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Teaching the Retrenchment Generation: When Sapphire Meets Socrates at the Intersection of Race, Gender, and Authority

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TEACHING THE RETRENCHMENT GENERATION: WHEN SAPPHIRE MEETS SOCRATES AT THE INTERSECTION OF RACE, GENDER, AND AUTHORITY

PAMELA J. SMITH*

*"The story of black women law professors in the legal academy has yet to be [fully] told. This [Article continues] . . . the process of creating a record of our experiences as teachers, scholars, administrators, and participants in the law school culture."*¹

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PREFACE

This Article is about perceptions and the negative sociological factors that feed these perceptions as Black women attempt to teach the Retrenchment Generation. For purposes of this Article, the Retrenchment Generation is not limited to any particular age group or period of time. Rather, the Retrenchment Generation refers to a state of mind that makes race-based, sex-based, and race/sex-based microaggressions acceptable and in fact normal. The Retrenchment Generation is defined by the synergism that is created by racial isolation, particularly in the educational arena, retrenchment fervor, and the presumption of incompetence that inflexibly presumes that all professional Black women are angry, threatening, intimidating, and unintelligent. These negative behavior characteristics define a Sapphire, a stereotypical myth that exploits the public's fear of, disrespect for, and denigration of Black women, especially their intelligence.

As Black female academics try to teach the Retrenchment Generation, we cannot ignore the fact that the Retrenchment Generation is comprised of students, colleagues, and administrators, whose attitudes about the ability of Black women to "profess" are shaped by the above three powerful, though negative, sociological phenomena. This Article reveals the effects racial isolation, retrenchment fervor, the presumption of incompetence, and the negative Sapphire myth have on the ability of Black women to successfully and easily navigate the waters of legal academia.

Further, although it is fairly clear that teaching students the substance of a particular area of law is what Black women professors are paid to do, we can no longer hide from the reality that Black women are also required to "teach" our students, our colleagues, and each other about the unique obstacles Black women face because we are Black, female, and otherwise vulnerable. This extra burden, fraught with danger, risk, and difficulty defines what it means to be

a Sapphire teaching the Retrenchment Generation. This Article explores and reveals these difficulties and the sociological phenomena that make it so.

I. INTRODUCTION

"In a world undivided along racial and gender lines, we would not have the occasion to ponder the relevance of race and gender to our role as *professors* of law."² Unfortunately, we do not live in such a world. In our world, race and gender remain supremely relevant to whether some professors of law are perceived as too incompetent to profess.³ Let me, therefore, introduce those facts about myself that are relevant to my perceived ability to profess successfully. I am an educated African-American⁴ female who is a law professor. As such, I am a Sapphire.⁵ I am a Sapphire not because I choose to be or because I actually am. I am a Sapphire because of an inflexible characterization about Black women that concludes that I am angry, threatening, and unintelligent.⁶ As a Sapphire, I am not regarded as entirely unintelligent, but intelligent enough to use my wit in angry and threatening ways.

My status and effectiveness as a law professor and my potential career opportunities are diminished by my identity as a Black woman, i.e., as a Sapphire.⁷ Given this peculiar state of being, I experience the burdens of teaching in legal academia during the late 1990's and will continue to experience these burdens in the next millennium. This Article explores some of the burdens of those who, like me, live at the intersection of race, gender, and authority.⁸

2. Linda S. Greene, *Tokens, Role Models, and Pedagogical Politics: Lamentations of an African-American Female Law Professor*, 6 BERKELEY WOMEN'S L. J. 81, 81 (1990-91).

3. See *infra* Part III (explaining that the presumption of incompetence in academia falls along racial, gendered, and age lines).

4. I will use Black and African-American interchangeably throughout this Article. Where others have chosen to use other terms, those terms will be left intact in quoted text. Similarly, to take into account the fact that Black women are disadvantaged by both race and gender, I will use race/sex or race/gender when specifically referring to this disadvantage to distinguish this from those who suffer only from either racial or gender disadvantage.

5. See *infra* Part III.C.1 (defining and exploring the Sapphire myth).

6. See *infra* Part III.C (exploring perceptions about Black women).

7. A specific discussion of identity, be it self-selected or involuntarily imposed and constricted, is beyond the scope of this Article. Still, as will be seen throughout this Article, those who are identified as Black and female risk facing the type of hostility discussed herein.

8. The articulation of this race/gender intersection owes its genesis to seminal articles by Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539; Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139; Judy Scales-Trent, *Black Women and the Constitution: Finding Our Place, Asserting Our*

The negative characterizations about Black women are exacerbated when a Black woman exercises authority in academia,⁹ for example, through class management, grading, and other forms

Rights, 24 HARV. C.R.-C.L. L. REV. 9 (1989); Peggie R. Smith, *Separate Identities: Black Women, Work, and Title VII*, 14 HARV. WOMEN'S L.J. 21 (1991); Judith A. Winston, *Mirror, Mirror on the Wall: Title VII, Section 1981, and the Intersection of Race and Gender in the Civil Rights Act of 1990*, 79 CAL. L. REV. 775 (1991); Cathy Scarborough, Note, *Conceptualizing Black Women's Employment Experiences*, 98 YALE L.J. 1457 (1989). See generally CRITICAL RACE FEMINISM: A READER (Adrienne K. Wing ed., 1997) (compiling the writings of several Black women scholars).

9. See *infra* Part III.C.4. One cannot deny that African-American women are not monolithic. We differ in age, color, sexuality, religion, marital status, socio-economic class, education, and numerous other individual characteristics. Yet, despite these differences, if we are recognizably Black and female, there is a striking similarity in experiences due to the presumption of incompetence and the strength of the negative myths and stereotypes about Black women. See generally Neil Gotanda, *A Critique of "Our Constitution is Color Blind,"* 44 STAN. L. REV. 1 (1991) (exploring, among other things, a two-step process that first identifies Blacks visually and then attributes negative stereotypes to them).

Although it is my hope that no other Black woman has faced the same quantity and quality of negative trials and tribulations that I have, I fear that this is not the case. This Article is designed to place the risks that Black women face in a theoretical and experiential framework. For excellent discussions by Black women who have risked writing about their experiences in academia, see generally, for example, SHEILA T. GREGORY, *BLACK ACADEMIC WOMEN: PROGRESS BUT NO PARITY* (1998) [hereinafter GREGORY, PROGRESS] (stating how the emphasis in tenure promotion on research and not on teaching or community service reflects racist and sexist attitudes); SHEILA T. GREGORY, *BLACK WOMEN IN THE ACADEMY: THE SECRETS TO SUCCESS AND ACHIEVEMENTS* (1995) [hereinafter GREGORY, SECRETS]; YOLANDA T. MOSES, *BLACK WOMEN IN ACADEME: ISSUES AND STRATEGIES* (1989) (exploring the climate for Black women in both predominately white colleges and universities and historically Black universities); Okianer Christian Dark, *Just My 'Magination*, 10 HARV. BLACKLETTER J. 21 (1993) (describing how racial biases permeate legal academia and how white people do not recognize it); Cheryl I. Harris, *Law Professors of Color and the Academy: Of Poets and Kings*, 68 CHI.-KENT L. REV. 331 (1992) (describing her particular experiences as a Black woman in legal academia and examining the intersection of race, gender, and class); Lisa R. Jackson, *"We're Fighting Two Different Battles Here": An Exploration of African-American Women's Definitions of Self at Predominantly White Schools*, 5 J. ADULT DEV. 171 (1998) (exploring how Black women who attend primarily white colleges perceive themselves); Angela Mae Kupenda, *Making Traditional Courses More Inclusive: Confessions of an African American Female Professor Who Attempted to Crash All the Barriers at Once*, 31 U.S.F. L. REV. 975 (1997) (describing how she as a Black female law professor attempted to make a traditional first year law course more inclusive of diversity); Vernellia R. Randall & Vincene Verdun, *Two Black Women Talking about the Promotion, Retention, and Tenure Process*, in *BLACK WOMEN IN THE ACADEMY: PROMISES AND PERILS* 213 (Lois Benjamin ed., 1997) (illustrating how a promotion and tenure committee can use a racially biased opinion to presume incompetence); Jennifer M. Russell, *On Being a Gorilla in Your Midst, or, The Life of One Blackwoman in the Legal Academy*, 28 HARV. C.R.-C.L. L. REV. 259 (1993) (describing how subordinated classes develop an outlaw culture and how the Black female outlaw culture interacts with predominately white male institutions such as the legal academy); Symposium, *Black Women Law Professors: Building a Community at the Intersection of Race and Gender*, 6 BERKELEY WOMEN'S L.J. 1 (1990-91) [hereinafter Symposium, *Building*] (containing 16 essays by Black women discussing their experiences as law professors; each one is useful in understanding the hostilities, prejudices, and biases experienced by Black women professors).

of student evaluative measures.¹⁰ This Article explores this phenomenon, as well as the unwillingness of institutions, white colleagues, and white students to recognize the hostility that results.¹¹ Indeed, it appears as if many white academics do not want to recognize that negative stereotypes impact a Black woman's ability to be successful; nor do they appear to want to recognize the inflexibility and pervasiveness of the stereotypes.¹² Further, throughout this Article, I hope to begin the dialogue on how resegregation and retrenchment have renewed and intensified the hostility against Black women in academia.

Regrettably, I acknowledge that my African-American femaleness acts as an impenetrable barrier that may preclude academic institutions and institutional players from actually hearing the message. After all, due to non-existent or poor credibility, Black women also are not believed.¹³ So, like many others who have written about the experiences of Black women in academia,¹⁴ this Article is in part about me, a Sapphire, writing on

10. Further exacerbation of the negative perceptions toward Black women in academia occurs as the academic level and the subject matter taught become less female or family-centered. Accordingly, Black women teaching in graduate and professional schools may experience more hostility than their sisters teaching in undergraduate schools. Black women teaching "unusual" and "unexpected" courses such as Computer Law, Patent Law, or Health law may experience more hostility than their sisters teaching Race, Gender & Law, Family Law, or Civil Rights Law. See, e.g., Elyce H. Zenoff & Kathryn V. Lorio, *What We Know, What We Think We Know, and What We Don't Know About Women Law Professors*, 25 ARIZ. L. REV. 869, 880 (1983) (suggesting that there may be a correlation between what women teach and how they are perceived); cf. REIKO HASUIKE, *Credibility and Gender in the Courtroom: What Jurors Think*, in THE WOMAN ADVOCATE: EXCELLING IN THE 90'S 117, 122 (Jean Maclean Snyder & Andra Barmash Greene eds., 1995) (reporting that women will not face hostility from jurors if they excel at traditional feminine activities and "so long as women do not challenge traditional female values such as motherhood"). Despite varying levels of hostility based on these academic levels and/or subject matter differences, one thing is certain: as a group, Black women can expect to face inflexible negative characterizations that lead to student hostility, among other things. See *infra* Part V.D (exploring the problem of hostility in student evaluations).

11. This Article will be making generalizations about the racial and gender-based prejudices that African-American women face in academia, not only to set forth the theory of incompetence and hostility, but also to set forth my personal experiences. These generalizations, however, are not an indictment of all white people, all white colleagues, or all white students. Rather, the generalizations are intended to show that it is the institutions and institutionalized customs that ensure that prejudices are perpetuated and encouraged such that Black women continue to struggle in academia.

12. See *infra* Part II.B.2 (describing the inability of white academics and institutions to recognize retrenchment).

13. See *infra* notes 16-17, 444-451 and accompanying text (discussing credibility and Black women).

14. See generally Symposium, *Building*, *supra* note 9 (exploring the issues raised by being a Black female law professor).

my own behalf and on behalf of others who are like me.¹⁵ Yet, I am writing a legal article, using footnotes, statistics, tables, sociological data, and other scholarly material. Without this official support, my experience and the experiences of other Sapphires who are teaching during retrenchment will go unrecognized or will be considered defensive and self-serving.¹⁶ Consequently, this legal article is both theoretical and experiential; both analytical and emotional.¹⁷

I theorize that given educational racial isolation, educational retrenchment, and increased racial hostility, African-American female academics are facing an intractable presumption of incompetence. As the barriers to success for Black women who began teaching during retrenchment, i.e., the mid-1990's, appear to be different than those experienced by their sisters who began teaching ten years or more earlier,¹⁸ racial isolation and retrenchment must be defined, explained, and explored. Part II of this Article does just that.

This Article also explores the presumption of incompetence and each resulting phenomenon that Black women in academia face. It further attempts to prove not only that such biases exist, but also that they diminish, if not entirely eliminate, a Black woman's ability to succeed in academia if their consequences are left unrecognized

15. See Austin, *supra* note 8, at 542.

16. This official support, therefore, acts as a legitimizer, i.e., a much needed patron. For a relevant discussion opining that Black women need the legitimization of a patron, see Anita Faye Hill, *Marriage and Patronage in the Empowerment and Disempowerment of African American Women*, in RACE, GENDER AND POWER IN AMERICA: THE LEGACY OF THE HILL-THOMAS HEARINGS 271, 271-91 (Anita Faye Hill & Emma Coleman Jordan eds., 1995).

17. Given the denigration of women of color in academia, one author has opined that the writings of white women are considered theoretical, whereas the writings of women of color are considered experiential. See BELL HOOKS, TALKING BACK: THINKING FEMINIST, THINKING BLACK 37 (1989). In this Article, I hope to use both a theoretical and an experiential approach.

Despite this theoretical/experiential approach, this Article is indeed a "legal" article because it critiques the legal academy, students, and colleagues alike. It does not, however, analyze one case, one statute, or one regulation. Yet, the perceptions of Black women that are discussed herein inform and color how Black women are perceived when they appear in court to assert their rights, to protect the rights of their clients, etc. Thus, the perceptions discussed in this Article inform the reader of the statutes, cases, and regulations that Black women must use in order to seek justice under Title VII of the Civil Rights Act, the Equal Protection Clause of the Fourteenth Amendment, sexual harassment jurisprudence, and hostile work place environment jurisprudence, among others. See, e.g., Ira J. Hadnot, *Interview with Mary Francis Berry*, DALLAS MORNING NEWS, Aug. 8, 1999, at 1J ("Black women, usually no matter what the legal issue is, have to fight against the presumptions about their integrity and morality. They have to prove themselves respectable before you can address anything else. The treatment of Anita Hill proved how hard that can be.").

18. See *infra* Part II.B. See generally Ass'n of Am. Law Schs., *Perspectives on Diversity: AALS Special Commission on Meeting the Challenges of Diversity in an Academic Environment* (visited Nov. 4, 1999) <<http://aals.org/table.html>> (discussing the barriers faced by the first and second generation of law professors).

and unredressed. Certainly, there are barriers to entry and success in all fields of endeavor for Black women. Yet, the barriers to success in academia are multiplied as Black women face hostility from students, hostility and indifference from colleagues, and indifference from administrators. Indeed, being a Sapphire or being perceived as a Sapphire is not only a barrier to entry into academia, it is also a barrier to retention and success.¹⁹

Given this background, Part III of this Article sets forth the presumptions of incompetence that are gender-based, race-based and race/gender based. Part IV sets forth the theory that racial isolation, retrenchment, and the presumption of incompetence create a synergism of negativity that upsets the expected professor/student power dynamic and makes Black women particularly vulnerable to student-based harassment. Part V reveals this synergism in operation, exploring four phenomena of hostility that result in hostile interactions in the classroom and less than stellar evaluations for Black women professors. Part VI provides suggestions and strategies for institutions and for Black women to recognize and overcome the effects of the synergism of negativity.

II. THE THEORY: TEACHING THE RACIALLY ISOLATED RETRENCHMENT GENERATION

Despite the dearth of empirical research on Black professorial credibility in the classroom,²⁰ it is perhaps common sense that in a racialized country, Blacks face some attacks on their credibility as they attempt to teach white students. These attacks may be the result of resegregation and retrenchment not only in the educational arena, but in society as a whole. Indeed,

[g]iven the (a) restricted interactions between Black teachers/professors and White students, (b) negative tenor of race relations within the United States . . . , and (c) continued expression of alienation by Black faculty . . . , it is logical to speculate that a classroom of predominantly White students

19. See generally BYRON W. BROWN & STEPHEN A. WOODBURY, STAFF WORKING PAPERS OF W.E. UPJOHN INSTITUTE, GENDER DIFFERENCES IN FACULTY TURNOVER (1995) (exploring why more women than men voluntarily leave academia); Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537 (1988) (discussing the problem of retaining minorities as part of law faculties).

20. But see Katherine Grace Hendrix, *Student Perceptions of the Influence of Race on Professor Credibility*, 28 J. BLACK STUD. 738, 739 (July 1998) (discussing how race impacts whether Black and white male professors are perceived as credible).

may present particular challenges to building [and maintaining] credibility and acceptance (and promoting student learning) for the Black teacher and professor.²¹

Because educational resegregation and retrenchment act as two powerful sociological phenomena that impact Black females' success in academia, each is explored below.

A. *Resegregation: Guaranteeing the Continued Uniqueness of Black Teachers*

Due to resegregation, Blacks as teachers and professors are rare, and probably unique, to many white students.²² Indeed, given the failure of desegregation and the rise of resegregation throughout the nation, most Blacks, in general, are very isolated, having little, if any, personal contact with whites where they live.²³ This conclusion does not change when we consider the educational system. After all, residential segregation generally leads to educational segregation.²⁴ To understand the sociological dynamics that fuel racial retrenchment and the development of racial stereotypes, I have looked at data that highlight the residential and educational isolation of whites from Blacks. The discussion below will highlight how the discomfort white students have with their Black professors during professional school results from racial segregation and isolation in primary and secondary schools, as well as undergraduate schools.

1. *Residential and Educational Racial Isolation*

Together, *de jure* segregation and *de facto* segregation ensured that African-Americans were universally segregated throughout the

21. *Id.* at 740.

22. See *infra* notes 34-50 and accompanying text (discussing the low number of Black teachers and Black female teachers at all levels of academia). See generally Sabrina Hope King, *The Limited Presence of African-American Teachers*, 63 REV. EDUC. RES. 115 (1993) (exploring the continued low number of Black teachers in the education profession).

23. See generally GARY ORFIELD ET AL., DEEPENING SEGREGATION IN AMERICAN PUBLIC SCHOOLS (1997) [hereinafter ORFIELD ET AL., DEEPENING SEGREGATION] (reporting statistics that show an increase in educational segregation of Blacks and whites since the early 1990's); GARY ORFIELD, THE GROWTH OF SEGREGATION IN AMERICAN SCHOOLS: CHANGING PATTERNS OF SEPARATION AND POVERTY SINCE 1968 (1993) [hereinafter ORFIELD, GROWTH OF SEGREGATION] (overviewing school desegregation patterns throughout the country, and contrasting rural and urban communities).

24. See *infra* Part II.A.1.

United States.²⁵ Thus, *de facto* segregation was as powerful a barrier to educational integration as was *de jure* segregation. Segregation was not unique to one area of the country. By the 1960's, "[t]he slow retreat of *de jure* segregation in the South had been paralleled by a rapid advance of [*de facto* segregation] of residence and schools in the north."²⁶

Of course, *de jure* segregation has been rendered illegal.²⁷ *De facto* segregation or resegregation, however, remains a powerful barrier that isolates many Blacks from the rest of the country, not only residentially but educationally as well.²⁸ For instance, in 1980, approximately 77% of all Blacks were living in segregated environments.²⁹ In twenty-nine major cities throughout the United States, Blacks were over 60% racially segregated.³⁰ In an interesting twist, the South was the most racially integrated area in the country.³¹

Unfortunately, since 1980, the racial isolation of Black people by residential patterns, and consequently by school attendance, has not improved and in fact has worsened.³² Blacks are finding themselves increasingly resegregated, regardless of where they move. If Blacks, in any great number, move to the suburbs, they

25. See 1 U.S. COMM'N ON CIVIL RIGHTS, RACIAL ISOLATION IN PUBLIC SCHOOLS 193-207 (1967) (concluding that by 1965 racial isolation in schools persisted because of such factors as housing patterns, school districting, economic stratification, and population movements).

26. C. VANN WOODWARD, *THE STRANGE CAREER OF JIM CROW* 192 (3d ed. 1974); see also Christine H. Rossell, *Desegregation Plans, Racial Isolation, White Flight, and Community Response*, in *THE CONSEQUENCES OF SCHOOL DESEGREGATION* 13-51 (Christine H. Rossell & Willis D. Hawley eds., 1983).

27. See generally *Brown v. Board of Ed. of Topeka* 347 U.S. 483 (1954).

28. See, e.g., GEOFFREY R. STONE ET AL., *CONSTITUTIONAL LAW* 490-93 (1986) (discussing the causes of resegregation and white flight); Derrick A. Bell, Jr., *Brown v. Bd. of Educ. and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 532, nn.80-81 (1980) (discussing white flight as the cause of resegregation); see also A COMMON DESTINY: BLACKS AND AMERICAN SOCIETY 83-84 (Gerald David Jaynes & Robin M. Williams, Jr. eds., 1989) [hereinafter A COMMON DESTINY] (discussing the various causes of white flight during school desegregation); William D. Green, "Critical Mass is Fifteen Colored's!" *De Facto and De Jure Policies of Racial Isolation in St. Paul's Schools and Housing Patterns During the 19th Century, and Beyond*, 17 HAMLINE J. PUB. L. & POL'Y 299, 299 (1996) (opining that the white flight of being in the minority escalates white flight).

29. See A COMMON DESTINY, *supra* note 28, at 78.

30. See ANDREW HACKER, *TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL* 162-65 (1992); A COMMON DESTINY, *supra* note 28, at 78-79, 89-90.

31. See A COMMON DESTINY, *supra* note 28, at 76-77 (noting that in 1972 the number of Black students attending schools whose enrollments were at least 90% minority dropped to 1 in 4 students).

32. See ORFIELD ET AL., *DEEPENING SEGREGATION*, *supra* note 23, at 7-9; ORFIELD, *GROWTH OF SEGREGATION*, *supra* note 23, at 6-7.

face white fright, white flight, and subsequent resegregation.³³ Consequently, throughout the country, regardless of whether Blacks live in the inner city or in the suburbs, if there are too many Blacks, racial resegregation ultimately results.

Given this residential and educational segregation, quantitative and qualitative interactions between Black adults and white children in the public educational arena are unlikely for two reasons. First, there are too few Black teachers to go around. In fact, most African-American teachers teach in urban schools where Black students are the majority and white students are virtually non-existent.³⁴ Where white students are the majority, Black teachers are virtually non-existent.³⁵ For instance, in the school year 1993-94, in those public schools where whites were 95% to 100% of the student body, Blacks were only 6.9% of the teaching population.³⁶ Thus, numerically, there are insufficient Black teachers to ensure quantitative and qualitative transracial interactions between Black teachers and white students.

Second, quantitative and qualitative interaction between Black teachers and white students is unlikely because historically Blacks have been perceived as being too incompetent to teach white students.³⁷ In fact, the public debate regarding the incompetence of Black teachers can be traced to desegregation.³⁸ During desegregation, Black teachers were, by implication, considered to be incompetent to teach white children.³⁹ As a result of the perceived incompetence of Black teachers, during desegregation many Black teachers lost their jobs, leaving white teachers as those who were perceived to be competent enough to teach desegregated classes.⁴⁰ Due to this perception of incompetence and the fact that there are

33. See ORFIELD ET AL., *DEEPENING SEGREGATION*, *supra* note 23, at 12-14; ORFIELD, *GROWTH OF SEGREGATION*, *supra* note 23, at 29.

34. See FREDERICK D. PATTERSON RESEARCH INST. *THE AFRICAN AMERICAN EDUCATION DATA BOOK: PRESCHOOL THROUGH HIGH SCHOOL EDUCATION* 208 (1997).

35. See *id.* at 217.

36. See *id.*

37. See, e.g., MICHELLE FOSTER, *BLACK TEACHERS ON TEACHING* XXVIII (1997) (stating that since the nineteenth century, "Black leaders were [considered] inferior to whites and not suitable to teach white pupils").

38. See *id.* at XXXV.

39. See *id.*; see also James S. Liebman, *Desegregating Politics: "All-Out" School Desegregation Explained*, 90 COLUM. L. REV. 1463, 1514 n.252 (1990) (noting that in the early days of desegregation, some whites believed that Black teachers could not teach in white schools because they were too poorly educated to teach white children); Note, *Race Based Faculty Hiring and the Layoff Remedies in School Desegregation Cases*, 104 HARV. L. REV. 1917, 1919 (1991) (noting that prior to 1954, southern school districts often assigned Black teachers to Black schools and white teachers to white schools).

40. See FOSTER, *supra* note 37, at XV-XXXVII.

so few Black teachers, white teachers dominate the teaching profession; not only in teaching white children, as before, but also in teaching Black children in desegregated and resegregated schools.⁴¹

Unfortunately, the dearth of Black teachers does not change when one reviews the number and percentage of African-American teachers in colleges and universities. During the 1992-1993 school year,⁴² Blacks were only 4.9% (29,598) of all college and university teaching faculty, including full-time, part-time, temporary, and permanent positions.⁴³ The percentage of African-American teachers does not improve when only full-time permanent positions are considered. Blacks were only 5.3% (16,790) of all regular, full-time faculty in 1992.⁴⁴ Black women comprised only 2.4% of all faculty, numbering 14,692 throughout the country in all positions, making Black women as teachers particularly rare.⁴⁵

As a result of resegregation and the dearth of Black teachers at the university level, Black teachers remain a rarity at all educational levels. Most white students may not ever have had a Black female teacher in elementary school, high school, or college.⁴⁶ Outside of the inner-city primary and secondary schools and Historically Black Colleges and Universities (HBCUs), Black academics, especially Black women academics, are particularly unique.⁴⁷ This uniqueness affects how white students will perceive a Black woman when they finally have the opportunity to be taught

41. See FREDERICK D. PATTERSON RESEARCH INST., *supra* note 34, at 214-15 (revealing a ratio of 387,765 white women teachers to 104,644 Black teachers in large urban areas); NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEPT OF EDUC., DIGEST OF EDUCATION STATISTICS 1997, 97 (1997) (listing the race of teachers from 1971 through 1996).

42. The focus in this Article is on the 1992 school year because that is the year that most of the students I taught in my 1997 Property Law class would have begun their college studies, assuming that they graduated in 1996. If students graduated before 1996, then the statistics on the number of Blacks professors teaching in colleges and universities would have been much worse, because growth in the number of Black professors did not begin until 1993. See *A Troubling Drop in the Number of Black College Faculty*, J. BLACKS HIGHER EDUC., Spring 1999, at 26 [hereinafter *A Troubling Drop*] (reporting that between 1993 and 1996 there was a dramatic 56% increase in the number of Black professors).

43. See FREDERICK D. PATTERSON RESEARCH INST., THE AFRICAN AMERICAN DATA BOOK: HIGHER AND ADULT EDUCATION 427-29 (1997); see also *A Troubling Drop*, *supra* note 42, at 26-27 (reporting that the number of Black college professors has declined since the early 1990's—Black teachers were 4.8% of the teaching population in 1993, 5.0% in 1994, 6.2% in 1995, 6.5% in 1996, 6.5% in 1997, and 5.8% in 1998).

44. See FREDERICK D. PATTERSON RESEARCH INST., *supra* note 43, at 428-29.

45. See *id.*

46. See FREDERICK D. PATTERSON RESEARCH INST., *supra* note 34, at 214 (discussing where Black teachers teach by region); Kupenda, *supra* note 9, at 978.

47. See Anita L. Allen, *On Being a Role Model*, 6 BERKELEY WOMEN'S L.J. 22, 25 (1990-91); cf. FREDERICK D. PATTERSON RESEARCH INST., *supra* note 43, at 428 (reporting that most full-time regular Black university and college teachers teach in the South, with 47.7% and 8.3% of Black teachers teaching in the Southeast and the Southwest, respectively).

by one.⁴⁸ Because of her uniqueness, a Black woman's very existence as the authority figure in the classroom may be perceived as making a political statement, reminding many white people of the not too distant *de jure* and *de facto* segregated past and the *de facto* resegregated present.

Against the background of this history [of racial subordination and apartheid in the United States], it is impossible for us to expect that [Black women's] participation in the transmission and critique of legal culture will be apolitical. To the contrary, our participation is profoundly political and disturbing to many. Our scattered presence draws the attention of students and faculty alike to a past in which we were completely absent and to a present in which we are virtually absent. Our limited presence visually politicizes the past and present by reminding students, faculty, alumni, and others of the rationales of our historical and current exclusion. Our demand *to profess*, to authoritatively declare and critique society's norms, is at odds with our historical roles and status. . . . The ubiquitous white male law professor arouses no curiosity or attention based solely upon his presence. Yet we are the object of curiosity and scrutiny whenever we are present, and the subject of rationalizing explanations when we are not.⁴⁹

The likelihood of Black women being perceived as objects of curiosity, discomfort, and hostility is perhaps exacerbated in those environments that are most intensely segregated.

Given general educational racial isolation, whether law students come from racially segregated environments is relevant to whether Black women law professors will experience racial hostility. The effects of this general racial resegregation will be explored in the law school context, using Boston College Law School (BCLS) and the Northeast region as a focal point.⁵⁰

2. Educational Racial Isolation in the Northeast

Primary and secondary schools in the Northeast are the most intensely segregated,⁵¹ because "segregation is greatest in the large

48. See Kupenda, *supra* note 9, at 979.

49. Greene, *supra* note 2, at 81-82.

50. I limit this inquiry to students who were admitted into Boston College Law School (BCLS) in 1996 because the students admitted that year evidenced particularly aggressive and explicit racial hostility that the experiential part of this Article explores. See *infra* Parts V.C & V.D.

51. See ORFIELD, GROWTH OF SEGREGATION, *supra* note 23, at 9 (reporting that 50.1% of

northern cities where desegregation was never accomplished."⁵² Consequently, in northern cities, the effects of residential and educational racial segregation ensure that most white students will not experience a Black female academic throughout their entire educational lives.⁵³ Racial isolation heightens the likelihood that students will perceive Black women teachers as objects of curiosity, discomfort, and hostility. Racial isolation helps explain the intensity of the racial experiences that some Black women, like myself, experience in legal academia.

Boston, Massachusetts, is a large northern city where desegregation never occurred successfully.⁵⁴ Boston is also located in the Northeast. Reference to the Northeast is relevant to this Article because BCLS recruits most of its students from the hyper-segregated Northeast.⁵⁵ The states that comprise the Northeast region are Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.⁵⁶

The BCLS first-year class that began in 1996, my last first-year Property Law class, is perhaps indicative of the BCLS student body. Based on the students' permanent addresses, 166 of 267 1L

all Black and 46.2% of all Hispanic students attend schools that are 90-100% minority); *see also id.* at 11-15 (reporting on the most segregated states for Black and Hispanic students); ORFIELD ET AL., *DEEPENING SEGREGATION*, *supra* note 23, at 15 (reporting on regional segregation); *id.* at 28-29 (reporting on the most segregated states for Black students).

52. ORFIELD, *GROWTH OF SEGREGATION*, *supra* note 23, at 6.

53. *See* THE FREDERICK D. PATTERSON RESEARCH INST., *supra* note 34, at 217 (stating that Blacks represented only 4.38% of all teachers in the public elementary and high schools in the Northeast in the 1993-94 school year); *id.* at 214 (stating that Black women were only 3.8% of those teaching in the Northeast); *id.* at 215 (stating that Black women were only 5.2% of public elementary teachers in the Northeast and only 4.5% of high school teachers in the Northeast).

54. *See, e.g.,* NAACP v. Harris, 567 F. Supp. 637, 640-44 (D. Mass. 1983) (describing the extreme racial residential segregation in the City of Boston). Boston is also known for its reputation of being particularly racially discriminatory. *See, e.g.,* Cindy Rodriguez, *Blacks Look for Place to Call Home in Boston; First-Ever Conference Aims to Help Minorities Feel Welcome*, BOSTON GLOBE, June 5, 1999, at A1 (reporting that "hundreds of black professionals have fled the city after spending a year or two" in Boston because of Boston's "reputation for racial tension"); Virgil Wright, *Black Professionals See Progress in Hub*, BAY STATE BANNER, July 17, 1999, at 1 (noting that "Black professionals nationally have a negative view of Boston, ranking the city among the least likely targets of relocation"). Unfortunately, the reputation is sometimes deserved. For instance, "you have the federal government saying Boston is guilty of the worst racism seen in public housing, and it's against the backdrop of the incident of alleged racism at the restaurant, Mistral, and you have front page stories about race and the fire department. Obviously, there's a problem here." Jack Thomas, *Were Stories on Racism Biased?*, BOSTON GLOBE, Mar. 1, 1999, at A17 (citing deputy political editor Alison Bethel).

55. *See supra* notes 51 & 54 and accompanying text; *see infra* notes 57-58 and accompanying text.

56. *See* ORFIELD ET AL., *DEEPENING SEGREGATION supra* note 23, at 20 (App. B); ORFIELD, *GROWTH OF SEGREGATION, supra* note 23, at 31 App. A.

students—62% of the BCLS students—listed the racially isolated Northeast as their permanent residence.⁵⁷ The following chart reflects students' state of residence.⁵⁸

State in Northeast Region	Number of Students
Connecticut	12
Massachusetts	89
Maine	2
New Hampshire	10
New Jersey	10
New York	27
Pennsylvania	8
Rhode Island	6
Vermont	2

In addition, most of the students reported that they had attended undergraduate schools in the hyper-segregated Northeast.⁵⁹ Thus, students from the Northeast, the region with the most racially segregated educational institutions, dominate the BCLS student body. BCLS students are unlikely to have benefited from attending integrated primary and secondary schools. They are also unlikely to have had an educational experience that included a Black woman as a teacher or professor.⁶⁰ In 1997, the New England region, where BCLS is located, had one of the smallest percentages of Black faculty, especially Black women. Black women comprised only 2.3% of all faculty, numbering 14,692, throughout the country in all positions and only numbering 357 and 182, in all teaching positions and full-time regular faculty, respectively, in New England.⁶¹

57. See BOSTON COLLEGE LAW SCH., MATRICULANT FEEDER STATES CLASS ENTERING FALL 1996, Aug. 30, 1996; see also BOSTON COLLEGE LAW SCH., BOSTON COLLEGE LAW SCHOOL ENTERING CLASS STATISTICS, Sept. 1, 1995 [hereinafter ENTERING CLASS](reporting that for the class of 1995, there were 187 of 280 students from these same Northeastern states, meaning 67% of the 1995 first-year class was from the racially isolated Northeast).

58. See ENTERING CLASS, *supra* note 57.

59. See BOSTON COLLEGE LAW SCH., MATRICULANT FEEDER SCHOOLS CLASS ENTERING FALL 1996, Aug. 30, 1996; see also ENTERING CLASS, *supra* note 57 (listing Boston College, Harvard, Tufts, Georgetown, Cornell, Yale, Wellesley, University of Massachusetts (Amherst), and others among the top feeder schools for the class that began in 1995).

60. Black women, and other people of color, who are teaching in states that have faced legal attacks on affirmative action at the schools in those states may face particularly harsh aspects of the intersection of racial isolation, uniqueness of Black teachers, and retrenchment. See *infra* Part IV (discussing the synergism of negativity).

61. See FREDERICK D. PATTERSON RESEARCH INST., *supra* note 43, at 428 (reporting that "[r]elative to whites, African Americans comprised a smaller share of faculty in New England

Exacerbating Black women's uniqueness to white law students is the dearth of Black women teaching college and university courses in law or law-related funnel courses.⁶² Around the country in all colleges and universities, there were only 188 Black women teaching law to students in 1997.⁶³ In fact, outside of nursing and other health related subjects, education, and English/literature, no subject matter had more than a few hundred Black women teaching.⁶⁴ Data from the 1992 school year shows that there were only:⁶⁵

636	Black women teaching business
112	Black women teaching communications
115	Black women teaching engineering
32	Black women teaching foreign languages
338	Black women teaching history
7	Black women teaching philosophy
205	Black women teaching mathematics
131	Black women teaching computer science
170	Black women teaching political science
262	Black women teaching sociology
392	Black women teaching psychology

Many of these courses in which there were so few Black women are core courses—English, mathematics, history, philosophy, political science—in which Black women would have had the opportunity to teach large classes and thereby teach some white students. This would have increased the opportunity for white students to be exposed to Black female teachers.

Unfortunately, given the small numbers of Black female professors, few opportunities exist in academia for white students to be taught by Black women. This is so regardless of the subject matter. Thus, as the numbers above show, the dearth of Black women teaching pre-law is merely an effect of the small number of Black women teaching in general at the college and university level.⁶⁶

(2.3% versus 6.6%), the Plains States (1.9% versus 10.6%), the Rocky Mountain region (0.5% versus 3.4%), and the Far West (8.6% versus 13.0%)").

62. *See id.* at 437-39 (listing the percentages of professors by race and gender based upon subject matter).

63. *See id.* at 439.

64. *See id.* at 437-39.

65. *See id.*

66. *See id.* at 441 (reporting that 6,589 Black women teach solely at the undergraduate level, 651 teach undergraduate/graduate, and 734 teach graduate courses only, showing that most Black women in post-secondary schools teach in an undergraduate school).

Given the small number of Blacks who teach at the college level and the effects of resegregation, it is perhaps not entirely unexpected for these same students to approach Black women professors with curiosity, hostility, and discomfort when they finally have the opportunity to be taught by one in professional school. This is especially true when retrenchment and the presumption of incompetence are taken into account.⁶⁷

Furthermore, because students themselves become educated, are middle-class, or are now adults does not mean that they will not participate in subtle racial discrimination; rather, the contrary is true.⁶⁸ Education in and of itself does not reduce the racist leanings most whites learn as members of a white supremacist society.⁶⁹ Such education, especially in light of the above data on racial isolation throughout elementary school, high school, and college, may in fact exacerbate it and make covert racism more complex. Indeed,

previous research has suggested that educated whites in middle-class settings may be more inclined to engage in less obvious discrimination than their less-educated counterparts. . . . The experience of [Black women facing discrimination practiced and allowed by] mostly middle-class discriminators raises serious questions about the general perception that education reduces racial intolerance.⁷⁰

Therefore, the level of students' education does not positively impact any propensity to participate in, encourage, or allow racist behavior. The opposite appears to be the case.

In addition to invisibility in hyper-segregated environments, the lack of Black females in school books that communicate to students our history, our norms, our possibilities, and our contributions exacerbates the invisibility of Black women as a

67. Retrenchment and the presumption of incompetence are discussed *infra* Parts II.B and III, respectively. The assertion that law schools cannot find "qualified" women of color to teach is best exemplified by Harvard Law School's refusal to hire women of color until recently when it hired Lani Guinier as a tenured professor. Professor Guinier became the first tenured Black woman at Harvard Law School, but not without a fight. The rhetoric generated by Harvard's refusal and Derrick Bell's subsequent termination and departure also may affect how students in the Northeast perceive Black women. See generally DERRICK A. BELL, JR., *CONFRONTING AUTHORITY* (1997) (discussing his fight at Harvard Law School to have a woman of color hired on the tenure track).

68. See Yanick St. Jean & Joe R. Feagin, *Racial Masques: Black Women and Subtle Gendered Racism*, in *SUBTLE SEXISM: CURRENT PRACTICE AND PROSPECTS FOR CHANGE* 179, 183 (Nijole V. Benokraitis ed., 1997).

69. See *id.*

70. *Id.*

legitimate part of academia.⁷¹ Because there are still so few Black women in these school books, students, regardless of race and gender, receive "the message . . . subtle and indirect but very clear: Black females just did not exist. . . . [They] could not be astronauts, scientists, doctors, or attorneys."⁷² As the logic continues, if Black women could not occupy these careers and positions, then surely they could not and should not be professors to teach the next generation of scientists, doctors, and lawyers.

The invisibility of Black females does not change in legal academia.⁷³ The presence of Black women in legal academia, at all levels, is listed below for the 1997-98 academic year:⁷⁴

Position	No. of Black Women	% of Law Teaching Population
All Positions	265	11.1%
Deans	1	7.1%
Associate Deans, without Professor Title	5	7.9%
Associate Deans with Professor Title	4	5.7%
Assistant Deans, without Professor Title	21	11.5%
Assistant Deans, with Professor Title	0	0.0%
Professors	66	8.1%
Associate Professors	89	17.8%
Assistant Professors	46	15.4%
Visiting Professors	6	10.9%
Lecturers and Instructors	25	9.3%

71. See JULIA BOYD, IN THE COMPANY OF MY SISTERS: BLACK WOMEN AND SELF ESTEEM 59 (1993).

72. *Id.* See generally REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS (J. Clay Smith, Jr. ed., 1998) (describing the early involvement of Black women in the legal profession).

73. See AM. BAR ASS'N COMM'N ON WOMEN IN THE PROFESSION, UNFINISHED BUSINESS: OVERCOMING THE SISYPHUS FACTOR: REPORT ON THE STATUS OF WOMEN IN THE LEGAL PROFESSION 6-7 (1995); Richard A. White, *The Gender and Minority Composition of Law School Faculty*, AALS NEWSL., Feb. 1995, at 7; Am. Bar Ass'n, *Miles To Go: Progress of Minorities in the Legal Profession: A Report from the ABA, Table 33* (1998) (visited Oct. 29, 1999) <<http://www.abanet.org/minorities>> [hereinafter *Miles to Go*] (stating recent counts on the number of law professors).

74. Ass'n of Am. Law Schs. *Statistical Report on Law Faculty and Candidates for Law Faculty Positions 1997-98, Table 1B* (visited Nov. 22, 1999) <<http://www.aals.org/statistics>>.

Based on the smallness of the numbers, Black women do not fare any better in legal academia than in other areas of the academy. The chart above shows that Black women continue to have a fairly limited presence at all levels in legal academia. Unfortunately, this limited presence suggests to some in legal academia that Black women, as a group, are unqualified and incompetent to profess.

One inference is that our limited presence indicates the overall inferiority of our group in general. Another inference which may be drawn from our limited presence is that our group is not suited to teach: it is inappropriate for us to *profess*. Our limited presence also permits inferences about the overall superiority of the dominant group.⁷⁵

Given the perception that it is inappropriate for Black women to teach in legal academia and the uniqueness of a Black teacher teaching white students, some white students enter legal academia not expecting or desiring to see Black women in the ivory tower of legal academia. This mind-set, coupled with retrenchment in the United States, sets the stage for the type of hostility I experienced as a Black female teaching first-year law students in Property Law in the 1995-96 and 1996-97 academic years. Because retrenchment and retrenchment denial apparently have made it politically correct to be expressly racist, retrenchment is discussed below.

B. Retrenchment and Retrenchment Denial

As the 1990's began, white women and people of color began to face retrenchment. Retrenchment can be viewed in two ways: 1) a retreat from prior promises of equality, inclusion, and retention, or 2) a wholesale return to old racist and sexist habits that were only temporarily and tenuously out-of-fashion during the 1970's and 1980's. Regardless of how it is defined, as the 1990's began, conservatives and others began a wholesale attack on affirmative action, the vehicle that had attempted to gain some equitable access to education and jobs for white women and people of color.⁷⁶

The most vociferous attacks have been on the educational front, as opponents of affirmative action have struck at the heart of educational access for Blacks who were historically denied access by

75. Greene, *supra* note 2, at 86.

76. See *infra* notes 80-82 and accompanying text (describing the conservative attack on affirmative action).

law under *de jure* segregation and by custom under *de facto* segregation.⁷⁷ Two well known white male scholars, Derek Bok and William G. Bowen, discussing the attack on admissions in the educational arena, note that the attack is not only being waged effectively, but it is being waged without opponents, supporters, and the public having actual information about admissions policies and whether using race as a factor in admissions policies has effected a change.

In the 1960s . . . few of the leading professional schools, [sic] and nationally prominent colleges and universities enrolled more than a handful of minority students.

Starting in the late 1960s, however, highly selective colleges and universities set about to change these statistics, not by establishing quotas but by considering race, along with many other factors, in deciding which applicants to admit.

This policy was adopted because of a widely shared conviction that it would be unwise and unhealthy for the country if overwhelming numbers of minorities continued to hold routine jobs while the more influential positions were almost always held by whites.

In a nation becoming more racially and ethnically diverse, educators also considered it vital to create a learning environment that would prepare students of all races to live and work together effectively.

