

Women of Color in Law Teaching: Shared Identities, Different Experiences

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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 law¹

Women of color who teach law share their gender with their white female counterparts and their race with men of color in law teaching.² But their experiences in the legal academy differ significantly because of their particular vantage point at the intersection of gender and race. Theirs is a unique perspective.³ Some commentators have even observed that women of color in the legal profession as a whole bear the burden of both identities and the privileges of neither.⁴ Others have made similar observations about the experiences of women of color in the legal academy.⁵ Indeed, many have noted how

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1. 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 (1990-1991).
2. I use the term "women of color," much as Herma Hill Kay does, to include African-Americans, Asian-Americans, Latinas, and Native Americans, as well as South-Asian-Americans who define themselves as women of color. These identifications are also based on my personal knowledge and on listings in the AALS Directory of Minority Law Teachers. But because I am African-American, the experiences of African-American women law teachers will undoubtedly dominate this discussion. See Herma Hill Kay, *UC's Women Law Faculty*, 36 *U.C. Davis L. Rev.* 331, 334 n.8 (2003).
3. See Taunya L. Banks, *Two Life Stories: Reflections of One Black Woman Law Professor*, 6 *Berkeley Women's L.J.* 46, 56 (1990-1991); Berta Esperanza Hernandez-Truyol, *Borders (En)gendered: Normativities, Latinas, and a LatCrit Paradigm*, 72 *N.Y.U. L. Rev.* 882, 882-84 (1997).
4. *Commission on Women in the Profession & Commission on Opportunities for Minorities in the Profession*, American Bar Association, *The Burdens of Both, The Privileges of Neither: A Report of the Multicultural Women Attorneys' Network* (Chicago, 1994).
5. See generally 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 (1992).

inhospitable the law school environment can be for both women and people of color in general.⁶ Yet despite their odds for success, it is fair to say that women of color in law teaching have managed, for the most part, to survive and in some cases to prosper. But the struggle has not been an easy one.

Historical Perspective

[O]ur experiences extend the challenges of others who have gone before us.⁷

As with any progressive movement for social change, the story of women of color in law teaching begins with the early pioneering women who intrepidly ventured there. Emma Coleman Jordan has described three pioneering African-American women who “represent a complex legacy of achievement in the legal academy” and who were, indisputably, “an exciting presence in legal academia.”⁸ No doubt women of all colors have similarly described their pioneering female predecessors. In short, women law teachers of all colors have had remarkable predecessors who could serve as significant role models.

After the women’s movement of the 1960s and 1970s ushered greater numbers of women of all colors into law schools, the first wave of women of color in law teaching began in the early 1970s. Given the general absence of white women and people of color in the legal academy, nonwhite women in this first wave were unlikely to benefit from the guidance of any mentors like themselves. Many found themselves isolated unless the mentor role was assumed by their white colleagues. For some, at least, the pioneering women of color could serve as role models.⁹ Whether they were capable of being mentors is quite another matter. The experience as the *first* could be quite daunting, especially if, as Marina Angel has observed, you were part of a *perpetual* first wave.¹⁰

For example, consider the early experience of Joyce Hughes, the first African-American woman to teach at a predominantly white law school. Her experience was anything but pleasant.¹¹ She was the only faculty member of color at her institution. Hughes refers to her experiences there as “horren-

6. See, e.g., Leland Ware, *People of Color in the Academy: Patterns of Discrimination in Faculty Hiring and Retention*, 20 *B.C. Third World L.J.* 55, 68–72 (2000).

7. Emma Coleman Jordan, *Images of Black Women in the Legal Academy: An Introduction*, 6 *Berkeley Women’s L.J.* 1, 11 (1990–1991).

8. *Id.* at 20. Jordan describes the travails of Sybil Jones Dedmond, the first black woman to teach law full time and attain tenure; Patricia Roberts Harris, the first black woman law dean; and Jean Camper Cahn, cofounder of a pioneering law school in clinical legal education.

9. For an explanation of the important distinction between *role model* and *mentor*, see Banks, *supra* note 3, at 46. Of course, as my colleague pointed out in a later conversation, a mentor can also be a role model, an icon. But as a practical matter a mentor is also capable of interacting personally with a junior colleague, giving advice and counsel.

10. See *Women in Legal Education: What It’s Like to Be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 *Temp. L. Rev.* 799, 800 (1988).

11. See Joyce A. Hughes, *Neither a Whisper nor a Shout*, in *Rebels in Law*, ed. J. Clay Smith, 90 (Ann Arbor, 1998).

dous.”¹² And such experiences weren’t limited to those pioneering few in the first wave. Others entering the legal academy in subsequent waves have described similarly daunting experiences, especially when they were the only ones of color at their institutions.¹³ Given the intersection of gender and race, perhaps it should not be too surprising that these negative experiences have persisted for entering women law teachers of color throughout subsequent decades.

On a positive note, the number of women of all colors entering law school continued to increase well into the 1980s and 1990s, expanding the potential pool of female applicants for law faculty positions. The second wave of non-white women in law teaching had potential mentors to counsel them on the perils of the struggle to survive in the legal academy, assuming they were lucky enough to be at an institution with more than one woman of color on the faculty. Unfortunately only a few were so lucky, given the apparent pattern of hiring only one woman at a time, let alone more than one woman of color at any given time.¹⁴ And at least one commentator has suggested that women of color who survived to achieve tenure are likely to be among the generation of walking wounded and, therefore, unlikely to be effective mentors.¹⁵ Nowadays, with more women in the applicant pool, more women of all colors are in a better position to mentor, especially at institutions where they are not the only senior faculty of color.

Those of us on the East Coast were fortunate enough to have been beneficiaries of a group of African-American women in law teaching known as the Northeast Corridor Collective. It was the brain child of Emma Coleman Jordan and Linda Greene, whose early guidance and mentoring were enormously helpful to me.¹⁶ Even though women now represent close to the majority of the law student population across the country, informal groups

12. Joyce Hughes, *Different Strokes: The Challenges Facing Black Women Law Professors in Selecting Teaching Methods*, 16 *Nat’l Black L.J.* 27, 33 (1998–99).

13. See, e.g., Catherine Pierce Wells, *The Perils of Race and Gender in a World of Legal Abstraction*, 34 *U.S.F. L. Rev.* 523 (2000); Emma C. Jordan, *Nepenthe*, 6 *Berkeley Women’s L.J.* 113 (1990–91); Pamela J. Smith, *Teaching the Retrenchment Generation: When Sapphire Meets Socrates at the Intersection of Race, Gender, and Authority*, 6 *Wm. & Mary J. Women & L.* 53 (1999).

14. See, e.g., Kay, *supra* note 2, at 382 (citing Deborah J. Merritt & Barbara F. Reskin, *Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring*, 97 *Colum. L. Rev.* 199, 230 table 1 (1997); see also Angel, *supra* note 10, at 805. Angel cites, among others, Rachel Moran, *Commentary: The Implications of Being a Society of One*, 20 *U.S.F. L. Rev.* 503 (1986).

15. This observation is attributable to Judy Scales-Trent, who once, in a conversation with Taunya Banks, questioned the ability of those of us who survived and achieved tenure in the legal academy to be mentors to those who come after us. Cf. Kay, *supra* note 2, at 352–53.

16. For more on the Northeast Collective, see Jordan, *supra* note 7, at 3–4.

The appointment of Taunya Banks, who was part of the first wave of women law teachers of color, to a senior position on the faculty at my institution was also fortunate for me; she helped to support me through the unnecessarily hellish ordeal of the tenure process. And I will always feel indebted and eternally grateful to the members of my tenure promotions subcommittee for their tremendous efforts and encouragement. Without their support and that of others (and they know who they are), I might not have seen it through to the end.

like this one are still very much needed for women of color in particular. Today the collective continues to provide women of color a safe place for scholarly feedback, as well as mentoring for the third wave of nonwhite women now entering the legal academy.

Undoubtedly the experiences of women of color will change with each successive group of beginning law teachers. But how women fare in the legal academy generally, especially women of color, is a question for continuing debate. And for women of color, is the law school environment still hostile, alienating? Do they lose their essential selves in order to be part of the whole, especially during the pretenure process? What about hiring and retention? Have we reached a critical mass yet? Some of these questions are explored below.

Against the Odds

We are misfits, not fully accepted by the Black or White community, and as women, we still are not full members of the feminist community.¹⁷

The odds of success in the legal academy are stacked against women of color from the start. This is so for any number of reasons, but a few come quickly to mind. First, only a small number of women of color occupy tenured or tenure-track positions.¹⁸ In the profession overall, in fact, women of color continue to be underrepresented.¹⁹ If their numbers remain low, their pursuit of the brass ring—for academic women, tenure—is likely to be difficult at least for a while longer.