The use of race in making admissions decisions is now under attack. One federal court of appeals has found the practice unconstitutional. Voters in two states have decided to ban any consideration of race in choosing among applicants to state universities. Several law schools are facing suits challenging their admissions policies.

Surprisingly, however, the controversy has proceeded with very little hard evidence of how these [admissions] policies work and what their consequences have been. To remedy this deficiency, we examined the college and later-life experiences of tens of thousands of students entering 28 colleges and universities with selective admissions policies in fall of 1976 and 1989.

While our study . . . focused mainly on college students, the data we gathered and the lessons we learned seem eminently relevant to the world of legal education as well.⁷⁸

77. See generally, e.g., *Sweatt v. Painter*, 339 U.S. 629 (1950) (denying a Black person access to the University of Texas's law school because it was claimed that the newly established state law school for Blacks offered substantially similar opportunities).

78. Derek Bok & William G. Bowen, *Opinion: Affirmative Action—Access to Success*, A.B.A. J., Feb. 1999, at 62, 62.

Several things from this long quotation have to be accentuated. First, in the 1960's, 1970's, and 1980's, there was a rhetorical conviction in the nation's colleges and universities to be more inclusive, given the history of exclusion and the diversity of our future. As will be discussed more below, we no longer have this type of rhetorical conviction in the nation's schools or in the nation as a whole.⁷⁹

Second, without any hard data, many colleges and universities have changed or will change their admissions policies of considering race; not because of litigation or legislation, but because of public opinion. For instance, Proposition 209 in California,⁸⁰ *Hopwood v. Texas*,⁸¹ and litigation-based attacks in Georgia, Michigan, and Washington State⁸² have led some state and/or higher education systems to change their admissions policies outright and others to

79. See *infra* notes 149-54 (discussing how overt racism has become more acceptable).

80. Proposition 209 is codified in the CAL. CONST., art. I, § 31. Its relevant text states that "the state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting." *Id.* § 31a.

81. 78 F.3d 932 (5th Cir. 1996) (holding that the University of Texas's Affirmative Action Program violates the Fourteenth Amendment).

82. See *Wooden v. Board of Regents of the Univ. Sys. of Ga.*, 32 F. Supp. 2d 1370, 1382 (S.D. Ga. 1999) (ruling that dual track admissions policy violated white applicant's equal protection rights and entitled plaintiff to damages under Title V); *Gratz v. Bollinger*, 183 F.R.D. 209, 213 (E.D. Mich. 1998) (holding that the University's admissions policy impermissibly utilizes race as a factor in determining admissions and that prospective minority applicants for admission to the University of Michigan lacked a substantial legal interest in the plaintiff's suit against the University to justify a right of intervention); *Smith v. University of Wash. Law Sch.*, 2 F. Supp. 2d 1324, 1324 (W.D. Wash. 1998) (alleging that the school used racially discriminatory admissions practices which denied plaintiff's admission); see also Corinne E. Anderson, *A Current Perspective: The Erosion of Affirmative Action in University Admissions*, 32 AKRON L. REV. 181, 184-85 (1999) (reviewing the historical development of using race as a factor in university admissions); Geoffrey A. Campbell, *Slow Progress for Minorities in Law: Increase since Mid-'80s Is Tempered by Problems Facing Women of Color*, A.B.A. J., Sept. 1998, at 82, 82 (noting how both Proposition 209 and *Hopwood* have resulted in lower law school admissions for African-Americans and Hispanic applicants); Jeffrey B. Wolff, *Affirmative Action in College and Graduate School Admissions—The Effects of Hopwood and the Actions of the U.C. Board of Regents on Its Continued Existence*, 50 SMU L. REV. 627, 640-60 (1997) (discussing the effects of the *Hopwood* decision and Proposition 209); Trisha Lacey, Note, *All in the Name of Diversity: Preferential Admissions in Higher Education*, 6 KAN. J.L. & PUB. POL'Y 107, 111 (1997) (writing that current admissions practices are in danger of being considered unconstitutional); Adam Cohen, *The Next Great Battle Over Affirmative Action; A Lawsuit against the University of Michigan Could End Racial Preferences in College Admissions*, TIME, Nov. 10, 1997, at 52, 55 ("[T]here is anecdotal evidence suggesting that the number of underrepresented minorities on campus could decline sharply."); *Illinois Added to Anti-Affirmative Action Hit List*, BLACK ISSUES HIGHER EDUC., Apr. 29, 1999, at 5, 5 (reporting that the Center for Equal Opportunity intends to target the affirmative action programs at Illinois' four-year institutions); Larry Reibstein, *What Color is an A?*, NEWSWEEK, Jan. 5, 1997, at 76, 76 (reporting on the efforts of the Center for Individual Rights to do away with race as an admission factor in Michigan schools).

begin to change their policies impliedly by simply admitting fewer Blacks.⁸³ Some states do not bother to wait for litigation or threat before they dismantle programs favorable to Blacks.⁸⁴

Third, Professors Bok and Bowen imply that if only the opponents of affirmative action in education knew that it had been a powerful stepping stone for Blacks, perhaps the direct attacks would stop and the ripple effects would diminish.⁸⁵ Perhaps the data on how successful inclusion had been would cause institutions to shore up their historical conviction to be inclusive. Professors Bok and Bowen provide statistical data to show that on the educational front "a little boost goes a long way" not only for the Black student herself, but also for the nation. In their study, they found that a high percentage of minorities who attended selective undergraduate schools earned higher degrees, were successful in the marketplace, were very active in their communities, and felt extremely satisfied with their college experience.⁸⁶

Once enrolled, competing against their higher-scoring white classmates, blacks and Hispanics at the selective colleges and universities in our study received somewhat lower college grades. Still, 75 percent of blacks and 81 percent of Hispanics graduated within six years, a rate below the 86 percent figure for whites but well above the levels not only for blacks (40 percent) but also for whites (59 percent) graduating from all 305 larger universities that participate in Division I-level NCAA athletics.

83. See Campbell, *supra* note 82, at 82 (noting that after *Hopwood* and Proposition 209 African-American admissions fell about 80% in California and Texas public law schools and Hispanic admissions fell about 50%).

84. See generally *Black Enrollments Drop at Harvard Law School*, J. BLACKS HIGHER EDUC., Spring 1999, at 135 (reporting that even though Harvard is a private school, and *Hopwood* does not apply, minority enrollment has dropped anyway); Lincoln Caplan et al., *The Hopwood Effect Kicks in on Campus*, U.S. NEWS & WORLD REP., Dec. 23, 1996, at 26 (reporting that, as of that time, institutions outside of the Fifth Circuit where *Hopwood* is the law are using it to re-examine, kill, or modify affirmative action programs specifically in Georgia, Arkansas, and Wisconsin).

85. See Bok & Bowen, *supra* note 78, at 62-63.

86. See *id.* at 62-63; see also Theodore Cross & Robert Bruce Slater, *Only the Onset of Affirmative Action Explains the Explosive Growth in Black Enrollment in Higher Education*, J. BLACKS HIGHER EDUC., Spring 1999, at 110, 110-15 (looking beyond elite institutions to opine that affirmative action has greatly assisted the inclusion of Blacks in many schools around the country, but also looking at the successful inclusion of Blacks at schools such as Harvard Law School, the University of Virginia, medical schools, and other law schools). See generally DEREK BOK & WILLIAM G. BOWEN, *THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* (1998) (arguing that race-sensitive admissions policies work to provide Black students better opportunities).

....

It was not by majoring in easy subjects that minorities earned degrees from the selective schools. Blacks selected substantially the same concentrations as whites. More than 90 percent of both blacks and whites in our survey were satisfied or very satisfied with their college experience, and blacks were even more inclined than whites to credit their undergraduate experience with helping them learn crucial skills.

Following graduation, a remarkable 40 percent of blacks earning bachelor degrees who entered the selective colleges in 1976 went on to earn Ph.Ds or professional degrees in the most sought-after fields of law, business and medicine. This figure is five times higher than that for all blacks with bachelor degrees nationwide. Moreover, 14 percent of the black graduates from our selective schools went on to earn law degrees as opposed to 11 percent of their white classmates.

The black students in our study who attended college in the late 1970s have been eminently successful by the judgment of the marketplace.

At the time of our survey, black male graduates who had entered these schools in 1976, though typically under age 40, were earning an average of \$85,000—82 percent more than other black male college graduates nationwide. Their black female classmates earned 73 percent more than all black women with bachelor degrees.

Black lawyers were slightly less successful than other blacks in our sample but still earned about \$76,000 per year, well above the average of \$64,000 for all black lawyers of a similar age. (Hispanics also appear to have done well, but too few entered in 1976 to permit an equally detailed analysis).

Besides their earnings, how active have black lawyers been in civic and community activities?

We found that black attorneys in our sample were much more likely than their white peers (21 percent vs. 15 percent) to be involved not just as members but as leaders of community or social service organizations.

....

... [T]he minority graduates of these schools are thriving professionally in every way. They just happen to feel an obligation to "give something back," and they respond by providing leadership to an unusual degree in community centers, neighborhood improvement associations and a wide variety of other civic endeavors. ...

Some critics have surmised that black students would be demoralized by competing with whites possessing higher high school grades and test scores. Thus, Dinesh D'Souza, author of *The End of Racism: Principles for a Multicultural Society*, claims "American universities are quite willing to sacrifice the future happiness of many young blacks and Hispanics to achieve diversity, proportional representation, and what they consider to be multiracial progress." Is this true?

The facts are very clear on this point. Among blacks with similar test scores, the more selective the college they attend (that is, the higher their classmates' test scores), the likelier they are to graduate, earn advanced degrees and receive high salaries. Far from being demoralized, blacks from the most selective schools are the most satisfied with their college experience.

...

Much of this benefit would be lost if race-sensitive admissions were declared unlawful. According to our data, a mandate to ignore race in choosing applicants would mean that more than half the black college students attending these selective colleges would be rejected.

At law schools, the effects would be much more dramatic because they are so selective and competition for entry so intense.⁸⁷

From this author's point of view, the attacks on the inclusion of African-Americans in the nation's institutions of higher learning are for the sole purpose of closing doors where Blacks have been successful. The statistical evidence presented by Professors Bok and Bowen, showing that a "little boost goes a long way,"⁸⁸ is actually the problem. Retrenchment is an attack on Black success in general and, in particular, Black success within elite schools and professions.

This conclusion is supported by a recent poll which states that white people perceive that there are more African-Americans than there actually are.⁸⁹ As an effect of the negative stereotypes and fears about African-Americans, whites believe they are surrounded

87. Bok & Bowen, *supra* note 78, at 62-63.

88. *Id.* at 62.

89. See *Immigration Facts*, PORTLAND OREGONIAN, Mar. 26, 1996, at A6 (listing how most whites believe that Blacks are over 20% of the population when in fact they are 11.8%; most whites believe that Latinos are approximately 15% of the population, when in fact they are 9.5%; most whites believe that Asians are much more than 6% of the population, when in fact they are only 3.1% of the population).

by and eventually will be overrun by people of color. Although whites are actually 74% of the American population, they believe that they are less than 50% of the overall population.⁹⁰ Thus whites grossly under-represent their own numbers while over-representing the percentage of minorities. The reported numbers are as follows:⁹¹

Racial Group	Speculative % Population	Actual % Population	Over-Representation
Blacks	23.8%	11.8%	12.0%
Hispanics	14.7%	9.5%	4.8%
Asians	10.8%	3.1%	7.7%

It is interesting to note the greatest disparity between the speculative population and the actual population is found for Blacks. Thus, it appears that whites believe there are many more Blacks than there are of any other "of color" group and, therefore, may fear being "overrun" by Blacks the most.⁹² Further, most whites believe they are poorer than Blacks and that Blacks are richer than they actually are.⁹³ As a result, whites believe that Blacks, in particular, are more of a threat to their numerical and economic security than reality reflects.⁹⁴ These perceptions run deep into the white psyche and perhaps help explain the pervasiveness of negative stereotypes and white hostility to those programs that benefit racial minorities.⁹⁵ If whites perceive that Blacks are more successful than they actually are because of the widely touted success of the "elite" Blacks surveyed by Professors Bok and Bowen, then the response to their data is not likely to be one that will solidify Black inclusion.⁹⁶

Hence, I cannot imagine that whites will be spurred to embrace inclusiveness if they learn that eliminating admissions policies that take race into account will have a devastating impact on Blacks in

90. *See id.*

91. *See id.*

92. *See id.* The hyper-visibility of African-Americans due to negative stereotypes and fear may cause whites to magnify the number and effect of the Black population.

93. *See* John Yemma, *Rethinking Integration*, BOSTON GLOBE, Dec. 21, 1997, at A40 (citing ORLANDO PATTERSON, *THE ORDEAL OF INTEGRATION* (1997)).

94. *See id.*

95. *See id.*

96. *Compare id.* (noting that most whites believe they are poorer than Blacks and that Blacks are overall richer than they are), with *A College Diploma Adds Large Sums to Black Incomes but Makes Only Small Inroads in the Black-White Unemployment Gap*, J. BLACKS HIGHER EDUC., Spring 1999, at 43, 43 (stating that higher education for Blacks does not alter the employment disparity between Blacks and whites).

most institutes of learning.⁹⁷ Rather, it is this very Black success of which Bok and Bowen write that drives the attack on affirmative action and retrenchment.⁹⁸ Although the data is very convincing in showing how successfully some Blacks have used the "little boost" provided, it may in the end only serve to harden white resolve that Blacks no longer need such a boost, especially if the success of this small group of Black "elites" equals or exceeds the success of similarly situated whites.⁹⁹

This attack on Black inclusion is particularly targeted at academia. After all,

97. See, e.g., *Black Enrollments Drop at Harvard Law School*, *supra* note 84, at 135 (reporting that though Harvard Law School is a private school and has not been sued or threatened, Black enrollment has nonetheless dropped because "[t]he nationwide attack on affirmative action has caused many private institutions, including perhaps Harvard, to reduce the scoring gap on the Law School Admission Test between black and white entering students"); Cross & Slater, *supra* note 86 at 110, 115 (showing what happened at Texas and California schools when affirmative actions was eliminated). *But see African Americans Continue to Flock to Graduate School*, J. BLACKS HIGHER EDUC., Spring 1999, at 52, 52-53 (reporting that graduate school admission of African-Americans continues to increase). See generally *African Americans at the Nation's Highest-Ranked Business Schools*, J. BLACKS HIGHER EDUC., Spring 1999, at 48 (reporting the decreasing number of Blacks in elite business schools in California and Texas and opining that if race-based admissions in elite business schools were to end, Black enrollment would sharply decline); *The Declining Enrollments of Blacks in Schools of Architecture*, J. BLACKS HIGHER EDUC., Spring 1999, at 35 (reporting a similar decline in the number of minorities enrolled in Architecture schools); *Ending Affirmative Action at Prestigious Law Schools Will Sharply Curtail African-American Progress Into Major Law Firms*, J. BLACKS HIGHER EDUC., Spring 1999, at 129 (providing statistics about the number of minorities entering top tier law schools and explaining how a decrease in minority students will lead to a decrease in minority representation at major law firms); *Why a Nationwide Ban on Race-Conscious Admissions Will Sharply Curtail Black Enrollments at the Nation's Highest-Ranked Medical Schools*, J. BLACKS HIGHER EDUC., Spring 1999, at 22 (opining that Black enrollment in medical schools could drop by nearly 90% at elite medical schools).

98. See generally Theodore Cross, *African-American Opportunities in Higher Education: What Are the Racial Goals of the Center for Individual Rights?*, J. BLACKS HIGHER EDUC., Spring 1999, at 94. Once the Bok and Bowen book was released, showing the nation "the success of affirmative action in creating a whole new generation of black professionals," the Center for Individual Rights (CIR) placed "a barrage of highly inflammatory full-page advertisements in the student newspapers of 14 major colleges and universities," encouraging white students to sue their institutions, telling students how to obtain a lawyer to sue, and claiming that the school's admissions policies were illegal, despite the fact that many of the schools were private and anti-affirmative action litigation had not extended to include private institutions. *Id.* at 95.

99. See *id.* at 95 ("By widely broadcasting its threats . . . the CIR was successful in persuading many admissions officers that if they chose to continue to use race-conscious admissions they would do so at great peril to themselves and to their universities."). Given the effect on Black admissions in undergraduate and professional schools around the country, white resolve is indeed hardening, and Blacks are feeling the effects of whites' renewed historical conviction for Black educational exclusion.

[t]here have been no initiatives or legal decisions . . . which seek to delimit access based on gender, athletic prowess, musical talent, or religious orthodoxy. In fact, according to the *Hopwood v. Texas* case, all of these characteristics are desirable on a college campus. Consequently, the intended contrast of desirables forces the deduction that African Americans and other people of color are not welcomed within the ivory-covered walls — perhaps “ivory-controlled walls” is more appropriate — of the university.¹⁰⁰

The attack on affirmative action is an emotional response from whites retreating from the short-lived national rhetoric of academic inclusion.¹⁰¹ Not only does the above data serve to increase white resolve against inclusion of Blacks, but it also tends to excuse diminished white resolve to protect inclusion in the face of express or implied threats of a lawsuit.¹⁰² Perhaps the best visual depiction of both reactions is *The 1990's: How Racial Conservatives Are Closing the Door on Black Opportunities in Higher Education*, which provides the month and year for negative action and the express or implied negative action against Black inclusion in institutions of higher learning.¹⁰³

September 1990	Due to large GOP-led increases in tuition, black enrollments in higher education in California drop to 118,000 compared to 142,000 a decade earlier.
December 1990	. . . Michael L. Williams, assistant secretary of civil rights, issues an administrative opinion that scholarships, set aside for black students, violate civil rights laws.
September 1993	Massive tuition increases of more than 200 percent produce a major drop in enrollments in public higher education in California. . . . Once again, tuition price increases disproportionately reduce black student applicants and enrollments.

100. M. Christopher Brown II, *Societal Schizophrenia and Academic Retrenchment: A Tale of Two Inconsistencies*, BLACK ISSUES HIGHER EDUC., July 8, 1999, at 116, 116.

101. See *id.* (calling the attack on affirmative action “purposefully malicious”).

102. See *The 1990's: How Racial Conservatives Are Closing the Door on Black Opportunities in Higher Education*, J. BLACKS HIGHER EDUC., Spring 1999, at 100, 100-01 (setting forth the attacks on Black inclusion from September 1990 through September 1999).

103. *Id.*

November 1994	GOP scores major victory in midterm elections. Republican leadership vows to abolish Department of Education, decrease funding for Howard University, and reduce enforcement of federal affirmative action guidelines.
May 1995	The U.S. Supreme Court declines to hear an appeal of a lower court decision outlawing race-based Benjamin Banneker scholarships at the University of Maryland. The ruling effectively bans all race-based scholarships at public universities in five states.
July 1995	Lead by African-American Ward Connerly, the regents of the University of California vote to end race-sensitive admissions at all of the state's university campuses.
September 1995	Mayor Guiliani and Governor Pataki cut financial aid for students at the City University of New York, where 60,000 black students are enrolled. Tuition rises by 156 percent in five years.
March 1996	Racially conservative litigation organization, the Center for Individual Rights, wins landmark <i>Hopwood</i> case. U.S. appeals court rules that a race-sensitive admission program at the University of Texas Law School is unconstitutional. Ruling effectively bans affirmative action in admissions at state universities in the states of Texas, Mississippi and Louisiana.
April 1996	In response to perceived legal vulnerability as a result of the <i>Hopwood</i> decision, privately operated Rice University abandons its race-sensitive admissions program. As a result, the percentages of blacks in the freshman class drops from 10 percent in 1995 to 7.7 percent in 1996 and 4.2 percent in 1997.
November 1996	Consideration of race in admissions to the 200,000 student University of California system outlawed by ballot initiative known as Proposition 209.

January 1997	Ward Connerly forms the American Civil Rights Institute, an organization dedicated to eliminating affirmative action nationwide. Racially conservative foundations lend strong support.
March 1997	In staged litigation led by the racially conservative Center for Individual Rights, white student files lawsuit against the University of Washington School of Law charging race discrimination in admissions policies.
April 1997	Center for Individual Rights continues national campaign of setting up staged litigation to kill race-conscious admissions. Legal attack mounted by a black student against Alabama State University, a black college, for using scholarship aid to attract more white students. Suit is still pending.
September 1997	Litigation driven rulings banning race-conscious admissions policies for law school admissions in Texas and California have a devastating effect on enrollments in public institutions. In 1997 only one black student enrolled in 270-member first year class at the Boalt Hall law school at the University of California at Berkeley. Only five blacks enroll at the law school at the University of Texas.
October 1997	Lawsuits filed by the Center for Individual Rights against the University of Michigan and its law school charge the institution with unfair preference in the admission of blacks.
September 1998	First undergraduate class matriculates at the University of California under the new race-neutral admissions programs. Black enrollments drop from 224 in 1997 to 98 in 1998 at the prestigious Berkeley campus.
October 1998	Federal judge in Ohio rules that minority set-aside program at Cuyahoga Community College is unconstitutional. Ruling warns college trustees that they may be personally liable if they continue to practice racial preferences.

November 1998	Voters in Washington State approve a statewide referendum banning racial preferences by any agency of the state government including public universities.
November 1998	In a divided opinion, federal appeals court in Boston overturns lower court and rules racial preferences in admissions at the prestigious Boston Latin High School are illegal. Ruling appears to have strong restrictive effect on affirmative action policies at state-operated colleges and universities.
January 1999	A federal district judge in Georgia rules that the University of Georgia's affirmative action admissions policies violate the United States Constitution.
January 1999	Stung by charges that its affirmative action policies are unlawful, the University of Virginia Board of Visitors appoints a committee to establish whether the school's affirmative action admissions program is in violation of the law.
January 1999	Racially conservative Center for Individual Rights buys space in student newspapers at 15 prestigious universities urging their students to sue their colleges for racial discrimination in admission.
February 1999	As a result of widespread fears caused by efforts of the Center for Individual Rights, the University of Massachusetts announces that it will sharply reduce the role that race plays in its admission and financial aid decisions.
September 1999	City University of New York to embark on a plan to end remedial education at its four-year institutions. Estimates are that up to 8,000 black students may be forced out of college as a result.

In 1996, Boston College Law School (BCLS) modified its admissions program, which had been designed to ensure that Blacks and other minorities had a fairer chance at admission.¹⁰⁴ In defense

104. See generally Letter from Robert M. Bloom, Professor of Law, Boston College Law School, to Admissions Committee, Boston College Law School (Jan. 6, 1997) (on file with

of making this change, BCLS claimed that *Hopwood* would somehow impact this private school residing far outside of the Fifth Circuit, the only circuit in which *Hopwood* is actually the law.¹⁰⁵ As a result of this change, admission of Black students at BCLS decreased in the academic year beginning in 1999 from twenty-one Black students in 1997 and 1998, to twelve Black students in 1999.¹⁰⁶

Professors Bok and Bowen attempt to speak to the nation's intellect, providing hard statistics of Black success. Unfortunately, it seems the data has spoken more to the emotions of white people who may expressly or impliedly feel that Blacks have gone too far, gotten too much, and are moving ahead too fast. Thus, it is this negative emotional response to inclusion and its resulting Black academic success that defines the Retrenchment Generation.

Accordingly, for purposes of this Article the Retrenchment Generation is not limited to any particular age group or any particular instant in time, though it does note that the public discourse of the 1970's and 1980's versus the public discourse of the 1990's has changed to the detriment of Blacks seeking higher education. The Retrenchment Generation includes whites students, colleagues, and administrators.¹⁰⁷ Thus, unlike the Baby Boomers and Generation X, the Retrenchment Generation is cross-generational. It is more a state of mind than an age group. It is those people, regardless of age, who believe that Blacks have become too successful, more successful than whites, and should no longer be given "preferences" over "deserving whites."¹⁰⁸ Thus, as I discuss the Retrenchment Generation, I am referring specifically to those who are expressly or impliedly involved in, or are beneficiaries

author) (describing the alterations of BCLS's admissions policy as a consequence of the *Hopwood* decision).

105. See *id.* at 1. It may also defy the argument that Blacks who benefit from affirmative action are going to be stigmatized forever. The success of the Black elites shown by Bok and Bowen suggest that while Blacks may have entered these selective institutions of learning as affirmative action babies, due to the rigors of the programs, they did not remain affirmative action babies. Instead, being able to compete with those who had historical educational advantage, made Blacks in these schools that much more competitive. Their future success shows that this competitive spirit stayed alive and helped in their subsequent careers and professional lives.

106. See BOSTON COLLEGE LAW SCH., OFFICE OF ADMISSIONS AND FINANCIAL AID, COMPARATIVE STATISTICS, ENTERING CLASS FOR 1999 AND 1998 (on file with author).

107. For an excellent current discussion regarding the generations of minority law professors, students, and administrators, see ASS'N OF AM. LAW SCHS., PERSPECTIVES ON DIVERSITY: AALS SPECIAL COMMISSION ON MEETING THE CHALLENGES OF DIVERSITY IN AN ACADEMIC DEMOCRACY chs. 1-3 (1997) (discussing how the first generation faced barriers to entry, which still remain, and the second generation of law professors now are facing barriers to acceptability, retention, and promotion).

108. See Yemma, *supra* note 93.

of, the above retreat from what should be a continued national goal of ensuring equal access to education for all. This retreat is affecting civility and collegiality in law schools around the country, separating the experiences of today from the rhetoric of inclusion in the past.¹⁰⁹

In the 1970's and 1980's, hiring people of color under the guise of affirmative action, diversity, and inclusiveness was the politically correct thing to do and say.¹¹⁰ White benevolence was in vogue. Though society provided people of color limited access to other economic opportunities, whites' actions still evidenced a belief that people of color were inferior and unqualified to teach.¹¹¹ Although people of color gained entry into legal academia, legal academia gave people of color few opportunities to stay and even fewer opportunities to change their environments for the better.¹¹² Early legal academic pioneers assumed that though "the slights and the condescension [were] part of a transitional process," they hoped that accepting this denigration would open doors for other professors of color like themselves.¹¹³ Certainly, the door has been opened for some professors of color to enter into legal academia, but it has not been opened enough to allow them to inherit less hostile racial environments and a fuller opportunity to gain retention.¹¹⁴ In many legal institutions, a transition from racial hostility and exclusion has not occurred.¹¹⁵

Given the hostility that many professors of color have faced in legal academia, the open doors promised have in reality been revolving doors. Legal academia allows people of color in, but only for a short period of time.¹¹⁶ The revolving doors also ensure that people of color, especially Black women, enter academia in a

109. See *infra* notes 137-45, 148-55 and accompanying text (comparing past and present experiences of minorities in higher education).

110. See Richard Delgado & Derrick Bell, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349, 350-51 (1989).

111. See *id.* at 349-53.

112. See *generally id.* (reporting the results of a job satisfaction survey of Black Law professors).

113. *Id.* at 349.

114. See *Miles to Go*, *supra* note 73, at Table 33 (discussing the hiring and retention of professors of color since the 1980's). See *generally* ASS'N OF AM. LAW SCHS., *supra* note 107 (describing the barriers that exist for second generation law professors compared to the first generation).

115. See *generally* ASS'N OF AM. LAW SCHS., *supra* note 107 (discussing how the racial hostility faced by law professors has not changed since the early pioneers in the profession).

116. See *generally* Delgado & Bell, *supra* note 110 (investigating reasons for the high attrition rate of minority law professors).

sequential fashion such that as new professors enter the field, many others exit due to the negative treatment they experienced.

In order for professors of color to be able to stay in legal academia and be happy and fulfilled, fundamental changes must be made to the institutions themselves. As one of my friends stated "I want white people to be trained"—trained to not be racially denigrating, trained to provide a leveler playing field for people of color on which to compete, and trained to see and address subtle and blatant racism even in themselves. Without demanding and ensuring such training, the earlier pioneers failed to obtain qualitative institutional assistance for the emotional survival and success of junior professors of color to come.¹¹⁷

Consequently, those people of color who entered legal academia early on were unable to change their environments in a fundamental way to make them less hostile and more friendly for themselves and their successors. The experiences of Derrick Bell at Harvard and Stanford,¹¹⁸ Linda Mabry at Stanford,¹¹⁹ and many others, are a testament to the recalcitrance of institutional racism in legal academia and the unwillingness of law schools to root out bias and prejudice in their environments. The racism that existed in academia in the 1960's continues to exist today. Only now it is not shrouded in white benevolence and the rhetoric of white conviction for inclusion. As has been shown above, racism now is evidenced by white commitment to exclusion.¹²⁰

The renewed conviction for excluding Blacks in institutes of higher learning has adversely impacted the tenor of the relationship Black professors have with students and colleagues in many institutions. Yet, instead of recognizing this rippling effect of the Retrenchment Generation, many whites are in denial, trying to

117. See Angela P. Harris, *On Doing the Right Thing: Education Work in the Academy*, 15 VT. L. REV. 125, 132-34 (1990) (referring to the training of white colleagues about people of color's daily struggles with racism as education work, the dangers associated with undertaking such training, and the rewards attendant upon making the effort).

118. See Derrick Bell, *Diversity and Academic Freedom*, 43 J. LEGAL EDUC. 371, 377 (1993) (opining that the presumption of minority incompetence is the most difficult challenge professors of color face). Professor Bell sets forth his experience at Stanford in 1986, where his distinct teaching style solidified in the students' mind that he was incompetent. His Stanford colleagues, instead of supporting him, a nationally renowned Black professor, supported the presumption of incompetence. See *id.*

119. See Ritu Bhatnagar, *Mabry Speaks Out—Fmr. Law Prof. Alleges Racism*, STAN. DAILY, Feb. 12, 1999, at 1 (setting forth allegations made by Professor Mabry that Stanford "is an institution that engages in a pattern of practicing intense bias, which devalues, discourages, and marginalizes people of color").

120. See Delgado & Bell, *supra* note 110, at 352 (reporting that based on survey results, professors of color faced a "decline in civility and toleration of difference," as well as environments that were subtly or overtly racist).

believe that somehow the few Blacks who remain in legal academia feel welcomed by students and colleagues.¹²¹ Before this form of denial is discussed in this Article, many Blacks, like myself, also failed to see how the retrenchment fervor would impact us as academics. Both forms of retrenchment denial are detailed below.

1. *Retrenchment Denial of African-American Law Professors*

Thanks to retrenchment, some people of color teaching the Retrenchment Generation since the mid 1990's are facing unrivaled and multifaceted institutional racism. Yet, some of us have not adjusted our expectations and assumptions to reflect this new reality. We are, therefore, still in denial when, as academics of color, we believe that:

[w]e are no longer encountering the blatant racism that we saw before the civil rights movement, but . . . "we are definitely dealing with institutionalized racism. There is no name calling or in-your-face-assaults. No one is saying that he or she doesn't want you around. There are no doors closed that you are aware of. But there are problems that prevent you from proceeding within the system. . . . We can't say this is racism, . . . but, yet, in part it is, because race filters [and shapes] these attitudes about black faculty members."¹²²

As the rest of the Article will show, those, like myself, teaching the Retrenchment Generation are indeed facing blatant racism as well as institutionalized racism. Many teaching in law schools now during retrenchment are just as unwelcome as the early pioneers.¹²³ Given this, the racism faced by the Retrenchment Generation professor is multifaceted. Yet, we remain in denial about this very reality. Like many, I am guilty of this form of retrenchment denial.

121. Cf. generally Terry Carter, *Divided Justice: White and Black Lawyers May Practice the Same Law, but They Have Decidedly Different Views of How the System Works*, A.B.A. J., Feb. 1999, at 42 (reporting on how Blacks and whites view the justice system differently).

122. C. Aisha Blackshire-Belay, *The Status of Minority Faculty Members in the Academy*, ACADEME, July-Aug. 1998, at 30, 32 (quoting Henry Durand of the State University of New York, Buffalo).

123. See Joyce Ann Hughes, *Neither a Whisper Nor a Shout*, in REBELS IN LAW, *supra* note 72, at 90, 98 n.43.

Minority teachers can expect difficulties from many white students who have never had a non-white peer, much less a non-white in a position of authority over them. . . . It may be that in the 20 years since this statement was made, students and faculty have now come to accept certain non-white persons.

Id. (quoting *Proceedings of Minority Group Law Teachers Planning Conference*, 4 BLACK L.J. 575, 584 (1975)).

I am perhaps an example of the unsuspecting professor of color facing the Retrenchment Generation.

Since my arrival at BCLS in 1995 to begin my law teaching career, I have always wondered what made my experience different from others. I have been the recipient of a racial flyer, racial hate mail, and a racially-toned meeting with students seeking grade changes. I received little to no institutional support or protection. Not only did my racial/gendered experience appear to be different in kind, but also in quantity, intensity, and explicitness. The racism/sexism I faced was blatant and old-fashioned. Students did not hesitate to tell me what they felt about being taught by a Black woman. My institution did not mind letting me know expressly and impliedly through the actions and words of administrators that I was not believed, valued, or respected.

My experience was completely different from what I had expected because BCLS was listed as 43rd out of the 168 best law schools for women.¹²⁴ My experience was completely different than I expected given BCLS's rhetoric of equality, community, respect for diversity, and inclusion.¹²⁵ My experience was completely different than I expected also because BCLS had what I considered a critical mass of professors of color in the environment¹²⁶ and had a purportedly equality-focused Dean.

My experience was completely different than what I expected based upon a 1992 interview with Black women law professors who stated that most of their negative reactions were mild and "none of their experiences involved situations which were very serious."¹²⁷ In fact, some of the Black women who participated in the study indicated that their racial experiences had been pleasant.¹²⁸ They noted that their primary challenges were class preparation, learning

124. See Shanie Latham, *Is Law School Still A Man's World?*, NAT'L JURIST, Oct./Nov. 1995, at 22, 26.

125. See *Boston College Law School Mission Statement* (visited Nov. 6, 1999) <<http://infoeagle.bc.edu/bc-org/avp/law/lwsch/default.html>>.

126. Without including visitors, when I began in August 1995, there were two other African-Americans, one Hispanic-American female, and two Asian-American males. Most had been at BCLS for many years. See BOSTON COLLEGE, OFFICE OF AFFIRMATIVE ACTION, WORKFORCE PROFILES, Oct. 1996, at 8, 15, 22, 29 (setting forth the tenured, tenure track, and other ranked professors in the law school as of May 31, 1995). Further, prior to my arrival, BCLS had hired other tenure-track Blacks. We have also had a host of professors of color as visitors and adjuncts. Thus, if there were a need to "train" the environment to be racially sensitive or sensitive to the needs/issues of a Black woman teacher, I had assumed wrongly that most of this type of racial training had occurred.

127. Linda Crane, *Can We Talk? Reflections of Seven Female African-American Law Professors*, NBA MAG., July 1992, at 16, 19 (responding to the question: "Do you feel students react to you differently because of your race? If so, how?").

128. See *id.* at 17.

the law well enough to teach, and publishing.¹²⁹ As a result of what appeared to be their positive racial experiences, the author of the study concluded:

I think it is worth noting the answers to this question [on racial experiences] seem to reveal a significant shift in the collective experience of African American law professors over time. Most accounts regarding the pioneering of the entry of minorities into the legal academy are replete with stories of openly racially motivated hostility, and other adverse reactions from non-minority students—with sometimes serious consequences.¹³⁰

Based on this, I assumed that blatant racism would be avoided. If preparation were the only issue, I assumed that I could easily resolve this problem by simply working harder.¹³¹ I assumed that in a school where there was and had been a critical mass of Black and other professors of color, any racism/sexism that existed would have been eliminated or tempered. I also assumed that if there were going to be any racial venting, it would be in a few poor evaluations and minor racial misbehavior. I assumed that with an allegedly understanding Dean, I would face if not a level than a more level playing field. I assumed in a school that markets itself as a community in that it has a civil and community based environment (not only to students but to new recruits like me), that each person would be treated equally and with respect.¹³²

I had assumed that any opposition I would receive to my teaching would be to what I was teaching,¹³³ i.e., Computer Law and Patent Law,¹³⁴ not on my qualifications to teach, my ability to teach,

129. *See id.*

130. *Id.* at 19.

131. In fact, throughout my first two years of teaching, I continued to believe that work and preparation would resolve some, if not most, of the hostility I faced in my first-year Property Law course. As a result, I was very work focused. I worked Monday through Sunday, spending many early mornings and late nights at the law school. Having dinner at the law school became the norm. Meeting with students on Saturday, Sunday, or during evenings was not unusual. As I learned later, preparation was not the issue. Despite my preparedness, the presumption of incompetence and racial hostility that is caused by racial isolation and retrenchment prevented me from reaping the benefits of my hard work. *See infra* Parts V.C and V.D (discussing the phenomena of authority and evaluative hostility that negatively impact a Black woman's success in legal academia).

132. As a result of my denial, it took me far too long to realize that my assumptions about BCLS and its environment were wrong.

133. I also was told students did not react with hostility toward women who taught non-traditional subjects.

134. Although I most certainly have had student opposition to my teaching these non-traditional subjects, this opposition has not been as great, as racially motivated, or as intense as the opposition I experienced in teaching Property Law in the BCLS first-year curriculum.

or my existence in legal academia. I most certainly did not expect any racism/sexism from the first-year students I would be teaching in Property. I had accepted as truth that "[a]s the number of women teachers has increased, the resistance from students has decreased."¹³⁵

Given all of the above, I expected minor racist/sexist skirmishes, but nothing major. On all points, I was wrong. My experience, especially as a Property Law professor, defied all my assumptions and expectations. In believing the rhetoric of equality and community, I had not taken resegregation and retrenchment into account. I did not realize that the presumption of incompetence and the negative stereotypes that drive it are inflexible. I should have. Perhaps then I would have been prepared for the racial flyer, racial hate mail, a racial meeting, and hostile encounters with students regarding my qualifications, credentials, appearance, behavior, and my ability and right to evaluate their exam materials.¹³⁶

Under retrenchment and racial isolation in the Northeast, my experience was more analogous to Black women like Professor Joyce Hughes who, in 1971, was the first tenure track Black woman to teach at a predominantly white law school.¹³⁷ Her experience was harsh, racially denigrating, and institutionally permitted.¹³⁸ Professor Hughes described her reactions to her negative experience as follows:

It was almost 20 years ago that I was recruited into law teaching. What I expected and what actually occurred are two different matters. The trauma associated with my early years in the profession were substantial. . . . In those years immediately following the death of Rev. Martin Luther King, Jr., the student body also was unaccustomed to having a professor . . . who [was] different from them. Adjustment problems of persons of color on a law faculty which had on it no persons of color and no [white] women could perhaps be understandable. But I had not anticipated the severity of the difficulty so many of them would experience. . . . It now seems incredible that any law professor would have to undergo the events I experienced

135. Jordan, *supra* note 1, at 21.

136. See generally *infra* Part V (discussing credential, appearance, authority, and evaluative hostility).

137. See Hughes, *supra* note 123, at 90.

138. See generally *id.* (describing professor Hughes's experience as the first Black female tenure track professor at a white law school).

during my first years of teaching. . . . After all this time the events of those early years in law school remain vivid.¹³⁹

In this account, Professor Hughes does not provide details about her racially traumatic experiences. That information is provided by Professor Hughes only long after the experience ended.¹⁴⁰ The emotional and traumatic nature of the experience, however, is clear and leads to one certain conclusion: Professor Hughes experienced outright racial warfare that was in many senses unexpected.

Like Professor Hughes, I am still a rarity in legal academia despite the existence of other Black people and Black women at my school.¹⁴¹ Due to resegregation and racial educational isolation, I am still perceived as unique when students enter my classroom.¹⁴² Consequently, the twenty-five year gap between when Professor Hughes began and when I began did not make a difference in how we ultimately were treated.¹⁴³ Based on the similarities of experiences of Black pioneers across time, Professor Linda Crane stated that when she began teaching in 1978, she "was not prepared to relive Jackie Robinson's 1947 experiences 30 years later."¹⁴⁴ Similarly, I did not expect to relive either Jackie Robinson's 1947 experiences or Professor Crane's 1978 experiences when I began teaching in 1995.¹⁴⁵ Yet the racial antagonism that Jackie Robinson experienced in 1947 and that Professors Hughes and Crane experienced in the late 1970's is very similar to my experience today. All were hostile, explicitly racial and racially denigrating, and institutionally permitted.

139. Jordan, *supra* note 1, at 20-21 (quoting Professor Hughes); *see also* Greene, *supra* note 2, at 83 (describing her teaching experiences when she began in 1978, as "an intellectual version of a nighttime ride through the countryside in the deep South").

140. *See generally* Hughes, *supra* note 123 (describing her own personal experiences in an article written in 1995, over twenty years after the experiences occurred). *See also* Trina Grillo, *Tenure and Minority Women Law Professors: Separating the Strands*, 31 U.S.F. L. REV. 747, 752 (1997) (describing Professor Hughes's experience with students and noting that "[t]he students behaved like vultures").

141. *See generally* Greene, *supra* note 2, at 81 (opining that as long as there are so few Black women teaching law, we will remain tokens).

142. *See supra* Part II.A (discussing residential and educational racial isolation).

143. *See* GREGORY, PROGRESS, *supra* note 9, at 4 (comparing a 1974 study with a 1995 study and concluding that Black women still face race/gender-based discrimination).

144. Greene, *supra* note 2, at 83 (quoting Professor Crane).

145. *Cf.* Christine Haight Farley, *Confronting Expectations: Women in the Legal Academy*, 8 YALE J.L. & FEMINISM 333, 333-34 (1996) (introducing the idea that because women continue to face gender barriers and gender-based discrimination, they "still experience some of the types of problems that their foremothers did three decades ago").

Yes, I did receive negative evaluations.¹⁴⁶ But my experience was much more than negative evaluations. I experienced an outright racial war in which I was afforded little to no institutional protection or support.¹⁴⁷ Although some individual colleagues, Black, white, Asian, and Hispanic, were crucial to my day-to-day survival, I faced constant direct racist/sexist confrontations with students and others over my very existence in academia.

Although there are some striking similarities between my experience and the 1970's experiences of Professors Hughes and Crane, the environment in which I began to teach is very different.¹⁴⁸ Today, Blacks face renewed blatant racism, more subtle liberal affirmative action racism, institutionalized racism, and institutionalized encouragement of racism without the buffer of a national rhetoric of inclusion, equality, and diversity through affirmative action. Accordingly, we have witnessed "a decline of tolerance and a resurgence of blatant racist and sexist behavior."¹⁴⁹ Perhaps such behavior is worse in those areas like the Northeast that are racially isolated and are therefore more strongly affected by retrenchment fervor,¹⁵⁰ but this problem is not limited to any one institution, any one region, or any one state.

146. An informal study found that "the experiences of relatively new law teachers indicate that most of their negative race-related encounters with students seem to have taken the form of unduly harsh written evaluations and sporadic discipline problems." Crane, *supra* note 127, at 19.

147. *But see* Kupenda, *supra* note 9, at 980 (noting how supportive the administration at her school was when she received negative comments on her evaluations).

148. Professor Hughes also has opined that her experience as a Black woman teaching in a predominantly white school was different than Black female predecessors who had taught only Black students in Historically Black Colleges and Universities. She thus concluded that the race of the students matters in how a Black female professor is ultimately treated. *See* Hughes, *supra* note 123, at 91.

149. Pamela Trotman Reid, *African-American Women in Academia: Paradoxes and Barriers*, in *STORMING THE TOWERS: WOMEN IN THE ACADEMIC WORLD* 147, 151 (1990).

150. *See supra* Part II.A.2 (discussing the regional nature of resegregation). Like racial isolation, retrenchment has a certain regional flavor. Thus, Black women who are teaching in those geographic regions that are directly or indirectly attacked under retrenchment may be particularly vulnerable. This vulnerability may be exacerbated if an African-American woman has the misfortune of being at the heart of a racially isolated area that is also being attacked by retrenchment fervor. *See, e.g., supra* note 82 and accompanying text (listing the areas that have been directly targeted by litigation-based retrenchment fervor). Although the risks of geographic vulnerability may increase the potential for negativity, the risk of negativity is already fairly high for all Black women given the interaction of the three sociological phenomena: racial isolation, retrenchment, and the presumption of incompetence. These phenomena create a synergism of negativity that impacts the ability of all Black women to succeed in academia.