Second, the law school environment has always been perceived as hostile to outsiders, especially so-called misfits of all colors, classes, and sexual orientation. Unfortunately, many (admittedly not all) men in the legal academy, whether intentionally or otherwise, persist in making the environment unwelcoming to female faculty.²⁰ An unwelcoming environment has potential impact on other aspects of the law school experience. For example, a hostile environment eventually finds expression in the classroom. It is as though the environment allows, or even encourages, some students to treat the outsider differently—or worse, with disdain.²¹ A hostile environment also affects decisions about recruiting and hiring faculty of color, and about their retention, which is an entirely separate matter.²² There is evidence that women of color

17. Banks, *supra* note 3, at 48.

18. See Law School Admission Council, *Taking Stock: Women of All Colors in Law School Databook 12* (Newtown, 2003); AALS online statistical report at <<http://www.aals.org/statistics/TIB.htm>> (last visited Oct. 8, 2003).

19. Commission on Women in the Profession, American Bar Association, *The Unfinished Agenda: A Report on the Status of Women in the Legal Profession* (Chicago, 2001).

20. See, e.g., Trina Grillo, *Tenure and Minority Women Law Professors: Separating the Strands*, 31 *U.S.F. L. Rev.* 747, 748–49 (1997).

21. See generally Okianer Christian Dark, *Just My 'Magination*, 10 *Harv. BlackLetter L.J.* 21 (1993).

22. See generally Albert T. Quick & Kent D. Lollis, *Retention of Minority Professors: Dealing with the Failure to Presume Competence*, 10 *St. Louis U. Pub. L. Rev.* 361 (1991).

bear a double burden and are particularly harmed by the “unflattering images that undermine our effectiveness as teachers and scholars.”²³

But perhaps the most debilitating factor that militates against success is the perception that people of color are intellectually inferior or less well qualified. This is, arguably, latent racism. It is not the reality, according to Richard H. Chused’s empirical study in the late 1980s on the hiring and retention of law faculty, specifically women and minorities.²⁴ Unfortunately, my observations over the past twenty years in academe lead me to believe that perceptions about who is qualified to teach will probably not change much in the years to come and the affirmative action debates will continue, the Supreme Court’s landmark decision in *Grutter v. Bollinger*²⁵ notwithstanding. Enter the myth of meritocracy.

More than for any other cohort, a perception exists that women of color who teach law are less qualified than their white female or their male counterparts. A stigma also attaches to efforts to increase their hiring, because society tends to equate affirmative-action hiring with being less well qualified or, at least, lacking the type of merit or credentials or intellectual acumen that is assumed for white law teachers, especially white males.²⁶ And some still believe that the person of color has been hired over a more highly qualified white male candidate,²⁷ even though studies have shown this not to be the case.²⁸ It is time to let go of the myth, which should have been long gone by now. Unfortunately, full equality and equal professional access remain only aspirational goals.

One aspect of the law school environment that has especially bothered me is a reluctance to acknowledge that my experiences in the classroom, and those of other people of color, may well be different—sometimes vastly so—from those of my white peers. Common sense alone says it must be so. But for some reason, rational or otherwise, some are reluctant to even consider the possibility that students’ perceptions of a teacher’s ability may be tinged by societal evaluations of racial or gender inferiority, i.e., the “usual” stereotypes. Moreover, some tend to think in rather neutral terms about this issue and view those of us expressing counter-experiences as having chips on our shoulders or making much ado about something insignificant.²⁹ This further undermines us and adds to our frustration.

This observation about racial and/or gender inferiority brings forth concerns about stereotypes and subtle or even overt hostility sometimes expressed

23. Jordan, *supra* note 7, at 10; see generally Merritt & Reskin, *supra* note 5.

24. See generally The Hiring and Retention of Minorities and Women on American Law School Faculties, 137 U. Pa. L. Rev. 537 (1988).

25. 123 S. Ct. 2325, 156 L. Ed. 2d 304 (2003).

26. Merritt & Reskin, *supra* note 14.

27. See generally 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. Rev. 259 (1993).

28. Merritt & Reskin, *supra* note 14.

29. See, e.g., Dark, *supra* note 21, at 28–30.

on student evaluations.³⁰ Despite students' positive observations, more credence seems to be given to negative student evaluations in promotion and tenure meetings—at times, much more. Such consideration not only lacks scientific validation but has the potential to affect promotion and retention reviews unfairly. Still, many in academe view student criticisms as legitimate fair assessment of teachers' ability and are unwilling, for whatever reasons, even to acknowledge such a possibility.