As a result of this form of multifaceted racism,¹⁵¹ "Black faculty members still experience daily the slights and hardships of being ostracized or ignored, of having to be everywhere and anywhere at the same time, of trying to be all things to all people, and of having their qualifications and scholarship constantly challenged by white colleagues and students."¹⁵² Unfortunately, these slights and hardships now have the imprimatur of institutional support and encouragement.¹⁵³ With such institutional support, it is now acceptable to be racist. In fact, in the late 1990's it is "politically correct to be racist"¹⁵⁴ not covertly or subtly racist, but outright,

151. See CARTER A. WILSON, *RACISM: FROM SLAVERY TO ADVANCED CAPITALISM* 220 (1996) (defining "meta-racism" as comprising "a conglomeration of many forms of racism with dynamics similar to older forms of racism").

152. Blackshire-Belay, *supra* note 122, at 32.

153. Further, those who are the victims of such racist treatment are expressly or impliedly encouraged to remain silent, such that racial encounters remain private secrets. Part of this implied pressure to be silent is the continued rhetoric and assumptions that there are equality-focused deans, faculties with critical masses of people of color, and law schools that are "safer" than others. If one works in a school with this type of reputation, breaking this silence becomes an act of revolution because one has to overcome the rhetoric in both one's head and in the legal academic community as a whole.

154. Rosalind Muhammad, *L.A. Times Under Fire*, FINAL CALL, May 6, 1997, at 9 (quoting Dennis Schatzman). Muhammad discusses a cartoon in the L.A. Times that is racially insensitive, depicting a white father and son discussing his positive future and also depicting a Black mother and son, discussing his future of "lethal injection or random shooting." See *id.* One civil rights leader, Cecil King, III, stated that "[s]ince the O.J. Simpson civil verdict, the mainstream media have been taking liberties in being overtly racist against Black and other minorities." *Id.* Yet, the racist reporting of the media did not begin with the O.J. Simpson civil verdict. The O.J. Simpson trial simply exacerbated existing racial tension and animus. See, e.g., Peggy C. Davis, *Law as Microaggression*, 98 YALE L. J. 1559, 1561 (1989) (reporting "[t]he traditional stereotype of blacks [as possessing an] inferior mentality, primitive morality, emotional instability, laziness, boisterousness, closeness to anthropoid ancestors, occupational instability, superstitious mentality, care-free attitude, and ignorance"); Patricia G. Devine & Andrew J. Elliot, *Are Racial Stereotypes Really Fading? The Princeton Trilogy Revisited*, 21 PERSONALITY & SOC. PSYCHOL. BULL. 1139, 1146-49 (1995) (concluding that the negative stereotypes about Blacks as a group have not changed since the 1930's); Marlene Cimon, *Myths Color Views on Who Receives Aid*, CHI. SUN-TIMES, Jan. 29, 1995, at 24 (revealing that most Americans believe that the average AFDC recipient is a Black female when in reality it is a rural white person); Lynne Duke, *Whites' Racial Stereotypes Persist Most Retain Negative Beliefs about Minorities, Survey Finds*, WASH. POST, Jan. 9, 1991, at A1 (reporting that a 1990 survey by the National Opinion Research Center found that 53% of whites polled believed that Blacks were less intelligent than whites); David K. Shipler, *Challenge is to Confront Camouflaged Racism in National Debate*, STAR TRIB., Oct. 20, 1997, at 13A [hereinafter Shipler, *Challenge*] (reporting that in a recent poll by the National Opinion Research Center at the University of Chicago, 53.2% of white Americans regard Blacks as less intelligent, 62.2% of white Americans view Blacks as less hard working than whites, and 77.7% of white Americans polled stated that they believed Blacks preferred welfare over employment); David K. Shipler, *Reflections on Race*, TIKKUN, Feb. 11, 1998, at 59, 59 [hereinafter Shipler, *Reflections*] (reporting same but without the percentages); see also Martin Gilens, *Race and Poverty in America: Public Misperceptions and the American News Media*, 60 PUB. OPINION Q. 515, 527-36 (1996) (reporting that media portrayal of Blacks goes

upfront, overtly racist. As a result, professors of color in academia, in particular Black female professors, are increasingly at risk.¹⁵⁵ This risk is exacerbated because white people, as a whole, are unwilling to see that racism is alive and well as we enter the twenty-first century, that it is practiced by them, and that it is firmly institutionalized. White people and institutions deny the continued existence of racism and its effects on the ability of African-Americans to survive and excel in academia. This form of retrenchment denial is discussed below.

2. *Retrenchment Denial of White Professors and Institutions*

A recent ABA report confirms that white lawyers and Black lawyers have different filters that allow white lawyers to believe that race is irrelevant and that racism does not occur in their own behavior and in their own environments.¹⁵⁶ Indeed, due to different racial filters, many whites do not see racism when it occurs.¹⁵⁷ Thus, they are in denial about the multi-faceted racism that resegregation and retrenchment have brought and their particular role in the national renewed fervor for excluding African-Americans. Some white colleagues have managed to navigate academia and obtain success. They naively like to believe that their unencumbered experience is the experience of everyone, including Blacks. Unfortunately, nothing could be further from the truth.

Professor Vincene Verdun cogently explores the ease with which white colleagues deny racism and its impact on Blacks and their ability to be successful. She has written a fictionalized account of a white male student's refusal to answer questions during class, as well as his refusal to leave class, while her teaching was being evaluated by the Dean. She described her surprise and the Dean's denial as follows:

far in perpetuating and solidifying existing biases and prejudices). For instance, although Blacks are only 32% of the poor in the 10 largest cities in the United States, and are only 29% of those Americans who are impoverished, they are pictured as being poor 62% of the time in print media and 65% of the time in the news. *See id.* at 527.

155. *See* Blackshire-Belay, *supra* note 122, at 30-31 ("[T]he recent furor over affirmative action in California and elsewhere and the growing crisis in academia have made the status of minority faculty members on our nation's campuses insecure.").

156. *See generally Miles To Go*, *supra* note 73 (reporting that minority progress in the for-profit sector is stagnant, contrary to perceptions of white lawyers); Carter, *supra* note 121 (reporting on the different ways that Black people and white people view the legal system).

157. *See, e.g.,* Carter, *supra* note 121, at 42-43 (reporting that 66.9% of all Black lawyers polled stated that they had witnessed racial bias in the justice system, but that 82.4% of white lawyers polled said they had not).

My lips tightened, defying my command to help me conceal my disgust. I managed to curl them into a half smile-smirk as he spoke. I now wondered why I had expected to hear the big "R" word in this discussion. Whatever had led me to anticipate that the dean would identify racism as a likely explanation of Scott McCarty's rude outburst in my Business Organizations class? . . .

In the past few years before McCarty's attack, I had noticed an increased reluctance by white liberals to acknowledge racism, even when it rears its ugly head and flicks its slick tongue in plain view.

....

Perhaps white liberals identify with the sickness of mind and society that generates racist behavior in white racists, and feel a part of that condition. They may have to battle the sickness within themselves. . . . But unlike Black professionals, who are sympathetic to the condition of the black criminal, many white liberals cleanse themselves of the implications of racist thoughts and conduct by refusing to acknowledge racism. It's as if [they] think they can deny it out of existence. . . .

....

Because many white liberals are insulated from racism by their whiteness and their middle-class suburban reality, they feel they can reasonably relegate racism to the pits of poverty or the deep, deplorable South. They conclude that every charge of racism results from a predisposition to identify racism by the victim, and so they compensate by giving the accused the benefit of the doubt. They assign the action some less onerous label: it is nothing more than youth, or stupidity, or resistance to authority, or sexism.¹⁵⁸

In essence, there is always an excuse for racist behavior that is practiced by white students, white colleagues, and white administrators. A racial flyer is not really a racial flyer; it is merely a prank. Racial hate mail is not really racial hate mail, it is merely hate mail. Racial meetings are not really racial meetings, just students venting—even though their behavior and complaints speak in racist terms. Given white denial, these excuses, and in fact any excuses, are preferable to white colleagues concluding that students who share their socio-economic class, politics, race, and rhetoric of

158. Vincene Verdun, *The Ugly Truth: Was the Outburst Anything But Racism?*, BUS. L. TODAY, May/June 1994, at 18, 18, 19-20.

community and inclusiveness are racist. To conclude otherwise would force many to look at some of their own behavior, including denying that racism exists. Few are prepared to make this self-analysis. Denial becomes the chosen behavior for many whites. As noted above, "[i]t's as if [they] think they can deny it out of existence."¹⁵⁹ Unfortunately, denying racism does not impact its existence, especially for those who are the recipients of racialized behavior.

Even worse, perhaps white colleagues and administrators actually believe that Black women are the problem because Black women are too sensitive, too angry, too rigorous, or just plain incompetent. Certainly, the stereotypes about Black women would support this worst-case scenario.¹⁶⁰ Perhaps affinity for perpetrators of racism and disaffinity for the victims of racism may prevent white colleagues from seeing the negative effects of resegregation and retrenchment. A poem I came across aptly describes not only white affinity for the perpetrators, but disaffinity for the victims: "Human beings are so made that the ones who do the crushing feel nothing; it is the person crushed who feels what is happening. Unless one has placed oneself on the side of the oppressed, to feel with them, one cannot understand."¹⁶¹

This form of transracial disaffinity for Blacks is created because whites do not have true knowledge of the racial experiences that punctuate the daily lives of many African-Americans; nor do whites share experiential familiarity with Blacks in that they do not have to face the daily racial macro and micro aggressions that Blacks certainly face.¹⁶² Given racial resegregation in residential areas and schools, whites lack daily interactions with Blacks that would allow them to have empathy for the experiences of those they know.¹⁶³ Given the physical distance brought by residential resegregation and the emotional distance brought by retrenchment and increased racial hostility, there is little recognition that whites may have affinity for the perpetrators of racial discrimination and either

159. *Id.* at 19.

160. See *infra* Parts III.B and III.C (discussing the negative stereotypes about Black people and Black women).

161. Simone Weil, *Oppression*, INSPIRE, Apr. 9, 1999 (e-mail from inspiration list serv, copy on file with author). This type of affinity/disaffinity based upon shared experience is best described as experiential familiarity. See generally Pamela J. Smith, *Reliance on the Kindness of Strangers: The Myth of Transracial Affinity versus the Realities of Transracial Pedism*, 52 RUTGERS L. REV. (forthcoming 1999) (discussing the myth of experiential familiarity among whites and Blacks).

162. See generally Smith, *supra* note 161 (discussing, among other things, why automatic transracial affinity cannot develop between Blacks and whites).

163. See *id.*

disaffinity or dispassion for its victims. Yet such recognition is necessary because, as racial hostility, intolerance, and resegregation increases and solidifies in the United States, African-American women teaching the Retrenchment Generation should expect to face a heightened version of the presumption of incompetence that historically prevented Black teachers from teaching white students during desegregation.¹⁶⁴ The presumption of incompetence itself is explored below.

III. THE THEORY: THE PRESUMPTION OF INCOMPETENCE

This part of the Article explores the presumption of incompetence. Does it exist? If so, who does it advantage and who does it disadvantage?¹⁶⁵ The presumption of competence/ incompetence falls along expected racial, gendered, and age lines, especially in academia.¹⁶⁶ Hence advantages and disadvantages also follow along those same lines. The presumption of incompetence survived the displacement of Black teachers under desegregation and still impacts Black teachers and professors today. Given its existence, the closer one is to the ideal and expected professor, i.e., a middle aged white male, the closer one is to the presumption of competence.

A. *White Women: Positive Race But Negative Gender and Age*

One could assume that race helps diminish negative stereotyping about the competence of white women in academia. One also could assume that age is irrelevant, or if it is relevant, that it operates to advantage younger white women. After all, are not older women devalued in our Western society? Is not youth supposed to be valued over old age?

These assumptions are baseless when competence to teach is concerned. Gender is a powerful component in determining

164. See *supra* notes 37-40 and accompanying text (discussing the effects of desegregation on Black teachers due to the perception that Black teachers were not competent to teach white children in integrated schools).

165. As will be shown more fully throughout the rest of the Article, the presumption of incompetence is a white privilege that any and every white person can use against any minority faculty, that white men can use against white women, and that people of color can use against each other. This is a type of Prestigism, i.e., deciding who is competent, capable, and who has potential based upon where they went to undergraduate or law school, with a premium placed upon the Ivy league schools despite their records of keeping all but a few people of color out. The presumption of incompetence is a powerful weapon that students can use to denigrate and disrespect white women and professors of color.

166. See *infra* notes 293-304 and accompanying text (transporting Mammy and Sapphire into academia).

whether academics and students perceive white women as competent. Possessing a positive factor like the "right" race does not diminish the strength of the presumption of incompetence that arises for women due to their "wrong" gender.

Researchers have . . . found that college students' teacher evaluations are affected by the instructor's gender. . . . The findings were that "male students gave female professors significantly poorer ratings than they gave male professors on the six teaching evaluation measures. . . . Female students also evaluated female professors less favorably than male professors on three measures."¹⁶⁷

Thus, based on gender alone, women, regardless of race, ethnicity, religion, sexual orientation, etc. are more harshly and less favorably evaluated by male students and female students alike. This gender-based deficit negatively impacts women as a whole, giving rise to a presumption of incompetence that is gender based and which must be actively rebutted. In contrast, white males receive an advantage, giving rise to a presumption of competence that is also gender based and is difficult to shake. For white men, competence is not only a given, but an inflexible given.¹⁶⁸

This preference for white men is intensified depending upon the race and age of the professor. A recent study confirms that there are ingrained race/gender biases that favor the white male professor, with age being a significantly important factor.

A study conducted by psychologists at Weber State University showed similar biases. In this study, the 400 students in an introductory psychology class were divided into four classes of 100 each and sent to separate classrooms. They were told that their professor was ill that day and that they would listen to an audio taped lecture. Posted at the front of each classroom was the picture of the person the students were told was the lecturer on the audiotape. The pictures in each of the four rooms differed: one was a middle-aged white male, one a younger

167. Deborah A. Ballam, *Affirmative Action: Purveyor of Preferential Treatment or Guarantor of Equal Opportunity? A Call for a "Revisioning" of Affirmative Action*, 18 BERKELEY J. EMP. & LAB. L. 1, 19 (1997) (citing Susan A. Basow & Nancy T. Silberg, *Student Evaluations of College Professors: Are Female and Male Professors Rated Differently?*, 79 J. EDUC. PSYCHOL. 308, 308 (1987)) (identifying the student evaluations of professors as a function of the teacher's gender, the students' gender, and academic field).

168. See generally Ballam, *supra* note 167 (describing a study that found that students presumed a white middle aged male to be the most competent, despite all actors reading from the same script).

white male, one a middle-aged white woman, and the final one was of a younger white woman. The same male voice was used on the audiotape for the rooms with the two male pictures and the same female voice was used on the tape for the rooms with the female pictures. The identical lecture, which was scripted and read by professional actors, was presented in the four rooms. At the conclusion of the lecture, the students were told that the university was considering hiring the lecturer. The students were then asked to provide written evaluations of the lecturer's teaching effectiveness, including the content of the lecture. The middle-aged white male was rated an excellent teacher who definitely should be hired. The younger male was rated a good teacher who should be considered for the position. The middle-aged woman was rated as barely competent and the younger woman was rated as totally incompetent who under no circumstances should be hired. Presumably, the students' stereotypes regarding gender and age influenced their evaluations.¹⁶⁹

This particular study is very important because it shows the presumption of competence/incompetence operating on visual identification alone. Indeed, on the same material, scripted exactly, presumably read exactly, and read by the same man and the same woman, but based on the picture of the professor that provided race, age, and gender difference, the students judged the women to be the least competent. What explains these disparate results? How could a person be less effective as a professor if the material is the same, the voices within the genders are the same, and the script is the same?

The results of the above study are nonsensical unless we realize that the students took into account the indicia of race, gender, and age provided by the picture at the front of the classroom. As a result, the race, gender, and age of the "professor" was wholly responsible for how receptive or hostile the students were of the material provided. These indicia acted as a filter through which the information was either stopped or allowed to flow through, uninterrupted and untainted. Unfortunately, the combination of race, gender, and age determined the perception of competence and prevented some of the students from accurately and objectively assessing the professor.

The middle-aged white man was presumed to be not only competent, but an expert. As the person who best fit the ideal

169. *Id.* at 20 (citing telephone interview with Julianne Arbuckle, Assistant Professor of Psychology at Weber State University, Ogden, Utah).

model of a professor, the presumption of competence benefited him the most. He was excellent according to the students. Apparently, he was exactly what students expected and desired in a professor. He had the proper race, the proper gender, and the proper age. Given that their expectations matched the visual picture, students attributed extra competence to the material he provided.

Though the material was scripted the same for him and the other would-be professors, the picture of the middle-aged white male cast a halo of competence around him and the material he provided. Given his picture, his competence was presumed. It was a fact and the evaluations showed the students knowledge, understanding, and acceptance of this presumption, even if unconsciously held.

The white male halo next benefited the younger white gentleman. Though young, speaking from the same material, and using the same voice, the students judged the younger white man to be competent, but less so than the ideal middle-aged gentleman. This younger white man was not exactly the ideal professor, but he was close enough. The halo of competence for white maleness attached to him and was only somewhat diminished by his age. After all, the assumption must be that he would become the ideal professor as he aged. His competence, therefore, was presumed and the students' evaluations showed not only their knowledge, understanding, and acceptance of the presumption, but also their hope that he would become expert as he aged.

Students judged both white men supremely more competent than both white women. For both white women, race did not diminish the perception that they were incompetent, but gender incompetence controlled how students perceived both women, not withstanding the fact that both were white. These two white female professors faced subtle sexism, i.e., "the unequal treatment of women that is typically less visible and obvious than blatant discrimination."¹⁷⁰ Although the students may not have been consciously sexist, the effects of unconscious sexism are the same as conscious sexism. After all, students presumed both women to be less competent than both men even though the material was exactly the same.

170. NIJOLE V. BENOKRAITIS & J.R. FEAGIN, *MODERN SEXISM: BLATANT, SUBTLE, AND COVERT DISCRIMINATION* 41 (1995). Recently, MIT resolved claims brought by white women in the science department who alleged that their offices were smaller, their salaries smaller, research money smaller, and their committee assignments less prestigious than white men. See Kate Zernike, *MIT Women Win a Fight Against Bias*, *BOSTON GLOBE*, Mar. 21, 1999, at A1; see also *A STUDY OF THE STATUS OF WOMEN FACULTY IN SCIENCE AT MIT* (1998) (unpublished report, on file with author).

This gender-based result had an age component. The young woman, though using the same voice and same scripted material as the middle-aged woman, was considered quite incompetent—so much so that the students thought she should not be hired under any circumstance. In contrast to her white male counterpart, the young white woman was not salvageable. Her gender inflexibly determined her incompetence. Her perceived absolute incompetence could only become “barely” competent as she aged. She could never become competent, and certainly not expert, unless she became a white male. As long as both women remained female, they would forever be either incompetent or barely competent. As long as both men remained white and male, they always would be deemed competent or expert.

The white male presumption of competence and white female presumption of incompetence pervades academia at all levels. Indeed, “discriminatory treatment advantaging males has been found in nursery schools, elementary schools, and college classrooms.”¹⁷¹ This white male advantage specifically impacts how students and peers perceive and evaluate female teachers. Unfortunately, the above study shows that this perception of women occurs and is perpetuated by men and women alike. As one commentator feared, when women academics are involved:

Almost all students will subconsciously register a reaction that records something less than the presumption of competence accorded white males. . . .

. . . .

. . . One of the most important aspects of this characteristic of the gender gap is that it is born the moment I walk into the classroom. It has a life of its own before I open my mouth.¹⁷²

The above study confirms what this female academic suspected, i.e., she is incompetent based on the visual indicia of her gender. Based on this visual signal, she is then presumed to be incompetent before she opens her mouth, and as the above study shows, even after she opens her mouth.

171. Ballam, *supra* note 167, at 20 (citing Florence L. Geis, *Self-Fulfilling Prophecies: A Sociological View of Gender*, in *PSYCHOL. GENDER* 9 (Anne E. Beale & Robert J. Sternberg eds., 1993)). See generally TAYLOR COX, JR., *CULTURAL DIVERSITY IN ORGANIZATIONS: THEORY, RESEARCH, AND PRACTICE* (1993) (discussing the effects of stereotypes in employment).

172. Kathleen S. Bean, *The Gender Gap in the Law School Classroom—Beyond Survival*, 14 VT. L. REV. 23, 28-29 (1989).

The form of unconscious or subtle sexism identified in the above study is not as discernible as historical and current conscious sexism because we all have internalized who is the model professor, and this vision rarely includes white women or people of color, especially at the higher echelons of academia. Indeed, subtle sexism "is often not noticed because most people have internalized subtle sexist behavior as 'normal,' 'natural,' or 'customary.' However liberated we might like to be, many of us—men and women alike—often feel deep down that women are *really* not as good, capable, competent, and intelligent as men. . . ." ¹⁷³ Given this feeling, many often treat women as if they are not as good as men, i.e., not as intelligent and not as capable.

Given this type of gender-based presumption of incompetence, women must always prove their competence. Prior acts of competence are either looked at with disregard, indifference, or hostility. ¹⁷⁴ Alternatively, a competent woman is perceived to be "lucky." ¹⁷⁵ As a result, proving competence is a daily task. Unless a woman overcomes the presumption of incompetence or has a powerful patron to espouse her competence and legitimacy, ¹⁷⁶ the presumption of incompetence stands as a proven fact. Women are incompetent simply because they are female.

Throughout the last few decades, white women and professors of color have told their narratives, stating that they are "perceived as less competent, or out of place, solely because of their race and/or gender." ¹⁷⁷ The above study, as well as similar studies, ¹⁷⁸ confirm

173. BENOKRAITIS & FEAGIN, *supra* note 170, at 41; see also Deborah Olsen et al., *Women and Minority Faculty Job Satisfaction: Professional Role Interests, Professional Satisfaction, and Institutional Fit*, 66 J. HIGHER EDUC. 267, 268-70, 282-88 (1995) (discussing how women and minorities are perceived as less competent than men even if evidence to the contrary is provided); HASUIKE, *supra* note 10, at 121 (reporting the findings that "both men and women think that men generally are more competent than women").

174. See HASUIKE, *supra* note 10, at 126.

175. See *id.*

176. See also Hill, *supra* note 16, at 271-91 (opining that Black women need the legitimization of a patron to be credible). See generally HASUIKE, *supra* note 10 (opining that women lawyers can minimize any potential jury hostility if the judge or a senior attorney shows appreciation for their expertise).

177. Kupenda, *supra* note 9, at 978.

178. See generally LORRANINE DUSKY, STILL UNEQUAL: THE SHAMEFUL TRUTH ABOUT WOMEN AND JUSTICE IN AMERICA (overviewing the difficulties, past and present, women have in the legal profession); BERNICE RESNICK SANDLER ET AL., THE CHILLY CLASSROOM CLIMATE: A GUIDE TO IMPROVE THE EDUCATION OF WOMEN (1996) (describing how gender is a factor in evaluations); Susan A. Basow, *Student Evaluations of College Professors: When Gender Matters*, 87 J. EDUC. PSYCHOL. 656 (1995) (describing a study that found female professors received the best evaluations from female students); Susan A. Basow & N.T. Silberg, *Student Evaluations of College Professors: Are Male and Female Professors Rated Differently?*, 79 J. EDUC. PSYCHOL. 308 (1987) (evaluating the gender differences between how students evaluate

what these faculty members have suspected all along. Students do have a presumption of incompetence that falls primarily if not exclusively on white women and minorities.¹⁷⁹ This presumption of incompetence operates throughout all levels of academia. Law schools are not exempt.

For white women, the presumption of incompetence does not bode well for positive student-professor interactions. As one white female professor stated quite eloquently, "because the combination of women and law professor contradicts traditional sex roles, a woman law professor challenges the values of many students. Ultimately, it challenges the traditional male gender identity of the law. This challenge threatens the superior status of these students' chosen profession. This threat creates hostility."¹⁸⁰ The presumption of incompetence for white women may devolve into gender-based authority and evaluative hostility.¹⁸¹ The evaluation of the young white woman in the above study as being completely incompetent suggests that the students were very hostile to her as a professor.

professors); Elaine Martin, *Power and Authority in the Classroom: Sexist Stereotypes in Teaching Evaluations*, 9 SIGNS: J. WOMEN CULTURE SOC. 482 (1984) (describing a study that reveals gender biases in teacher evaluations).

179. See *infra* Part III.C (discussing racial aspects of the gendered presumption of incompetence). Although this Article focuses specifically on Black women, doing so does not mean to suggest that other people of color and related subgroups do not experience a unique form of the presumption of incompetence. They do. Each subgroup is haunted by specific race/gender stereotypes that form the basis for the presumption of incompetence and society's reactions to it. For discussions on race/gender stereotypes, see, for example, Sumi K. Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong*, in CRITICAL RACE FEMINISM: A READER 203 (Adrien K. Wing ed., 1997) (discussing the stereotypes about Japanese women that make them particularly vulnerable to race/sex harassment); Virginia W. Wei, Note, *Asian Women and Employment Discrimination: Using Intersectionality Theory to Address Title VII Claims Based on Combined Factors of Race, Gender, and National Origin*, 37 B.C. L. REV. 771, 786-804 (1996) (discussing stereotypes attributed to Asian women and its impact on employment discrimination); Floyd D. Weatherspoon, *Remedying Employment Discrimination Against African-American Males: Stereotypical Biases Engender a Case of Race Plus Sex Discrimination*, 36 WASHBURN L.J. 23, 27-37 (1996) (discussing common stereotypes of Black males and their impact on employment discrimination).

Given that this Article focuses on my experiences as a Black female academic, I have limited the discussion to the stereotypes, however, and myths about Black women. The fact that other race/gender subgroups face stereotypes cannot hide the fact that Black women face unique and peculiar denigration of their intelligence because they are both Black and female. See *infra* Part III.C (discussing the stereotypes about Black women). Furthermore, given that social hierarchies exist, we also cannot ignore that Black women are at or near the bottom. Thus, other race/gender subgroups have the opportunity to ignore, deny, and participate in the peculiar denigration that Black women face in academia.

180. Bean, *supra* note 172, at 29.

181. See *infra* Parts V.C and V.D (discussing the phenomena of evaluative and authority hostility).

The results of the study above also contain a hidden message: the presumption of incompetence can only be shown by looking at the effects of subtle discrimination. The presumption of incompetence can best be found if we review not what people say, but what people do. Based upon what the students did in this study, i.e., evaluated a professor to determine whether the professor should be hired, they specifically looked at the combination of race, gender, and age. Not only did race, age, and gender matter, but each individual was attributed with positive or negative stereotypes based on that combination.

What if one does not share any of the characteristics of the ideal middle-aged white male professor? Racialized gendered stereotypes about Black women are more negative than those held about white women.¹⁸² Accordingly, the gendered presumption of incompetence may become that much more inflexible and negative when Black people's experiences are taken into account. The next section explores this possibility.

B. Black People: Negative Race

The above study focused on white people, as has most of the empirical research in this area. What if the pictures had shown different racial combinations? Would there be a difference between a middle-aged white woman and a middle-aged Black woman; between a young Black man and a young white woman; between a young white woman and a middle-aged Black woman? Would different combinations of race/gender/age exacerbate or diminish the gender-based presumption of incompetence?¹⁸³

182. See *infra* notes 195-98 and accompanying text. Further, the inflexibility of the presumption of incompetence for white women and people of color increases as we move into higher echelons of education because we are the farthest removed from what is expected, i.e., a middle aged white male. Thus, as we move from undergraduate schools to graduate and professional schools, the presumption of incompetence takes on a more fixed character and more disadvantageously affects women of color. After all, at the highest levels of the ivory tower, a woman of color is the last person one expects to see in a position of authority.

183. This Article limits its focus to the race/gender effects of the presumption of incompetence. The effect of age on the presumption of incompetence for Black women is thus beyond the scope of this Article. There is, however, a strong likelihood that Black women who are young or close in age to their students may face specific age-based hostility. Although some of my interactions with students did raise age-related issues, most were specifically race/gender based. Furthermore, as Black women age, the assumption is not that they will become more competent but that they will become Mammy. See *infra* Part III.C.2 (discussing the myth of the Black female Mammy). Further study needs to occur to assess any race, gender, and age differences among white women and professors of color.

That there would be differences is almost a certainty.¹⁸⁴ Unlike the above study, in which the students' actions showed the presumption of incompetence for white women, there are no specific studies that particularly reveal actual student bias in terms of the racial presumption of incompetence. Yet, consistent anecdotal data support the conclusion that professors of color do not enter academia with "[t]he presumption of competence enjoyed by our white colleagues."¹⁸⁵ Because of this minority presumption of incompetence in law schools, minorities face hyper-criticality from students. In effect, professors of color face

a predisposition to assess minority performance in a negative or hypercritical fashion, an intolerance for even small mistakes committed by minorities, [and] a proclivity toward denying minorities the deference or presumption of competence accorded to white male law professors. [In essence, a]n anti-minority mindset . . . is a set of negative biases held against minorities either consciously or unconsciously.¹⁸⁶

Given retrenchment, neither conscious nor unconscious biases held against professors of color can be ignored. After all, the effect is generally the same, and we cannot continue to deny that "[c]ontemporary racist practice is so rooted in U.S. history and culture that even whites who genuinely believe in equal rights can be perpetrators, without necessarily being aware of their role in transmitting subtle racial messages."¹⁸⁷ Yet many refuse to acknowledge this basic fact and the effects of retrenchment. Given this denial, as scholars it is not enough to concentrate on what people say. Instead, we must concentrate on what people do. Based

184. Cf. Scott R. Vrana & David Rollock, *Physiological Response to a Minimal Social Encounter: Effects of Gender, Ethnicity, and Social Context*, 35 PSYCHOPHYSIOLOGY 462, 462-69 (July 1998) (examining the physiological response by Blacks and whites when a stranger of a different race and perhaps a different gender enters the room and reporting that the heart rates for white men "accelerated greatly" when a Black person entered the room).

185. Delgado & Bell, *supra* note 110, at 349; see also Bell, *supra* note 118, at 377 (describing Professor Bell's experience at Stanford where his unique teaching style was used by whites to presume incompetence.); Albert Quick & Kent Lollis, *Retention of Minority Professors: Dealing with the Failure To Presume Competence*, 10 ST. LOUIS U. PUB. L. REV. 361, 362-64 (1991) (describing the failure to presume competence as a factor in low job satisfaction in minority professors).

186. Roy L. Brooks, *Anti-Minority Mindset in the Law School Personnel Process: Toward an Understanding of Racial Mindset*, 5 LAW. & INEQ. J. 1, 2-3 (1987).

187. St. Jean & Feagin, *supra* note 68, at 182. See generally Charles R. Lawrence, III, *The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987) (arguing that most people do not purposefully perform racist acts and most racism is unconscious, socially ingrained behavior).

on what has been done, Black professors are judged more harshly by students.¹⁸⁸

Given the racialized presumption of incompetence, white administrators and peers may be transmitting and receiving subtle racial messages that solidify and confirm the presumption of incompetence. Subtle racial messages can be transmitted through course assignments, by not responding to negative racial interactions targeting a professor of color, by relying on evaluations as a true indicator of a professor's worth and excellence—as if student evaluations are objective and not infected with racist and sexist bias, and subtle messages that state or imply that Blacks are just not competent enough and cannot become competent enough. None of these subtle messages are beyond the pale of reality in legal academia. After all, “the lingering perception that people of color are less competent than their majority counterparts permeates the law school community.”¹⁸⁹

In essence, in academia, race matters and it matters in a very negative way for African-Americans. As Professor Patricia Williams so eloquently stated: “the simple matter of the color of one's skin so profoundly affects the way one is treated, so radically shapes what one is allowed to think and feel about this society, that the decision to generalize from such a division [between the experiences of Blacks and whites] is valid.”¹⁹⁰

Obtaining education does not eliminate or reduce the racism that Blacks will experience. As one's education increases, the potential for racial hostility also increases. A 1997 Gallup Poll reports

that African Americans with more education and higher incomes identify race as a more significant factor than lower income African Americans. And separate polling by the Joint Center for Political and Economic Studies showed that as income and educational levels increased, African Americans assigned a greater importance to the influences of race.¹⁹¹

188. See Bell, *supra* note 118, at 377; Bell & Delgado, *supra* note 110, at 349; Hendrix, *supra* note 20, at 756; Quick & Lollis, *supra* note 185, at 363.

189. MULTICULTURAL WOMEN ATTORNEYS NETWORK, *THE BURDENS OF BOTH, THE PRIVILEGES OF NEITHER* 21 (1994). Further, society believes that Blacks in general are much less intelligent than other racial groups. See Shipler, *Challenge*, *supra* note 154; Shipler, *Reflections*, *supra* note 154, at 59; Davis, *supra* note 154, at 1561; Duke, *supra* note 154.

190. PATRICIA WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 256 (1991).

191. Karin Chenoweth, *Race and Success*, BLACK ISSUES HIGHER EDUC., Nov. 26, 1998, at 32, 33. This article discusses a Gallup Poll, directed by Senior Scientist Jack Ludwig, entitled “Haves and Have-Nots: Perceptions of Fairness and Opportunity.” The Gallup Poll itself can be found at <http://www.gallup.com/have_have_not/>.

Race continues to matter. Increased education and status do not diminish the effects of racism for African Americans. Instead, increased education and status seem to exacerbate the effects of racism. By obtaining a successful education, Blacks destroy white stereotypes about Black inferiority and lack of intelligence. As a result, hostility may occur. Although this form of credential hostility is explored in detail below,¹⁹² it is important to note it here because possessing or not possessing the right credentials has no effect on the presumption of incompetence and the opportunities afforded to Black people, especially Black women.¹⁹³ The race/gender nature of the presumption of incompetence is discussed below.

C. *Black Women: Negative Race, Negative Gender*

Although "[i]t is a blatant example of racism or sexism to assume that anyone not like you must be incompetent and, conversely, anyone who is like you must be competent,"¹⁹⁴ Black female academics face intellectual denigration because the gendered presumption of incompetence is exacerbated by the race-based presumption of incompetence, and vice-versa. Although the presumption of incompetence for white women and Black people are egregious alone, the presumption of incompetence is particularly harmful for Black women. After all,

[t]hroughout the past three and a half centuries, America's black women have been perceived primarily as sexual beings who have no modesty, virtue, or intelligence and little claim to respect or power. Characterized by an "image of mindlessness" . . . and "belonging to two groups historically labeled as intellectually inferior—women and blacks—[African American women] continue to find their intellectual capabilities doubly discredited."¹⁹⁵

192. See *infra* Part V.A (discussing credential hostility).

193. For an excellent analysis of the credentials of women of color compared to men of color and the less prestigious benefits women receive from having traditional credentials, see generally Deborah Jones Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action In Law Faculty Hiring*, 97 COLUM. L. REV. 199 (1997) (showing that despite having the same credentials as men of color, gender bias infects hiring decisions such that women of color begin at less prestigious institutions and teach less high-status courses).

194. Don Williamson, *Racism Lurks in "Presumption of Incompetence,"* SEATTLE TIMES, Apr. 12, 1992, at A10 (discussing how the general public presumes that Blacks are incompetent whenever they assume "high-level or even mid-range positions").

195. Adele Logan Alexander, *"She's No Lady, She's A Nigger": Abuses, Stereotypes, and*

In this same vein, bell hooks claims that "[b]lack women have been seen as all body, no mind."¹⁹⁶ Indeed, for African-American women academics "[t]he greatest challenge in teaching is overcoming the obstacles students construct out of their racism and their gender biases."¹⁹⁷

Because of the intellectual marginalization they face due to the intersection of race/gender, Black women are not immune from experiencing the effects of unconscious racial/sexist bias. Indeed, the fact that they are marginalized is communicated to them in a myriad of ways by the behavior of students, colleagues, and institutions.¹⁹⁸ This behavior communicates to Black women that esteemed status as a professor or a professional does not trump the negative perceptions many whites have of Black women.

For instance, I had the opportunity to visit Oxford University as a Visiting Law Fellow of St. Hilda's College in 1998. When I returned, one friend wanted to know if I had perceived any racial differences between my experiences as an Oxford Fellow and my

Realities from the Middle Passage to Capital (and Anita) Hill, in RACE, GENDER, AND POWER IN AMERICA: THE LEGACY OF THE HILL-THOMAS HEARINGS 5 (Anita Faye Hill & Emma Coleman Jordan eds., 1995); see also AM. BAR ASS'N COMM'N ON WOMEN IN THE PROFESSION, *supra* note 73, at 6 ("[A]lthough certain assumptions of incompetence or weakness are leveled at women generally, or at minority males, neither group has to weather both sets of stereotypes the way multicultural women do.").

196. Mary-Christine Phillip, *Free Speech? People are Paying Top Dollar to Hear Others Talk*, BLACK ISSUES HIGHER EDUC., Apr. 20, 1995, at 8, 15 (quoting bell hooks, *Black Woman Intellectuals*, in BREAKING BREAD: INSURGENT BLACK INTELLECTUAL LIFE 153 (bell hooks & Cornel West eds., 1994)).

197. Deborah Waire Post, *Reflections on Identity, Diversity and Morality*, 6 BERKELEY WOMEN'S L.J. 136, 150 (1990-91).

198. For an excellent example of how white hatred is communicated to those most vulnerable, see AIDA HURTADO, THE COLOR OF PRIVILEGE: THREE BLASPHEMIES ON RACE AND FEMINISM 19-22 (1996). Hurtado notes that marginalization is

not a status conferred on [women of color] as they step outside the confines of ascribed roles; rather, as Audre Lorde poignantly describes, it is a condition of [women of color's] lives that is communicated to them by the hatred of strangers. A consciousness of this hatred and the political reasons behind it begins in childhood.

Id. at 19 (quoting AUDRE LORDE, SISTER OUTSIDER 119 (1984)).

For many Black women, outsider status is communicated in a myriad of ways. Many of them are explored in this Article. For instance, failing to respond to racist flyers and failing to assign substantive committees to address charges of racism communicates marginalization.

This particular form of race/gender denigration also can be conveyed by an institution when it fails to provide (or delays providing) equal funding for research assistants and money for travel, especially when a Black woman is giving presentations on works-in-progress or presentations that are within her area of teaching. Marginalization can also be communicated by administrators who are non-responsive to reasonable requests, regardless of whether they are for institutional support or funding.

experience as an Assistant Professor at BCLS. I told her that there was a fundamental difference.¹⁹⁹

In the United States, "ascribed status (race and gender) is more important and powerful in determining professional identity than achieved status (doctor, professor)."²⁰⁰ Thus, in the United States, my status as a professor generally does not protect me from race/gender discrimination and denigration. As my race is discernible, and it is, then any benefits that would accrue to my education and status are diminished or destroyed altogether. In the United States, race controls. Rather than bringing added respect, any status or education that is above what is expected or deemed normal for Black women is met with hostility as a result of white envy or white hostility.²⁰¹ In the United States, race trumps my professorial status and that status becomes a source of contention between me and others.

In contrast, if people reacted negatively to the color of my skin at Oxford, they hid it well. In fact, based on my perception, it appeared that status, not skin color or gender, controlled at Oxford. As a result, my position as a Fellow generally controlled. Granted, as I walked the streets and traveled from college to college, people may not have been aware that I was a Fellow; but given that people come from all over the world to be educated at Oxford, it seems that people were not willing to risk racializing me in a negative way because I may have been a princess, a future ambassador, or some other person initially "worthy" of their respect and admiration. As a result, people met me with a presumption of respect given the status-oriented hierarchical system in Oxford.

Further, in the United States, race/gender marginalization is also communicated to Black women through the unflinching operation of the presumption of incompetence. The presumption of incompetence operates to communicate marginalization to Black women in America.²⁰²

199. Though this comparison may be imperfect because it compares a city to an entire country, it is the same type of comparison that James Baldwin made when he compared the city of Paris to the United States. See generally JAMES BALDWIN, *NOTES OF A NATIVE SON* (1949) (arguing that Paris was much more welcoming to him as a Black man whereas he felt wholly unwelcome in America); JAMES BALDWIN, *THE FIRE NEXT TIME* (1962 & 1963) (critiquing racism in the United States, especially at the 100th anniversary of Emancipation).

200. GREGORY, *PROGRESS*, *supra* note 9, at 5.

201. See *infra* Part V.A (discussing credential hostility).

202. The intellectual denigration of Black women also can be seen in how the media determines who can be a Black intellectual. bell hooks notes that "it is the sexist/racist Western conception of who and what an intellectual is that rules out the possibility that Black women will come to mind as representatives of intellectual vocation." See Phillip, *supra* note 196, at 15.

In our society African American women must face the presumption of incompetence every day. It doesn't matter what credentials we bring to the table—degrees, experience, letters of recommendation, and so on; there is little or no exemption from the presumption. We live with the insulting notion that we are a mistake or a quota project of sorts. We are presumed incompetent until we walk on water, and then we hear it's because we don't know how to swim or we are too intimidating or aggressive. In the meantime, others are presumed competent until they show otherwise, and then they have the luxury of forgiveness.²⁰³

Given the unflinching and unforgiving nature of the presumption of incompetence, a Black woman has no "positive" characteristics that she can use to fight or disprove the gendered presumption of incompetence. By not being white, a Black woman cannot rely on any presumption of competence afforded whites. By not being male, she cannot rely on any presumption of competence afforded men. As seen above, for young women, age exacerbates negative stereotypes. Thus, for Black women in general and perhaps young ones in particular, there are few, if any, characteristics that will give rise to a presumption of competence.²⁰⁴ Accordingly, "the disrespect toward female faculty from male faculty . . . [is] particularly pronounced for women of color, who are two steps removed from [the] cultural expectation that a law professor be a [middle-aged] white male in the image of Professor Kingsfield."²⁰⁵

There are, unfortunately, many factors which give rise to this inflexible presumption of incompetence that disproportionately impacts Black women as professors of color.²⁰⁶ The most salient

203. Jetola E. Anderson, *Presumed Incompetent*, in *SISTER TO SISTER: DEVOTIONS FOR AND FROM AFRICAN AMERICAN WOMEN* 7 (Suzan D. Johnson Cook ed., 1995).

204. See, e.g., Harris, *supra* note 9, at 346 ("Students have assumed and asserted that neither my intellectual qualifications nor teaching abilities could match those of my white male counterparts.").

205. Lynn Hecht Schafran, *When Bias is the Norm*, NAT'L L.J., May 28, 1990, at 13, 13. Professor Kingsfield is a character in the movie *The Paper Chase* (20th Century Fox), which chronicles the life of a first-year student at Harvard Law School. Professor Kingsfield embodies the prototypical law professor: white, middle aged, and overly-fond of the Socratic method. See also Farley, *supra* note 145, at 350 ("[Students] come to law school expecting to get Professor Kingsfield. When they get a woman instead, they feel cheated."); Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 J. LEGAL EDUC. 311, 327 (1994) (reporting that 18% of male survey respondents, 48% of female respondents, and 73% of female students of color in a survey exploring gender bias in Ohio schools agreed with the statement that "students come to law school with an expectation of a competent law professor being [a white] male.").

206. See generally Brooks, *supra* note 186 (describing how the presumption of incompetence is a factor in the difficulty in retaining minority professors); Gloria T. Hull, *I'm Not Shouting*

focal points of discrimination²⁰⁷ for Black women in academia are the attendant negative stereotypes and characteristics that attach to Black women simply because they are Black women.²⁰⁸ For instance, when white female undergraduates were polled in the early 1980's, they "reported their belief that society regards black women as more dirty, hostile, and superstitious than white women."²⁰⁹ These negative portrayals of Black women have not changed over time.²¹⁰

Granted, most studies that have analyzed academic stereotypes about minorities tested for biases against minority men or white women.²¹¹ Yet, when students are tested about their specific biases or perceptions about Black women compared to "American" (white)

'Jubilee': One Black Woman's Story, in ROCKING THE BOAT: ACADEMIC WOMEN AND ACADEMIC PROCESSES 57 (1981) (describing her experiences as the first Black woman at her University to be on the promotion and tenure track); Jacqueline Jordan Irvine, *The Black Female Academic: Doubly Burdened or Doubly Blessed*, in STEPPING OFF THE PEDESTAL: ACADEMIC WOMEN IN THE SOUTH 109 (Patricia A. Stringer & Irene Thompson eds., 1982) (describing how when white women made progress in the academic world, Black women did not); Quick & Lollis, *supra* note 185 (exploring the failure of whites to presume competence of minority professors); Reid, *supra* note 149 (discussing how the presumption of incompetence inhibits white professors from effectively teaching Black graduate students, thereby creating fewer Black professors); Symposium, *Building*, *supra* note 9 (compiling several essays by Black Female Law professors about their experiences).

207. Although there are legal definitions of discrimination, I prefer the definition that provides that discrimination occurs "when women of equivalent qualifications, experience, and performance do not share equally in the decision-making process or receive equal rewards, such as salary, promotions, prestige, professional recognition, and honors." Gregory, PROGRESS, *supra* note 9, at 5 (quoting ATHENA THEODORE, *THE PROFESSIONAL WOMAN* 27 (1971)).

208. See generally L.M. ANDERSON, *MAMMIES NO MORE: THE CHANGING IMAGE OF BLACK WOMEN ON STAGE AND SCREEN* (1st ed. 1997) (exploring why Black women are always expected to have certain sets of characteristics in popular culture); K.S. JEWELL, *FROM MAMMY TO MISS AMERICA AND BEYOND: CULTURAL IMAGES & THE SHAPING OF U.S. SOCIAL POLICY* (1st ed. 1993) (arguing that images of Black women in mass media help formulate social policy); Alexander, *supra* note 195 (contextualizing the Anita Hill situation in historical stereotypes about Black women); Linda L. Ammons, *Mules, Madonnas, Babies, Bathwater, Racial Imagery and Stereotypes: The African-American Woman and the Battered Woman Syndrome*, 1995 WIS. L. REV. 1003 (discussing how cultural stereotypes of Black women affect societal perceptions about Black women); Carolyn M. West, *Mammy, Sapphire and Jezebel: Historical Images of Black Women and Their Implications for Psychotherapy*, 32 PSYCHOTHERAPY 458 (1995) (describing the impact of historical Black female stereotypes on Black women's psychological functioning); Janet Sims Wood, *The Black Female: Mammy, Jemima, Sapphire and the Other Images*, in IMAGES OF BLACKS IN AMERICAN CULTURE 265 (Jessie Carney Smith ed., 1988).

209. Rose Weitz & Leonard Gordon, *Images of Black Women Among Anglo College Students*, 28 SEX ROLES 19, 21-22 (1993) (citing a 1985 study by H. Landrine, *Race and Class Stereotypes of Women*, 13 SEX ROLES 65 (1985)).

210. The negative stereotypes about Blacks as a group have also not changed. See generally Devine & Elliot, *supra* note 154 (reporting that there has been little positive progress since the 1930's in how Blacks are negatively stereotyped).

211. See Weitz & Gordon, *supra* note 209, at 20-21.

women,²¹² “the traits selected for American women in general are overwhelmingly positive, while the picture drawn of black women is far more negative.”²¹³ For instance, in 1991, when over 400 sociology students²¹⁴ at Arizona State University were asked to rate the perceived characteristics of Black women and other women—here American women—the results fell along traditional stereotypical lines, with students perceiving Black women more negatively than other women.²¹⁵

American Women (n=256)	% Polled	Black women (n=236)	% Polled
Intelligent	45	Loud	38
Materialistic	37	Talkative	23
Sensitive	20	Aggressive	22
Attractive	20	Intelligent	22
Sophisticated	18	Straightforward	18
Emotional	18	Argumentative	14
Ambitious	17	Stubborn	14
Career-oriented	16	Quick-tempered	12
Independent	15	Bitchy	11
Talkative	13	Too Many Children	11
Imaginative	13		
Kind	13		

212. Although the study purported to test the different perceptions between “American women” and African-American women, in America, “[d]eep within the word ‘American’ is its association with race. . . . In this country . . . American means white” and it is assumed that when asked to judge American women, the students in effect judged white women. TONI MORRISON, *PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION* 47 (1992).

213. Weitz & Gordon, *supra* note 209, at 26.

214. According to the author of the study, the students represented students from all over the country, not differing greatly from similarly situated undergraduate students nationwide. The study polled 405 undergraduates. Almost 80% responded. Of those, 55% were male; 45% were female; 96% were under 25 years of age; 2% were Black, 3% were Asian, 8% were Hispanic, 1% were American Indian, and 84% were white. See Weitz & Gordon, *supra* note 209, at 23. The fact that most of these students are white is important because of the escalating resegregation in the country and the resulting fact that most undergraduate, graduate, and professional school students will be pulled from racially segregated environments. As a result, they may not have had a Black female teacher during their formative years. See *supra* Parts II.A and II.B.

215. See Allen, *supra* note 47, at 37 (“Black women, like black men, are often presumed to be at the bottom of the intellectual heap.”); Weitz & Gordon, *supra* note 209, at 20-21. See generally Faye Gary-Harris, *Racial Myths and Attitudes Among White Female Students and the University of Florida*, in *STEPPING OFF THE PEDESTAL: ACADEMIC WOMEN IN THE SOUTH*, *supra* note 206, at 99 (exploring white females’ attitudes and myths, primarily about Black women in 1980).

Based on the data provided, Black women were considered far less intelligent than other women and were considered to have several negative behavioral characteristics, e.g., being loud, aggressive, argumentative, stubborn, bitchy and quick-tempered.²¹⁶ All of these negative characteristics impact a Black woman's ability to teach in academia and to interact successfully with students and colleagues. These negative characteristics also form the basis of powerful myths that operate against Black women.²¹⁷

The picture drawn of the Black woman can be placed within an overall behavior group. Black women were considered "loud, talkative, aggressive, intelligent, [and] straightforward."²¹⁸ Of course, it is not so bad to be considered intelligent, straightforward, and aggressive. Evaluating the overall category, on the surface, Black women do not appear to be perceived so negatively. Yet, this overall group can be broken down into three subgroups, none of which are positive.

Further analyses suggested the presence of three subtypes among the black female stereotypes: a "threatening" type (loud, dishonest, argumentative), a "good mother/wife/daughter" type (intelligent, family-oriented, loyal to family), and a "welfare mother" type (too many children, fat, lazy). These data show that gender images do not hold across racial categories. Given that this study was conducted in 1991, when respondents were highly likely to have recognized that negative images of members of racial minority groups are not socially desirable, the negativity of some of these responses is striking. . . . [R]acial stereotypes have not died out.²¹⁹

Despite these subgroups, 95% of those who responded to the survey characterized Black women as threatening.²²⁰ This characterization of Black women does not bode well for Black

216. Although a large portion of this Article is about how students respond to Black women, we cannot overlook the fact that administrators also respond in a negative way to Black female "aggressiveness." See Krauskopf, *supra* note 205, at 332.

217. See *infra* Parts III.C.1 and III.C.2 (discussing Sapphire and Mammy).

218. Weitz & Gordon, *supra* note 209, at 20-21; see also JUDITH A. HOWARD & JOCELYN HOLLANDER, *GENDERED SITUATIONS, GENDERED SELVES: A GENDER LENS ON SOCIAL PSYCHOLOGY* 78 (1997) (discussing the many attributes associated with Black female stereotypes).

219. HOWARD & HOLLANDER, *supra* note 218, at 78 (citing Weitz & Gordon, *supra* note 209, at 20-21); see also Devine & Elliot, *supra* note 154, at 1146-50 (concluding that the negative stereotypes about Blacks as a group have not changed since the 1930s).

220. See Weitz & Gordon, *supra* note 209, at 27; see also Nancy S. Ehrenreich, *O.J. Simpson and the Myth of Gender/Race Conflict*, 67 U. COLO. L. REV. 931, 941 (1996) (noting that Black women are considered "dominating, promiscuous, and irresponsible").

women who desire to profess. It certainly does not bode well for Black women who desire to teach law school using the Socratic method or any method that allows a Black woman academic to call on and question students. In other words, this overall threatening characterization does not bode well for any Black female academic who desires to exercise the authority she needs to teach.

If Black women are considered much less intelligent than others, students will presume that they are incompetent.²²¹ If Black women attempt to manage their classrooms like other colleagues, the students will perceive them as loud, argumentative, aggressive, bitchy, stubborn, and quick-tempered. In essence, Black female academics will be considered Sapphires,²²² if not in name, then in deed. Consequently, we must continue to gain expertise in recognizing when this stereotype is being employed as a deterrent to Black female success.

Given the current and future negative effects of racial isolation and retrenchment, Black women must recognize that being characterized as a Sapphire is part and parcel of the Black woman's experience, regardless of—and sometimes because of—how educated or professional she is. Black women must define and understand Sapphire and other stereotypes that stand as barriers to Black women's success in academia. In the next section, I hope to begin that process.

1. *Seeing the Sapphire in All Black Women*

Sapphire was the sarcastic fictional character in the Amos 'n' Andy show who was constantly denigrating those around her.²²³ According to Regina Austin,

Amos 'n' Andy originated as a radio comedy program about two black males. It was first broadcast in 1928, and the characters were played by the program's white originators. *Amos 'n' Andy* came to CBS television in 1951 with a cast of carefully chosen black actors. Various black civil rights organizations condemned the television version "as insulting to blacks" and as portraying blacks "in a stereotyped and derogatory manner." The sponsor

221. See Greene, *supra* note 2, at 86-87 (discussing the presumption of incompetence that binds Black female academics).

222. See *infra* Part III.C.1 (defining the Sapphire myth that evolved from stereotypes about Black women).

223. See Austin, *supra* note 8, at 542.

withdrew from the show, and it was dropped by the network in 1953. It lived on in syndication until 1966.²²⁴

At its inception, the Sapphire myth was a race/gender stereotype designed to denigrate Black women as being masculine and to denigrate Black men as being effeminate.²²⁵ While it continues to be used to denigrate Black women, the denigration is more than Black women being perceived as masculine. Sapphire has become any Black woman who does not conform to the Mammy stereotype.²²⁶

As I was expounding this Sapphire theory to a white colleague, she said with great relief that she had not heard of Sapphire and had never heard of or watched the Amos'n' Andy show. Relief, presumably, because my theory would not apply to her if she did not know who the character was. But Sapphire is more than the specific character in Amos'n' Andy. "Sapphire [is] a more generally employed appellation for the stereotypical BLACK BITCH—tough, domineering, emasculating, strident and shrill. Sapphire is the sort of person you look at and wonder how can she possibly stand herself. All she does is complain. Why doesn't that woman shut up?"²²⁷ Others have agreed with the generalized nature of the modern appellation of Sapphire. None are positive. For instance, one commentator defined Sapphire as "the wise-cracking, balls-crushing, emasculating woman, [who] is usually shown with her hands on her hips and her head thrown back as she lets everyone know who's boss."²²⁸ Another characterized Sapphire as "devoid of maternal compassion and understanding . . . tough, efficient, and tireless."²²⁹ Sapphire is perceived in such a negative light that one commentator has labeled her "Sinister Sapphire."²³⁰ As such, Sapphire is described as "nagging, shrewish, castrating, dangerous

224. *Id.* at 539 n.1 (citations omitted); see also BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* 84-86 (1981) (describing the Sapphire myth and how it became popular during the Amos 'n' Andy show).

225. See HOOKS, *supra* note 224, at 84-86.

226. See *infra* Parts III.C.2 and III.C.3 (discussing the Mammy myth and the Anti-Sapphire backlash).

227. Austin, *supra* note 8, at 539.

228. Marilyn Yarbrough, *Cassandra and the 'Sistahs': The Peculiar Treatment of African-American Women in the Myth of Women as Liars*, 3 J. GENDER, RACE & JUST. (forthcoming 1999).

229. DEBORAH GRAY WHITE, *ARN'T I A WOMAN? FEMALE SLAVES IN THE PLANTATION SOUTH* 66 (1985).

230. Shelby A.D. Moore, *Battered Woman Syndrome: Selling the Shadow to Support the Substance*, 38 HOW. L.J. 297, 333-35 (1995) (discussing how Black women are perceived as either Sinister Sapphire or the Black Amazon).

and 'treacherous toward and contemptuous of black men.'²³¹ These types of negative generalizations about Sapphire coincide with the stereotypes about Black women in general.²³²

On top of these negative characterizations, Black women are also perceived as being angry.²³³ In fact,

[e]ncompassed in the image of the African American woman as the Sinister Sapphire and the Amazon is the "angry black woman." Dr. Walker indicates that many whites commonly view African American women as angry. They fear black anger. They may also perceive many normal African American cultural modalities, such as speech patterns, and gestures, as signs of anger which they interpret as personally threatening to them.²³⁴

Given the characterizations of Black women that act as a foundation for the modern Sapphire, an amalgamation of Sapphire descriptions shows that Sapphire is a compassionless Black Superwoman. A woman who can do everything, who does it well and lets everyone know it.²³⁵ She is the angry Black woman, waiting happily to denigrate and destroy others with her intellect and anger.²³⁶ The intelligence she has is used only to denigrate others. High scholastic achievement, and indeed any education, increases her arsenal of weaponry and her ability to harm and destroy others. Education hones her intelligence and sharpens her tongue. Indeed, with education, Sapphire becomes the epitome of that which is threatening, and intimidating, and that which is Black and female.

One need not know of Sapphire, the Amos 'n' Andy character, to be able to perceive her in any Black woman. In fact, the "term 'Sapphire' is frequently used to describe an age-old image of Black women. The caricature of the dominating, emasculating Black woman historically has saturated both the popular and scholarly

231. Vernetta D. Young, *Gender Expectations and Their Impact on Black Female Offenders and Victims*, 3 JUST. Q. 305, 308 (1986).

232. See Weitz & Gordon, *supra* note 209, at 20-21 (listing the perceived negative characteristics of Black women; of the students polled, 38% described Black women as loud, 23% as talkative, 22% as aggressive, 22% as intelligent, 18% as straightforward, 14% as argumentative, 14% as stubborn, 12% as quick-tempered, and 11% as bitchy); see also *supra* note 213-15 and accompanying text.

233. See *id.* at 26, Table II (listing aggressive, argumentative, stubborn, quick-tempered and bitchy as traits associated with Black women).

234. Moore, *supra* note 230, at 334 (citing LENORE E. WALKER, *TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* 206-18 (1989)).

235. See, e.g., JEWELL, *supra* note 208, at 45 (summarizing the Sapphire myth).

236. See Moore, *supra* note 230, at 333-35 (discussing how Black women are perceived as either Sinister Sapphire or the Black Amazon).

literature."²³⁷ When 95% of the students surveyed above described Black women as threatening, they were in fact finding the Sapphire in all Black women.²³⁸ Indeed, the Sapphire myth is how people perceive Black women. Given the extent of the media portrayals of Sapphire and Mammy,²³⁹ it is unlikely that anyone living, especially white people, fails to understand the characteristics of Sapphire. When students described Black women as threatening, loud, aggressive, bitchy, quick-tempered, and sarcastic, they were in essence describing the characteristics that define the Sapphire myth. Therefore, a Black woman who is perceived as a threatening and intimidating Black woman is being perceived as a Sapphire, even if called something else. A Black woman who is perceived as bitchy and defensive is being perceived as a Sapphire. A Black woman who is perceived as too loud, talkative, or argumentative is being perceived of as a Sapphire. An educated Black woman is a Black woman who is perceived of as a Sapphire. An assertive, demanding, and intellectually sophisticated Black woman is also a Black woman who is being perceived of as a Sapphire. In fact, it is the very characterizations or stereotypes themselves that form the perceptions of who a Sapphire is rather than the name. A Sapphire by any other name is still a Sapphire.²⁴⁰

Even as we generalize about Sapphire, some specific characteristics remain the same. Sapphire is a specific race/gender myth. It begins and ends with Black women. Sapphire is an insult peculiar to Black woman. It does not extend to Black men, other women of color, or white women. Sapphire is still a characterization used to devalue the experiences and struggles of Black women in the United States.

237. Patricia Bell Scott, *Debunking Sapphire: Towards A Non-Racist And Non-Sexist Social Science*, in "ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN," BUT SOME OF US ARE BRAVE 85, 85 (Gloria Hull & B. Smith eds., 1982).

238. See *supra* Part III.C.1 (discussing the negative characterizations whites have of Black women).

239. See *infra* Part III.C.2 (discussing the widespread media portrayals of Mammy).

240. This general depiction of Black women could also be recast as a Black matriarch. According to Professor Linda Ammons, the matriarch "symbolizes the black mother in her home. The matriarch is the mammy gone bad, a failed mammy, because she has spent too much time away from home, has not properly supervised her children, is overly aggressive, and emasculates the men in her life." Ammons, *supra* note 208, at 1003. The matriarch was the centerpiece of the Moynihan Report of the mid-1960's. See *id.* Sapphire, however, exists primarily in the world of work and is, therefore, most relevant to African-American female academics. This quotation about the matriarch, however, highlights the fact that Mammy is the model from which all Black women are judged. See *infra* Part III.C.2 and III.C.3 (discussing Mammy and how the Mammy myth is used to denigrate Black women).

Given the characterization of Black women as Sapphires, what effect does this have on Black women academics? Given the prevalence and inflexibility of the Sapphire myth, Black female academics cannot ignore how the Sapphire perception will affect them. After all,

[m]ythic thinking constructs and permeates our culture, lodging in our collective unconscious, shaping and ultimately validating the way we look at the world. The word "myth" itself has many connotations. Myths can create reality and increase meaning, operating not as reflection but inspiration. Myths can also be reductive, abolishing complexities and creating a "blissful clarity." Myths can be symbolic or distortive, positive or negative, descriptive or normative. Operating in our minds often without our being aware of them, myths can make even the most historically contingent ideas seem universal, natural, and inevitable. Thus, myths serve ideology and can perpetuate orthodoxy, legitimating a particular point of view, and often relieving us of the burden of critical thinking.²⁴¹

The Sapphire myth and all of its negative behavior characteristics allows whites to generalize about Black women. It eliminates the need to ascertain the personal qualities of individual Black women. The Sapphire myth allows whites to presume that all Black women possess the negative behavioral characteristics. Coupled with the presumption of incompetence, the Sapphire myth acts as an inflexible stereotype that negatively impacts Black women who seek, especially those who seek to be (or are) even-keeled, intelligent, straightforward, and assertive.

Regina Austin introduced the Sapphire myth and its effect on Black females when she stated: "Black bitch hunts are alive and well in the territory where minority female law faculty labor. . . . We really cannot function effectively without coming to terms with Sapphire."²⁴² For Black female academics, the question is not whether we are perceived as Sapphires. We are. The question is what effect this perception has on our ability to survive and excel in legal academia.

While the effect of being a Sapphire is discussed below, we cannot fail to recognize that one of the reasons why some Black female academics may face rabid hostility is because they refuse to accept and be seduced by the awards offered to them if they simply

241. Judith Olans Brown et al., *The Mythogenesis of Gender: Judicial Images of Women in Paid and Unpaid Labor*, 6 UCLA WOMEN'S L.J. 457, 457-58 (1996).

242. Austin, *supra* note 8, at 539.

became "Mammy" for their students and colleagues. Black women who are willing to be Mammy or to be perceived as Mammy are much more acceptable to white society. For Black women who work, there are few options in how others perceive them. Sapphire is one option. Mammy is another.²⁴³ Just as many whites see the Sapphire in all Black women, they search for the Mammy in all Black women.

2. *Seeking the Mammy in All Black Women*

The Mammy image is perhaps the most pervasive and desirable image of Black women among white people. The Mammy image also stands as the antithesis of Sapphire.²⁴⁴ Indeed, "the mammy image represents a normative yardstick used to evaluate all Black women's behavior."²⁴⁵ Mammy is defined so as to acquiesce to and support white supremacy.

Mammy was "asexual," "maternal," and "deeply religious." Her principal tasks were caring for the master's children and running the [master's] household. Mammy was said to be so enamored of her white charges that she placed their welfare above that of her own children. Mammy was "the perfect slave—a loyal, faithful, contented, efficient, conscientious member of the family who always knew her place; and she gave the slaves a white-approved standard of black behavior." She was "the personification of the ideal slave, and the ideal woman, . . . an ideal symbol of the patriarchal [and white supremacist] tradition. She was not just a product of the 'cultural uplift' theory [sic] [which touted slavery as a means of civilizing blacks], but she was also a product of the forces that in the South raised motherhood to sainthood."²⁴⁶

243. The severity of these options may suggest that many senior Black women have survived and excelled in legal academia by consciously or subconsciously deciding to manipulate perceptions by becoming more like Mammy. Unfortunately, if the idea of Mammy is internalized and not consciously manipulated, a particular psychological disorder may result. See Afi Samella Abdullah, *Mammy-ism: A Diagnosis of Psychological Misorientation for Women of African Descent*, J. BLACK PSYCHOL., May 1998, at 196, 198. Whether Black women in academia have manipulated the Mammy myth intentionally needs further study.

244. See HOOKS, *supra* note 224, at 84-86.

245. PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS AND THE POLITICS OF EMPOWERMENT* 71 (1990).

246. Austin, *supra* note 8, at 570; see also COLLINS, *supra* note 245, at 70-73 (describing the Mammy image); WHITE, *supra* note 229, at 46-52 (giving a historical description of Mammy); Abdullah, *supra* note 243, at 196 (introducing the particular characteristics that make up the Mammy myth).

The Mammy myth was a Black woman who acquiesced to her own inferiority and to white supremacy. Mammy was a Black woman who accepted that her role was to raise, train, and suckle future white mistresses and masters.²⁴⁷ As a Black woman who accepted and enjoyed her own inferiority, whites revered Mammy.

The mammy image was portrayed with affection by whites because it epitomized the ultimate sexist-racist vision of ideal black womanhood—complete submission to the will of whites. In a sense whites created in the mammy figure a black woman who embodied solely those characteristics they as colonizers wished to exploit. They saw her as the embodiment of woman as passive nurturer, a mother figure who gave all without expectation of return, who not only acknowledges her inferiority to whites but who loved them.²⁴⁸

Above all, Mammy is best remembered for her excessive love for and protection of her young, white charges.²⁴⁹ Mammy was one of the vehicles by which white children were taught white supremacy and Black inferiority.²⁵⁰ She epitomized the extent to which all Blacks should be willing to sacrifice.²⁵¹ Mammy sacrificed everything. All of Mammy's mothering and teaching was exclusively focused on the white family.

Like the Sapphire myth, the Mammy myth continues to have relevance today. Granted, the national thirst for Mammy is perhaps best placed within the historical context of slavery and slave-like labor in the South after Emancipation. Yet, the white search and desire for Mammy is not limited to such historical contexts. Like the image of Sapphire, the image of Mammy has been modernized.²⁵² Mammy still exists. She is simply "being reworked"²⁵³ such that the Mammy image is relevant in all areas where Black women work, including legal academia. In fact, given the rise of such popular talk shows like Oprah,²⁵⁴ the search for

247. See Austin, *supra* note 8, at 570.

248. HOOKS, *supra* note 224, at 84-85.

249. See WHITE, *supra* note 229, at 47.

250. See *id.*

251. See *id.*

252. See, e.g., Paulette M. Caldwell, *A Hair Piece, Perspectives on the Intersection of Race & Gender*, 1991 Duke L.J. 365, 390-92 (discussing how Aunt Jemima's hairstyle has become more corporate).

253. 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 200, 209 (1992).

254. For current information about the Oprah talk show, see *The Oprah Winfrey Show website* (visited Nov. 9, 1999) <<http://www.oprah.com>>.

Mammy is even more intense in the large audience-type forums where Black women teach. Oprah Winfrey may have rejuvenated the national thirst for Mammy, especially for the Retrenchment Generation. Oprah epitomizes Mammy not only in her appearance but also in her behavior.²⁵⁵

As to her appearance, Oprah is fairly dark, is fairly heavysset, and has characteristic African features such as voluptuous lips and a wide nose. Her appearance fits the myth of Mammy.²⁵⁶ After all, whenever the media visualizes Mammy, she is "typically portrayed as overweight, dark, and with characteristically African features."²⁵⁷

255. This discussion about Oprah does not mean to suggest that Oprah intentionally tries to be Mammy; rather my argument is that is how she is perceived. See, e.g., John Griffin, *Scarlet Fever Herald-Tribune Readers May Not Know Nothing About Casting' No Movies, But Many of You Like Throwing Caution to the Wind When it Comes to This Old Favorite*, SARASOTA HERALD-TRIB., June 23, 1998, at E1 (reporting that readers suggested that Oprah, among other dark, heavy set Black woman, portray Mammy in a modern version of *Gone with the Wind*); see also Jill Nelson, *Oprah Winfrey: For the Daytime Queen, Vulnerability Wins Out*, WASH. POST, July 19, 1987, at Y7 (reporting that critics say the Oprah Winfrey show caters mostly to white audience's desire for a safe, African-American "mammy" figure with which to relate); Charles Whitaker, *TV's New Daytime Darling: Oprah Winfrey*, SATURDAY EVENING POST, July 1987, at 42, 42 ("Some Black's . . . charge that Oprah's 'touchy-feely' manner toward the members of her predominately white audiences is reminiscent of the stereotypical Southern 'mammy.'").

Oprah is not alone in being perceived as Mammy or Mammy-like. One could look at the popularity of other Black women, most of whom have either the behavior or appearance of the historical Mammy image. Star Jones is one example of a popular Black women who displays both the behavior and appearance of mammy. See, e.g., Christina Coleman, *Speaking Up Makes Her (A) Star; Star Jones of ABC's The View is Full-Figured and Outspoken, and That's What Viewers Like about Her*, ORLANDO SENTINEL, Mar. 5, 1998, at A2 (describing Star Jones as "full-figured, flamboyant and outgoing" and who "is known for speaking her mind"); Mike McDaniel, *Star Jones' View of Life; She Uses Humor to Express Ideas*, HOUSTON CHRON., Dec. 27, 1998, (Television), at 3 (discussing Star Jones and her use of humor to tell the truth); Kelly Starling, *A View of Star Jones*, EBONY, Dec. 1998, at 52, 52 (describing Star Jones as a nurturer and hand holder, among other things). Mother Love is another example of a television figure with obvious Mammy characteristics. See, e.g., Kay McFadden, *Forgive or Forget: Such A Sorry State*, SEATTLE TIMES, June 29, 1998, at F1 (describing Mother Love, host of the talk show *Forgive or Forget*, "as a large woman who radiated big-bosom maternal concern"); Olivera Perkins, *Mother Love's Style Sassy and Successful*, PLAIN DEALER, July 4, 1995, at 1E (describing how Mother Love's sassiness is used to put people in their place and describing one incident where she castigated a male guest "like a naughty child who had just been disciplined"; noting how she hugs teary-eyed fans; describing Mother Love also as a "large woman, and I am a large, black woman who doesn't have a problem with who she is"); Cynthia Thomas, *Writer Mother Love: "been there, done that,"* HOUSTON CHRON., June 18, 1995, (Lifestyle), at 2 ("Mother Love is a woman who likes to speak her mind—an I-don't-take-no-guff-from-no-one kind of person, although in the nurturing way of a big-bosomed mother who protects her young."). Whoopi Goldberg also displays many Mammy characteristics. See, e.g., Griffin, *supra* note 255, at E1 (reporting that readers voted for Whoopi the most in deciding who would portray Mammy in a modern version of *Gone with the Wind*).

256. For a description of why the image of mammy was created this way, see HOOKS, *supra* note 224, at 84-86.

257. COLLINS, *supra* note 245, at 78. A Black male colleague of mine asked whether a light-

As to her behavior, Oprah showed the nation that Mammy could operate in large classroom-like forums. She showed the nation that a Mammy could work inside and outside of the home. She showed the nation that even when the Black woman was the host, she could subordinate herself to whites and be a nurturing mother figure to her audience, especially her white. Thus, while the Mammy myth's forum changed, its *modus operandi* did not. Thanks to these types of talk shows and the mass media in general,²⁵⁸ the Mammy myth has become relevant to other industries and other jobs.²⁵⁹ The myth of the modern Mammy operates far beyond the home. Mammy is now sought in corporate America and in academia, as well as many other areas.²⁶⁰

When she began her talk show career, Oprah faced allegations from Blacks that she excessively pandered to white audience members.²⁶¹ In the early days of her success, not only did Oprah appear to select white audience members more often, but she appeared to hug whites more, longer, and with more gusto. Like Mammy, she appeared to love her white children more than she loved her Black children. Her behavior, as well as her appearance, solidified her Mammyness in the eyes of the viewing white public.

Furthermore, despite appearance changes as she loses weight, Oprah appears to select movie roles that inevitably solidify the public's perception of her as Mammy. Every role she has selected

skinned, "cultured" (presumably from a middle-class or upper-middle class background), intelligent Black women could be Mammy. Presumably, this question was intended to raise the issue of whether one could be Mammy if one's socio-economic class was not "poor" and one was near in color to white people. First, Mammy and Sapphire both share a characteristic of being intelligent. Mammy's intelligence is used, however, to forward the agenda of her white family. Second, the hue of a Black woman's skin is minimally relevant to whether she can be perceived as Mammy because the Mammy myth focuses not only on appearance, but behavior.

Further, socio-economic class (of origin or current) may or may not impact whether a Black woman will be perceived as a Mammy. Oprah is probably worth several million dollars, though she had humble beginnings. Her current socio-economic class has not prevented her from being perceived as a Mammy. The fact that professional Black women (presumably middle-class) are facing the Mammy myth in their workplaces strongly indicates that socio-economic class of origin or current socio-economic class is irrelevant. See Abdullah, *supra* note 243, at 201 (arguing that the image of Mammy has extended beyond domestic work to clerical, managerial, and technical work, among others). Further, as will be discussed more fully below, if one does not fit the Mammy profile in appearance or behavior, then one is perceived as Sapphire. The Sapphire myth is not specifically limited to appearance, color, socio-economic class, prestige, or status.

258. See *infra* Part III.C.3 (discussing the esteem to which Mammy has been marketed and held in the public).

259. See Abdullah, *supra* note 243, at 201-02 (describing a case study in which the pressure to be Mammy is found in corporate America).

260. See *id.*

261. See Nelson, *supra* note 255; see also Whitaker, *supra* note 255, at 42 (arguing that some Black's charge that Oprah's style fits the southern "mammy" stereotype).

since she began to act involves Oprah portraying a poor, beat up, broken down, aged and aging Black woman whom the world has disused.²⁶² In all of these roles, Oprah's Mamminess in appearance is magnified. Her clothing is old and motherly. Her face is further lined. Her eyes are hidden or swollen, with their fatigue exacerbated and highlighted. Her beautiful hair is masked. Her smile is eliminated. Her weight is magnified. Furthermore, for these roles, she becomes Mammy not just in appearance, but in behavior as well. In her most critically acclaimed roles, from *The Women of Brewster Place*,²⁶³ to *The Color Purple*,²⁶⁴ to *Beloved*,²⁶⁵ the role remains pretty much the same; only the stories and the characters around Oprah change.²⁶⁶ She successfully solidifies the public's perception of her as Mammy: by behavior on her shows and in her roles.²⁶⁷

In one recent ABC movie, *Before Women Had Wings*,²⁶⁸ Oprah

262. For a list of the movies and television shows in which Oprah appeared, see *Oprah Winfrey* (visited Nov. 9, 1999) <<http://www.celebsite.com/people/oprahwinfrey/content/credits.html>>.

263. See *The Women of Brewster Place* (ABC television broadcast, Mar. 19, 1989).

264. See *THE COLOR PURPLE* (Warner Bros. 1985).

265. See *BELOVED* (Touchstone Pictures 1998).

266. Whoopi Goldberg also appears to select roles that accentuate her Mammyness to the audience. She generally receives acclaim for those roles that portray her as a maid or a nurturer of white people. See, e.g., *BOYS ON THE SIDE* (Warner Bros. 1995) (playing a homosexual Black woman who cares for a white woman who contracted AIDS); *CORRINA, CORRINA* (New Line 1994) (playing a maid to a white girl after the girl's mother dies, though she ends up dating the father); *STAR TREK: GENERATIONS* (Paramount 1994) (playing a timeless alien who cares for the crew, providing sage advice over meals); *SISTER ACT 2: BACK IN THE HABIT* (Buena Vista 1993) (continuing theme from *Sister Act*); *SISTER ACT* (Buena Vista 1992) (playing a casino singer that rescues a dilapidated white nunnery and the surrounding community); *GHOST* (Paramount 1990) (playing a psychic who takes care of a deceased man's girlfriend); *CLARA'S HEART* (Warner Bros. 1988) (playing a maid to a white boy after she is raped by her own son); *THE COLOR PURPLE* (Warner Bros. 1985) (playing a beat up and abused Black girl and woman). For a recitation of all Whoopi Goldberg's movies, see *The ACME Whoopi Film Page* (visited Nov. 9, 1999) <<http://www.acmewebpages.com/whoopi/films.htm>>.

267. For a critique of Oprah's role in the solidification of stereotypes, see Michele Wallace, *Negative Images: Towards a Black Feminist Cultural Criticism*, in *THE CULTURAL STUDIES READER* 118, 122-24 (Simon During ed., 1993).

268. See *Before Women Had Wings* (ABC television broadcast, Nov. 2, 1997). This movie was made as part of the Oprah Winfrey Presents franchise for the ABC Television network. See *Ultimate TV News*, *Oprah Winfrey, Ellen Barkin and Tina Majorino Star in "Before Women Had Wings," The Premiere Movie in "Oprah Winfrey Presents" Franchise, to Air During 1997-98 on ABC* (visited Nov. 7, 1999) <<http://206.230.220.7/news/bn/0320wings.html>>.

Research indicates that this movie may not be generally available. See *Before Women Had Wings* (visited Nov. 9, 1999) <<http://www.moviefinder.com/facts/0,5,63524,00.html>> (reporting that the movie is not in theatres, not on video, and not on television). This movie is based upon a book by this same name and generally stays true to the book, especially as to Oprah's role as Miss Zora and the descriptions of the relationships and occurrences in the movie. See CONNIE MAY FOWLER, *BEFORE WOMEN HAD WINGS* 119-20, 130-31, 136, 158-62, 166, 249-71 (1996) (describing Miss Zora, her relationship with her daughter, her financial status, the

plays a widow who is estranged from her daughter. Her loss weighs heavily on her soul and emotions. Oprah is no longer overweight, as she was in most of her other pictures, but her slimness highlights some great emotional burden rather than beauty. She appears aged and dresses like an old man, carrying a stick whenever she goes out and about.²⁶⁹

Her character, Miss Zora, lives alone in a hotel-like area. She is a recluse. No one talks to her and she talks to no one. It appears that she has money, but she also appears to be the only Black person around. She is befriended by a little white girl, Bird, who enjoys visiting Miss Zora because Bird's widowed mother, who is grieving the death of the girl's father, is mentally and emotionally abusive. Miss Zora is nurturing and maternal, providing a safe haven for the emotionally and physically abused little girl. Like the traditional Mammy, she is all-powerful and all-knowing. This power and knowledge is, in the traditional Mammyesque fashion, focused on the white family.

After the mother viciously beats Bird, Miss Zora (Oprah) actually becomes the primary caregiver of the white woman's two children. The white woman's character does not really know Miss Zora and displays some hostility toward her, although they do not meet until the end of the story. Their first real meeting occurs after the white woman beats her daughter. The white mother trusts that Miss Zora, a stranger, will take better care of her two children than she could. The movie ends with Oprah's character driving off with the two little white girls, waving to the white mother who is left behind. Presumably, Oprah's character never reconciles with her own daughter and the two little white girls become substitutes for her own child.

As to depicting the genre of the Mammy myth, *Before Women Had Wings* is excellent.²⁷⁰ It shows the nation how a slim, rich Oprah is still Mammy. It shows that even a Black woman with money can and will be Mammy for white children and their parents.

hostility the mother evidenced toward her, and the final scene in which the mother gives her two children to Miss Zora and they drive away).

269. See *Before Women had Wings* (ABC television broadcast, Nov. 2, 1997).

270. The movie, *Ghost*, is also an excellent example of the operation of the Mammy stereotype. In that movie, Whoopi Goldberg plays a fake psychic. When the lead character, Sam, dies, Whoopi's character becomes a real psychic, with Sam taking over Whoopi's ability to seek peace in her own mind. Whoopi Goldberg's character is aggressively persuaded by Sam to communicate to and take care of the girlfriend he left behind. Whoopi's character does so at great personal peril. She even allows Sam to take over her body, though it was personally offensive to her, so that he could communicate physically to his girlfriend one last time. At the end of the movie, she promises to take care of the girlfriend. Whoopi's independence as a Black woman is co-opted by these white people and she becomes Mammy.

It shows that even childless or child-estranged Black women have an excess well of mothering that is available to mother white children. It also shows how white people willingly trust their children to Black women who will sacrifice to care for them. It shows the operation of Mammy outside of slavery and in modern times. In essence, through her role in this movie, Oprah assists in the successful transportation of Mammy across time, status, and prestige. If Oprah, one of the most powerful and rich Black women in the country can be a "live," modern, non-housekeeping Mammy, surely white students must believe Black female academics could be Mammy for them, especially in the same type of a large classroom arena.

Unfortunately, some Black female academics like myself do not desire to be Mammy, or to be perceived as Mammy.²⁷¹ I am overweight, which puts me in the same "weight arena" as Mammy in appearance. My behavior is probably unlike the expected Mammy behavior. Yet, my behavior and appearance is professional. I do not imagine that I smile a lot during the lecture, although I imagine that I smile a lot generally.²⁷² I am not touchy-

271. Despite my personal decision, I understand that some Black women may desire to consciously manipulate perceptions and be perceived as Mammy to avoid the negative treatment that is afforded Sapphires and to gain the positive treatment afforded Mammy. See *infra* Part V.B. (explaining the phenomenon of appearance hostility).

272. As whites often expect Blacks to smile, when Blacks instead "display a more affectively neutral, dominant expression," the contradiction between the expectation and the reality may cause whites to interpret "Blacks' facial expressions as unfriendly." Vrana & Rollock, *supra* note 184, at 467; see also Moore, *supra* note 230, at 334 (citing Walker who opines that whites may perceive "normal African American cultural modalities, such as speech patterns and gestures, as signs of anger which they interpret as personally threatening to them"). Despite the fact that whites interpret African-American facial expressions as hostile and threatening, most whites are not particularly good at judging Black emotions and generally make mistakes, especially as to judging Black anger. See Stephen Nowicki, Jr. et al., *A Test of the Ability to Recognize Emotion in the Facial Expressions of African American Adults*, J. BLACK PSYCHOL. 335, 345, 347 (1998).

Although I do not imagine that I smile a lot in classroom, I expect that I try to achieve an emotionless, neutral facial expression. Despite this, I have had numerous odd reactions from whites, especially white men in my first year Property Law class. If my face is neutral as I listen to their recitation or answer, then I am angry and am denigrating them. If I smile at one point in class and not at others, then I am smiling at particular students and not at others. Thus, my students perceive me as having favorites.

I was told by one white male student, who is about my age, that because I looked at him and did not call on him that particular day, I was having a problem with him. I was told by an older white male, that since I did not look at him in class, I was avoiding looking at him and was therefore having a problem with him. I was told by others, male and female alike, that I looked at them too much, thereby causing them discomfort. My very glance, or lack thereof, appeared to be cause for student discomfort. Apparently, a neutral facial expression or any facial expression that does not involve one constantly smiling like a Black minstrel is perceived as angry, threatening, and intimidating. In essence, my facial expression signals and solidifies their image of me as Sapphire, the angry and sinister Black woman. See *supra*

feely during class. My demeanor is very similar to that of my white male colleagues. I do not want to hug anyone while doing my job. I have no kids and do not desire to make white students my substitute children, although they seem to desire it. Given that I share some of the same appearance characteristics as the Mammy myth, students appear to believe that I should have an overflow of excess innate mothering available to them. I have numerous students coming to my office to tell me of emotional issues they are having in school or their personal lives. I have men and women crying in my office when they never would have never felt comfortable doing this in front of a white male professor. It is in these moments that I feel the most pressure to comply with the Mammy image; to offer more than advice, a kind word, and a tissue.

By being Black and female, students demand and expect that I be Mammy for them at a moment's notice.²⁷³ After all, in "the 1990s [Black women] still are expected by White people to behave like Mammy in many institutional settings (university classrooms where the professor is a Black female and corporate boardrooms where the board member is a Black female)."²⁷⁴ Students are not shy in asking for, and indeed demanding in word and deed, their Mammy. Students also are not shy in penalizing those who refuse to be Mammy for them.²⁷⁵

While perhaps some Black women can "own" the Mammy image and use it as a mechanism of strength and learning, I find it difficult to do so. Mammy epitomizes Black female acquiescence to white supremacy and sexism. She gives her soul for the caring and rearing of white children who in turn later oppress her and those like her.²⁷⁶ Therefore, I reject any and all attempts to be perceived as Mammy.²⁷⁷ Perhaps as a result of this rejection, while teaching the Retrenchment Generation, I faced what I consider the Anti-Mammy/Sapphire Backlash. The theory and my personal experience with this type of backlash are discussed below.

Part III.C.1 (discussing Sapphire).

273. See generally Abdullah, *supra* note 243 (describing how demand for the Mammy places a burden on Black women).

274. *Id.* at 208.

275. Some students also seem to recognize that despite my professional role as a law professor they still desire to see me as Mammy. In fact, one anonymous note I received from a student stated that while the students were looking for a mother, they did not understand that Black mothers were different than white mothers. See *infra* Part V.D.6 (discussing this anonymous note that refers to the differences between Black mothers and white mothers).

276. See Abdullah, *supra* note 243, at 197-208.

277. See generally *id.* (opining that all Black women should reject the Mammy image to maintain and regain psychological health).

3. *Risking The Anti-Mammy/Sapphire Backlash*

"The pervasive cultural images of Mammy have been used to define, despise, disgrace, embarrass, humble, humiliate, ignore, reject, and shame women of African descent."²⁷⁸ Yet, if one is Mammy or is perceived as Mammy, one is rewarded,²⁷⁹ especially with white love and admiration.²⁸⁰ Despite all of her talent, Oprah perhaps stands as a testament to the extent to which whites will reward and honor Mammy. The reaction to her increased sensuality when she lost weight also shows the extent to which whites will punish and denigrate a perceived Sapphire. In fact, once again it can be seen in the roles she selects that Oprah epitomizes what happens to a Sapphire who refuses to be Mammy for white people when they desire it.

In *The Color Purple*,²⁸¹ Oprah plays Sophia, an intelligent, beautiful, and voluptuous Black woman. Sophia does not countenance fools. She has had to fight for her right to simply be. Sophia fought her father, brothers, and cousins to prevent incestual sexual assault. When she married, Sophia had to fight her husband. She has a sharp tongue, a sharp wit, and is willing to tell everyone what she thinks, how she feels, and what she wants. Based on both her appearance and her behavior, Sophia is clearly the quintessential Sapphire. As the audience, we admire her brashness and fear for her.

One day, a white woman sees Sophia's beautiful and clean Black children. Presumably assuming that Sophia would be honored by the request, the white woman requests that Sophia become her maid. Sophia refuses. Because of the stridency of this refusal, Sophia is physically beaten, placed in prison, and later forced to be the maid of the very white woman who she initially refused. She is also forcibly taken from her children, her husband, and her family. Before our eyes, the strong Sapphiric Sophia becomes Mammy personified; not only in appearance, but in behavior as well. Not only is she working and caring for the white woman and her children, but she rarely if ever sees her own children. Additionally, she is forced to be very acquiescent to the

278. Abdullah, *supra* note 243, at 198-99.

279. See generally Abdullah, *supra* note 243 (describing a particular psychological disorder called Mammy-ism that develops when a Black woman succumbs to the seductiveness of the Mammy image).

280. Oprah is perhaps one of the most well-loved Black women in the world. For examples of the admiration she obtains, see *Rachel's Ode to Oprah* (visited Nov. 11, 1999) <<http://iloveoprah.com>>.