In short, our abilities are always in question. A friend once said that people of color in general, no matter how great their competence, are never able to bank on it.³¹ Every day is a test. No reserves are available to us to draw upon if, let's say, we happen to fall short of the mark in classroom performance. In other words, there are no presumptions of competence in our favor. We have to prove ourselves again and again.

Another potential obstacle to our success is that we must choose between being our essential self and expressing our own unique voice, or conforming (i.e., assimilating or being coopted) to the white male paradigm. This is a quandary that women of color must address when they enter the legal academy. Negotiating between these two paradigms or maintaining multiple identities in the process is anything but easy. It saps one's energy and, when combined with other negative factors, can lead to unfortunate outcomes.³² Becoming marginalized also has its impact on one's social and mental well-being. Add to the quandary of fitting in the insanity of the tenure process,³³ with its undermining and debilitating effects, and you have the possibility that long-term retention for women of color will always be in jeopardy.

Notably, the ever present problem of racism in this country also impacts women of color, excluded from the legal academy for the better part of the last century. And despite efforts of various organizations such as the AALS and the ABA through their many diversity initiatives, still only small numbers of people of color enter and remain in the legal academy.³⁴ This is so notwithstanding such laws as Title VII, which was intended to help alleviate institu-

30. Others have written about this phenomenon as well. See, e.g., Gabriela Montell, *Do Good Looks Equal Good Evaluations?* Chron. Higher Educ. <<http://chronicle.com/jobs/2003/10/2003101501c.htm>> (Oct. 15, 2003).

31. Cf. Quick & Lollis, *supra* note 22, at 363 (describing the failure to presume the competence of faculty of color as "the most destructive force standing in the way of diversity"); see also *id.* at 363–64.

32. See, e.g., Banks, *supra* note 3, at 51; Hernandez-Truyol, *supra* note 3, at 882–84.

33. [T]he system of getting tenure is crazy for everybody The problem that faces minority women is this: we cannot tell how much of the craziness has to do with sexism and racism—alone or in combination, expressed overtly or expressed covertly through institutional politics—and how much has to do with a fundamentally crazy system.
Grillo, *supra* note 20, at 747–48.

34. Ware, *supra* note 6, at 61 (citing Chused, *supra* note 24; Richard Delgado & Derrick Bell, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 Harv. C.R.-C.L. L. Rev. 349 (1989)).

tional racism.³⁵ And in the area of employment discrimination, courts tend to keep hands off the academy.³⁶ So racism will probably continue to be a factor.

Fortunately, the Supreme Court's decision in *Grutter v. Bollinger* is a hopeful sign that in the immediate future schools will still seek to diversify their faculties along with their classrooms. But we may see a backlash driven by concerns about reverse discrimination and lack of merit. So the struggle, if won, will be at a cost.

Surviving at a Cost

Our task cannot merely be to accommodate ourselves to the demands of the academy although first we must survive.³⁷

No woman of color easily attains success in the legal academy. It comes at a price. A lot of doubts, anxieties, dilemmas, and negative subtleties permeate the whole experience. And I would argue unnecessarily so. Many are the times that women of color, in particular, communicate with another at a different institution if no other sympathetic soul is available to engage in so-called reality checks. But probably the greatest threat to our success is the perception that we don't measure up intellectually to our white peers, male or female.

This is, arguably, where men of color fare better; the long acceptance of male domination in effect privileges them, as their race arguably privileges white women. Women of color feel this sense of intellectual inferiority more keenly because of women's usually greater willingness to acknowledge their shortcomings. In short, we are more realistic about our capabilities, as are most women regardless of color. For us the overall experience in the legal academy can be mercilessly debilitating, mentally and emotionally.

Self-knowledge can be an advantage if one uses it to improve or make appropriate accommodations. But there is a downside to all these reality checks. If others manage to undermine us—whether intentionally or not—we may, in effect, succumb and elect to leave the academy without a fight. And that course would be most unfortunate, though it's a valid choice when survival is at stake. But as Joyce Hughes recently said, "Survival in higher education is not automatic," contending that permanence should be the goal for women of color.³⁸ In short, it is paramount that women of color attain tenure status at their respective institutions.