281. See *supra* note 264.

white woman, almost to the point of being silenced forever. Sophia has also been physically transformed due to imprisonment. Her once black hair is now almost completely gray. She is still overweight, but she has lost her voluptuousness. Instead, she is downtrodden in appearance and demeanor. She has been broken. Not only does she acquiesce to the white woman, but everyone, including her own children and family, scare her. In the face of their boisterousness she is taken aback. In effect, she is Mammy.²⁸²

The Color Purple illustrates what can happen to a Sapphire who refuses to be Mammy when white folks come looking for their Mammy.²⁸³ Sapphires are physically injured, imprisoned, spiritually broken, emotionally damaged, and sold into a form of mental and emotional slavery which forces them to be Mammy.²⁸⁴

In essence, while Mammy evinces white sympathy, admiration, and love, Sapphire evinces white hostility, violence, and hatred. For whites, Sapphire is not a sympathetic character. No one petitioned Congress to have a statute placed in Washington to honor Sapphire. Yet, the honor to be attributed to the Mammy image has been solidified in the public consciousness due to the express and implied honors given to Mammy.

In the pictures painted by Americans, Mammy towered behind every orange blossom, mint julep, erring white child, and gracious Southern lady. She was immortalized in D.W. Griffith's popular antiblack film, *Birth of a Nation*, and eight years after its 1915 debut, the Daughters of the American Confederacy petitioned Congress to erect a granite monument in Mammy's likeness in Washington so that all America could pay tribute to her. The petition did not go far in Congress but in the 1930s, 1940s, and 1950s, Hollywood film producers and New York advertising agencies built their own monuments to Mammy. With their films, their pancake boxes, and their syrup bottles, they imprinted the image of Mammy on the American psyche more indelibly perhaps than ever before. We probably

282. It is only much later in the movie that Sophia recovers some of her Sapphire-ness. She declares "Sophia is back" and gives a long and vigorous laugh. What the movie does not tell us is whether Sophia can be or will be able to be both Mammy for the white woman and Sapphire for her family. See *id.*

283. See *id.*

284. At a recent meeting of Black women who critiqued a much earlier version of this Article, many of the senior women stridently admonished me not to publish this Article before tenure, believing that to do so would be "suicide." I understood and understand their fears for me, and perhaps for themselves. After all, a Sapphire who does not acquiesce is destroyed. I do not believe that waiting until after tenure will provide any more protection than I have before tenure. Given my experiences, negativity is part and parcel of being perceived of as a Sapphire in legal academia.

can not measure the effect of the mass packaging of Mammy with precision, but the fact is that Mammy began a national symbol of perfect domesticity [and racial acquiescence] at the very time that millions of black women were leaving the cotton fields of the South in search of employment in the Northern urban area. Surely there is some connection between the idea of Mammy, the service and domestic jobs readily offered to black women, and their near-exclusion from other kinds of work.²⁸⁵

Given the extent of this type of media marketing of Mammy to the public, Mammy lives on in the consciousness of white folk as to how the ideal Black woman should live, work, and act. The extent of white admiration for Mammy also shows the awards available to all Black women if they simply become Mammy.

Every working Black woman is judged against the image of and desire for Mammy. If a Black woman is found wanting, she will be perceived as Sapphire. And as Sapphire, Black women risk facing the Anti-Mammy/Sapphire Backlash. Sapphire is, after all, the worst of all worlds.

Sapphire is a domineering black woman who consumes men. Although hers is a nonsexual persona, it is as indomitable as Jezebel's and equally emasculating in effect. Jezebel emasculated men by stripping them of their ability to resist her temptations, and thus manipulating them. Sapphire emasculates men by the aggressive usurpation of their role. Her assertive demeanor identifies her with Mammy, but unlike Mammy she is devoid of maternal compassion and understanding. Sapphire is as tough, efficient, and tireless as Mammy, but, whereas Mammy operated within the boundaries prescribed for women, Sapphire is firmly anchored in a man's world.²⁸⁶

285. WHITE, *supra* note 229, at 165.

286. *Id.* at 165-66; *see also* Scott, *supra* note 237, at 85 (deconstructing the racist and sexist beliefs behind the sapphire myth).

Given the similarities and differences between Sapphire and Mammy, one has to ask whether one can be both Sapphire and Mammy. I do not believe so. What separates Sapphire from Mammy is not the behavior itself because there are strong similarities in that both myths involve Black women at work and both have specific and perhaps aggressive styles of communications. What separates Sapphire from Mammy is who benefits from the Black woman's efforts. Thus, Mammy's acceptability is grounded in the fact that she uses her assets (and liabilities) for the benefit of her white charges. It is not for her own aggrandizement or the aggrandizement of her people. Instead, her every effort is designed to further white supremacy and Black acquiescence. In contrast, Sapphire's efforts are not intended to benefit whites and instead are for her own aggrandizement. Further, for Black female academics, I also believe, given that they exercise authority that is not directly beneficial to white students, that white students will always feel that a Black female academic is a Sapphire

In academia, the men that Sapphire emasculates are no longer limited to Black men. She apparently emasculates all men, especially young white men. If the ideal image of a law professor is a white man, then surely it is logical to conclude that students believe that a Black female academic is emasculating white men by usurping their expected role. Consequently, as will be discussed more fully below, perceived Sapphires are penalized through excessive negative evaluations.²⁸⁷ Given the harshness of these evaluations, many Black women learn quickly how "dangerous [it is] . . . to be a woman in an environment where men rule—men who are faculty and men who are students."²⁸⁸

Further, while Mammy has an expected and desired role in the home, or places like home, Sapphire's place is in the world of work. Black females who labor in academia are therefore seen to labor in a man's world. A world where they do not and should not belong. This is a place where Mammy would never dare enter. Although white women face gender bias such that their existence in academia may challenge "traditional sex roles,"²⁸⁹ Black women face race/gender bias such that their existence in academia challenges traditional and expected racial roles, gender roles, and race/gender roles.

Therefore, as the antithesis of Mammy, Black female academics as Sapphire personified are perceived as unnecessarily authoritarian, uncaring, and adversarial. Again, the stereotypes about Black women mirror the characteristics of Sapphire. Interestingly, when these very attributes are seen in white men, they are revered and rewarded.²⁹⁰

If, unlike Oprah, working Black women cannot or will not be Mammy for their peers or their students, then their world of work

rather than a Mammy—even though her behavior (and perhaps appearance) may flow from one category to the next through the semester or academic year.

287. See *infra* Part V.D (discussing evaluative hostility).

288. Post, *supra* note 197, at 141; see also AM. BAR ASS'N COMM'N ON WOMEN IN THE PROFESSION, *supra* note 73, at 6-7 (reporting that Black women students and law professors felt that they had been discriminated against). The only place that women can be said to rule in the legal academy is in the legal research and writing programs. See generally Pamela Edwards, *Teaching Legal Writing as Women's Work: Life on the Fringes of the Academy*, 4 CARDOZO WOMEN'S L.J. 75 (1997) (discussing the gender-stratified nature of the legal research and writing programs); Farley, *supra* note 145, at 353 (concluding that unlike law faculty as a whole, women are welcome in the law library, the law clinics, and the legal research and writing programs).

289. Bean, *supra* note 172, at 29.

290. See *infra* notes 372-73 and accompanying text (discussing the different perceptions attributed characteristics depending on whether the actor is male or female, Black or white).

is fraught with danger and hostility. While white honor and tribute is laid at the foot of those who become or are perceived as Mammy, hostility and denigration are the rewards for Sapphire. The public's reaction to and denigration of Anita Hill,²⁹¹ Jocelyn Elders,²⁹² Lani Guinier,²⁹³ and many other educated professional Black woman are testaments to the hostility and denigration that await Sapphires—those who are and those who are perceived to be.²⁹⁴ By viewing how the public and media treated Professors Anita Hill and Lani Guinier, we all learned that “being a Black woman law professor

291. See generally ANITA HILL, *SPEAKING TRUTH TO POWER* (1997) (describing the public reaction to her allegation of sexual harassment). For several excellent essays on the stereotypes and images of Black women surrounding Justice Thomas's confirmation to the Supreme Court in light of Professor Hill's allegation of sexual harassment, see RACE-ING JUSTICE, EN-GENDERING POWER, ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY (Toni Morrison ed., 1992); Hill, *supra* note 16 (discussing how her dual status as a Black woman inhibited the public's ability to hear side of the story in the Justice Thomas confirmation hearings).

292. For an excellent discussion on the response to Dr. Elders when she was seeking confirmation as Surgeon General, see Norman Lockman, *Black and Brazen*, in THINKING BLACK: SOME OF THE NATION'S BEST BLACK COLUMNISTS SPEAK THEIR MIND 260, 261-62 (DeWayne Wickham ed., 1996) (reporting how Dr. Elders was referred to as the Condom Queen).

293. See generally Karen Grisby Bates, *Scene 2, Take 3: Mr. Bill Learns to Count to 1,000%*, Lani Guinier: *Fumbling and Bumbling by the White House Is a Primer on How to Win Enemies and Amuse People*, L.A. TIMES, June 6, 1993, at 5 (describing how President Clinton rescinded Guinier's nomination due to political pressures, despite the fact that she had stellar credentials, a wealth of experience, and an impressive record in civil rights litigation); Dale Russakoff, *Lani Guinier is Still Alive and Talking*, WASH. POST, Dec. 12, 1993, at W14 (reporting how the media misrepresented Lani Guinier and attempted to discredit her during her nomination by referring to her as “Loony Lani” and as a person with a “[s]trange name, strange hair, strange writings”).

294. See generally Richard Grenier, *Profiles in Timidity . . . and Absurdity*, WASH. TIMES, July 28, 1993, at G1 (chastising Senator Carol Mosely-Braun's comments in response to racially offensive statements by her colleagues; and concluding that: “We must prepare ourselves for six years of strident, browbeating self-righteousness from Sen. Braun—not always impeccably logical to be sure—whenever a feminist or black issue comes before the Senate”); Herman Job Wait *Stirs ‘Race Card’ Attacks on Senate*, JET, Mar. 17, 1997, at 10 (discussing how the confirmation hearing for the Secretary of Labor, Alexis Herman, the highest-ranking Black woman in the Clinton Administration, was held up unprecedentedly); William Murchison, *Senator Dares to Own Our History*, DALLAS MORNING NEWS, July 28, 1993, at A21 (criticizing Senator Carol Mosely-Braun, the first African-American woman elected to the U.S. Senate, for objecting to the renewal of the design patent of the United Daughters of the Confederacy, as one who “is black, female and don't you forget it, because she appears to have put herself in charge of American history”); Charles Pope, *O'Leary on the Job, but GOP Pushes for Her Ouster*, DAYTON DAILY NEWS, Nov. 11, 1995, at A3 (describing how “Hazel O'Leary survived a White House rebuke, media enmity and congressional calls for her job”); Susan Schmidt, *Probe of O'Leary Over Charity Donation Ends*, WASH. POST, Dec. 3, 1997, at A33 (describing how former Secretary of Energy, Hazel R. O'Leary, who involuntarily resigned under congressional criticism, despite winning praises for her accomplishments, regained some of her reputation after Attorney General Janet Reno announced that the investigation developed no evidence).

means that one is 'regarded as inherently unbelievable and untrustworthy despite years of hard-won educational and professional accomplishments."²⁹⁵

Apparently, no work place is immune from the dichotomy of Mammy versus Sapphire. Indeed, "[a]ssumptions about black women are so webbed into the social fabric that these images effectively pervade workplaces and many other spaces in U.S. society."²⁹⁶ Academia is no different. The racial hostility that Black women professionals face in the work force does not subside because they labor in the ivory tower of academia. Quite the contrary. The quest for Mammy and the denigration of Sapphire pervade academia.

4. *Transporting Mammy and Sapphire into Academia*

Any and all behaviors and characteristics individual Black women possess are recast and miscast to support the overall stereotypes of Black women as threatening, intimidating, and angry. In essence, regardless of her education or economic status, a Black woman who refuses the role of Mammy is perceived as a Sapphire, i.e., an angry, sarcastic Black woman who uses her intelligence to harm, denigrate, and intimidate others. Unfortunately, there is no silver lining in this negative portrayal. Black women do not get benefits or kudos for being a Sapphire.

This negative portrayal is exacerbated by the fact that even for positive traits, Black women are judged less positively than white women. The above study on Black women stereotypes shows that "the same people who rate Black women less negatively on negative traits rate them less positively on positive traits."²⁹⁷ Where American white women were rated positively for being assertive, determined, independent, attractive, and meditative, Black women were considered in a less positive light if these traits were exhibited. When Black women are evaluated by students, the

findings suggest two conclusions: that Anglo students assign different emotional evaluations to the same trait depending on whether they are characterizing women in general or black women and that Anglo students believe that black women are

295. Joyce Hughes, *Different Strokes: The Challenges Facing Black Women Law Professors in Selecting Teaching Methods*, 16 NAT'L BLACK L.J. 27, 30 (1998) (quoting Adrien Katherine Wing, *Brief Reflections Toward a Multiplicative Theory and Praxis of Being*, in CRITICAL RACE FEMINISM—A READER 1 (1997)).

296. St. Jean & Feagin, *supra* note 68, at 190.

297. Weitz & Gordon, *supra* note 209, at 29.

generally characterized by a different and substantially more negative set of traits than women in general.²⁹⁸

Indeed, when Black women act positively by showing independence, assertiveness, or thoughtfulness, white students "will be not only surprised but disturbed."²⁹⁹ This disturbance may lead to racial confrontation in the classroom, less-than-stellar evaluations from students, and less-than-satisfactory relationships with white colleagues. Due to these reactions, unless the presumption of incompetence itself is recognized and destroyed, "the reality is that blackwomen [sic] can only expect to have dysfunctional relationships in the legal academy."³⁰⁰ The relationship between Black women and the academic environment is dysfunctional because of the historical and continued devaluation of Black women.³⁰¹

While individual experiences may vary from one Black woman to the next, the above race/gender study and myths about Sapphire and Mammy strongly suggest that before she walks into the classroom, a Black female professor has certain devaluing presumptions against her.³⁰² Before and after she opens her mouth, the stereotypes and presumption of incompetence are operating against her.³⁰³ Before she is formally evaluated, she is already considered incompetent, unintelligent, and threatening. Before she interacts with students, she is already perceived as angry and personally threatening to them.³⁰⁴ Given the lack of exposure white students have to Black female teachers in elementary school, secondary school, and college,³⁰⁵ the presumptions operate that much more consistently and inflexibly.

A Black woman who is perceived as Sapphire or some other negative Black female stereotype can only be fully and permanently redeemed if she becomes, or is perceived as becoming, Mammy. As Mammy, a Black woman is not threatening and her intelligence is

298. *Id.*

299. *Id.* at 30.

300. Russell, *supra* note 9, at 261.

301. See HOOKS, *supra* note 224, at 51-86 (1981) (discussing the historical devaluation of Black women); see also St. Jean & Feagin, *supra* note 68, at 180 ("Devaluation is at the heart of the negative treatment of black women by whites.").

302. See Quick & Lollis, *supra* note 185, at 367-71. See generally Symposium, *Building*, *supra* note 9 (discussing the preconceived notion that students have of Black female professors).

303. See Kupenda, *supra* note 9, at 979.

304. See Moore, *supra* note 230, at 334 (discussing the angry stereotypes that many Black women are perceived as).

305. See *supra* Part II.A (discussing resegregation and racial isolation in education).

revered because it is then used to nurture and mentor white children. Mammy's sassiness and assertiveness is acceptable because, again, it is used for the benefit of the white family. Of course, Mammy has to be somewhat competent in the arena of the home to adequately care for white children. Thus, perhaps for Mammy there is a small window of competence available if she simply stays in her expected place. If a Black woman becomes Mammy at work, she can expect better performance evaluations. Indeed, given the extension of Mammy from the home to the work area to the school room,³⁰⁶ "[j]ob performances of good to excellent are given when [Black women's] personal interactions with the Whites result in deferential treatment by exhibiting [traditional Mammy-like characteristics such as] passiveness, insecurity, and inappropriate dependency."³⁰⁷ If one does not become Mammy for one's students or colleagues, then the opposite of good to excellent job performance results.³⁰⁸ After all, part of the devaluation that Black women face in academia, and as work force participants, is negative performance evaluations. When the Anti-Mammy/Sapphire Backlash controls, it becomes acceptable to punish Sapphire with negative evaluations, poor performance reviews, and little, if any, institutional support or protection.

The power of the Sapphire myth must be understood as it interacts with racial isolation, retrenchment, and the presumption of incompetence. Together, these sociological factors create a synergism of negativity that inherently makes it difficult for Black women to feel welcome and successful in legal academia. This synergism is discussed below.

IV. THE THEORY: SYNERGISM OF NEGATIVITY AND THE REVERSAL OF THE EXPECTED POWER DYNAMIC

In the book *One L*,³⁰⁹ Scott Turow compellingly describes the powerlessness of first-year law students when compared to professors. Those aspiring lawyers are warned about how roughly they will be treated by professors in their first year of law school, especially at elite institutions. Students are told in excruciating

306. See Abdullah, *supra* note 243, at 201.

307. *Id.* at 203; see also COLLINS, *supra* note 245, at 71 ("Black women executives are hampered by being treated as mummies and penalized if they do not appear warm and nurturing." (citing Rhetaugh Dumas, *Dilemmas of Black Females in Leadership*, THE BLACK WOMAN 203 (La Frances Rodgers-Rose ed., 1980))).

308. See *infra* Part V.D (discussing student evaluations and evaluative hostility).

309. SCOTT TUROW, *ONE L* (1977).

detail how their self-confidence and self-esteem will suffer as they are viciously attacked day-in and day-out by professors. This book has become the "must read" book for those who aspire to be lawyers.

The portrayal in *One L* and *The Paper Chase*³¹⁰ only involved the power and authority between older white male professors and white students. In both of these books, it is assumed that the all-powerful professor is middle-aged, white, male, and tenured. They are also teaching in an area that is well-respected and coveted, i.e., the "Law." Thus, based upon how we define power and authority in our society, the professors in *One L* and *The Paper Chase* are not vulnerable in any respect. They are powerful beyond measure. Accordingly, they are privileged to harass, denigrate, intimidate, and humiliate without censure. The students, in contrast, are powerless to stop or to prevent this form of harassment, and they certainly have no power of their own. Both of these books help shape stereotypes and biases that encourage law students to believe that only white, middle-aged, tenured men are capable of teaching the law. Anyone else is not competent to engage students in the anticipated rigors that the study of law demands. Both books also fail to take into account the increasing diversity in the legal professoriate.

The 1970's portrayal of all-powerful professors and the powerless students is inaccurate, when the current realities of the heterogeneous nature of legal academia are taken into account. All professors are not all-powerful because all of the professors are not white, male, tenured, and middle-aged. In fact, the professor/student powerful/powerless dynamic changes dramatically when outsiders within the academy are taken into account. Outsiders include those who are race vulnerable, gender vulnerable, race/gender vulnerable, age vulnerable, tenure vulnerable, or all of the above. Furthermore, when the professor is not white and the students are white, the institutional power dynamic between the professor and the students is reversed. Racial privilege that flows to white students from our white supremacist society controls when the outsiders are the professors.

When outsiders are within the legal professoriate, they remain outsiders in many respects. In a white-supremacist society, power is held in the hands of institutional players. Although professors of color can wield some power by being the authority figure at the podium and the person who grades exams, white students have

310. (Twentieth Century Fox 1973). The movie is based on the book by JOHN J. OSBORN, *THE PAPER CHASE* (1971).

equivalent or more institutional power. White students can wield the power of poor evaluations because evaluations determine whether a tenure vulnerable professor of color will obtain tenure. White students can wield the power of hate mail, racial meetings, and racially denigrating flyers because these types of reputation destroyers determine whether a professor of color will be considered valuable to their institutions. Oftentimes, the students wield this racial power with the full knowledge and, in many instances, consent of the institution.³¹¹ The reversal of the power dynamic is particularly striking when a Black woman is the professor, i.e., the Socrates, in the legal classroom.

The denigration of Black women as unwelcome and incapable of professing law is exacerbated by their uniqueness at all levels of academia, by retrenchment fervor, and by the Sapphire myth that inflexibly presumes that Black women are unintelligent, angry, intimidating, threatening, and not worthy of respect. Because this societal denigration infects academia, Black women are particularly vulnerable when institutional players believe that Black women are not worthy of the imprimatur of institutional respect.

The synergism of negativity that results from the continued uniqueness of Black women as the Socrates in the front of any classroom, the racial hostility that is brought to the fore by retrenchment, and the continued presumption of incompetence is more powerful than each of its individual parts. The synergism of negativity heightens and exacerbates age-old biases and prejudices. It is these biases and prejudices that are given the imprimatur of institutional support and respect rather than the Black woman who stands behind the podium.

Although *One L* and *Paper Chase* tried to articulate for law students the phenomenon that allowed white male professors to intimidate and oppress them, no book or article has fully captured the effect this new synergism of negativity has on the most

311. See, e.g., Bell, *supra* 118, at 377 (describing his experiences at Stanford); Hughes, *supra* note 123, at 93-34 (describing several meetings by students in her second year of teaching a Legal Professions course to have the grading changed to pass/fail); Reginald Leamon Robinson, *Split Personalities: Teaching and Scholarship in Nonstereotypical Areas of the Law*, 19 W. NEW ENG. L. REV. 73, 74-77 (1997) [hereinafter Robinson, *Split Personalities*] (describing hostile student and colleague responses to his teaching Property Law using social theory and philosophy; one such reaction was en mass student complaints to the dean). See generally Reginald Leamon Robinson, *Teaching from the Margins: Race As a Pedagogical Sub-Text: A Critical Essay*, 19 W. NEW ENG. L. REV. 151 (1997) [hereinafter Robinson, *Teaching from the Margins*] (describing hostility to his teaching as a Black intellectual); Bhatnagar, *supra* note 119 (describing allegations by Professor Mabry that Stanford is institutionally racist).

vulnerable professors in academia—professors of color. No book or article has shown that the synergism of negativity allows students, primarily white students, to intimidate and oppress Black female professors, primarily through evaluations that are used as a basis for tenure and promotion by institutions.

Given the reversal in the power dynamic, this synergism of negativity, and all of its component parts, ensures that for years to come Black women in legal academia (and perhaps many other fields) will feel unwelcome, and unwanted. The power and authority institutions hand to students via evaluations, racial meetings, and non-responsiveness to racial hate mail ensures this result.

The next part of this Article stands as a powerful response to the books *One L* and *The Paper Chase* because it forcefully shows that negative institutional power can be wielded against the professor, especially if the professor is not race, gender or tenure privileged. This power can be wielded by all students, including first-year law students. In fact, it is not the students' rank that is relevant. It is their race that is of premier importance.

Unlike the professors in these two books, Black women are not privileged. Given their rather recent entry into legal academia, Black women are not sufficiently middle-aged to benefit from the status of being aged.³¹² In addition, they are Black, female, and generally tenure vulnerable. Black female professors are not institutional insiders by any means. Based upon how we define power and authority in our society, Black women as professors are exceedingly vulnerable. Instead, any hold they have on power is tenuous and can be diminished or eliminated entirely by students, colleagues, and administrators. Further, because Black women are outsiders within the academy, they are generally powerless to stop or to prevent students, colleagues, and administrators from harassing, denigrating, intimidating, or humiliating them.

This difference in power dynamic is exacerbated by racial isolation, retrenchment fervor, the presumption of incompetence, and the Sapphire myth. These factors create a societal synergism of negativity that hinders the ability of Black women (regardless of industry, but particularly in academia) from succeeding with any relative ease. Against the backdrop of this synergism of negativity,

312. See Lee E. Teitelbaum, *First-Generation Issues: Access to Law Schools*, in PERSPECTIVES ON DIVERSITY: AALS SPECIAL COMMISSION ON MEETING THE CHALLENGES OF DIVERSITY IN AN ACADEMIC ENVIRONMENT, Ch. 3, at 7 (1997) (reporting that women of color are younger than most of the other race/gender groups, with women of color being an average age of 41 and white men being an average age of 54).

I began my career as a new professor at Boston College Law School (BCLS).³¹³

Given these sociological factors, my experience shows the effects of being perceived and treated as a Sapphire in an educational environment in which racial isolation and retrenchment have negatively impacted the civility and collegiality one would expect in a professional and intellectual environment. My experience also shows how Black women are judged against the race/gender presumption of incompetence and how an institution uses this judgment. The next section focuses on potential hostile relationships with students, applying the above theory to my experiences as a new Black female academic teaching first-year Property Law.

V. THE THEORY/EXPERIENTIAL PRAXIS: STUDENT REACTIONS AND THE RESULTING PHENOMENA

The narratives of Black women in academia provide evidence of not only the existence of the presumption of incompetence, but also the phenomena of various hostilities. Student "hostility finds expression in the classroom in subtle but disruptive ways: the noise level, the inattention, the answers which verge on disrespect."³¹⁴ In this Article, I delineate the student-based hostility into hostility based on credentials, appearance, existence, and evaluative authority.³¹⁵ My experience as a new law professor helps explore

313. See generally IAN F. HANEY LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996) (opining that racism is contextual). Although I agree, in part, with Professor Lopez that racism is contextual, much of racism is not merely contextual. Certainly being in a non-supportive institution in the Northeast region created a situation in which racism flourished, but the existence of racism, negative racial stereotypes, and racial isolation is beyond the context of my individual situation. Rather, it is national. Thus, if racism is contextual, the context encompasses our entire country and all points in time in our past, present, and perhaps future.

314. Post, *supra* note 197, at 149.

315. There are other types of hostilities. Some are discussed *infra* Part VI in regards to how institutions respond to student-based hostility. Other types of hostility are beyond the scope of this Article, but have been explored by other scholars. For example, Black professors receive student-based hostility based on what and how we teach. See, e.g., Hendrix, *supra* note 20, at 749 (discussing how race among Black and white male professors affect whether students perceive them as credible and reporting that Blacks are most credible when they are teaching ethnic courses); Russell, *supra* note 9, at 261 ("[An African-American women] cannot legitimately claim any special competence or expertise in any subject or field. Her considered judgments regarding course coverage, teaching methodology, examination and grading can be challenged with impunity."); Mary L. Fifield, *Conceptual Shift Needed to Diversify Higher Education*, BLACK ISSUES HIGHER EDUC., June 12, 1997, at 56, 56 (discussing how there is hostility based upon what professors of color teach). See generally Robinson, *Split Personalities*, *supra* note 311 (describing hostile reactions from students and colleagues for

these phenomena of hostility, as do the experiences of other Black women.³¹⁶

The application of the presumption of incompetence is shown when students evidence animosity toward a Black woman who has earned traditional credentials and thereby undermines the presumption of incompetence. Indeed, because of this and the fact that Black women are stereotyped as unintelligent, I have experienced some hostility from students because of my credentials. This phenomenon is discussed below.

A. *The Phenomenon of Credential Hostility*

Given the presumption of incompetence and Black women's uniqueness in the legal academy, perhaps African-American women should expect to have their credentials called into question at a moment's notice.³¹⁷ After all, Black women are perceived as being unqualified affirmative action hires.³¹⁸ Black women also are presumed to be incompetent and unintelligent.³¹⁹ Thus, in academia, where intelligence is purportedly supreme, a Black woman is the last person a student expects to see at the front of the classroom.³²⁰ As such, we have to prove our intellectual entitlement to be the authority figure in front of the classroom to everyone,

using social theory and philosophy); Robinson, *Teaching from the Margins*, *supra* note 311 (describing the difficulty he faced as a Black professor in trying to teach law in a more intellectual way).

316. See Russell, *supra* note 9, at 261; Delgado & Bell, *supra* note 110, at 349. See generally Symposium, *Building*, *supra* note 9 (compiling the personal experiences of several Black female law professors).

317. See MULTICULTURAL WOMEN ATTORNEYS NETWORK, *supra* note 189, at 21; Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539, 539, 543 (1991); Crane, *supra* note 127, at 19; see also Hughes, *supra* note 123, at 97 (explaining how her excellent traditional credentials did not shelter her from student attacks or guarantee that her colleagues and deans would treat her with collegiality).

318. Despite this myth, women of color actually have benefited the least from affirmative action. See Deborah Jones Merritt, *The Status of Women on Law School Faculties: Recent Trends in Hiring*, 1995 U. ILL. L. REV. 93, 102. For an analysis of the credentials of women of color versus men of color, see Merritt & Reskin, *supra* note 193, at 63; Deborah J. Merritt & Barbara F. Reskin, *The Double Minority: Empirical Evidence of a Double Standard in Law School Hiring of Minority Women*, 65 S. CAL. L. REV. 2299, 2356-59 (1992) [hereinafter Merritt & Reskin, *Double Minority*]; see also Arthur S. Hayes, *Color-Coded Hurdle*, A.B.A. J., Feb. 1999, at 56, 56-57 (reporting that almost 70% of all Black lawyers polled believed that women of color lawyers were treated less fairly in hiring and promotion than white women lawyers).

319. See *supra* Part III.

320. See also Krauskopf, *supra* note 205, at 327 (reporting that many students come to law school with an expectation that the professor will be a white male).

continuously. We must answer the express or implied question, "Who are *you* to teach me anything?"

Further, like every professional, Black women in academia must establish credibility. Unfortunately, credibility is subjective and tainted by race, gender, and race/gender bias.³²¹ One study has explored the impact that race has on the ability of a professor to establish credibility and has concluded that

[a]lthough students stated they would not automatically favor one race over another, some of their discourse revealed that Black professors had to work harder to establish their credibility [and students of color] were very aware that the qualifications of Black professors were often questioned by their White classmates. During their interviews [students of color] spoke of overheard comments and conversations in class as well as open challenges to the authority of Black professors during class lectures.³²²

Thus, despite what students claimed, their actions belied their words. White students do indeed question Black professors authority, credibility, and credentials.

This conclusion is further supported by the above theory of the presumption of incompetence and how it operates to advantage white men and to disadvantage all women.³²³ Indeed, one cannot explore the presumptions of incompetence/competence without also exploring credibility. After all, we cannot ignore the fact that the experiment at Weber State University showed that when all else was equal, except for a photograph showing race, gender, and age, students ranked the middle-aged white male as the most competent and credible and ranked the young white female as the least competent and credible.³²⁴ Given this, without additional information and based on visual indicators alone, students will presume that Black women and other women are incompetent the moment they walk into the classroom purporting to profess.

Perhaps, then, one way to establish credibility is to provide students with additional information before the presumption of

321. See *supra* Part III.C (discussing Black women's perceived lack of credibility despite education, status, and prestige).

322. Hendrix, *supra* note 20, at 750 (discussing how race affects whether students perceive professors as credible). This study also shows that Black professors do not obtain automatic credibility from Black students. Instead, Black professors are judged by some Black students as harshly, if not more so, than white students. See *id.*

323. See *supra* Part III.A-C.

324. See *supra* Part III.A (discussing the presumption of incompetence that negatively impacts white women).

incompetence is solidified too firmly in their minds. Perhaps then the presumption of incompetence can be either destroyed or minimized by introducing oneself to the students providing the indicia of traditional credentials. In legal academia, traditional credentials have remained the same for years. Indeed traditional credentials have "defined excellence among law faculty for several generations. [That standard is:] Graduate with superior grades from a superior law school. Serve on law review. Clerk in a prestigious court. . . . Have a successful run in big-firm private practice."³²⁵ I have many, if not all, of these traditional credentials.

I was told at the American Association of Law Schools (AALS) New Teachers' Conference in 1995 to introduce myself at the beginning of my first class because, as a new teacher, I was an unknown. So, I did. I said something to the effect of:

Good morning/afternoon. My name is Pamela J. Smith. I will be teaching you Property Law. Let me first tell you a little bit about myself. I am a 1992 magna cum laude graduate of Tulane University School of Law. As a Tulane student, I graded on to the Tulane Law Review. I published three student pieces; one of which won the Best Comment Award. I also enjoyed moot court, winning Best Brief Honors and 2nd Place in the J. Braxton Craven, Jr., Memorial Moot Court Competition.

After graduating from Tulane in 1992, I clerked for the Honorable Robert H. McWilliams, U.S. Court of Appeals for the Tenth Judicial Circuit, sitting in Denver. I clerked until 1993 and thereafter joined the law firm of Thompson & Knight in Dallas. I practiced civil litigation, intellectual property, and computer law.

I am licensed to practice law in Colorado, D.C., and Texas.

I also have a B.S. in Computer Science and an M.B.A. in Information Management.

I owe my success to many of the law professors I had the opportunity to get to know while a student. Thus, I am looking forward to meeting you all and to facilitating your success in Property Law. I hope you will find something in my background that is similar to your background and goals. Please stop by to introduce yourself.

325. Hughes, *supra* note 123, at 97 n.39 (quoting Edward W. Lempinen, *A Student Challenge to the Old Guard*, STUDENT LAW., Sept. 1990, at 16).

*Let's now review the course syllabus so that I can answer any questions you may have about the class.*³²⁶

Although I had heard that white students held the general presumption that Blacks are unqualified, I had not heard of or experienced the reverse: hostility and anger from whites if their negative stereotypes about Black qualifications are destroyed.³²⁷ Yet, that was my experience as a first-year Property Law professor.

There are two reactions to my introduction, generally falling along racial and gender lines.³²⁸ The Black students give an almost audible sigh of relief. They actually visibly relax. Presumably, they are glad that they are not going to have to argue that the professor is entitled to be there. They are glad that they do not have to argue that affirmative action is a good thing. With a "properly" credentialed professor, they can focus on something else rather than on the issues of race and the presumption of Black incompetence.³²⁹ Although this turns out to be a false impression, it is one that my Black students seem to have.

Further, Black students, other students of color, and many white women are visibly and audibly ecstatic. They seem to think that they will have an easier time not only substantively, but emotionally, if a Black woman is in front of the class. They also see opportunities for mentoring, nurturing, and the like. Indeed,

[a]s a group, both black men and women students expect a special sympathy from black women professors, who, after all, are their mothers and sisters, and as everyone knows, all black women nurture all black people all of the time.

326. See Douglas J. Whaley, *Teaching Law: Advice for the New Law Professor*, 43 OHIO ST. L.J. 125, 129 (1982) (suggesting that new professors introduce themselves and review course administrative details to students). I never read this introduction from notes. Thus, the actual text and order varies. The ultimate content, however, remains the same.

327. For an excellent analysis of the credentials of women of color compared to men of color and the benefits they receive from having traditional credentials, see Merritt & Reskin, *supra* note 193; see also Merritt & Reskin, *The Double Minority*, *supra* note 318. Based on their studies, it appears that the credential hostility that Black women face in academia not only affects classroom interaction, but it also affects their hiring. Professors Resnik and Merritt opine that despite having equivalent credentials to men of color, gender bias infects hiring decisions. Women begin at less prestigious institutions and teach fewer high-status courses. They thus debunk the myth of women of color receiving advantages for being "two fers."

328. Given my introduction, I do not frequently and expressly face what some others have faced in being compelled by students to state their credentials and qualifications to be there. See, e.g., Culp, *supra* note 317, at 539, 543 (describing how many Black professors use the autobiographic experience in scholarship).

329. See Hendrix, *supra* note 20, at 750 (discussing how race impacts a student's assessment of a professor's credibility).

On the surface it seems that white women students make few "special" demands on black women professors. They do not identify racially with the professor and seldom manifest hostility towards her. Nor do they take it for granted that the grade they will get in the course is the one they want. But appearances can be deceptive, and seeming objectivity often masks deep-felt anxiety. Many white women students come to my classes carrying the burden of the guilt of privilege and the fear that ignorance and unconscious insensitivity will mar the close encounter for me, for them, and especially for black women in the course.³³⁰

Though the opinion that white women do not evidence hostility toward a Black woman professor is a valid one, I have not found that to be the case. I have found that if white males are hostile in the law school classroom, many white females soon follow suit, exercising little independent judgment or analysis. As a result, the hostility I experienced is more race based. I experienced wholesale hostility from many white students, presumably because their stereotypes about Black female lack of intelligence was debunked. The effects of racial isolation due to resegregation and the effects of retrenchment seem to eliminate any gendered solidarity between some of my white female students and myself.

In contrast to the relief shown by some white women and people of color, the second reaction is that of my white male students. My little introduction angered or annoyed many of them. Indeed, they do not desire to have the presumption of incompetence minimized or destroyed. "White male students are the most difficult of the groups. They often express open hostility towards the authority of the black women on the opposite side of the lectern."³³¹ White male students do not hesitate to verbalize anger and annoyance to the Black female professor.³³² The race/gender of the Black female professor seems to eliminate from the minds of white male students the risk of confronting a person in authority.

Consistent white male responses to my introduction have been twofold. First, the students pretend that they did not hear the

330. Nellie McKay, *Black Woman Professor—White University*, in *WOMEN IN ACADEME* 143, 145-46 (Resa L. Dudovitz ed., 1984).

331. *Id.* at 146; see also Taunya Lovell Banks, *Gender Bias in the Classroom*, 14 S. ILL. U. L.J. 527, 533 (1990) (reporting that younger male students are more hostile to women law professors) [hereinafter Banks, *Gender Bias I*]; Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL EDUC. 137, 145, n.30 (1988) [hereinafter Banks, *Gender Bias II*] (reporting that subtle vestiges are alive and well, and that some covert sex-based and race-based barriers remain).

332. See McKay, *supra* note 330, at 146.

introduction at all. As a result, for the rest of the year, they feel justified in constantly interrogating me about my credentials to teach in general and Property Law in particular. In essence, these students are comfortable ignoring the introduction and returning to the question: Who are you to teach me? When the answer to their question indicates or highlights my credentials, their self-imposed ignorance becomes hostility.

The second reaction I receive from my white male students is anger. Anger that seems to intensify after they verify that I do indeed possess the credentials outlined in my introduction. After one student verified my introduction via my law school biographical statement and my Martindale-Hubbell entry, he came to see me during my office hours and stated that he was "very upset" that I flaunted my credentials in their faces. In fact, he stated that he was insulted by the introduction itself. After all, who did I think I was. I explained that I was fairly certain of who I am, but was curious about his reaction. I was not surprised that this was how he felt, because I had perceived that other white male students felt this way as well. Indeed, by the time a student actually articulated the anger to me, I had experienced it many times before impliedly through the constant questions about my background. Nonetheless, learning that this student was angry about and insulted by my credentials helped verify my hypothesis regarding credential hostility.³³³ When this student told me that I was flaunting my credentials in the class's face, I became professorial. The conversation went something like this:

Professor Smith: Are you talking about my introduction given on the first day of class?

Student: Yes. I am angry that you flaunted your credentials. You are the only professor in our section that introduced herself. And, quite frankly, I believe you were trying to prove to us that you belong here. At least that is what I do when I feel out of place in environments when people question whether I belong. [This student claimed that in his prior profession, he had to constantly give training sessions. He found that his trainees always questioned his credibility because he looked young.] You did not have to throw it in our faces like that.

Professor Smith: Well, I was not trying to prove to you or anyone else that I belong. Nonetheless, I find it intriguing that

333. See MULTICULTURAL WOMEN ATTORNEYS NETWORK, *supra* note 189, at 21 (noting that minority female professors of color face "openly racially motivated hostility from non-minority faculty and students who question their right to be there").

my introduction bothered you. You know, Professor X, who teaches in our section, is a sitting magistrate. Professor Y has a wealth of experience in civil rights litigation. Professor Z has a wealth of experience training moot court students and has 25 years of teaching under his belt. Wouldn't you have wanted to know that information on the first day of class?

Student: Yes! And, I am really angry that they did not tell us this information!

Professor Smith: Wait a minute. You are angry at me because I gave you the information you would want, as a student, about a faculty member teaching you a class. You are angry at your other professors because they did not give you the information I provided. Have you told any of these other professors that you are angry and disappointed that they did not introduce themselves?

Student: No, I have not. . . . Hey! I am not racist!

Of course, I had not accused the student of being racist.³³⁴ I did find it curious that all of the other professors from whom he would have gladly accepted introductory information were white, male, and older than myself. Further, he only confronted me, a Black female, who is younger than these other professors. Was this racist? I do not know, but it was racially curious.

I found it intriguing that my introduction angered him to the point that he felt "insulted." I found it very intriguing that he felt compelled to tell me this to my face. After all, what did my past exploits have to do with him personally? What did he expect me to do? Apologize for the introduction? Beg forgiveness for my background? How was I to diffuse his anger if it was my past that angered him? After all, I graduated magna cum laude. I graded on to law review. I wrote three articles as a law student. I clerked and worked for a firm. All of it was the truth. Though I was not trying to prove to him that I was superior to him, the fact that I was the professor meant that "by definition I [was] superior since he/she must learn that which I already know."³³⁵ Apparently, this student was hostile and angry because I possessed credentials and

334. Many Black people, especially Black women, "often ponder and take second or third looks at their every experience with white Americans," before concluding that the interaction was a racial micro aggression. St. Jean & Feagin, *supra* note 68, at 183. For an excellent discussion of racial micro aggressions, see Davis, *supra* note 154, at 1565 (defining micro aggressions as "subtle, stunning, often automatic and nonverbal exchanges which are 'put downs' of blacks by offenders").

335. Hughes, *supra* note 123, at 101 n.60.

experiences he had yet to acquire. Not only was this student hostile during the above interaction, but he, and others like him, remained hostile most of the year. Destroying their presumption of incompetence created the phenomenon of credential hostility. Indeed, as this narrative shows, if one is Black, female, and has traditional credentials, one is likely to face credential hostility from students.

Granted, my hypothesis on credential hostility is based upon my experience. Certainly, much more research and study need to be done.³³⁶ Despite this, general research supports my hypothesis that Black women are especially vulnerable to credential hostility: "whites will view black women who succeed . . . less positively than they would equally successful whites, since white observers would attribute black women's successes to forces outside the women's control rather than to hard work, intelligence, and so on."³³⁷ Yet, having traditional credentials from law school and thereafter speaks of intelligence, hard work, perseverance and assertiveness—all traits which society deems to be positive for white women, but less so for Black women.³³⁸ If whites cannot attribute a Black woman's success to luck or fortuity, then credential hostility may result because the presumption of incompetence is threatened by her past successes.³³⁹

Black women also may be at risk of facing other types of hostility based upon their failure to fit the stereotypical images of Black women that are built into the presumption of incompetence. Indeed, given the modern desire for Mammy, Black women may face excessive scrutiny and hostility based upon their appearance.³⁴⁰ My experience with the phenomenon of appearance hostility is discussed below.

336. In the late 1980's, Derrick Bell and Richard Delgado created a questionnaire to take the pulse of the lives, trials, and tribulations of professors of color. See Delgado & Bell, *supra* note 110, at 349. Given increased educational segregation and retrenchment since then, perhaps it is time that a similar study be performed to determine whether, as is argued here, retrenchment and resegregation have made law teaching that much more risky for people of color, especially women of color.

337. Weitz & Gordon, *supra* note 209, at 32.

338. See *supra* Part III (setting forth the stereotyped perceptions of different groups of women).

339. This type of credential hostility perhaps can be diminished by not mentioning one's background. In my situation, I did not mention my traditional credentials again, which allowed white students to perceive me as a teacher assistant or a guide with little more experience than they. This credential avoidance lasted until I exercised my evaluative authority. See *infra* Part V.D (discussing evaluative hostility).

340. See MULTICULTURAL WOMEN ATTORNEYS NETWORK, *supra* note 189, at 22.

B. The Phenomenon of Appearance Hostility

There are certain things that a Black woman can do to manipulate another's reaction to her appearance and thereby attempt to diminish or eliminate that initial presumption of incompetence when she walks into the room. There are also many things that an institution can and must do to recognize the presumption of incompetence and to counter it. Without active institutional support, a Black woman's individual efforts may solidify the presumption. As a result, her dress, hair style, and demeanor will then be used to justify the stereotype of the Black woman as threatening.

My experience is perhaps indicative of this. Admittedly, my experience is not necessarily indicative of the experiences of all Black women. Black women academics vary, as do their experiences.³⁴¹ Nonetheless, my experience may be a useful guide to highlight some of the obstacles Black women face in academia when their appearance is used to solidify the perception that they are the epitome of Sapphire and the antithesis of Mammy. I found that students critiqued my clothing and hair and used both to solidify their image of me as threatening, intimidating, and angry. Both aspects of appearance and appearance hostility are discussed below.