During my tenure ordeal I often thought of leaving (among other thoughts). Indeed the outgoing dean at the time suggested that I find a job somewhere in law school administration. The insular life of the academic causes the self-doubter to tie her self-esteem to any and all criticisms whether or not justified. And reading student evaluations of her teaching can be a particularly painful

35. See Ware, *supra* note 6, at 65–68.

36. *Id.* at 68 (citing William A. Kaplin & Barbara A. Lee, *The Law of Higher Education: A Comprehensive Guide to Legal Implications of Administrative Decision Making* 215 (San Francisco, 1995)).

37. Cheryl I. Harris, *Law Professors of Color and the Academy: Of Poets and Kings*, 68 *Chi.-Kent L. Rev.* 331, 351 (1992).

experience.³⁹ As a result, she may internalize every negative judgment expressed in those evaluations despite the presence of positive ones.⁴⁰ So she absolutely must know and understand what's really going on.

The more women of color write about their experiences and share their stories, the greater the validation for others who follow them. Those who come after will know that triumph is a real—not an elusive—possibility in legal academe.⁴¹ We are strong and we are survivors despite the odds. We can achieve success in law teaching if we take charge of our own destinies and capitalize on all that has gone before us. In other words, we must not be deterred by perceptions that we do not measure up.

Most important, the woman of color must hold on to her true self, her essential identity. This is where our strength lies that enables us to even thrive and prosper. Concern about teaching, student evaluations, writing, and so on, can admittedly take its toll even in the most hospitable environment. There's something about negative subtleties and the impact they have on one's psyche that is so pernicious. Keep your counsel, or seek out others who share like experiences. All that the woman of color can do and look to for strength and healing is to rely on her true self, and hope that her battle for survival will not cost her dearly.

A Promising Future Nonetheless

[T]he human spirit is resilient and . . . it is worthwhile to analyze the process by which we can sometimes create and sustain our own positive momentum.⁴²

Not surprisingly, survival has been a key factor in the success that women of all colors have experienced in academe. And our success is due in no small measure to the resiliency of the human spirit. Furthermore, permanence in the form of tenure status is an attainable goal. A promising future lies ahead. And a positive assessment of the permanent status of women of color in the legal academy is realistic for several reasons.

At some point soon, women of all colors are likely to be the dominant force in the profession and in academe notwithstanding the fact that old habits—i.e., white male dominance—tend to die hard. And those of us in academe like to think of the academy as populated by enlightened colleagues who are willing to consider and entertain all possible ideals. Women of color in law teaching and in the profession as a whole notably share common identities with others striving for success in their chosen career paths. Both women of all colors and men of color, as groups previously denied professional access, have

38. Hughes, *supra* note 12, at 33.

39. Grillo, *supra* note 20, at 753–54.

40. Hughes, *supra* note 12, at 33.

41. Okianer Christian Dark was told by her dean at the end of her first year that she was one of the school's worst teachers; a few years later she received the school's Distinguished Educator Award in recognition of excellence in teaching. Dark, *supra* note 21, at 32 n.25. At the 2004 AALS annual meeting she told me that she had, in fact, received the award a second time.

overcome major obstacles notwithstanding their persistently small numbers and the persistent white male domination of the profession.

Also, increasing attention is being paid to the status of women of color these days; witness the Taking Stock conference. This validates and underscores the need to pay attention to their status in the legal academy which augurs for greater inclusion and positive initiatives. The positive energy at that conference was palpable and strong. Everyone, I think, left with a renewed feeling that we were on the right track in addressing the issues even if we still have a way to go before women of color will be fully represented in the legal academy. I am confident that this focus on women of color will be sustained for years to come.

The heterogeneity of women of color in legal education and the variety of their experiences offer the potential for rich collaborations scholastically and pedagogically. The argument for racial and gender diversity does not lead to a race-based degradation of preexisting standards of excellence. Adding diversity merely enhances the richness of the entire enterprise, not to mention reflecting the real world. The number of women in legal education—both students and faculty—is on the rise.⁴³ Is the increased presence of women a measure of success worth noting? Yes. Do obstacles still persist? Yes. Is the old adage about strength in numbers really true? Let's hope that it is.

42. Wells, *supra* note 13, at 531.

43. See generally Richard K. Neumann Jr., Women in Legal Education: What the Statistics Show, 50 J. Legal Educ. 313 (2000).