1. Clothing as Threatening and Intimidating

As an attorney, I was used to wearing suits. As every other female professional that I knew dressed this way, I did not feel that I stood out among professional women. Therefore, when I began my job as a law professor, I wore what I was accustomed to, i.e., suits.

During my first year teaching, I received constant comments from white students who felt I was "always" wearing suits. I was told that I was always just too put together. I was "always" matching, making the students feel underdressed. White female students allegedly took bets on what I would wear the next day and whether I would ever wear a dress instead of a suit. Students waited to catch me wearing the same thing twice within a short time period. White male students commented on how they longed to see me out of "uniform."

341. See generally Robin D. Barnes, *Black Women Law Professors and Critical Self-Consciousness: A Tribute to Professor Denise S. Carry-Bennia*, 6 BERKELEY WOMEN'S L.J. 57 (1991) (concluding that Black female academics are not homogenous, but also concluding that others expect them to be in thought and behavior).

Despite the comments, during my first year of teaching, I continued to wear suits. It had been a customary style of dress since I began working, regardless of whether I was an attorney, a consultant, a computer programmer, a supervisor, a word processor, or a secretary. The suit and its variations dominated my professional wardrobe. Though I was no longer an attorney, I was still a professional. I did not intend to make any political, socio-economic, or racial statements with my clothing. I certainly was not trying to intimidate students or flaunt my successes. Despite my intentions, or lack thereof, students perceived my clothing as both threatening and demeaning to them.³⁴² They needed to reorder their world in a way that was more comforting to them. As a result, the polls and bets on what Professor Smith would wear came into being.

Perhaps my suit was a daily reminder to them that I defied their stereotypes and expectations regarding the proper ordering of our society.³⁴³ My very clothing seemed to surprise and "disturb" them.³⁴⁴ My clothing seemed to be a personal affront and statement to them, rather than merely clothing for me. My clothing was perceived as sending messages to them about my purportedly threatening and unapproachable nature.³⁴⁵ My clothing was used to solidify my image as a Sapphire, i.e., a Black woman using all that is at her disposable to denigrate and intimidate others.

This reaction to a Black woman's clothing and the perception that through clothing a Black woman is evidencing her desire to be above her "place" have long historical roots. After Emancipation, Black women began to draw a demarcation between working slave clothing and clothing befitting free African-American women.

Slavery . . . meant field work, with no opportunity for the women and girls to dress as they chose and when they chose. Field workers were given their clothes as they were given their rations, only the clothes were given usually as a part of the Christmas celebration, "two clothes a year," explained one of them as she remembered the old days. With the hunger for books very naturally came the hunger for clothes, pretty clothes,

342. On my year-end evaluations for my first-year Property Law class, I received more than a few comments that I would look less severe and less threatening if I did not wear so many suits. Some students accused me of flaunting my prior success via my clothing.

343. See Caldwell, *supra* note 252, at 394-95 (opining that the images whites have of Black women is not compatible with the image of conservative professionalism).

344. See Weitz & Gordon, *supra* note 209, at 30.

345. See Farley, *supra* note 145, at 344-46 (discussing appearance and the impact appearance has on a woman's ability to be perceived as a professor).

and more of them! And so with school and freedom best clothes came out and ragged clothes were kept for the fields. Work and old "raggedy" clothes were . . . closely associated in the minds of the large group. . . .³⁴⁶

Just as education signaled to the post-Emancipation Black woman that she could choose her appearance, my additional education and professional attainments also signaled to me the opportunity for a different type of attire. Like many professional women, I choose the suit, partially to conform, but also to explore my new entrance into the middle-class.

After Emancipation, new fancy clothes did more than signal apparel choices to whites who scrutinized and took exception to the clothing of African-American women. Whites took the new clothes as a signal of unexpected and unacceptable defiance.³⁴⁷ Likewise, perhaps my professional clothing signaled my noncompliance with the expected social hierarchy which places Black women at the bottom.

Perhaps to many, my choice of professional attire communicated my rejection of the Mammy image. Most depictions of Mammy in the media portray her as a fairly unkempt Black woman with a rag or handkerchief on her head. Her clothing signals her subservience, as she always wears aprons and domestic-type clothing. In essence, Mammy's appearance signaled her understanding that she has to serve white people; and her clothing signaled to white people that Mammy knew and would stay in her place.³⁴⁸ In contrast, by appearing in professional attire, I apparently and unknowingly signaled my defiance to being the modern version of Mammy.³⁴⁹

Clothing does indeed make a statement, and it has done so historically. Perhaps now, as it was perceived after Emancipation, "[t]he abandonment of deference and old clothes . . . signals an imminent struggle over 'social equality.'"³⁵⁰ Perhaps my selection of the suit made a statement that the expected role of who should be a professor was changing to include someone besides a middle-aged white male.

346. JACQUELINE JONES, *LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK AND THE FAMILY FROM SLAVERY TO THE PRESENT* 69 (1985).

347. *See id.* at 69-70.

348. The Mammy image is being reworked and it may be including, among other things, modern hairstyles and modern clothing. *See Caldwell, supra* 252, at 390-92 (reporting the new hairstyle Aunt Jemima received).

349. *See supra* Part III.C.2 (discussing the characteristics of Mammy).

350. JONES, *supra* note 346, at 69-70.

The message of equality clothing is two-fold. First, it “serves to announce a [Black] woman’s awareness of her new status.”³⁵¹ Second, it signals this new awareness of equality and freedom to whites. My attire coupled with my job as a professor signaled that all was not right with the world. Not only was I not acquiescing to my perceived inferiority, but I was encroaching on what had been exclusively the territory of white men. After all, law professors were supposed to be middle-aged white men. As I could not be a white man, students implied in their actions that I could at least be a more acceptable Black woman, i.e., Mammy. By not dressing like Mammy, I put on airs, denying many white students their due of seeing me dressed appropriately for my expected and preferred place in the social and power hierarchy. These students held the same popular view as that held by whites after Emancipation who saw something in this unexpected dress that they found unacceptable and threatening.³⁵² To minimize the threat to their psyches, students expressed a desire for me to dress differently, less professionally—perhaps more like Mammy. When I did not comply with their wishes, the implicit hostility escalated, with students allegedly taking bets on what I would wear and making sarcastic comments such as: “Oh, I liked you in that suit the last two times you wore it.”

When I did not respond to their apparel suggestions and requests, my appearance justified the perception that I was a Sapphire, the most threatening and intimidating of Black women. After all, who but Sapphire would use her clothing to intimidate, threaten, and signal to others that the expected and desired social hierarchy was coming to an end? Who but Sapphire would send a political message of freedom and equality to others unintentionally through clothing? Surely, Mammy would not.

Because clothing can communicate certain messages to others, professional apparel can be a source of great hostility. Clothing can solidify the image of professional Black women as Sapphires, using their attire to denigrate others. Using appearance to strengthen the image of a Black woman as a Sapphire does not end with clothing. It also can include the knowing and unknowing statements Black women make with their hair.

351. *Id.* at 69.

352. *See id.* at 70-71.

2. *Hair as Threatening and Intimidating*

Unlike some Black women, I do not have a hairstyle that intentionally makes a political statement to white people by the nature of the hairstyle itself. My hair is not in an Afro; nor is it braided in any style.³⁵³ Instead, my hair could be characterized as being assimilationist because it is permed straight. As has been my practice for years, I wear my hair in a bun, which is no more than a pony tail pinned up in the back. I wear this bun because it is professional, quick, and easy on the hair.

Given the simplicity of my hairstyle, I did not choose it knowing that there were political statements attributed to Black women who did not wear Afrocentric hairstyles.³⁵⁴ I did not know that people would ascribe certain personality traits and behaviors to me based on this very simple hairstyle. In my mind, there was nothing political, intimidating, or threatening about a pony tail. "After all, hair is such a little thing,"³⁵⁵ isn't it?

Hair is more than a little thing. Even if hair is such a little thing, "it is the little things, the small everyday realities of life, that reveal the deepest meanings and values of a culture, give legal theory its grounding, and test its legitimacy."³⁵⁶ Hair goes far in solidifying and/or destroying historical stereotypes about Black women in the minds of others, especially whites. Hair, I learned, is a powerful vehicle to stereotype Black women as either Mammy or Sapphire. I would like to highlight this point with a story.

One day in the late Spring of 1997, I needed to go to some event in the evening and decided to "do" my hair. I ran out of time, so I wore a wig. Not an outlandish wig. It was not long or red or green or multi-colored. The wig was actually quite ordinary and would have been the hair style I would have put my own hair in if I had had the time. It was an off-black wig cut in a short bob. It had short bangs in the front, combed to the left side of the face (same side as the usual pony tail I wore) with the rest combed straight down and slightly curled under in the back. The wig was medium length, ending just above my shoulders. In wearing the wig, which

353. See Caldwell, *supra* note 252, at 365-67.

354. See Julianne Malveaux, *Just a Nappy-Headed Sister with the PC Blues*, BLACK ISSUES HIGHER EDUC., Dec. 24, 1998, at 30, 30 (discussing the multi-faceted nature of how Black women with natural hair styles are perceived; discussing also a controversy over the word "nappy" between a white female teacher and Black parents). See generally Caldwell, *supra* note 252 (discussing the difficulties that many whites have with natural Black women's hairstyles).

355. Caldwell, *supra* note 252, at 368.

356. *Id.* at 370.

was quite understated and conservative, I did not intend to communicate anything to anyone.³⁵⁷ Yet, based on the reactions I received about the wig, I clearly did. Thus, I developed the next hypothesis: hair can and does indeed solidify the image of Black women as either Sapphire or Mammy.³⁵⁸

As I was to attend the event after school, I wore the wig to school that day. The reactions were *amazing*, causing me to realize how appearance supports or destroys stereotypes and how appearance is used to support the presumption of incompetence of Black women and their stereotype as threatening.

One colleague did not recognize me even though we were purportedly fairly close.³⁵⁹ When I spoke to her in the hall, she did not speak back. My colleague looked right at me with disdain, not recognizing this “new” Black woman as her old colleague. Puzzled, I called to her by name. When I called to her, I could see the actual transformation on her face, with her features going from disdain and lack of recognition, to recognition, to utter amazement. She clearly recognized my voice. She was astounded when she finally recognized me. She specifically said she had not recognized who I was. Obviously, a change of hairstyle transformed me from a known Black person to an unknown Black person, not worthy of a return greeting. My colleague said that this hairstyle transformed me. I was much *more* with my hair down than with it pinned back.

Another colleague, after exclaiming “wow,” noted that my bun/pony tail made me look so severe and authoritarian. Taken aback, I asked what she meant. She explained that the new hairstyle made me more approachable. The other one was too “classy”—it was just too Grace Kelly classic. She did not mean to give offense of course, or so she said. This second colleague was certain that the students would find the “new” me more comfortable. She assumed that because the bob was shorter than my natural hair that I had gotten it cut and styled and could not go

357. When I think about the wig in retrospect, my memory tells me that it mirrored the style Proctor and Gamble adopted for its modern Aunt Jemima ads. See Caldwell, *supra* note 252, at 390-92. Thus, perhaps the sameness in style made the students and my colleagues believe that my “true self,” i.e., Mammy, had come to the fore when I adopted the up-to-date Mammy hairstyle.

358. See, e.g., Russakoff, *supra* note 293 (reporting that Lani Guinier attempted to make herself look less strange and intimidating by replacing her afro-like hairstyle with a style that “has moved her look from funk to high fashion”).

359. For another example of this type of reaction, see Caldwell, *supra* note 252, at 370 (describing how a white male colleague did not recognize her when she wore her hair, which was normally braided, in an Afro style).

back to the "severe" me.³⁶⁰ Unfortunately, it was just a wig. At the end of the day I went back to being untransformed, severe, threatening, classic, and classy.

Students echoed this reaction and confirmed my colleague's prediction. All day, students went out of their way to greet me in the cafeteria, on the walk in front of the law school, and other places. Some literally ran across the law school and the cafeteria to let me know their thoughts.³⁶¹ They wanted to come over and give me their compliments on my hair. Of course, compliments in and of themselves are not disturbing, it was the type and quantity of compliments that caused concern.

People went out of their way to tell me directly and indirectly that my prior hairstyle did not comply with what they expected and desired of me. They wanted to tell me that they noticed how I was now transformed and that they approved. For that one day I became a "screen for student and faculty fantasies, a subject for private discussions, an object for their assessment, veneration and contempt."³⁶² These private discussions did not, however, remain private. Students and colleagues alike publicly expressed their preferences for the newly transformed me.

With the little bob hairstyle intact, I was told how beautiful I was³⁶³—that I was much more feminine, mysterious, and sexy.³⁶⁴ I was more comfortable to be around and to be in front of. I was told how the hair and hairstyle had transformed me. I was more maternal and sexy. I most certainly was approached a lot that day. I was seen as more nurturing, feminine, and sympathetic—more like Mammy.

When I walked into my afternoon Property Law class, most students, who attended my class for almost the entire academic year, sat in stunned silence. Quickly, whispers went around the room "but that is Professor Smith" and "I told you she looked completely different." When the whispers finished and I used my

360. See *id.* (describing how white female colleagues said Professor Caldwell looked like a teenager when her hair was not in braids).

361. Now, I have a fairly healthy ego, but I can say honestly that the wig did not do that much for me and surely did not do enough to cause students to literally run across the law school lawn to greet me.

362. Angela Harris, *Women of Color in Legal Education: Representing La Mestiza*, 6 BERKELEY WOMEN'S L.J. 107, 111 (1990-91).

363. Paulette Caldwell also had this reaction when she put her normally braided hair into an Afro. See Caldwell, *supra* note 252, at 370 (describing how a colleague told her that he had "never seen [her] look more beautiful").

364. Though I discuss below how these comments appeared to be designed to fit me into the Mammy stereotype, some of the comments, e.g., beautiful, sexy, mysterious, also could have been trying to fit me into the hyper-sexual Jezebel stereotype.

familiar voice to call the class to order, the students broke out into applause. Some of the white men students even rose to their feet! Imagine, a standing ovation for a wig!³⁶⁵

One white male colleague stated that "if I had a vote, I would vote that you keep your hair like that." Whatever made this white man articulate such a thing to me? Why would he think I would care about his feelings, thoughts, and vote on my hair? He obviously did, as did every student who went out of his way to express a vote, impliedly or expressly, on my hair. The applause and standing ovation were votes—messages that with a classic hairstyle I had made students and colleagues uncomfortable.³⁶⁶

Imagine a hairstyle making people like you better, making them feel more comfortable with you, and making them feel that they can approach you. In essence, a hairstyle made me less threatening.³⁶⁷ My little bob wig made me more comfortably like Mammy. This newly transformed me better met their expectations. Expressly and impliedly, there was a message that day: we like you better with hair around your face. You are less threatening, more competent, more beautiful with hair, i.e., straightened hair that can be seen.³⁶⁸ Based upon their statements, it was as if I "must have

365. Taking advantage of their approval of this new me, I also handed out my student evaluation questionnaire that day. Perhaps the halo of the wig prevented some of the students from denigrating me entirely and caused some to be "uncertain" of how they felt when responding to questions like whether they enjoyed the class. See *infra* Part V.D (discussing evaluative hostility in general); see also Part V.D.6 (discussing the number of students who selected "uncertain" as a response on the formal evaluations).

366. One could characterize these express and implied "votes" on my hairstyle as attempts to intimidate me to fit the expected Mammy image. See Caldwell, *supra* note 252, at 382 ("[I]ntimidation . . . is a crucial instrument to limit the economic and social position of black women.").

367. When I told one of my non-lawyer friends about this incident, she suggested that I manipulate the students' desires and expectations. If they were acting up, I could threaten to "go severe" by wearing the pony tail bun again. Otherwise, if they behaved, I would wear the less threatening wig. We laughed with great hilarity, for a moment, at how I could transform myself and manipulate their emotions by wearing blonde wigs, long Cher-like wigs, red wigs, and the like. See generally *Consider This . . . Beauty Editor Mikki Taylor Experiences the Transforming Power of a Wig*, ESSENCE, Mar. 1999, at 28, 28 (opining that Black women can transform themselves without the normal wear and tear on their natural hair by wearing wigs in different styles and colors). The possibilities were endless, we laughed. Until we realized that to comply with their desires, I risked becoming a kind of multi-cultural changeable Barbi. Dress me the way you desire. Style my hair the way you like. Make me look the way that you feel most comfortable. Dress me, style me, manipulate me so that I am closer to your ideal for a professor or a Black woman or a woman; so that my appearance makes you more comfortable. We no longer laughed after that.

368. See, e.g., Caldwell, *supra* note 252, at 382-83 (describing reactions to a workshop she gave with her straightened long hair and noting how she received compliments on her insight, competence, and mastery, but most of all for her beautiful hair).

been masking [my] true self."³⁶⁹ Their responses loudly declared: "We knew you were Mammy. Why have you been hiding from us, Mammy?"

My new hairstyle allowed people to see their vision of me realized. I had not changed. My personality was no different. My clothing was the same. My mannerisms were the same as the day, the week, and the year before. My face, makeup, nails, earrings, etcetera were all the same. What a difference a little change in hairstyle made. Suddenly for that one moment, because I never wore the wig again that year as the excessive attention was uncomfortable for me, I was more approachable, less intense, and less threatening. I came closer to my students' and my colleagues' ideal of a Black female professor. I had been "transformed."³⁷⁰ They all wanted me to know, based on their assessment of who I could be, that they preferred the new me.

In contrast, my pony tail bun confirmed my status as Sapphire. It was described using such words as threatening, severe, intimidating, unapproachable, and classic. Coupled with my suits

369. Yarbrough, *supra* note 228 (discussing how Anita Hill did not fit the public ideal of a Black woman and that she must have been hiding her true identity; she had to be either Jezebel, a hyper-sexual Black woman or Sapphire, an emasculating Black woman). There are, of course, many stereotypes about Black women, e.g., Jezebel, Mammy, Sapphire, and the Matriarch, among others. See Scott, *supra* note 237, at 85. See generally JEWELL, *supra* note 208 (describing how the stereotypes of Black women in the media affect social policy); Carolyn M. West, *Mammy, Sapphire and Jezebel: Historical Images of Black Women and Their Implications for Psychotherapy*, 32 PSYCHOTHERAPY 485 (Fall 1995) (examining how the historical stereotypes of Black women, the Mammy, Sapphire and Jezebel, affect Black women's psychological functioning); Janet Sims Wood, *The Black Female: Mammy, Jemima, Sapphire and the Other Images*, in IMAGES OF BLACKS IN AMERICAN CULTURE 236 (Jessie Carney Smith ed., 1988) (summarizing the images of Black women in television, film, and literature). As I do not have children and exercised authority in what I hope was an asexual way, the Matriarch and Jezebel myths were foreclosed. Thus, as to the exercise of authority in the modern world of work, the only options for me in this setting were Mammy and Sapphire.

370. Of the many components of my personal appearance, it was the hair and clothing that was transformative to the students. As a very near sighted person, I desperately need glasses to see. I rarely wear glasses and opt instead for contact lenses. I have worn my glasses to school and the reaction has been nowhere near the reaction that I received in response to the wig. Yet, I think the glasses are much more transformative. They are wire framed and fairly thick. Thus, with glasses on, I become more like a nerdy scientist, librarian, or professor. I have not received any positive reactions to this transformation. In fact, on the few occasions I have worn the glasses, everyone seems to recognize me. The lack of response is noticeable because no one ever comments on these very thick glasses on my face. No one is excessively surprised that I actually wear glasses. No one has ever mentioned that my glasses make me more approachable, less severe, and the like. Perhaps it is because with eyeglasses, I am still threatening, severe, and unapproachable. Imagine, by changing clothing, wearing my hair down, and putting on glasses, I could actually be perceived as a different person to my students and colleagues—perhaps one that is more acceptable than who I am.

and credentials, I was not only a Sapphire, I was the modern day, updated, educated version of Sapphire.

Like Professor Paulette Caldwell, who wore an Afro hairstyle to school one day, I had inadvertently and sadly tapped into the white psyche preference and need for me to be more like a modern Mammy and, at the end of the day, I felt "a lot less full and big and regal."³⁷¹ I had inadvertently learned of the power of hair.

What effect does hair have on a Black woman's authority? More research needs to be undertaken beyond my experience. I do know that hair is not a little thing. It confirms and solidifies stereotypes about Black women individually and in general. In fact, students and colleagues informed me impliedly and explicitly that my appearance did "fit" their desired image of me. With the "wrong hair," i.e., the bun, I was a severe, authoritarian Sapphire. With the right hair, i.e., the bob, I was a feminine, nurturing, maternal, loving, and approachable Mammy. A more modern, up to date Mammy, but Mammy nonetheless. Indeed, due to my position as a professor, I had to fit within existing stereotyped categories assigned to Black women, even down to my hair. As Professor Caldwell has concluded:

[n]otions about the black woman's presence that were prevalent during periods of overt racism and exclusion are now subsumed in the symbolism that characterizes contemporary racism. Rather than focusing on the black woman herself, the impetus to exclude is transferred to the black woman's hair, first in its natural stage in the form of Afro hairstyles, and then to the black woman's culture as reflected in braided or so-called "artificial" hairstyles.³⁷²

My hair made a statement to my students and colleagues about who I could be. The reality of who I am was irrelevant. I learned that an African-American woman makes a "statement" to others by how she wears her hair, either by defying or acquiescing to their closely-held stereotypes.³⁷³ To defy the stereotypes brings hostility. To acquiesce obviously brings rewards. I learned from my vivid personal experience that:

[b]ecause the appearance of hair and some of its characteristics are capable of change, the choice by blacks either to make no change or to do so in ways that do not reflect the characteristics

371. Caldwell, *supra* note 252, at 371.

372. *Id.* at 391.

373. See Russakoff, *supra* note 293.

and appearance of the hair of whites, represents an assertion of the self that is in direct conflict with the assumptions that underlie the existing social order. Such self-assertions by blacks create fear and revulsion in blacks and whites alike.³⁷⁴

Like clothing after Emancipation,³⁷⁵ choice of hairstyle signals to white people that there is something to fear—Black women who reject white supremacy by rejecting the desire for Mammy.

Seen through the prism of Sapphire and Mammy, my students and some of my colleagues clearly felt that I made a statement and was, purposefully trying to be classy, a status I apparently was not entitled to assume. It seems they felt that I was purposefully making my hairstyle “a proxy for legitimacy,”³⁷⁶ so I could be accepted, like white men or Mammy. There was no proof to support their assumptions, but given the strength of the Sapphire and Mammy images and myths, they needed none.

By being professional in appearance and by being traditionally credentialed, a Black woman in academia faces peculiar hostility that proclaims in word and deed: you are out of your place and above your station.³⁷⁷ Yet, your clothing and appearance do not apologize to white folk for your presence. Your credentials do not apologize or allow us to feel good about ourselves. Your hair and clothing make us feel uncomfortable. Further, we cannot feel good about ourselves because you are not an obviously unqualified affirmative action baby. For being where you do not belong and for not appearing apologetic, you must suffer.³⁷⁸ Black women do indeed suffer when subjected to authority hostility and evaluative hostility.³⁷⁹

Naturally, many students were much more comfortable with me when I was out of “uniform” and even more comfortable when I was not exercising professorial authority. In fact, students were much more comfortable with me when I was not in the classroom.³⁸⁰

374. Caldwell, *supra* note 252, at 384.

375. See *supra* notes 346-52 and accompanying text (discussing perceptions about appearance after Emancipation).

376. Caldwell, *supra* note 252, at 383.

377. For an excellent discussion on the experiences of Black women professionals and their sense that others perceive them to be out of their proper place, see St. Jean & Feagin, *supra* note 68, at 189.

378. See generally Norman Lockman, *Black and Brazen*, in THINKING BLACK: SOME OF THE NATION'S BEST BLACK COLUMNISTS SPEAK THEIR MINDS 260 (DeWayne Wickham ed., 1996) (suggesting that this failure to be or appear apologetic is considered by whites to be unacceptable brazenness).

379. See *infra* Parts V.C-D (describing authority and evaluative hostility).

380. Given this knowledge, I scheduled several opportunities outside of class to get to know

One white male actually stated that I was so much friendlier when I was not in class. He wished that I could be more feminine and maternal in the classroom.

It is my belief that I was no less feminine and maternal in the classroom than I was outside of it. It is my belief that upon finding themselves in a position of subordination, whites become hostile to the authority granted a Black woman because of her position as a professor. It is at this intersection, where Sapphire, the expected Black woman, meets Socrates, the expected classroom authoritarian, that Black women risk facing the hostility that results from their exercise of professorial authority in the classroom.

C. *The Phenomenon of Authority Hostility: When Sapphire Meets Socrates at the Intersection of Race, Gender, and Classroom Authority*

As an African-American woman, I am the last person in the world that a white male, white female, minority male, and perhaps some minority females believe should be in an academic position of authority. Given racial stereotypes, many whites still believe that African-Americans cannot be educated, are not educated, and certainly cannot be professionals because they are unintelligent and lazy.³⁸¹ Racial stereotypes are exacerbated by the fact that many white students attending law school have rarely had a Black person as a teacher in grade school, high school, college, or graduate

students. In the fall, I had breakfasts for my 1L students once a week for about a month and a half, starting in September and ending when all interest was exhausted. In the spring, I had weekly Thursday afternoon teas to which all students were invited and during which we would discuss whatever was on their minds. Generally, students wanted to discuss exam strategies.

Of course, someone complained. A white female claimed that through the teas, I was giving out the structure of the final exam to students with a hidden goal of helping the Black students. When asked what, then, was the structure of the final exam, she could not identify it. She claimed that during class time I had not emphasized enough how valuable these voluntary teas were. She had only attended one and was upset that she had missed something. I explained to her that the announcement was made every week, everyone was invited, and we discussed whatever the attendees desired. I explained that I was glad that she found the session she attended helpful, but explained to her that no professor has a crystal ball, knowing when something said or done will be helpful to students. Further, I explained, it is up to the individual student to be aggressive in seeking avenues that will make her law school experience a success. Apparently, this student was angry that I did not personally invite her to the teas and did not personally tell her how useful the teas and other such informal interactions with a professor could be. Again, it is a "damned if you do, and damned if you don't" situation.

381. See *supra* Part III.C (discussing stereotypes held about Black women).

school.³⁸² Thus, it is likely they have never had to come face-to-face with challenges to their beliefs of racial superiority, especially in the ivory tower of legal academia. I have seen the complete surprise in the faces of first-year students when they realize that their Property Law professor is not only a woman, but an African-American woman. Not just any African-American woman, but one who is close to them in age;³⁸³ not just a young African-American woman, but one who has traditional credentials.

Due to students' discomfort with African-American women in general, an African-American woman may face authority hostility. She will encounter this hostility not because she is abusing her authority as a professor, but because she is *using* her authority. She is managing the classroom: calling on some students and not calling on others, covering some topics in detail, not covering others, lecturing on some topics, actively involving students in another, using the Socratic method, not using the Socratic method,³⁸⁴ grading class participation, and not grading class participation. Therefore, it appears that authority hostility exists because the Black woman is simply the wrong person, or at a minimum, the least expected person to exercise such authority.

In addition to white students believing and acting as if a Black woman is out of her place and above her station, Black women face numerous challenges to their ability to use the Socratic method. I value the Socratic method as a pedagogically sound way to introduce first-year students to the study of law. I believe if properly used it acts as an important vehicle to prepare students for what they will face as practicing attorneys, i.e., the necessity to answer questions and respond in a timely and coherent manner. I understand, however, student anxiety and discomfort in having to perform on the spot in front of peers.

To lessen and eliminate any discomfort that students feel about talking in my first-year Property class, I use a very uniform three-tiered method. First, class participation counts toward the overall grade, thereby giving students an incentive to actively

382. See *supra* Part II.A (discussing the effects of white students not being exposed to Black academic professionals until law school).

383. The students' amazement and discomfort is increased if the Black woman happens to teach a class that is supposed to be a subject matter mastered by those who are white and male. These can be courses like Tax, Finance, Securities, Corporate Law, Intellectual Property, and the like. See Teitelbaum, *supra* note 312, at 5-7. If she does not teach Race, Gender & Law, Constitutional Law, Family Law, and the like, then she is surely far beyond her competence. See Hendrix, *supra* note 20, at 738.

384. See Hughes, *supra* note 123, at 27 ("Not using the Socratic method means that students may think one is teaching 'wrong.'").

participate.³⁸⁵ I understand that sometimes students are not in the mood to participate or are completely unprepared. To avoid potential public embarrassment, I allow students the opportunity to control their class participation through the use of options. Second, I allow students two opt-outs for the semester, which means that students can request before class that I not call on them. I keep meticulous records and honor the requests of students who do not want to be questioned.³⁸⁶ Third, to take into account that sometimes students are a little nervous to begin with or are more prepared on some topics than on others, I allow them to seek co-counsel.³⁸⁷ They can select the co-counsel of their choice, calling on their friends, buddies, or enemies; or they can ask me to call on someone to assist them. Co-counsel does not relieve the student from being responsible for the question or hypothetical, but it does allow her time to think. In setting forth these last two options, my goal was to make this large Property Law class less intimidating to students, despite my use of the Socratic method.³⁸⁸

Through these mechanisms,³⁸⁹ I attempt to eliminate as much fear as possible. I try to remove from students the fear that I will be a professor in the likeness of Professor Kingsfield from the movie *The Paper Chase*³⁹⁰ or that I am a Socratic Monster, i.e., one of those "professors who don't actually teach. They instill fear. Armed with students' names and seating charts, they have the class at their mercy, and they love it. They can sense fear. Never ask these teachers a question; they will make you answer it."³⁹¹ Unlike the expected Socratic professorial Monster, I like to think my approach

385. See generally John M. Rogers, *Class Participation: Random Calling and Anonymous Grading*, 47 J. LEGAL EDUC. 73 (1997) (discussing the importance of class participation and how to use it as a grading mechanism).

386. See Kupenda, *supra* note 9, at 982 (noting how she also kept "detailed records of who spoke in class")

387. See Whaley, *supra* note 326, at 136 (opining that allowing students to obtain a co-counsel is "[o]ne way of easing the situation without bruising egos").

388. See Lani Guinier, *Keynote Address by Lani Guinier*, 25 U. TOL. L. REV. 875, 885 (1995) (suggesting that professors should attempt to make large Socratic classes "into more conversational space so that people don't feel intimidated because participation is a performance, or because participation is a statement, i.e., 'I am in charge, and I am here to dominate you'").

389. I set forth these rules in the syllabus, we go over them in class, and I proceed uniformly throughout the class, row by row. Further, I use a seating chart, on which I mark the participation and the opt-outs, as well as any passes. I also use panels in the spring to allow students to work in groups to prepare for class participation. If students are particularly unnerved by class participation, when it is their turn, I also allow them to select exactly the extent of their class participation beforehand.

390. *THE PAPER CHASE*, *supra* note 310.

391. Brett S. Martin, *A Field Guide to Professors*, NAT. JURIST, Sept. 1997, at 28, 28.

to teaching is more student-friendly; it is not designed or implemented to instill fear or to intimidate.³⁹²

Further, to facilitate students' comfort in my first-year Property Law class, I impose a one month trial of class participation so students can experience it without risk and see that it is not designed to hurt but to facilitate learning. To me, the use of class participation has never been a question of abusing my professorial authority, but sharing it.³⁹³

Despite my attempts to make the Socratic method more user friendly, it is eventually met with great hostility by some students, especially white male students.³⁹⁴ Many white men appear to hate the Socratic method because it puts them in a position in which they must respond to rigorous questions posed by a Black woman. When students perceive that there is a reversal of the "normal" and expected power hierarchy, they take it as a personal affront. My every action or inaction is taken as a personal affront. Students truly believe and act as though in a class of 100 or more students, I am personally involved with them every moment of the class. It is as if I have an intimate and personal relationship with each student regardless of the class size. No matter what I do they feel it and perceive it personally.

White students have come to my office to say that they are upset because I unfairly interrupted them while they were talking in class, i.e., I did not allow them to talk *ad nauseum*. Others come to office hours to say that I have a personal problem with them either because I looked at them in class and did not call on them or because I never looked at them in class. These concerned students

392. Based on my use of the Socratic method, it is perhaps best described as a quasi-Socratic method because I actually give answers to questions. Under the pure Socratic method, which "often uses a casebook and the professor serves only as a questioner. One question leads to another. No answers are given. Questioning of students may range from inquiries about the specifics of a particular case, to the decision's implications for doctrine, to how it can or can not be synthesized with other decisions, to the social policy implications of the result, etc." Hughes, *supra* note 295, at 27 (quoting Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 Seattle U. L. Rev. 1, 13 (1996)).

Despite this formal definition of the Socratic method, Socrates can also be a metaphor for the professorial authority exercised in class. Thus, while I do engage in a question and answer method that is similar to the Socratic method, students also react with hostility or discomfort with my need to manage the class.

393. See Guinier, *supra* note 388, at 888 ("[H]ow do you convince professors who have the power and have the microphone that they should cede that power and . . . [h]ow do you convince women professors or professors of color who feel very vulnerable in the first place in exercising that power to then give up the authority?").

394. Authority hostility must be reviewed in light of evaluative hostility because authority hostility increases after students are graded. See *infra* Part V.D.3 (discussing post-midterm exam grading hostility).

are generally all white men, around my age or older. Further, many white males claim that I am using my position to control their behavior and conduct, as well as using class participation as a mechanism to threaten and punish them. They claim I am abusing my position by forcing students to act respectfully in class, and I am lowering their grades to favor Black people and feminists.

White men are not the only students complaining. White women claim that I have a problem with them if I do not give excessive praise for their answers. Furthermore, white students decry that I favor Black students, presumably because I give Black students equal time to answer questions. White men decry that I am allowing the women to talk too much. Others claim that I am trying to empower traditionally silent Asian and Hispanic students.³⁹⁵ There is no basis in fact to these allegations. Because students of color and white women are getting equal class airtime—each student will be called on at least three times during a semester—voices that are seldom heard are perceived to be speaking with greater frequency.³⁹⁶ The complaints are not, however, limited to how often students speak.

As an African-American woman, I cannot write on the board without hearing a complaint, I cannot stand too close to a student without that person later reporting that they felt oppressed, and heaven help me if I should call on the same white student more than once in the same class or correct a student's error of law. Then I am picking on them.³⁹⁷ If I am complimentary, I am not complimentary enough. If I use supplemental handouts to the reading, I am overloading them. If I do not, I am not adequately educating them. If I lecture and do not call on anyone in order to manage time, I am bitchy. If I use class participation as a grading

395. See generally Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL EDUC. 147 (1988) (discussing how to create an atmosphere in which white women and students of color feel comfortable engaging in discussions during class).

396. For scholarship that focuses on the silencing of white women and students of color, see Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 19-20 & n.63 (reporting that women law students speak less than male students); see also Elizabeth Mertz et al., *What Difference Does Difference Make? The Challenge for Legal Education*, 48 J. LEGAL EDUC. 1, 42-45 (1998) (concluding that "men spoke more frequently than women and for longer periods of time" in elite and non-elite schools); Susan P. Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy and the Legal Profession*, 4 DUKE J. GENDER L. & POL'Y 119, 129-30 n.55 (1997).

397. Other Black women academics have experienced this type of hyper-sensitivity from students when they are called on. See Verdun, *supra* note 158, at 20.

tool, which is legitimate,³⁹⁸ then I am the meanest, most threatening Sapphire in the history of academia.³⁹⁹ If classes are cancelled due to holidays or other events, then it is, of course, my fault.

The complaints are never-ending, voluminous, and contradictory. I talk too loud or not loud enough. I walk too close to people and make them nervous. If I look at students, they are nervous. If I do not look at them they are angry. If I call on them, I am picking on them. If I do not call on them, I have a personal vendetta against them. I am told that my classes are too rigorous, too much work, and too intimidating for students, especially as I am a woman.⁴⁰⁰ My experience proves the thesis that "[w]hat passes for assertiveness or complex thought patterns among men is interpreted as abrasiveness or confusion among women."⁴⁰¹ I am told I would fit in better if I were friendlier, gentler, and more pliable.

The more I exercise my normal professorial authority to run the class and teach the subject, the more uncomfortable students become. It is as if I am being viewed through a filter; a filter that contains all the negative stereotypes previously discussed about Black women.⁴⁰² Given this filter, students do not appear to be able to see me as an individual. By using the Socratic method and other normal classroom management techniques such as writing on the board, managing reading assignments, and the like, I am that much more a Sapphire.

White male students say they really want to like me. In fact most students who visit my office and complain about my professorial authority during and outside of office hours are white men, usually around my age, who "really" want to like me. I guess their visits during office hours are their attempt to see me in another light. Yet, these visits always involve a statement expressing or inferring that I am just "too" something in class. If only I would look at this student more, smile at that one more,

398. See generally Rogers, *supra* note 385.

399. See Rogers, *supra* note 385, at 73; Wildman, *supra* note 395, at 147. See generally Stephanie M. Wildman, *The Classroom Climate: Encouraging Student Involvement*, 4 BERKELEY WOMEN'S L. J. 326 (1989).

400. I was told this by a senior white female colleague before I started experiencing any hostility and before I had been teaching a month. If a colleague feels you are "too much," without the person actually experiencing your teaching, but instead simply experiencing your person as seen through the filter of various stereotypes, what can we expect from students? See *supra* Part III.A (discussing how incompetence is found even if the only material before students is a picture showing race, gender, and age).

401. DUSKY, *supra* note 178, at 88.

402. See *supra* Part III.C.

compliment another more, joke more, dress differently, style my hair differently, and let students talk at will, enter at will, and basically manage the class then everything would be all right. The list of things I could do to make my students more comfortable with my authority is never ending.⁴⁰³ In essence, they want to control me rather than have me control the class. Similar to the discussion above regarding students' preference for my hair, students' stated preferences for how they want the class managed imply that they want it managed like an audience-controlled talk show, where I am there to applaud their every effort and statement.

As will be discussed more fully below, I have videotaped myself, invited colleagues to come to class, and passed out mid-year evaluation forms to students to ascertain whether there was any truth to how students were perceiving me. I wanted to know whether I was really intimidating and threatening students. As I viewed the videotapes, I did not see what the students saw. When colleagues came to visit my class, they did not see what the students perceived. I could not confirm, based on the tools available to me, that I was indeed oppressing, intimidating, and striking fear in students' hearts.

When I talk to students in an attempt to ascertain what I do that is so different from the other professors teaching the same section of first-year students, they admit that I do no more in class than their white male professors—my class is no more rigorous, no more intimidating, no more work. In fact, they seem to like the class. It is very straightforward. Most students appear to like the use of overheads, the introductory and periodic summaries, and question and answer periods. They claim, at least to my face, that they enjoy participation and the opportunity to exercise more control over their grades.

The only difference appears to be that I am a Black female and the other professors using the Socratic method are white, male, and older. The difference is not my syllabi, teaching style, use of the Socratic method, the book I selected, what I cover, or how I cover it. It is who I am: Black, female, and close in age to some students. As soon as we get to that part of the conversation, the white students generally declare, "I am not a racist." Thus, no further rational discussion is possible.

Interestingly enough, how I am negatively perceived by

403. Even the fact that they feel comfortable enough to come to office hours to castigate me is an attempt to reclaim their sense of superiority over me as a Black woman. I continue to be amazed at the number of students who come to my office to tell me I am not what they expect and who demand, in one way or another, that I conform to their expectations.

students corresponds with how Blacks and women in general are perceived when exercising authority in the classroom. For instance, one Black academic opined that

there are problems that prevent you from proceeding within the system. One such problem is the language often used to characterize black faculty members. While a white professor is said to be vocal or assertive, a black one is seen to be out of line or aggressive. While a white professor is said to be confident, a black one is arrogant. While a white professor is said to be a strong leader, a black one is looked on as combative. And while a white professor is said to be skilled at negotiating, a black one is perceived as unwilling to follow procedure. "We can't say this is racism, . . . but, yes, in part it is, because race filters [and shapes] these attitudes about black faculty members."⁴⁰⁴

Another scholar provides a similar list of contrasting gendered behavior perceptions under the title, *How To Tell A Male Academic From a Female Academic*. The report notes that:

He is aggressive. *She is pushy.*
He's a stern taskmaster. *She's hard to work for.*
He is good on details. *She's picky.*
He worked very hard. *She slept her way through graduate school.*
He loses his temper because he's so involved in his job. *She's bitchy.*
He gets angry. *She gets emotional.*
He's close-mouthed. *She's secretive.*
When he's depressed (or hungover), everyone tiptoes past his office. *She's moody, so it must be her time of the month.*
He exercises authority diligently. *She's power mad.*
He isn't afraid to say what he thinks. *She mouthy.*
He follows through. *She doesn't know when to quit.*
He drinks because of the excessive job pressure. *She's a lush.*
He's confident. *She's conceited.*
He stands firm. *She's hard.*
He has good judgment. *She has women's intuition.*⁴⁰⁵

404. Blackshire-Belay, *supra* note 122, at 32 (quoting Henry Durand of the State University of New York, Buffalo).

405. ASS'N OF AM. COLLEGES, THE CAMPUS CLIMATE REVISITED: CHILLY FOR WOMEN FACULTY, ADMINISTRATORS, AND GRADUATE STUDENTS 5 (1986) (emphasis added); *see also* Farley, *supra* note 145, at 349-50 (setting forth words used to describe women and words to describe the law).

Based on these contrasting race and gender perceptions, it appears what is positive behavior for a white man is perceived as negative behavior for Blacks and women in general. Of course, there is a race/gender intersection in these types of behavior comparisons. For instance, "a Black woman's silence may be interpreted as 'sullenness' but that of an American Indian or Hispanic woman as 'natural passivity.'"⁴⁰⁶ From my experience, the Black woman's list mirrors the Sapphire stereotype because no matter what a Black woman does the conclusions are the same. She is arrogant. She is a bitch. She is incompetent. She deserves poor evaluations. She is too different. She is a megalomaniac. She is flaunting her credentials. She talks too much. She is attitudinal. She attacks people. She is defensive. She is argumentative. She demands too much—trying to be treated like a white man. Who does she think she is?

To be Black and female is to face a relentless catch-twenty-two. For Black women to teach is to risk denigration when students chafe at, and are hostile to, professorial authority. One Black female academic explains this phenomenon of the particular denigration Black female academics face as follows:

[w]hite female students, often exploring the full panoply of feminist ideology, tend to behave as though they are entitled to monopolize our time, and frequently call us by our first names even though the white male next door is always "Professor _____." White males have been known to challenge all women in class, but black women with a particularly pressing edge. Because law students, generally, have been likened to hounds on the scent of blood, we share one rule of thumb: never equivocate in class. Otherwise, we can expect to find ourselves defending our qualifications to teach a particular course during subsequent office hours. Anonymous teaching evaluations provide an opportunity for some students to vent their cumulative anger about race and gender issues in general; for black women professors, these evaluations too often turn into mini-essays about our personal styles, dress, sexuality, etc.⁴⁰⁷

In essence, whatever "normal" classroom behavior a Black woman exhibits, hyper-sensitive and hyper-critical students will react negatively. A white male, in contrast, is seen as part of the

406. ASS'N OF AM. COLLEGES, *supra* note 405, at 13.

407. Barnes, *supra* note 341, at 66; *see also* Farley, *supra* note 145, at 358 n.18 (listing the articles discussing the gender-based nature of negative evaluations in legal academia).

"normal" standard, and as a result his behavior is affirmed and idolized.⁴⁰⁸ Thus, in a white male-dominated environment,⁴⁰⁹ histrionics are acceptable, as long as a white male is the person throwing them.

There are many other examples that highlight the transracial hostility created by my mere existence as the professor, i.e., the Socrates at the front of the class. As one Black female academic concluded, "[m]y very presence incorporated race and gender into the . . . classroom."⁴¹⁰ My examples are presented here to show that white people are not comfortable with the authority an African-American woman utilizes when she is a professor. This is especially true when she uses the Socratic method.

Authority hostility flows from the idea that the existence of the Black woman in the front of the classroom threatens ideals of patriarchy and white supremacy, especially in the ivory tower of legal academia. Indeed,

[i]n an ideal world, a world untainted by slavery and subordination, [Black women] might take the podium without threatening the legitimacy of an academic world in which males—primarily white males—are hegemonic. But we live in a . . . world which clings stubbornly to comfortable notions of intellect, notions which seem inextricably, if unconsciously, bound to color and gender.⁴¹¹

It is these notions of who is or should be intelligent that form the basis of the collision when Sapphire meets Socrates at the intersection of race, gender, and authority.

Using the Socratic method places an African-American

408. Allegedly, a young white male colleague at BCLS became annoyed because students were not as prepared for one of his class as he would have liked. Instead of lecturing or asking for volunteers, the professor slammed his book on the podium, walked out of the class, and told people that he did not have to deal with such unpreparedness. There was silence in the classroom at that moment. Everyone was surprised, but through the grapevine, among students and colleagues he was congratulated for "courage." Had I, a Black woman, done such a thing, I most assuredly would have been harshly disciplined either formally or informally by the students and colleagues.

To help prove the hypothesis that there is a gendered nature to acceptable behavior, I refer to an incident at Harvard. There, a white female professor at Harvard walked out of her Contracts class after calling on several unprepared students. As a result, students met en masse and sent a delegation to the Dean to declare her incompetence. See Post, *supra* note 197, at 141. If this happened to a white woman, imagine what would happen to a woman who does not possess the protection that whiteness affords.

409. See generally *Miles To Go*, *supra* note 73 (reporting that among new law faculty from 1986 through 1994, only 287, or 14% were professors of color).

410. Kupenda, *supra* note 9, at 977-78.

411. Greene, *supra* note 2, at 81-82.

academic female in the purportedly untenable position of instantly evaluating the verbal performance and intellect of those who seek to be attorneys. Perhaps it is not merely the Socratic method itself that causes the hostility, but the professorial authority of a Black woman evaluating students' performances. The hostility arising from this implied evaluative authority is mild and perhaps manageable.⁴¹² Yet hostility increases if an African-American woman dares to exercise what is perceived as the most powerful weapon in the arsenal of an academic Sapphire, i.e., the power to evaluate through grading students' exams. If this evaluative authority is exercised expressly during the semester, via a midterm exam or other express grading mechanisms, mild hostility becomes rank racial misogyny.

D. The Phenomenon of Evaluative Hostility

An informal study found that "the experiences of relatively new law teachers indicate that most of their negative race-related encounters with students seem to have taken the form of unduly harsh written student evaluations."⁴¹³ On my first Property Law evaluations in 1995, I was crucified by my students.⁴¹⁴ I could not walk or talk right. They hated my clothing, my hair, my accent, and my very existence. They were not uncomfortable telling me how they felt. The intensity of their anger and hatred was frightening. Many of them attached notes to their evaluations, espousing crazy racial and/or sexist stereotypes. More than one claimed that I personally ruined their chances of grading on to Law Review, although my class was one of many they had taken that year.

I tried to explain this hatred to myself because overall, most of the students and I seemed to have gotten along well, especially in the fall. I realized that most of the hostility became express and intense after my midterm exam and escalated after the students received their final exams for their other substantive classes. Given the timing, I label this form of hostility, which I traced primarily to the in-semester authority of the Black female professor to grade and

412. See Crane, *supra* note 127, at 16, 19, 28.

413. *Id.* at 19, 28; see also Krauskopf, *supra* note 205, at 330 (reporting that 38% of female professors polled in Ohio schools, in contrast to only 20% of male professors polled, reported that they encountered hostility from students); McKay, *supra* note 330, at 146 (noting how peculiar it is for white male students to feel comfortable confronting a Black female professor, especially about grades).

414. I would bet, however, that the negativity of the evaluations would fall along specific racial lines given resegregation and retrenchment. Due to the fact that student evaluations are generally anonymous, however, there is no way to prove this hypothesis.

evaluate students, evaluative hostility—the hostility that results when white students refuse to accept the inevitability that a Black woman will judge their academic performance in her class.⁴¹⁵

Social scientists have proven a correlation between the grade students suspect they will receive from a professor and the negative evaluations they will give to a professor to retaliate.⁴¹⁶ Consequently,

[t]he more certainty with which a student can predict his or her grade, the more likely that expected grade might impact their evaluations of the instructor. Thus, for example, research confirms the suspicion of legal writing instructors that their early and frequent evaluation of students impacts their teaching evaluations more directly and negatively in comparison to their colleagues who do not distribute grades until after student evaluations are completed.⁴¹⁷

Students tend to retaliate for poor or unsatisfactory grades in order to “maintain or enhance their self-esteem.”⁴¹⁸ This form of evaluative hostility and students’ needs to recover or enhance their self-esteem bears particularly on Black women.

One Black woman professor explained the attacks which resulted because of evaluative hostility the following way:

[a]t the University of Wisconsin, Madison, during the time that I have been there, several white male students have angrily challenged my authority in relationship to the grades they receive in my class. In an age of grade inflation, and when students need the best grades in order to go on . . . I understand their frustrations and chagrin. I even understand the expression of thinking they deserve more for their efforts. But

415. See Hughes, *supra* note 123, at 90, 93-98 (discussing the hostility that she received from students *before* grading that resulted in several meetings to have her class turned into a pass/fail class instead of a graded class).

416. See Barbara Glesner Fines, *Competition and the Curve*, 65 UMKC L. REV. 879, 888 (1997); James G. Nimmer & Eugene F. Stone, *Effects of Grading Practices and Time of Rating on Student Ratings of Faculty Performance and Student Learning*, 32 RES. HIGHER EDUC. 195, 195 (1991) (finding that “student ratings were directly affected by grading practices and this effect was a function of the time at which ratings were completed”); see also Alan Lupo, *Refusing to Give College Students What They Want*, B. SUNDAY GLOBE, Oct. 10, 1999 at N8 (questioning the validity of student evaluations of college professors).

417. Fines, *supra* note 416, at 888 (citing Nimmer & Stone, *supra* note 416, at 195); see also Nimmer & Stone, *supra* note 416, at 207 (reporting that “the clearer the implications are of grading practices for the outcomes (e.g., expected or received grades) that students will experience, the greater is their tendency to provide the instructor with corresponding outcomes” on their evaluations).

418. Nimmer & Stone, *supra* note 416, at 207.

I have a difficult time in understanding angry verbal attacks on my authority and qualifications to administer the grades. I ask myself—am I paranoid or is it because I am a black woman that they respond this way?⁴¹⁹

Like this Black female academic, I too questioned whether I was paranoid. When I received my first Property Law evaluations in 1996, I was willing to assume it was me until I remembered the constant denigration I had experienced throughout the year. I wondered whether my negative evaluations were linked to my evaluative authority, i.e., my authority to grade students, especially white students. Based on my own experiments, which are discussed more fully below, I have confirmed what was then an infant theory.

Furthermore, due to negative stereotypes about Black women's intelligence, as well as the presumption of incompetence, students expect an easier time in a Black female professor's classroom.⁴²⁰ As a Black woman, I am supposed to be incompetent and, therefore, awed by even mediocre exam performances. I am supposed to be easily impressed by the personal notes and birthday greetings left on blue books for the midterm exam.⁴²¹ I am also supposed to be easily persuaded when students believe they deserve more than they earned.

Before my hypothesis and proof of evaluative hostility can be explored in greater detail, it is important to set forth the procedural peculiarities of the BCLS first-year timetable that increases the risk of, if not ensures that, evaluative hostility will occur. Because an important component of evaluative hostility is the timing,⁴²² i.e., whether a Black woman exercises her authority to grade students during the semester, BCLS's timing is set forth below.

1. Explaining BCLS's Peculiar 1L Curriculum

The BCLS 1Ls have an unusually timed first-year curriculum.

419. McKay, *supra* note 330, at 146; see also Banks, *Gender Bias II*, *supra* note 331 at 145 (reporting that there is "evidence of hostility toward female professors . . . from primarily younger white males, at various schools").

420. Students may expect me to be an easy grader simply because I am Black and female. Other Black women have also written about this expectation. See Odeana R. Neal, *The Making of a Law Teacher*, 6 BERKELEY WOMEN'S L. J. 128, 131 (1990-91).

421. In my first-year Property classes in 1995-96 and 1996-97, I was constantly amazed at what students would write on the exams. Many left me personal messages in their blue books, writing, for example that they enjoyed the exam, wishing me a happy birthday, telling me to have a wonderful Christmas, and informing me that they enjoyed the class.

422. See generally Nimmer & Stone, *supra* note 416 (proving that there is a correlation between the timing of an evaluation and students' negative responses on an evaluation).

Property Law is a quasi-year long course. Torts, Contracts, and Civil Procedure, are a little more than a semester. When students begin the fall semester, they register for Property (6 credits for the year), Torts (5 credits for the year), Contracts (5 credits for the year), Civil Procedure (5 credits for the year), and Legal Research, Reasoning, and Writing (6 credits for the year). Now this is not a particularly unusual curriculum. What is unusual is the timing.

Like most law students, BCLS 1Ls begin classes in late August. In November, students take midterm exams in Torts, Contracts, and Civil Procedure. These exams may or may not count as a small percentage of the final course grade. It is up to the professor's discretion whether to count the exam. Some professors count it zero percent; others five percent; others ten percent; while others count it more. Given the low percentage, students seem to perceive that these November midterms are unimportant. In fact, some students do not spend much time on these exams because they generally do not count, though we always encourage students to take these November exams seriously. After all, these earlier exams can act as an early warning or diagnostic signal before they take their "real" exams.

The first time the 1Ls face a "real live" law school exam is in December. At that time, all first-year students take a full-blown Property exam. There are generally three Property professors, and when I was teaching Property Law in 1995-96 and 1996-97, all of us "counted" these midterms in the final grade, up to fifty percent depending upon the professor.

Another peculiarity about Property is the hiatus. In the fall, the final class for Property Law is usually on December 11th. The midterm occurs a week or so later. Property Law classes do not begin again until after the winter recess, which is usually the third week of February. So, there is almost a ten week hiatus as to class time. Property professors see their students in class on December 11th and then again ten weeks later on February 22nd or so. As no teaching occurs in Property during this break time period, any hostility that develops during this time can be linked directly to the exercise of evaluative authority rather than the exercise of pure teaching authority.

Another peculiar aspect of the BCLS first-year curriculum is the fact that Torts, Contracts, and Civil Procedure begin again on or about January 4th without a hiatus, and the only break is Christmas break. These classes end on the last Friday of January. Students then enter into a reading period to prepare for the final exams in these three classes. These exams take place before the

winter recess, i.e., before the third week of February. Grades for these three classes are usually due within a month after the exam. So, students receive Torts, Contracts, and Civil Procedure grades in March, i.e., at a time when the only substantive professor they have had all year is the Property professor.

I explain the peculiarities of the BCLS 1L academic scheduling and evaluative system because it directly impacted the amount of hostility I received. It also allowed me to hypothesize when evaluative hostility begins, when it increases, and when it intensifies. Given the evaluative time periods, I was able to prove this hypothesis. The following discussion reviews these various time periods in order to explore evaluative hostility.

2. Identifying Teaching Excellence before Exam Grading

By comparing a December evaluative questionnaire with the official evaluations taken in May, I have gone far in proving my hypothesis that students punish Black women for being perceived as Sapphire, for resisting being Mammy, for having (or not having) the proper credentials, and for her appearance. This punishment will be particularly severe if the students receive a hint of how they will be graded by the Black woman before they fill out their formal evaluation forms.

In December 1996, I handed out an informal evaluative questionnaire to students. I was constantly critiquing and verifying my teaching effectiveness. I was determined to get better evaluations than I had the previous year. Not only did I invite several colleagues to visit my class, but I also visited several of my colleagues' classes. I videotaped numerous classes to try to figure out whether my actual classroom behavior justified the hostility shown on my last evaluations. I also decided to test out my hypothesis that the timing of the BCLS 1L curriculum caused and exacerbated evaluative authority. Thus, the December evaluative questionnaire was a vehicle for me to get mid-year feedback from the students, to obtain feedback specifically about the fall semester, and to test my evaluative hostility hypothesis before students received any formal grading, especially from me.

The questionnaire was handed out on the last day the class was to meet in December. As with the formal evaluations, I explained to the students the purpose and that I wanted their comments. I encouraged them to provide additional pieces of paper if they chose. A student proctored the actual questionnaire. I did not review the results until after I had turned in my final grades in May. Thus, I

received the questionnaire results and the results of the formal evaluations at the same time. The results were a startling contrast.

In December, before my students took my midterm exam, received scores on these exams, took their final exams in Torts, Contracts, and Civil Procedure, and received grades in these classes, they stated that they enjoyed Property Law. They enjoyed learning various aspects of Intellectual Property. The pace of coverage was fine. Some liked the overheads, others did not. Some liked the supplemental reading, others did not. Some liked class participation, others did not. None of the students liked the room in which the class was located. Despite the presumption of incompetence, authority hostility, and credential hostility, the informal evaluative measures were fairly decent. Select responses are discussed below.

In response to the question: "I rate the overall effectiveness of Professor Smith's fall teaching performance as," students responded as follows:

Excellent. One of the best I have had	40.8%
Very Good. A highly capable and effective teacher	44.7%
Good. A competent and knowledgeable teacher	14.5%

I asked this type of evaluative question several different ways to see whether I would get consistent results or whether the overall rating would show race/gender bias.⁴²³ The responses to the specific questions were consistent, all suggesting very good to excellent teaching.

In response to the question: "I rate the effectiveness of solving former exam hypotheticals during class hours, in helping me learn the material as," students responded as follows:

Excellent	69.7%
Good	26.3%
Uncertain	2.6%
Needs Improvement	1.3%

In response to the question: "I rate Professor Smith's performance during class hours in making the classroom a comfortable and open environment," students were much more diverse. Overall, students alleged that they were comfortable in

423. See *infra* Part V.D.6 (setting forth various ways, including asking specific questions that form the basis of good teaching, to reveal hidden student bias).

class. This question, therefore, did not appear to indicate that Sinister Sapphire was oppressing and intimidating students. Responses were on par with colleagues' statements and my assessment of the videotapes. In response to the above question, students responded:

Excellent	32.9%
Good	50.0%
Uncertain	13.6%
Needs Improvement	2.6%
Poor	1.3%

In response to the question: "I enjoyed learning the various aspects of Property Law subject matter," students were fairly consistent in showing their enjoyment. They selected:

Strongly Agree	35.5%
Agree	61.8%
Uncertain	2.6%

To the question: "The course was well organized and easy to follow," students reported the following:

Strongly Agree	46.1%
Agree	53.9%

To the question: "Professor Smith motivated me to do my best work," students reported that they were indeed motivated, and reported the following:

Strongly Agree	35.5%
Agree	63.2%
Uncertain	1.3%

To the question: "Professor Smith explained the materials clearly and in a manner easy for me to understand," the students reported that they understood the material.

Strongly Agree	35.5%
Agree	64.5%

All in all, the students reported that "[t]he fall semester of Property Law was a valuable academic experience for me," with 44.7% of students strongly agreeing with this statement and 55.3% agreeing. Additionally, when asked "What could Professor Smith have done to make your experience in Property Law more enjoyable, more successful, etc.," students provided various answers, listed here by the number selected rather than percentage.

Not had required class participation	23
Done more exam hypotheticals in-class	15
Nothing. Everything was great	32
Passed out overhead slides so we did not have to write them down	17
*Not counted due to mechanical error	11

Based on these responses, my fall pre-grading performance was good to excellent depending on the question, despite credential, authority, and appearance hostility.⁴²⁴ The students reported that they enjoyed the semester and that the teaching was clear, organized, and straightforward. As a teacher, I was highly capable and competent. My teaching style was effective. No specific problems were reported. In essence, there was parity between what I saw on the videotapes, what my colleagues viewed when they visited this particular class, and the results on the fall questionnaire. This honeymoon ended swiftly, however, when the students received their midterm scores in January, weeks before their final exams in three other first-year courses.

3. Exploring Post-Midterm Exam Grading Hostility

Before there is any exercise of evaluative authority, given the presumption of incompetence and the phenomena previously discussed, students already are experiencing low-grade anxiety and hostility because a Black woman is their professor. The evidence of authority and credential hostility discussed above both help prove this proposition. Yet, I have found that as long as the class is clear and straightforward, students are not overly angry or hostile. Some student hostility is directed at me during office hours and outside of the classroom. Yet, most students are fairly certain that they will do well on exams, especially in my class. The straightforward

424. Accordingly, perhaps these types of hostility can be diminished or discounted, in the absence of evaluative hostility.

nature of the class, in addition to the presumption of incompetence, seduces them into believing that the Property Law exam will be their easiest exam.

Hope for an easy exam, as well as only out-of-class hostility, changes when a Black woman finally exercises her evaluative authority. Hostility that begins when a Black woman enters the classroom and exercises her prerogative to manage the class escalates when the Black woman engages in the most unexpected and unacceptable behavior: evaluating or grading students who inherently believe in their own superiority and her inferiority.

Based on my experience grading, most of the white students, especially the young white men, became enraged. I encountered the true effects of evaluative hostility. My experience was similar to that of Professor Young, who captures the essence of evaluative hostility when she describes a particularly hostile post-grading student.

After receiving his grade, B+, in one of my classes, a white male student came to my office demanding that I explain my reasons for giving him this grade. I agreed to review his exam with him. I met with him for more than one hour reviewing his exam, explaining my reasons for his grade. It was quite evident at the end of our discussion that this student was dissatisfied with the criteria upon which I based my grades. Before receiving his grade, he and I had been friendly. We had sometimes eaten lunch together, and often chatted in my office. After he received his grade, his behavior changed dramatically. During another class the following semester, he avoided eye contact with me, sat directly in front of me, sneering during class discussion, and tried to contradict me as often as possible.

... I believe he was not prepared to see me, a young black woman, as someone who had the authority or capacity to evaluate his work. When I gave him a grade that was below his expectations, I had directly challenged his self-image and his "place" vis-à-vis me. He apparently asked himself, who was I to evaluate him?⁴²⁵

Before grading, students can deceive themselves easily into believing that an African-American female professor is not really a professor, not really an authority figure. They can deceive themselves into believing that she is a peer and if racial/gendered

425. Donna E. Young, *Two Steps Removed: The Paradox of Diversity Discourse for Women of Color in Law Teaching*, 11 BERKELEY WOMEN'S L.J. 270, 279-80 (1996).

stereotypes hold true, an inferior, less intelligent peer. They can, therefore, believe that all is right with the world when they compare themselves to the Black female professor, i.e., racial hierarchies remain intact. Indeed, in an attempt to minimize a Black woman's professorial authority prior to grading, students treat the Black female professor as if she were a group leader or a teacher's assistant rather than a professor. Before evaluative authority is exercised, the white students' self-image and self-esteem is not challenged vis-à-vis the Black female professor. After grading, however, the white students' perception drastically changes.

Perhaps Professor Young was fortunate. She was faced with only one student, and the semester ended before the hostility began. Further, her student presumably had to take affirmative steps to take another class from her to evidence his open hostility. I was not so fortunate. Given the peculiarities of the BCLS first-year curriculum, I faced student hostility from students who had yet to evaluate me and who believed that they could get their way by exercising time-honored racial strong-arm techniques to have their way.⁴²⁶ I also faced these same students three times a week for another fourteen weeks before the academic year ended.

On my December midterm exam, some students did not do as well as they would have liked and definitely not as well as they would have expected. Given that this was their first "real" law school exam, I tried to reassure them and to provide in-depth comments, one-on-one diagnostic sessions, classroom exam-taking tip sessions,⁴²⁷ and a personal intensive review of their exams. My goal was to ensure that students could identify where they were overly conclusory, which is the general problem, so that they would not make this same mistake on the upcoming Torts, Contracts, and Civil Procedure exams. I met with students in the evenings and on weekends to ensure that they had the tools they needed to succeed on later exams. I met them in groups and individually, doing

426. By racial strong-arm tactics, I mean mass student meetings about a professor of color with the expected hope that the administration will intervene. See, e.g., Bell, *supra* note 118, at 377 (opining that the minority presumption of incompetence is the most difficult challenge professors of color face); Hughes, *supra* note 123, at 91-101 (describing her students' attempt to have her course grading system changed to pass/fail); Robinson, *Split Personalities*, *supra* note 311, at 75-77 (describing en masse student complaints to the Dean because he taught property using more social theory). See generally Robinson, *Teaching from the Margins*, *supra* note 311 (describing the hostility he faced as a Black intellectual).

427. I developed an exam-taking diagnostic tool called S.E.X. (Strategic Examtaking eXercises) to help those who were willing to practice legal analysis and exam taking. Additionally, I gave out exam taking "tips" cards that contained an explanation of the difference between a conclusion and an analysis.

whatever was necessary to facilitate their success.

My assurances and attempts were not enough. In 1996, white students who were displeased with their midterm exam scores attempted racial strong-arm tactics by demanding a grade-changing meeting with BCLS's deans.

4. *Revealing Students' Attempt to Force A Midterm Grade Change: The Students' Meeting with the Deans*

Understandably perhaps, I experienced hostility from those who were displeased with their Property midterm exam score. It is difficult for most to understand that this exam has to be seen as a diagnostic stepping stone and that it is not determinative of their genius or ultimate standing in class. After all, my Property midterm exam ends up counting for only thirty percent of their overall grade. What I found difficult to understand, however, is how the status of the midterm Property exam helped create, and indeed solidified, student authority hostility and the presumption of incompetence.⁴²⁸

Upon receiving their midterm exam scores, a contingency of white students immediately went to the Dean of Students and demanded a meeting. Black students heard about such a meeting only when it was announced in one of my white male colleague's 1L class that students were "collecting any and all complaints about Professor Smith."⁴²⁹ The administration did not inform me of the meeting or the issues.⁴³⁰ I learned about the meeting through the students who were incensed not only at the complaints but also at the fact that the administration would hold such a meeting.

When I finally heard about the meeting, I sent the Dean of Students a memorandum, informing her that I was aware of the meeting. I explained that every year after taking graded exams, students are understandably upset about their exam scores. If she was going to meet with the students, I wanted to make sure she knew what the exam covered, how it was graded, and the statistical makeup of the class. I also wanted to provide her with the exact material the students were given during the examination and

428. See Nimmer & Stone, *supra* note 416, at 195 (finding that student evaluations are affected if students complete them after they receive their grade).

429. Clearly, only the students who were displeased by their scores complained. Those who were pleased probably kept quiet.

430. Professor Joyce Hughes, one of the first Black females in a major institution, also faced similar meetings by students, which were allowed by administrators. See Hughes, *supra* note 123, at 91-101. Though more than 20 years separate my experience from Professor Hughes's experiences, the similarities remain striking.

thereafter. I sent her the exam, the checklist used to grade the exam, and the overview memorandum I had prepared for the class listing the common mistakes.⁴³¹

I informed the Dean of Students that I had met with some students regarding their exam concerns and intended to meet with more. In fact, I had already scheduled a class session to review the exam and exam-taking in general. In essence, I was willing to provide whatever diagnostic assistance was necessary to assuage students' anxiety and concerns about their grades. Despite this willingness, I did want to remind the Dean of Students what we both knew, i.e., that students' reactions were much more intense when the person doing the grading is an African-American female.

In addition to providing all of this information, I strongly suggested that she tell students that BCLS's customs and protocol required them to first try to work with me. She did not act on any of these suggestions, as far as I can tell. As a result, very few of the white students with complaints about their midterm grades came to review their midterm exams with me. In fact, when I had a group session to review exam taking skills, only seven students attended and most of them were students of color. Presumably, the others did not show up because they felt they could succeed using traditional racial strong-arm tactics. Rumor had it that they were going to force the administration to make me change their scores. Of course race, gender, and race/gender had nothing to do with it. On the advice of a senior white faculty member, I requested that the Academic Dean attend on my behalf, not only to protect my interests and reputation, but also to see if there were any legitimacy to the students' complaints.

The ringleader for the meeting was a young white woman who had graduated from Harvard. According to the overhead bullet points she provided that day,⁴³² one of the primary goals of the white students was to establish the Dean of Students as a "conduit" between me and the students. Neither this student nor any of the other complaining students attempted to talk to me about their concerns on the exam. Rather, they sought administrative intervention in obtaining a grade or a score that they had not earned. I received hate mail immediately before this meeting which confirmed this. It stated:

431. See, e.g., Whaley, *supra* note 326, at 140 (explaining that preparing feedback on student mistakes and what the professor was looking for on the exam is a recommended practice for law professors).

432. One of the students in attendance that day provided me with this information.

WHO DO YOU THINK YOU ARE? *How dare you give anybody low scores. A black mammy like you is completely incompetent to judge anyone on anything.*

*I do not care whether you are magna cum laude. You went to a stupid school, one obviously that allows incompetents like you to graduate with honors.*⁴³³

You try to be "rigorous." Right. How can you even understand rigor? You do not belong in law school teaching. Black mummies should stay at home, doing mammy things. Or, they should stay in their place and it is not law school.

You can bet that we will make sure that these low scores are changed. We will do everything in our power to have these reversed, even if it means having you fired!!!! You had better not ruin my chances for law review and give it to one of your mammy girls or girlie girls.

Thus, going into the meeting, the students' motives as evidenced by the goals of one of the ringleaders and the gloating of the hate mail sender were clear: they wanted and indeed expected the institution to solidify the Black female presumption of incompetence, and they wanted it done swiftly and decisively.

Further, it was through the lens of evaluative hostility that students began to review the fall semester at the meeting with the Dean of Students. When the white students collected "all complaints about Professor Smith," suddenly I was hostile and intimidating in class and the material was confusing. I made too many mistakes, or was too arrogant and made no mistakes, and therefore was incompetent to teach the material. In response to all of these allegations made by the white students, the Black, Hispanic, Asian, and other white students provided specific recollections and contesting points. To their contesting points, the

433. Hostility towards the law school I graduated from is perhaps indicative of the hostility that this particular student was feeling because Tulane was and is ranked lower than BCLS. Thus, as a Tulanian, I was apparently teaching above my credentials and was therefore incompetent to teach a student who had the opportunity to attend BCLS rather than Tulane. See generally *Graduate School Rankings*, U.S. NEWS & WORLD REPORT (1990, 1991, 1992, 1993, 1994, 1995 1996). U.S. News & Word Report ranked BCLS 20th in 1990, below 25 in 1991, 22nd in 1992, 19th in 1993, 24th in 1994 and 26th in both 1995 and 1996).

There is excellent research that indicates that despite similar credentials, women of color begin their academic careers at schools that are lower ranked than the ones at which men of color began their careers. See Merritt & Reskin, *supra* note 193, at 199. See generally Merritt & Reskin, *Double Minority*, *supra* note 318. One can opine that the denigration of the intelligence of women of color begins at hiring and continues throughout their careers as the presumption of incompetence continues to operate, credentials notwithstanding.

complaining white students allegedly kept saying, "but it has nothing to do with race."

When all was said and done, the Academic Dean reported that the complaining white students publicly vented their anger but had no concrete problems they could identify with accuracy, specificity, and without a contrary view being heard.⁴³⁴ Consequently, the students' plan to establish an administrator as a conduit or supervisor failed. Further, their primary plan to have their scores upgraded or reversed also failed. The hate mail letter for that month came early and arrived almost immediately after the meeting. It reflected increased hostility and anger at the lack of success at the meeting. It stated:

*You were lucky this time. Those other black mammies and nigger lovers came to your defense. And those weaklings in administration, if you can call it that, were not willing to force you to change those fucking low scores. I bet you got to them. We are going to make sure that the rest of your semester is difficult, damn difficult. You had better not call on me or anyone else in class for your stupid control freak class participation.*⁴³⁵

You had better not ruined [sic] my chance for law review.

Despite the fact that the students' failed at having their scores changed, the meeting itself and the willingness of the administration to contemplate such a blatant racist attack on my competence created, and perhaps solidified, the presumption of incompetence. It also increased my vulnerability in the institution and negatively affected my future ability to teach Property Law or any other new course for that matter.

Professor Joyce Hughes had a similar experience when in her second year of teaching a course in Legal Professions, students held

434. Apparently the students had not reckoned with the power of academic freedom. Nor had they expected the fact that my library of videotapes, the visits from well-respected white male colleagues to this very class and the eloquent evidence presented by their peers stood as a ringing disputation to their claims of incompetence. They had apparently assumed that this frontal attack would be successful because the institution's failure to respond to a previous racial flyer had shown me to be vulnerable, as did the institution's willingness to even have such a disrespectful meeting. Further, going into the meeting, they presumably expected success because of the well-understood presumption of incompetence and the stereotypes associated with Black women who are perceived as Sapphires.

435. Contrary to this anonymous warning, I continued to use class participation. Everyone participated to varying degrees. Yet student hostility was vented in various petty ways such as students coming to class late, having numerous discussions while I was talking, constantly testing my understanding of the material, and questioning why they had to study the Civil Rights Act and the Fair Housing Act as part of landlord/tenant law and the buying and selling of land.

a meeting and petitioned their administration to have her class changed to pass/fail. In response to the meeting, the Black Law Students Association (BLSA) chapter at the University of Minnesota, where Professor Hughes was then teaching, remarked that the meeting and the aspersions cast upon Professor Hughes competence "leave a very negative impression of [her] performance and ability as a teacher."⁴³⁶ Similarly, in my situation, though the racist frontal attack failed, it did successfully and publicly question my competence with institutional support and perhaps encouragement.

As to their Property Law exam concerns, those students who were willing to do so eventually had to come talk to me. Some did and some did not. Many remained hostile throughout the semester and this hostility increased when a month later, the white male professors who taught them Torts, Contracts, and Civil Procedure handed out their final grades. Generally, those grades mirrored the scores I had given the students on my midterm exam, and, as a result, I faced greater hostility because of grades assigned by my colleagues.

5. *Bearing the Burden of Others' Spring Grading*

After the distribution of grades for the fall Property Law exams in January, and before the end of the Property hiatus toward the end of February, most of the students are fairly even-keeled emotionally. They return to a mental equilibrium in order to prepare for the other exams at the beginning of February. Further, various individual or group diagnostic exam-taking sessions give some students renewed confidence. Then, the Torts, Civil Procedure, and Contracts classes report final exam grades. Given that the curve allows only seven percent "A" grades, a good 90% of the class is displeased.⁴³⁷ Furthermore at least one of my white male colleagues gave some students D's or F's.

436. Hughes, *supra* note 123, at 98 n.44.

437. In most classes at BCLS, the curve percentages are

A	7%
A-	13%
B+	25%
B	35%
B-	10%
C+/C	10%

As these are not my grades and not my exams, one would logically conclude that this displeasure would not be relevant to me. Not so. Each year students are angry and perhaps legitimately so. They are afraid, however, to express their anger, disappointment, and rage to the three white men who teach their other courses. As a result, most, if not all, of this negative emotion is targeted at me. My midterm score, as read in light of the others' grades, confirms their perceived sense of intellectual mediocrity. I am perceived to have started their academic decline with my midterm exam score. I am truly standing in their way to law school academic success, although I have nothing to do with the exams or grading procedures in their other three classes.

I have never had to ask when grades are reported in any of these classes. I know. Students are more disruptive in class, they are angrier, they are more likely to refuse to participate, and they are suddenly hyper-concerned about their Property final exam which is months away. As a result, what little bit of credibility I have garnered throughout the year is lost. The authority hostility discussed above escalates, and the evaluative hostility solidifies and will be seen clearly on the formal Property evaluations given at the end of the year.

6. *Analyzing the Express and Implied Hostility on the Formal Property Final Evaluation*

At the end of the 1L academic year, the Property Law students are given one chance to formally evaluate my year-long performance. In both academic years 1995-96 and 1996-97, the news was not good. Given all of the other indicia of student hostility, students laid in waiting to tell me, and the institution, that I had done nothing to eliminate the presumption of incompetence in their minds. Their anger at my not being Mammy and being perceived as Sapphire controlled, as did their solidified authority, credential, and evaluative hostilities. Because the 1996-97 academic year showed the most student hostility in the form of authority, appearance, and existence hostility, the year-end evaluations for this class will be discussed and analyzed in light of the informal December 1996 questionnaire.

To the first question: "What rating does this instructor deserve as a teacher," the students responded that I deserved excessively poor evaluations.

Excellent	3.4%
Very Good	6.8%
Good	18.6%
Acceptable	35.6%
Poor	35.6%
No Response	5 students

This harsh evaluation is entirely inconsistent with the informal questionnaire in which most of the students selected that I was either "a highly capable and effective teacher" or "one of the best [they] have had" (44.7% and 40.8%, respectively). Moreover, although the positive responses to specific questions dropped, enough of the positive responses remained to make the overall poor rating inconsistent with the specifics the students selected on the formal evaluations. The specific questions asked students not about an overall rating, but about activities or behavior that may constitute good teaching. This inconsistency is highlighted below.

Furthermore, a previously unexplored phenomenon occurred on my evaluations. In response to several questions, many students selected that they were "uncertain." At Boston College, and perhaps many other schools, Black professors stated that poor evaluations were almost a near certainty.⁴³⁸ None, however, implied that students could taint an evaluation by simply being uncertain. But as will be shown below on most, if not all, of the questions asking students about specific teaching behavior, there is a great number of students who were uncertain. This uncertainty is just as hostile as pure negative selections. The effect is the same with regard to whether a Black woman will be able to attain tenure, i.e., negative evaluations and uncertain evaluations both act as an insurmountable barrier to retention. Consequently, although those who were willing to select negative options on the evaluations may have been steeped in express racial/gender hostility, those who selected uncertain options surely were steeped in implied racial/gender hostility. The presumption of incompetence and evaluative hostility, as evidenced by both the negative selections and the uncertain selections, remained intact.

438. See, for example, *infra* this Part for a discussion of my experiences.

To the question of whether the course was well organized, students selected:

Strongly Agree	18.8%
Agree	42.2%
Uncertain	15.6%
Disagree	14.1%
Strongly Disagree	9.4%
Not Applicable	0%
No Response	0%

To the question of whether the materials were explained clearly, students selected:

Strongly Agree	4.7%
Agree	21.9%
Uncertain	20.3%
Disagree	35.9%
Strongly Disagree	17.2%
Not Applicable	0%
No Response	0%

As with the overall evaluative selection, the responses to these two questions, asking whether I organized the class well and explained the materials clearly, are completely different from the responses given in the fall. In the fall, students were clear that the course was "well organized and easy to follow," with 46.1% strongly agreeing and 43.9% agreeing with this statement. Further, in a similar question, 64.5% agreed and 35.5% strongly agreed with the statement that "Professor Smith explained the materials clearly and in a manner easy for me to understand." Once I graded their midterm exams, students had the opportunity to exercise evaluative hostility. The contrary responses on these questions and the ones below show evidence of evaluative hostility.

To the question of whether the assignments contributed to the students' learning, students selected:

Strongly Agree	14.1%
Agree	28.1%
Uncertain	37.5%
Disagree	12.5%
Strongly Disagree	6.3%
Not Applicable	1.6%
No Response	0%

To the question of whether the students enjoyed learning the Property Law subject matter, students selected:

Strongly Agree	6.3%
Agree	31.3%
Uncertain	25.0%
Disagree	15.6%
Strongly Disagree	21.9%
Not Applicable	0%
No Response	0%

Again, as with the prior questions, these last two responses are in complete juxtaposition to the same or similar questions from the fall. In the fall, 69.7% of the students selected that solving in-class hypotheticals was an "excellent" vehicle to help them learn the subject matter. Further, 61.8% and 35.5% of the students agreed or strongly agreed, respectively with the statement that they "enjoyed learning the various aspects of Property Law."

After I evaluated them via their midterm exams, students began evidencing either express hostility through negative responses or implied hostility through uncertain responses. Evaluative hostility changed how I was perceived after I graded the students' midterm exams. The uncertain and negative responses indicate students' continued allegiance to the presumption of incompetence that negatively impacts Black women in legal academia.

In fact, most of the responses were "uncertain," with 37.5% of students selecting that they were uncertain that the assignments contributed to their learning and 24.0% of the students selecting that they were uncertain whether they enjoyed learning the subject matter. It is dubious to think that students do not know whether

they enjoyed something or not or whether something contributed to their learning or not. But as these selections are not positive selections, they evidence implied hostility because students refused to choose a selection that showed that they enjoyed learning the material.

To the question of whether I was conscientious, the students selected:

Strongly Agree	25.0%
Agree	50.0%
Uncertain	14.1%
Disagree	3.1%
Strongly Disagree	7.8%
Not Applicable	0%
No Response	0%

To the question of whether I showed enthusiasm, the students selected:

Strongly Agree	28.6%
Agree	60.3%
Uncertain	4.8%
Disagree	3.2%
Strongly Disagree	3.2%
Not Applicable	0%
No Response	1 student

These last two questions are more consistent with the ratings from the fall. Neither focused on my actual teaching, but rather on my other behavior. After all, one can still be judged via the presumption of incompetence as incompetent despite being very conscientious. Given the stereotype that Black people are unintelligent, one would expect that a truly stupid person would indeed work very hard, enthusiastically even, to overcome her natural stupidity.

Further, evaluative hostility is shown by most, if not all, of the specific responses that are entirely inconsistent with the overall poor rating. It is inconsistent that a poor teacher would be well organized, clearly explanatory, provide relevant assignments, be conscientious, and be enthusiastic. Yet after I evaluated them via their midterm exams, students began evidencing either express or

implied hostility through negative responses or implied hostility through uncertain responses.

In addition to showing evaluative hostility toward my teaching, students also evinced an anti-Mammy/Sapphire backlash based upon their perception of me as an intimidating, threatening, insensitive, and uncaring Black woman. For instance, to the question of whether the class atmosphere promoted students' learning, the students selected:

Strongly Agree	4.7%
Agree	15.6%
Uncertain	12.5%
Disagree	25.0%
Strongly Disagree	42.2%
Not Applicable	0%
No Response	0%

As with the other selections on the final evaluation form, this selection is completely contrary to the fall evaluations. In the fall, 50% and 32.9% of the students selected that I was either good or excellent, respectively, at making the classroom an open and comfortable environment for all students. After I graded them, perceptions changed. To the question of whether I was sensitive to students, they selected:

Strongly Agree	7.9%
Agree	25.4%
Uncertain	17.5%
Disagree	19.0%
Strongly Disagree	30.2%
Not Applicable	0%
No Response	1 student

To the question of whether I cared about the students, the students selected:

Strongly Agree	25.4%
Agree	31.7%
Uncertain	22.2%
Disagree	6.3%
Strongly Disagree	14.3%
Not Applicable	0%
No Response	1 student

In an odd twist, responses to this "caring" question are completely contrary to the previous question of whether I was sensitive to students. Responses to this question, more so than any other, show that many students wanted to see me as Mammy. Given my overall Sapphiric image, the responses are consistent with the stereotype that as Sapphire I am insensitive, uncaring, threatening, and intimidating. Given my authority to evaluate, I apparently was not able to entirely cast off the conclusion that as a Black woman I am a Sapphire.

To the question of whether they learned a great deal, students selected:

Strongly Agree	14.3%
Agree	28.6%
Uncertain	33.3%
Disagree	11.1%
Strongly Disagree	12.7%
Not Applicable	0%
No Response	1 student

Unlike most of the other questions on specific teaching behaviors, this question had a severe "uncertain" bias with more than one third of the students responding that they were uncertain

whether they learned a great deal. Similarly, to the question of whether they understood the principles and concepts in Property Law, students selected:

Strongly Agree	10.2%
Agree	40.7%
Uncertain	23.7%
Disagree	10.2%
Strongly Disagree	15.3%
Not Applicable	0%
No Response	5 students

Again, 23.7% of the students were not sure whether they understood the principles and concepts of Property Law. Amazingly, 50.9% of the students agreed or strongly agreed that they understood the principles taught in class. Yet, in response to the overall rating, 35% of the students selected that I was a poor teacher. It is inconceivable that 50.9% of the students would understand the principles and concepts taught if the professor was truly a poor professor. Perhaps more students were willing to be positive because this question is passive in that it does not specifically ask students to rate me but asks what they understood.

In addition to the above form questions on the formal evaluation, I provided five supplemental questions. To the question of how the students would "rate the effectiveness of classroom discussions and teas regarding exam taking skills in helping [them] learn what to expect on the Property exam," students selected:

Excellent	8.5%
Good	35.6%
Uncertain	27.1%
Needs much Improvement	10.2%
Useless	16.9%
Not Applicable	1.7%
No Response	5 students

Like the last two formal questions, this supplemental question had a great many students selecting that they were uncertain about whether they were prepared for the exam based upon my informal teas and my in-class discussions on exam-taking. Although 44.1% of the students agreed or strongly agreed with the statement that they felt prepared for the exam, 35% of the students selected that

I was a poor teacher. It is, once again, inconceivable that 44.1% of the students would feel that my efforts inside and outside of class helped them prepare for the exam if I was truly a poor professor. Again, given that this question is passive in that it does not specifically ask students to rate me, perhaps students were more willing to be positive.

I provided another supplemental question, asking whether the students "enjoyed learning the various aspects of the Property Law subject matter." Although I did not intend to provide a duplicate question in the formal evaluation, I did. Consistent with the general inconsistency of the entire evaluation, there is disparity not only within this formal evaluation but with the fall questionnaire. This is shown below.

Available Response	Supplemental Response	Previous Formal Response	Fall Questionnaire Response
Strongly Agree	8.5%	6.3%	35.5%
Agree	44.1%	31.3%	61.8%
Uncertain	18.6%	25.0%	2.6%
Disagree	16.9%	15.6%	
Strongly Disagree	8.5%	21.9%	
Not Applicable	3.4%	0%	
No Response	5 students	0%	

The internal inconsistency on the formal final evaluation is difficult to explain. As to the inconsistency between the fall questionnaire and both final responses, I can only hypothesize that evaluative hostility prevented students from consistently indicating that they enjoyed learning the subject matter, after I have graded their mid-term exams. It is interesting to note that between the fall question and the first formal question, the number of uncertain responses increased dramatically from 2.6% to 25.0%. Yet, the uncertain responses decreased slightly (from 25.0% to 18.6%) when students were asked this question again. It is also interesting to note that when students were first asked on the formal evaluation if they enjoyed the class, 37.5% of them indicated that they did not enjoy learning the materials. Yet, when they were asked this question a second time as a supplemental, only 25.4% of them indicated that they did not enjoy learning the materials.

Despite the inconsistency within the formal evaluations, the responses on the formal evaluation stand as a stark contrast to the

fall questionnaire. Before the midterm exam, 97% of students enjoyed learning the subject matter. After midterm grading, students apparently experienced evaluative hostility and no longer enjoyed their time in Property Law.

In this same vein, it is also interesting to look at student responses concerning how students would compare the fall semester to the spring semester. The responding students noted that they enjoyed:⁴³⁹

The fall semester more	8 students
The spring semester more	26 students
Both semesters equally	1 student
Neither semester	20 students
None of the above	4 students

It is interesting to note that based on this response, the responses on the fall questionnaire are not remembered, with few students selecting that they enjoyed the fall semester. Evaluative hostility obviously created a form of amnesia, preventing most students from remembering their prior selections on the fall questionnaire and their prior fall experiences.

Overall, the year-end formal evaluations showed not only evaluative hostility, but also a striking dedication to the presumption of incompetence and to the Sapphire myth. All inconsistencies, be they between the fall questionnaire and the spring formal evaluation, between the spring formal evaluation and the spring supplemental evaluation, or the striking quantity of uncertain responses, can be explained in light of evaluative hostility and the stereotypes, myths, and images of Black women as the incompetent and threatening Sapphire. It is this type of effect that must be recognized through further study and scholarship and in promotion and tenure decisions.

Despite all of the express and/or implied hostility evidenced in the final evaluations, one student took the time to write an anonymous note to reassure me that everyone was not racially hostile in the class. The letter stated:

439. This question was not calculated by the computer and was done by hand. Errors in calculation may have been made. Moreover, although I had 75 students, the formal evaluations only registered responses for 59-64 students, depending upon the question. For instance, for the first question asking what overall rating the professor deserves, only 59 of the 75 students responded.

Dear Professor Smith,

I know the last thing you want, now, is to get another anonymous communication. However, I think you may enjoy this one. You are a very intelligent woman and I'm sure you probably already know everything you are about to read. But, sometimes, I find that even if I know something, it helps when someone reinforces that knowledge.

I know that this is your second year teaching at Boston College Law and that you probably have dealt with most of the problems you have with our class before. I just want you to know that you are an excellent professor. Of course like most professors, there are things you could do to make the classroom atmosphere more comfortable for the students. But compared to the other section 2 professors, practically everyone would agree that we learn more in your class. With your teaching, we don't need study guides. Everything we need you give to us in a way that we can understand. So then, you may be wondering why there are so many people who don't enjoy your teaching. First, let me say that there are a lot of students who enjoy your teaching. I hear them all the time saying how much they like you. Then there are those who don't like your teaching. People like the ones who drafted the 'memo' (sorry to bring back memories of how young some of your students are) and the one I hear fusing [sic] after each one of your classes about you, not your subject matter.

Here's my theory. (Mind you, that I've talked to fellow students in section 2 as well as in your other classes about this, and they concur). You bring who you are to your teaching. Well, you may be saying, everyone brings who they are to their teaching. This may be true. However, everyone is not a strong black woman. I believe that the reason so many people don't like your teaching is because they are not use [sic] to a black woman teaching them. In a lot of cases, it is not their fault. They are not used to the way black women talk or walk or move or think. (I hope this does not offend you. I'm pretty sure it doesn't). They don't even know what is wrong. All they know is that they don't like you. Of course, they find little things they can pinpoint. For instances, some will say, "I don't like the fact that she locks the door." Maybe that might be the real problem for some. But believe me if you unlocked the door, you [sic] still hear just as many groans as you do now. I picture you treating us like your children, eager to teach us and have us learn. Wanting to be proud of us (like a mother) and say 'I take all the credit.' But you do it with a black flavor, something lot of you[r] students don't understand. Most people would tend to agree that a white mother and a black mother raise their children differently.

Perhaps some would argue that this student was particularly insightful. His/her observations certainly coincide with my observations regarding the effects of resegregation, retrenchment, and the quest for Mammy. The quest for Mammy is not a silent one. As the above discussion regarding appearance hostility articulates, the desire and search for Mammy is vocal and aggressive. This student recognized not only the Black Mammy quest, but also the discomfort that white students experience when they are faced with a Black woman who exercises any authority in the classroom.

Despite the positive message of this anonymous note, I cannot help but be uncomfortable with the student analogizing me to a Black mother even in a positive way. After all, the characteristics that are denigrated in Sapphire are awarded in Mammy. If one is perceived as Mammy, then all the Sapphire characteristics are positive because they are exercised to the benefit of white children. When the above student states "I picture you treating us like your children, eager to teach us and have us learn," I hear the implied desire for Mammy. I most certainly experienced the Anti-Mammy/Sapphire backlash, which is reserved for Black women who refuse to acquiesce to white students' desire to have Mammy in front of the classroom, catering to and acquiescing to their every whim.

The above discussion highlights what may be inevitable given racial resegregation, retrenchment, the race/gender-based presumption of incompetence, and the phenomena of hostility. As one Black female academic explained the peculiar denigration that Black female legal academics face from students evidencing evaluative authority: "[a]nonymous teaching evaluations provide an opportunity for some students to vent their cumulative anger about race and gender issues in general; for black women professors, these evaluations too often turn into mini-essays about our personal styles, dress, sexuality, etc."⁴⁴⁰ My evaluations show this peculiar form of denigration. Not only are my evaluations mini-essays on my appearance and credentials, but they are also testaments to express and implied student hostility, the presumption of incompetence, and negative Black female stereotypes. Thus, when given the opportunity, students use the evaluations as a vehicle to flex their institutional power. After all, negative evaluations determine to a large degree whether Black women will be able to stay in academia.

440. Barnes, *supra* note 341, at 66.

Negative student evaluations prove to those willing to believe that professors of color are incompetent. Yet, evaluations are not devoid of race/gender biases and are not a magical talisman to assess teaching excellence. Still, when a professor of color obtains negative evaluations, they nonetheless can be used to solidify the presumption of incompetence and to marginalize the professor of color. Professor Reginald Robinson explained this connection as follows:

good law teaching is a narrative, a story, that reflects a certain perspective, usually an institutional one driven by a host of well-formed cultural norms, and it continues to reject the black law professor—the questionable intellectual. As such, I understand these ingredients (e.g., excellence, commitment, challenge, and aggression) in this narrative context. They are text and subtext. At the level of text, everyone can be good law teachers, and in this vein, law schools actively recruit minorities and [white] women for this role. At the level of subtext, minorities and [white] women are not expected by white males (deans and professors) to succeed in the classroom. If a minority succeeds in the classroom, especially in a majority white institution, she must leave most of her lived experiences in her diary, in her close personal friend's ear, or in her law review article's "fictional" personal narratives. If a minority fails in the classroom, he must have violated an institutional norm, some totem to which most of the white males pray and upon which most white law students depend to gauge their performance in law school. In either case, success or failure depends on whether the minority law professor locates herself inside or outside of the institution's narrative. This narrative does not empower, but restricts, one pedagogy, and in so doing, it usually shelters white male law professors from the reality that they violently, institutionally, and continuously marginalize minority law professors. This narrative also prevents a minority law professor from naming her own personal and professional reality, an experience in which she has probably suffered the ugly face of invisible white privilege.⁴⁴¹

The use of student evaluations in tenure and promotion decisions, without discounting them to take into account the biases that infect them, is an attempt by institutions to imply that all professors can be evaluated as excellent law professors, and only those who are truly mediocre or poor deserve negative teaching

441. Robinson, *Teaching from the Margins*, *supra* note 311, at 162-63.

evaluations. Yet, my actual experiences defy this mythical text of evaluative equality.

My actual lived experience as complemented by a wealth of research shows that I, and many other professors of color, live within the confines of the subtext that says we are destined to fail. We are destined to fail because of the phenomena of hostility, namely authority hostility and evaluative hostility. We are destined to fail because of the presumption of incompetence. We are destined to fail because we are still unique to many students, given educational racial isolation and retrenchment. We are teaching at an academic level perceived to be above our competence. Consequently, if and when we do fail, this failure may be used by institutions to prove that we were inferior, incompetent, and out of place all along. Negative evaluations, therefore, become a self-fulfilling and expected institutional prophecy.⁴⁴²

Further, many whites do not want to believe that their experiences are strikingly different than the experiences of Black women. As a result, their express and implied reactions suggest that the problem lies with the Black woman herself. They want to believe that somehow the individual Black woman who is facing student hostility is somehow to blame, especially if white colleagues teach the same students. They do not want to recognize the institutional ignorance and encouragement that allows the hostility to exist and to escalate.

One senior Black female law professor eloquently described the experiences of many Black women. She states:

[a]fter a few years of teaching law, it occurred to me that the hostility and bitterness that I and other African American female law teachers experienced might be related to the scarcity of our presence and the ambiguity surrounding the legitimacy of our presence. The year was 1983; I had been teaching since 1978, and by this time I had had numerous conversations with the small number of African American women teaching law. Many reported experiences in the classroom and with colleagues which resembled verbal lynching and rapes. More than one of my African American female colleagues reported being shouted down in the classroom by white males, being shunned by colleagues, having her teaching qualifications openly challenged in the classroom, receiving anonymous and detailed hate notes critical of her teaching style, syntax, and appearance, and

442. See Farley, *supra* note 145, at 337 ("[N]egative evaluations can be used to affirm preconceived assessments of women faculty.").

learning of colleagues who had encouraged students to act disrespectfully towards her.

My early experiences were an intellectual version of a nighttime ride through the deep South countryside: I had constant awareness of racist and sexist danger, both real and imagined. I never knew when a students' seemingly innocuous response to my questions would slide into a challenge to my right to *profess*. I came to fear this almost daily assault on my psyche. Had I not received significant support and encouragement from several other African American professors, I would not be teaching today.⁴⁴³

Despite such gut wrenching descriptions, the Black woman's problem is one of hyper-visibility, disbelief, and invisibility.⁴⁴⁴ Few white colleagues or men of color want to believe that students present a different face to a Black female academic than they present to white men, white women, and men of color. White colleagues who have heard my tales of racial/gendered micro-aggressions at the hands of students, find it difficult to believe that I face different students than they, especially if this student has anything in common with them. After all, white colleagues face different, more welcoming, more respectful, more open white students. Though in the same school, our race, gender, and race/gender existences ensure that our experiences are strikingly dissimilar.

White colleagues may feel much more comfortable believing that because *I* am irrebuttably a Sapphire the problem must originate and reside with me. Perhaps the students are not doing and saying racial things. Perhaps I *am* simply too rigorous, too paranoid, too sensitive. Perhaps the flyer was not racist. Perhaps the racial hate mail was not racist or hateful. Even worse, perhaps they think I deserved such denigration. "It is a peculiar sensation . . . this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity."⁴⁴⁵ It is soul wounding to be constantly blamed (expressly and/or impliedly) for every racist, sexist, and racist/sexist incident that one experiences. It is soul wounding to feel that one does not belong. It is soul destroying to rarely receive institutional support when such racist/sexist

443. Greene, *supra* note 2, at 83.

444. See McKay, *supra* note 330, at 145 (stating the phenomena of "perverse visibility and convenient invisibility" of Black women); see also HOOKS, *supra* note 17, at 103 (discussing how bell hooks felt exposed, vulnerable, and constantly under scrutiny by students and colleagues).

445. W.E.B. DuBois, *THE SOULS OF BLACK FOLK* 45 (1903).

incidents occur, and to constantly be questioned, pitied, and scrutinized because you are different than your colleagues due to race, gender, or race/gender. As one Black female academic asked,

[w]hen was the last time someone told you that your way of approaching problems, be they legal or institutional, was all wrong? You are too angry, too emotional, too subjective, too pessimistic, too political, too anecdotal, and too instinctual. I never know how to respond to such accusations. How can I "legitimate" my way of thinking? I know that I am not just flying off the handle, seeing imaginary insults and problems where there are none. I am not a witch solely by nature, but by circumstance and choice as well. I suspect that what my critics really want to say is that I am being too self-consciously black (brown, yellow, red) and/or female to suit their tastes and should "lighten up" because I am making them feel very uncomfortable, and that is not nice. And, I want them to think that I am nice, don't I?⁴⁴⁶

Many African-American women can pinpoint with great exactitude the first time someone told them that they were "too different." In fact, many of us have numerous narratives in which we were told expressly or impliedly that we were just too different, too wrong, or just too.

Further, many of us have tried to make people think of us as nice by changing our clothes, our hair, our behavior, or our lives. The risk in trying to manipulate whether and how others think of you as nice is that eventually their distorted image of you as the original angry Black woman becomes solidified in your own consciousness. As a result, Black women risk becoming increasingly dependent upon colleagues who do not see and who do not desire to see the racialistic nature of the academic environment. Indeed,

I can think of nothing more debilitating than thinking ourselves dependent upon the good will and civility of those in a position to oppress us. While it is important to build coalitions with whites of both sexes and other people of color, black women will not prosper from them if we entirely muffle our indignation and negotiate as mere supplicants. Oh, no! We have paid our dues,

446. Austin, *supra* note 8, at 540; see also MULTICULTURAL WOMEN ATTORNEYS NETWORK, *supra* note 189, at 28 (discussing how women of color attorneys expend lots of mental and emotional energy trying to get others to feel comfortable with who they are).

done more than our share of the doing and the dying, and are entitled to prosper with everyone else.⁴⁴⁷

Part of the price we have paid and are still paying is the phenomena of hostility that results from the presumption of incompetence. The hateful flyers. The racial hate mail. The racialistic meetings. The students who are insulted by our hair, our clothes, our experience, our credentials, and indeed our very existence. The colleagues who hesitate or refuse to affirmatively support us and who deny the existence of racism, sexism, and racism/sexism in law schools. Our white colleagues who do not want to realize that the respectful faces students present to them become disrespectful faces when presented to a Black woman.

Unfortunately, the very questioning of Black women's assessment of reality is part of the burden that a Sapphire carries. After all, Black women lack credibility even with regard to their own lives and experiences.⁴⁴⁸ They most certainly, then, lack the credibility to profess and teach.⁴⁴⁹ Credibility is defined as "encompass[ing] many meanings: truthful, believable, trustworthy, intelligent, convincing, reasonable, competent, capable, someone to be taken seriously, someone who matters in the world."⁴⁵⁰ Given these definitions, it is difficult for many to attribute credibility to Black women, despite status, education, and other indicia of success. As one senior Black woman in academia has stated, "despite ample indicia of achievement in this society, I [as a Black woman] still lack credibility in the eyes of many."⁴⁵¹

447. Austin, *supra* note 8, at 543.

448. See Hill, *supra* note 16, at 271-73; Yarbrough, *supra* note 228; see also MULTICULTURAL WOMEN ATTORNEYS NETWORK, *supra* note 189, at 21 (discussing the lack of credibility attributed to women of color attorneys and professors); Hendrix, *supra* note 20, at 738 (discussing how race among Black and white male professors affects whether students perceive them as credible).

Credibility can be established for a woman lawyer if she has "someone with authority acknowledge her competent performance." HASUIKE, *supra* note 10, at 2. I sought advice and counsel after my first year of teaching. Although my self-selected mentor suggested that there were numerous things the administration could do to lend me its credibility—allowing me to welcome the 1Ls, speaking of me in complimentary and laudatory terms, and telling the students how happy they should be to have me as their teacher—to my knowledge none of this was done. In essence, I was denied the legitimacy of an institutional patron.

449. See, e.g., text accompanying note 443.

450. Yarbrough, *supra* note 228.

451. *Id.* Professor Yarbrough not only discusses how she lacks credibility but how other Black women lack credibility as well. See *id.* (discussing Anita Hill); see also Hendrix, *supra* note 20, at 738 (reporting that for academics, credibility involves an assessment of character, sociability, composure, competence, and extroversion); THE MULTICULTURAL WOMEN ATTORNEYS NETWORK, *supra* note 189, at 16-17, 21 (discussing the lack of credibility that plagues minority female attorneys).

Despite this lack of automatic credibility, Black women are experts at recognizing the intersection of race/gender "isms." We live it and experience its macro and micro aggressions daily. Indeed, "Black women are familiar with white culture and its symbolic codes and often have little difficulty in attaching meaning to white action."⁴⁵² In order to survive and excel, Black women must be instant and continuous experts on decoding white actions, regardless of how shielded, masked, or hidden. By decoding these actions, Black women often regrettably discover prejudice and discrimination.⁴⁵³ At times I would like to believe that race/gender bias did not taint my experiences at BCLS. My interactions with hostile students individually, in small groups, and in the classroom setting, however, left no doubt in my mind that negative perceptions about my race/gender had everything to do with how I was perceived, evaluated, and treated.

Perhaps by interacting more intimately with students, Black women have the opportunity to eliminate any biases that have infected perceptions of them by rumor, innuendo, the presumption of incompetence, and the negative perceptions attributed to the Sapphire myth. Perhaps. Yet, reputations are only partly built by personal effort. They are also built by institutional effort. Without institutional effort and support, a Black woman who has been labeled incompetent, threatening, angry, and intimidating will remain so as long as there are people willing to listen to the myth and pass it on.

Granted, law students turn over every three years. Although students appear to take on the roles of institutional police and keepers of the unwritten culture to ensure that racial hierarchies are maintained, the carriers of institutional rumor and reputation are rarely the students. Colleagues are the institutional carriers, and it is among colleagues that institutions must begin to recognize, break down, and eliminate the unconscious biases that form the barriers to success for those who are perceived as Sapphires and who are judged harshly by the presumption of incompetence. At a minimum, institutions must begin to recognize and redress the reality that student evaluations are tainted by race/gender bias

452. St. Jean & Feagin, *supra* note 68, at 194. See generally Lawrence, *supra* note 187 (concluding that people of color are better able to identify racism as racism due to their experience with it); Richard Delgado, *Critical Legal Studies and the Realities of Race—Does the Fundamental Contradiction Have a Corollary*, 23 HARV. C.R.-C.L. L. REV. 407 (1988) (opining that due to their daily experiences, people of color are experts at identifying racial discrimination).

453. See St. Jean & Feagin, *supra* note 68, at 194.

given the Sapphire myth, the presumption of incompetence, and other negative stereotypes. Suggestions for institutions are set forth below.

VI. ADDRESSING THE SYNERGISM OF NEGATIVITY THAT IMPACTS
BLACK WOMEN'S ABILITIES TO SUCCEED AND
EASILY NAVIGATE LEGAL ACADEMIA

My interactions with some students in Property Law at BCLS were hostile. Perhaps my experience was due to the peculiar timing of the BCLS first-year Property Law curriculum. Perhaps then other people of color can be comforted by the fact that they are not teaching part of the first-year curriculum, not teaching at BCLS, and not teaching in the hyper-segregated Northeast. Yet the synergism of negativity that I experienced is beyond any of these factors. The synergism of negativity is nationwide, as are all of its component parts. Racial resegregation is not limited to the Northeast. Retrenchment fervor also is not limited to the Northeast. In fact, retrenchment in the form of express statutory, constitutional, and legal attacks has not occurred in the Northeast as it has in Texas and California. Further, the presumption of incompetence is not limited to any one school or region of the country. It is a negative stereotype that impacts all Blacks regardless of where they live and work. In this same vein, the anti-Mammy/Sapphire backlash is a negative phenomenon that is historical in nature but is grounded in the peculiar denigration that all of society has for Black women.

Given this, perhaps racial hostility is worse in those areas under express attack by retrenchment fervor. Perhaps racial hostility is worse in those areas that are hyper-resegregated. After all, a change in the elements that give rise to the synergism of negativity may impact the intensity of hostility that results in the end.⁴⁵⁴ Any such change will not diminish hostility entirely. Unfortunately, there are certain inflexible elements to the synergism of negativity that have not and are not likely to change: the presumption of incompetence, the perception of Black women as the angry, intimidating, and unintelligent Sapphire, and the national thirst for Black women to be more acceptable by becoming

454. By examining the status of professors of color teaching under retrenchment, I hope to test this hypothesis. I have revised the Bell/Delgado survey, which surveyed the experiences of professors of color in the late 1980's. My revised survey asks more particular questions related to regional resegregation, regional retrenchment, and retrenchment hostility.

Mammy personified. It is these inflexible elements that will continue to ensure that Black women teaching in legal academia will face student hostility. Though the exact form of hostility experienced by Black women who teach law students in racially isolated areas that are facing retrenchment fervor may be different than the hostility experienced by others in similar situations, the common denominator will be student hostility.

Unfortunately, the expected characteristics of the twenty-first century student do not bode well for the hope that academia will become a safe and nurturing environment for Black women.⁴⁵⁵ The students of the twenty-first century will be used to entertainment in the classroom; they will also be media and consumer oriented.⁴⁵⁶ As discussed above, the twenty-first century law student is likely to be white because of the exclusionary admissions policies of graduate and professional schools.⁴⁵⁷ All of these factors will harm the credibility of Black women who continue to be portrayed negatively in the media.

In addition, the twenty-first century student is expected to be less deferential and less respectful.⁴⁵⁸ As a result, environments may become increasingly hostile as students feel more comfortable confronting Black female professors in any manner, including sending hate mail.

In order for institutions to respond to the specific obstacles that Black women face given the synergism of negativity resulting from racial isolation, retrenchment, the presumption of incompetence, and the Sapphire myth, institutions must first break through their denial and recognize that these individual sociological factors exist. The collective factors exist and interact to create a powerful negative synergism. Perhaps institutions can develop strategies to respond effectively to the negative impact of the individual factors and the synergism that results. Some strategies are discussed below to respond specifically to student evaluative hostility.

455. See generally Jane E. Prather, *1995 Presidential Address: What Sociologists Are Learning about the Next Generation of Students: Are We Prepared to Teach in the 21st Century?*, 39 SOC. PERSP. 437 (1996) (discussing the characteristics of twenty-first century students).

456. See *id.* at 441-42.

457. See *supra* notes 102-03 and accompanying text.

458. See Prather, *supra* note 455, 442 tbl.2.

A. *Providing Strategies for Institutions to Recognize Race/Gender Bias and Potential for Hostility in Student Evaluations*

The most important thing for institutions to do to recognize the individual collective factors and their resulting synergism is to realize that for Black female academics, the hostility will eventually show up in negative student evaluations. Evaluations provide students a formal institutionally-recognized mechanism through which to vent and to show their individual and collective discomfort at being exposed to a Sapphire in the Socratic role.⁴⁵⁹

Given that there is both a racial and gendered nature to the evaluative hostility that has been shown, it is incumbent upon institutions to recognize the risks for Black women. Yet, institutions must do more than recognize the risks. Institutions must take affirmative steps to minimize the career harm caused by race/gender biases held by students when evaluating a Black women, especially when the first-year academic timetable provides another incentive for racial/sexist venting. Because it is common practice for evaluations to be the mechanism in many schools that determine contract renewal, status, salary increments, and tenure, biased evaluations can be especially harmful to Black female academics.

This section provides concrete suggestions for how institutions can recognize the race/gender presumption of incompetence, negative race/gender myths and stereotypes, and all attendant phenomena of hostility—especially evaluative hostility, as evaluative hostility stands as an insurmountable barrier to retention, tenure, and academic success.

There are certain steps institutions can take to ensure that these negative evaluations are discounted or placed within their proper context. The first step is to recognize that evaluative hostility exists and that it bears negatively on Black women and other outsiders. The second step is for institutions to take affirmative steps to discount or minimize evaluative hostility, as well as any other phenomena of hostility that flow from the presumption of incompetence. Institutions can:

- Ensure that *all* members of promotion and tenure committees, as well as *all* administrators who make decisions about faculty advancement, are familiar with key

459. See *supra* Part V.D (discussing evaluative hostility).

research findings about the potential for gender and race bias in evaluation processes.

- Conduct workshops for promotions and tenure committee members to ensure that they are aware of how devaluation and gender and race bias can affect both their own evaluation of candidates and student ratings of faculty.
- Provide committee members with materials such as copies of research on gender and race bias and evaluations. (Search committees could also profit from similar training).
- Offer in-service training on interactive teaching and classroom management styles to *all* faculty and teaching assistants.
- Ensure that all faculty involved in the peer review process understand that the tendency of some women faculty members to use personalized experience—their own and that of students—as a teaching tool, coupled with the tendency of some students to focus on women’s personalities in assessing professional performance, may introduce extraneous factors into the evaluation process. Monitor the evaluation, tenure, and promotion system to identify and, to the extent possible, to exclude such biases.
- Require that all faculty who evaluate the teaching of their colleagues in promotion decisions show evidence that they are aware of the new scholarship on women [and professors of color] in their discipline and of effective approaches to teaching that may be more widely practiced by women [and professors of color]. (A woman faculty member who is trying to actively engage students in the learning process may be viewed by other faculty as being disorganized or less knowledgeable).
- Evaluate teaching by more than one method, such as
 - Observational peer review (with specific criteria provided).
 - Evaluation of teaching materials (such as syllabi, bibliographies, class goals).
 - Student evaluations.
 - Teaching portfolios developed by the faculty members, including the proceedings and other materials, such as video-taped classes.
 - ... When weighing student evaluation questionnaires, review responses to specific questions rather than noting only the overall response.
- Recognize that women in traditionally male fields may be judged the most harshly by students and that students majoring in such fields may judge women faculty members more critically.

- Recognize that other faculty can also influence students' ratings when they talk to students about other teachers. They can validate a student's perceptions about a particular teacher or they can encourage the student to rethink negative or positive perceptions. Faculty members who denigrate women's studies, women in general, [professors of color, Black women specifically,] feminists, or young faculty in general may be exerting a negative influence on students' perceptions and on how they evaluate faculty members. Such faculty members are not likely to be objective in their evaluation of other faculty.
- When evaluating faculty performance in graduate-level teaching, assure that out-of-class advising, mentoring, and efforts to foster professionalization are considered along with assessment of classroom teaching. . . .
- Include both current students and alumni/ae in evaluation of faculty for major reviews and for tenure. (Sometimes, women and other students don't recognize the value of alternative content, pedagogical approaches, and role-modeling until they themselves are out in the workforce).
- When conducting exit interviews with women and faculty of color, include specific discussion about the evaluation mechanisms currently in place and suggestions for improvement.⁴⁶⁰

In addition to these specific recommendations, institutions also can reformulate and reorganize the actual evaluation questionnaires to ensure that they are fair. For instance, institutions can "[r]ecognize that asking only for generic ratings such as 'Is this a good teacher?' may obscure behaviors associated with good teaching."⁴⁶¹ If my experience is an indicator, the overall ratings on my Property Law midterm questionnaire and my formal evaluations did not coincide with specific questions that indicated that students were learning and that I was effectively teaching. Further, the results from the fall questionnaire were entirely inconsistent with the results from the final formal evaluation. As discussed above, these inconsistencies suggest that race/gender biases infected the overall formal ranking of my performance and some of the negative and uncertain responses.

As the responses to my Property Law fall questionnaire showed, students were less likely to have their race/gender biases infect their evaluations when they were asked pre-grading

460. SANDLER ET AL., *supra* note 178, at 87-88.

461. *Id.* at 89.

questions about specific behaviors that constitute good teaching. For example, positive responses to questions that asked if the course was organized well, if the material was explained clearly, and if the students felt prepared for the exam, were all indicators of good teaching.⁴⁶² Yet, on the formal evaluation, the students were not willing or able to provide an overall assessment of good or excellent teaching. Thus, on the formal evaluations, if "good teaching" specific questions are asked instead of or in addition to the overall questions, institutions may obtain a clearer, less infected evaluation of a Black woman's effectiveness as a professor.

Evaluative hostility does have a timing component. In order for Black women to have a fairer opportunity to get honest and untainted evaluations, institutions must be aware that if students suspect that they are going to receive a grade that they do not desire, which is likely to be the case in any class that has a required curve, they will "retaliate."⁴⁶³ Then the evaluations of a Black female will be even more negatively affected. Institutions can, therefore, schedule the timing of an evaluation to ensure that the evaluation is not so adversely affected by exam or grade anxiety.

In my situation, the administration could have performed multiple evaluations—one in the fall before the midterm exam and one in the late spring. Given the fact that I was not only impacted by students' hostility to my midterm grading in December, but by the final grades from my other white colleagues in February and March, this timing aspect of student hostility is difficult to work around unless the entire BCLS first-year curriculum is changed such that students do not receive grades in February/ March that interrupt their recovery from their initial grade shock in December/ January. When such a period of grade recovery is interrupted, many students' self-esteem takes another hit perhaps before they are prepared for it. This is so given the mandates of the curve.⁴⁶⁴

It appears that when recovery from a disappointing grade is interrupted in a Black woman's class by the grades of other colleagues, students act as if their only recourse is to show their displeasure by hostile interactions in her class and negative ratings and comments on her evaluations (even though the grades are not her grades and she had no control over them). Perhaps it is the

462. *See id.*

463. Nimmer & Stone, *supra* note 416, at 207 (finding that student ratings were directly affected by grading practices and this effect was a function of the time at which ratings were completed).

464. Perhaps one recommendation is to eliminate the curve so that professors have more flexibility in how they grade.

trifecta of vulnerability that causes a Black woman to be so negatively affected by grade timing, i.e., race vulnerability, gender vulnerability, and tenure vulnerability. This trifecta also makes a Black woman more vulnerable because evaluations reverse the normal power dynamic and give students an opportunity to exercise their recognized institutional power in a way that can negatively impact a Black woman's ability to obtain tenure, seek other academic opportunities, and pass any contract renewal review.⁴⁶⁵

In addition to the above, each member of an institutional community must be committed to speak when there is a *risk* that an evaluation process, be it tenure or other promotion, is infected with racial and gendered bias, especially as retrenchment and retrenchment denial is creating white silence surrounding Black exclusion in all educational arenas. Many times colleagues do not speak when bias is shown. One Black woman described her unmet expectations of a previously sympathetic colleague:

[p]ractically everything got trivialized and picked at—if not simply dismissed [during the promotion and tenure process]. The unkindest cut of all came from a [white] woman on the promotion and tenure committee who apparently did not forcefully contradict the trend or tone of the evaluation but who I had thought might do so, if not from pure feelings of empathy and scholarly appreciation, then certainly from political awareness.⁴⁶⁶

When colleagues who claim that they are individuals of good faith fail to speak when bias is shown, then they are just as much a problem as those who are knowingly acting in bad faith.

In addition to these institutional strategies, Black women also can walk more easily down the tenure path by recognizing the synergism of negativity and by manipulating student and colleague perceptions. Such strategies are discussed below.

B. Providing Strategies for Sapphires to Navigate and Manipulate the Effects of the Synergism of Negativity

Black women teaching during retrenchment must move beyond their own denial that retrenchment has not negatively impacted

465. See SANDLER ET AL., *supra* note 178, at 89 (suggesting that a way to counter the biases in student evaluations is to "place[] in your tenure file an article that summarizes the issues surrounding gender and faculty evaluation").

466. Hull, *supra* note 206, at 59.

collegiality in all professional environments. We must begin to look askance at all representations that some academic environments are safer than others; that some are a community; that there are equality-focused deans; that a critical mass of people of color makes a positive difference in collegiality; and that tenure is a safe harbor. Black women must begin to assume that all such representations are half-truths or absolute falsehoods until the opposite is affirmatively shown to be true. While there are some safer academic environments, no environment is entirely safe given the synergism of negativity and the inflexibility of both the presumption of incompetence and the Sapphire myth. Due to the particular denigration that Black women face because they are Black women, none of us are entirely "safe." There is no safe harbor for people of color, including tenure. Before tenure there is tenure vulnerability. Yet when this vulnerability is removed, the individual and combined race, gender, and age vulnerabilities remain.

By not succumbing to the rhetoric of inclusion and the seduction of denial, Black women who enter and who are in legal academia may be more emotionally prepared if and when hostility occurs to ascertain whether their environment is hostile due to the synergism of negativity. Critiquing the environment is a much healthier response for a Black woman than asking herself if she caused the hostility and can prevent it by changing her hair, clothing, demeanor, teaching style, credentials, pedagogy, classes, and the like.

As with institutions, Black women who are perceived as Sapphires must begin to focus on those aspects of racial isolation, retrenchment, the presumption of incompetence, and the Sapphire myth that will affect their ability to succeed in academia, i.e., authority and evaluative hostility.

As Black women are presumed to be unintelligent and not sufficiently credentialed, it is perhaps worth the risk to introduce one's credentials at the beginning of the class. The risk of credential hostility, though real, may be too small to not attempt to establish credibility and to destroy the presumption of incompetence immediately. After all, credential hostility may fade, but the presumption of incompetence will only solidify if it goes unchallenged.

Another strategy that Black women may want to employ is to manipulate the strong white desire for Mammy. Black women can consciously decide to mimic those behavior characteristics such that they more likely than not to be perceived as Mammy to avoid the

anti-Mammy/Sapphire backlash. Given that the Mammy myth has both an appearance and a behavior component, Black women can choose to manipulate their clothing, hair, teaching behavior, pedagogy, and courses to suggest Mammy-ism to students.

This is a difficult suggestion to make because Mammy-ism is a particular psychological disorder,⁴⁶⁷ because it demands acquiescence to white supremacy and misogyny. Believing that one can positively manipulate the negative perceptions whites hold without negatively impacting one's self-esteem and psyche is a horrible myth. By not contesting the desire whites have to find a Mammy in all Black women, Black women lose an important opportunity to confront this reality openly. James Baldwin describes the inherent conflict in attempting to manipulate perceptions and how doing so limits necessary confrontations about false perceptions which then negates a healthy psyche for Blacks:

I had become very accomplished . . . at guessing and, therefore, to a limited extent manipulating to my advantage the reactions of the white world. . . . I knew very well what Americans saw when they looked at me and this allowed me to play endless and sinister variations on the role which they had assigned me; since I knew that it was, for them, of the utmost importance that they never be confronted with what, in their own personalities, made this role so necessary and gratifying to them, I knew that they could never call my hand or, indeed, afford to know what I was doing; so that I moved into every crucial situation with the deadly and rather desperate advantage of bitterly accumulated perceptions of pride and contempt. This is an awful sword and shield to carry through the world, and the discovery that, in the game I was playing, I did myself a violence of which the world, at its most ferocious, would scarcely been capable . . .⁴⁶⁸

Thus, manipulating any aspect of the Mammy myth may do untold damage to a Black woman's psyche. Because the Mammy myth, its behavior component, and its appearance component contain very negative connotations about Black women, especially Mammy's acquiescence to white supremacy and rank misogyny, many black women may find it repugnant to manipulate. For those

467. Unfortunately, if the idea of Mammy is internalized and not consciously manipulated, a particular psychological disorder may result. See Abdullah, *supra* note 243, at 196, 198 (discussing Mammyism as a psychological disorder and whether Black women in academia have manipulated the Mammy myth in this way and need to be studied further).

468. JAMES BALDWIN, NOTES OF A NATIVE SON 144-45 (1955).

who can stomach this type of perception manipulation, manipulating Mammy is an option to be explored.

Instead of accepting the Mammy stereotype, Black women also can attempt to obtain a more level playing field by manipulating those factors that are manipulable, but which will not negatively impact a healthy psyche. For instance, Black women can recognize that there is a link between when evaluations are given and when students receive a hint of what their grades will be. Given that most law schools require a curve, most of the students will be unhappy about their grades. This unhappiness will accrue to the detriment of Black women who are so vulnerable given their race, gender, and institutional vulnerability. Black women should consider manipulating the link between timing and student hostility by demanding that an evaluation be performed before grading. If one's institution is not responsive to a Black woman's timing vulnerability,⁴⁶⁹ Black women should consider doing their own informal evaluations before they grade students in any respect. I, for instance, gave students an informal questionnaire, and the results from the questionnaire were much more positive than the post-grading formal evaluation.

Black women should create their own questionnaires so that they can ask specific questions about good teaching in order to manipulate any difficulties students may have with selecting the global response that a Black woman is an excellent professor. In this same vein, Black women should lobby within their institutions for the formal evaluations to be modified so that they ask specific questions about qualities that give rise to good teaching rather than a general response on whether a professor is a good teacher.⁴⁷⁰ This will help ensure that the evaluative process is fairer to Black women and others who are tenure vulnerable.

Black women should aggressively lobby for tainted evaluations from the past to be eliminated entirely from their records or discounted, especially if the class that created the tainted evaluations was steeped in racial controversy throughout the year (racial flyers, hate mail, racial meetings, etc.) or if there were racist,

469. One commentator has suggested that ignoring the timing vulnerability issue may present important legal issues. See Nimmer & Stone, *supra* note 416, at 212 (noting that "the fairness, validity, and perhaps the legality of using" student evaluations for such purposes as contract renewal and tenure decision is questionable).

470. William Mitchell Law School in St. Paul, Minnesota studied their evaluations to ascertain whether there was gender bias and have modified the formal evaluations based upon what they found. See generally Deborah A. Schmedemann, *The Eyes of Beholders*, in FRESH LOOKS AT TEACHING AND LEARNING LAW: INSTITUTE FOR LAW SCHOOL TEACHING AT GONZAGA UNIVERSITY (June 11, 1999) (copy on file with this author).

sexist, or racist/sexist comments on the evaluations themselves.

Black women should also videotape classes and have these videotapes critiqued by other professors of color. This will create an important record of excellence in teaching by others who share your points of vulnerability, be it race vulnerability, gender vulnerability, or both. In this same vein, Black women should also invite trusted colleagues to classes to provide constructive critiques of teaching before any formal review for promotion or tenure.

Black women must be continuously prepared to demand institutional support and patronage if racial and/or gendered hostility affects them in the classroom or with colleagues. Unfortunately, I tried this tactic unsuccessfully. If institutional support and patronage are not forthcoming, Black women must be willing and able to seek external help. Let others know about the specific trials and tribulations you are facing from students and colleagues. Be prepared to bring a lawsuit if that is necessary. Change jobs. Change classes. Perhaps it is the first-year curriculum or other specific aspects of law teaching that increase the risk of negative evaluations. Write about the experience, the institutional responses, and your attempts to obtain equality in a hostile environment.

Black women and other women of color must continue to write about their academic experiences. We need many more voices, Black, white, Hispanic, Latina, Asian, male, and female to assess the effects that retrenchment, racial isolation, the presumption of incompetence, and many other factors are having on professors of color in legal academia. We need to know the specific ways that these factors affect other women of color. What is the Latina equivalent of Sapphire and Mammy? What is the Asian equivalent?⁴⁷¹ How are women in the South affected by the synergism of negativity? Is it different than women in the North, the Midwest, and the East? Or is it all very similar?

In addition to all of the above, Black women, and indeed all professors of color, must accept and efficiently bear the added burdens and risks of being the people "teaching" the Retrenchment Generation. We must perform the necessary education work to ensure that our personal work environments are safer not only for ourselves, but for those who follow us.⁴⁷² If we do not, then we fail

471. I am in the process of revising the Bell/Delgado survey in order to answer some of these questions and to take a pulse of the state of professors of color in legal academia, all of whom are teaching under racial isolation (in one aspect or another), retrenchment, and the presumption of incompetence.

472. See generally Harris, *supra* note 117, at 125 (referring to training white colleagues

horribly in keeping the doors of legal academia open and in ensuring that legal academia becomes a safer, if not a safe, environment for all professors of color, in the present and future.

C. *Be Sapphire Bound!*

Despite the above suggestions and the perception that Sapphire is a negative stereotype used to devalue Black women's natural responses to denigration and degradation, Black women can choose to reclaim Sapphire from the negative perceptions to which she is held. If Black women who are hard-working, intelligent, educated, talkative, straight-forward, quick-tempered, assertive, and angry are going to be perceived as Sapphire, perhaps it is time that Black women begin to see the positive in what society defines as a negative stereotype. Many Black women can proclaim: "I am not a [Sapphire] solely by nature, but by circumstances and choice as well."⁴⁷³

After all, it is this misogynistic and white supremacist society that proclaims that an intelligent Black woman is negative unless her intelligence is used to serve and acquiesce to white supremacy. It is this same society that proclaims that an educated, hard-working, and intelligent Black woman is intimidating, threatening, and angry. It is this same society that attempts to demand that Black women be less than they are in order to be acceptable, especially to perform their jobs.

For Black women, positive characteristics such as intelligence and assertiveness are perceived as negative only because society demands that they be so. In redefining and reclaiming the Sapphire in all Black women, Black women can and indeed must choose to see the positive in all of these characteristics, by rejecting the negative conclusions that society tries to impose. Black women can choose to be intelligent and intellectually sophisticated. Choose to be demanding and rigorous. Choose to be assertive. Choose to highlight and showcase their education. Choose to be bitchy, talkative, quick-tempered, argumentative, and stubborn when the situation demands it. Given the synergism of negativity that is causing less and less collegiality, situations may demand that Black women simply tell the truth in the best way they know how.⁴⁷⁴ That

regarding people of color's daily struggles with racism as education work, discussing the dangers associated with undertaking such training, and the rewards attendant upon making the effort).

473. Austin, *supra* note 8, at 540.

474. Some Black women who are perceived as Sapphire, due to either appearance or

may mean risking being perceived as quick-tempered, argumentative, stubborn, and bitchy.⁴⁷⁵

The aspersion cast at Black women's emotional responses to white supremacy and misogyny raises a real risk that Black women will repress natural emotions, becoming too afraid to demand equality and fairness. Black women should be angry at the continued existence of racism and sexism. Black women should feel short-tempered and impatient when institutions fail to recognize the effects that racism and sexism have on Black women's careers. Black women must be straightforward and argumentative in order to demand that racism and sexism be addressed and eliminated. By accepting Sapphire, Black women accept their right to demand equality and fair treatment, with all of the emotion that such a demand requires. Sapphire must exist as a response to white supremacy and misogyny. Reclaiming Sapphire and accepting this reality will ensure Black women's success and survival.

I am certain that by writing this Article, I will be stamped with the Sapphire label I was trying to avoid. Simply by being a Black female law professor, I was perceived as a Sapphire initially by circumstance. By speaking about institutional and student oppression, I become a Sapphire by choice.

Black women must give up the fear of being Sapphire. We must relinquish the idea that somehow we can manipulate other's negative emotions and perceptions by being different or less than who we are. Perhaps Nelson Mandela was right when he proclaimed:

*Our Deepest Fear Is Not That We Are Inadequate.
Our Deepest Fear Is That We Are Powerful Beyond Measure.
It Is Our Light, Not Our Darkness, That Most Frightens Us.
We Ask Ourselves,
"Who Am I To Be Brilliant, Gorgeous, Talented And Fabulous?"
Actually, Who Are You Not To Be?
You Are A Child Of God.
Your Playing Small Doesn't Serve The World.
There's Nothing Enlightened About Shrinking*

behavior, may be taking this route. See, e.g., Coleman, *supra* note 255 (describing Star Jones's reputation for speaking her mind); McDaniel, *supra* note 255 (describing Star Jones's blunt use of humor); Perkins, *supra* note 255 (describing Mother Love as "sassy, spunky and loud"); Thomas, *supra* note 255 (describing Mother Love's reputation for speaking her mind while being nurturing toward her audience).

475. The education work that Angela Harris defines may require these no-nonsense characteristics in order for Black women to survive and be heard. See Harris, *supra* note 117, at 125.

*So That Other People Won't Feel Insecure Around You.
We Were Born To Make Manifest The Glory Of God That Is
Within Us.*

*It's Not Just In Some Of Us; It's In Everyone!
And As We Let Our Own Light Shine, We Unconsciously Give
Other People Permission To Do The Same.
As We Are Liberated From Our Own Fear,
Our Presence Automatically Liberates Others!*⁴⁷⁶

Black women can choose to stop "playing small" so that others, be they white students or colleagues, feel more comfortable in their presence. It is only through the lens of racial isolation, retrenchment, and the presumption of incompetence that Black women are perceived as threatening, angry and unintelligent. We must not be complicit in society's view of us. In the very nature of being perceived and labeled as a Sapphire, there are opportunities for individual and community salvation. Black women can choose to redefine and claim Sapphire for themselves. In the words of Regina Austin, perhaps it is time for all Black women to be *Sapphire Bound*!⁴⁷⁷ If there is no true difference between being a Sapphire and being perceived as one, especially in legal academia, Black women might as well choose to be Sapphire. Perhaps then we can begin to see the benefits of redefining Sapphire for ourselves.

After all, a Sapphire is one of the most precious of fine jewels. A jewel deep blue in color, almost black. Depending upon whether it is man-made or genuine, the colors range from pure white to the deepest blue with a fire that cannot be extinguished and with a vibrancy to behold. A Sapphire is more diverse than diamonds, more adaptable than rubies, and more enduring than emeralds. These are the types of qualities that Black women will need in order to survive and excel in racially resegregative post-retrenchment legal academia. We can find these very qualities in choosing to be Sapphire bound!

VII. CONCLUSION

I am an educated Black woman. I am a law professor by trade. Unfortunately, my very existence in the legal academy threatens the white hierarchy upon which the ivory tower depends. To ensure that this power hierarchy remains, students who are attending law schools during retrenchment and hyper-resegregation are given

476. Nelson Mandela, 1994 Inaugural Speech (copy on file with author).

477. Austin, *supra* note 8, at 541.

more and more power to oppress professors of color. This is shown through the tendency of institutions to rely on student evaluations in promotion and tenure, despite the wealth of research showing that evaluations are tainted by race, gender, and race/gender bias.

Using my experiences and academic research, this Article has shown how the traditional power dynamic between a law professor and her students is reversed when Sapphire is the Socrates in the front of the classroom. It has shown that the very racialized and gendered nature of the ivory tower ensures that when Sapphire is Socrates, she is unwelcome and ultimately attacked. It has shown how the continued denigration of Black people is one mechanism that allows Black women's authority as law professors to be diminished by institutions' failure to recognize the existence of student racial hostility and the institutions' role in creating and solidifying this hostility.

I am a Sapphire, though I tried not to be. Despite my best efforts to the contrary, I now realize that my very being creates and causes express and implied student and institutional hostility. It is not my actual activity or behavior that creates this hostility and envy; it is perceptions about me. It is perceptions about my Blackness. My femaleness. My education. My professionalism. My age. My credentials. My authority. My grading. My existence. It is all of these factors individually and combined that interact to create excessive student hostility when Sapphire meets Socrates at the intersection of race, gender, and authority.