

Black Women Law Professors and Critical Self-Consciousness:

A Tribute to Professor Denise S. Carty-Bennia

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“Rest in peace, the meaning of your lives is still unfolding. Rest in peace, in me, the meaning of your lives is still unfolding.”¹

Denise’s work will live on through the continued efforts of former students and colleagues. These brief words of her accomplishments can only convey a partial sense of this very talented woman. She was at times gentle and understanding, and at times a tough unyielding fighter for the causes she believed in. She criss-crossed the country, often at her own expense to fight against racism whenever it reared its head. She had enormous faith and compassion for black youth and directed so much of her energy to opening the doors of opportunity for them. She was quite simply, one of the best among us. She will be missed, but long remembered.²

Denise Carty-Bennia³ had a tangible effect, whether positive or neg-

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¹ Alice Walker, *In The Closet of the Soul*, in *Living By the Word* 78, 88 (Harcourt, Brace, Jovanovich, 1988).

² *In memoriam* tribute to Professor Carty-Bennia, from the program of the National Conference of Black Lawyers (22nd Annual Conference), “Challenges Facing The Black Liberation Movement in the 1990s: Environmental Racism, Social and Political Dimensions.”

³ Professor Denise Carty-Bennia (June 28, 1947 - September 11, 1990). Denise grew up in St. Paul, Minnesota, attended Barnard College, and went to Law School at Columbia University. She was a practicing attorney at the New York firm of Kaye, Scholer, Fierman, Hays & Handler. She held several teaching positions over the years, at Northeastern University (where she was tenured), Wayne State, and CUNY. She was a research fellow at the Institute for the Study of Educational Policy at Howard University, and a Charles Revson Fellow for the Max E. and Filomen M. Greenberg Center for Legal Education and Urban Policy at CUNY. She was a member of the National Bar Association, the American Bar Association, the New York State Bar Association, the National Conference of Black Lawyers, and the Massachusetts Black Lawyers Association. During law school she was active in the Black Law Students Association, and she remained an active mentor for the national association thereafter. During her tenure as co-chair of the National Conference of Black Lawyers, she

ative, on every one with whom she came in contact. My own descriptions of Denise, before her recent death, always included this warning: "wherever she is, whatever she sees, whomever it involves, she is going to call a spade a SPADE."

Denise never perceived her mission as one of smoothing over the rough spots. In fact, she was more like a minister of truth who intuitively understood the essence of the baptism by fire. Everyone who knew her marveled when she approached a podium, because we knew that long before she finished someone in the room, and more likely quite a few someones, would be squirming uncomfortably in their seats. A few years ago she was a panelist at a Harvard conference, speaking at a seminar on political perspectives. Apparently each panelist was charged with presenting their vision of a viable national political agenda for black Americans, for the upcoming presidential campaign. Denise was the final speaker. As she stood up and walked over to the microphone, she smiled at the other panelists, all black men, and assured the audience that she had indeed requested to go last, in order to formulate her thoughts. She then began to compliment the men on their approach, emphasizing some of their major proposals. The minute I heard the compliments I prepared myself for the ax that would surely fall. In a honey-toned voice, without a hint of animosity, she asked, where were the proposals for subsidized day care for our children, the educational bills which would assist single female heads of household, and quality vocational training programs for displaced workers? Her style was effective; she forced others to think about their attitudes and hence behavior regarding crucial issues in the movement to end oppression.

Many of us who loved Denise, those she inspired to pursue a law teaching career, believe that the constellation of light that shines down on the injustice, falsehoods, and bias in American legal institutions has lost one of its brightest stars.⁴ She represented intellectual honesty and

forged cooperative links between the National Lawyers Guild and the Center for Constitutional Rights. She became a national spokesperson on affirmative action and civil rights for the NCBL. In 1979 she was nominated to *Who's Who in Black America*. She served for several summers as a faculty member for the Council on Legal Education Opportunities' (CLEO's) summer institute. Id.

⁴ Id, written for Denise by Judy Scully:

NOT ALWAYS

a strong black woman died today, murdered by living.

She was a member of many families, a person who no one thought would ever be alone; and so no one ever asked about her needs. . . I guess we thought she had none.

a strong black woman died today, and many people mourned in total disbelief of the fragility and of the warrior who is no longer.

She had no "handle with care" sign, and she was always prepared, always willing, always able . . . so how could we have recognized her pain?

those of us who worked with her, those of us who learned from her, those of us who knew of her, those of us she loved, needed to believe that she really was a rock as solid and perennial as the earth.

advocated the utility of clearly defined political agendas. We were greatly impressed by her brilliance, struck by her candor, amazed at her courage, and devastated by her death. This article was born out of that grief and my need to express the gratitude I feel about her having been a part of my life.

Black women law professors confront many challenges, as evidenced in the forthcoming pages, that we have not chosen by any reasonable definition of volition or predilection.⁵ Denise stood as a symbol of the strength every black female law professor needs to continue her daily struggles. Before Denise died, I assumed that just mustering up the courage to tell the truth about what I see in the socio-political realm would strengthen me enough to complete each task. I surmised that because I knew, better than anyone, all the places in which I was vulnerable, I was therefore immune to the toll which struggle takes on even those most committed to the cause. I took for granted that Denise would be around for years to come and that we would spend endless hours talking about our mutual concerns, hopes, dreams, and aspirations. Now, much too soon, I am forced to say goodbye. I do so by acknowledging that her influence caused me to think deeply about my role as a black female professor of law and my responsibility as such to assist in defining the goals of social and economic justice.

I bring to my work a critical self-consciousness defined by my particular experiences, which have always been partially, yet never entirely, constructed by race, class, gender, and ideology.⁶ This consciousness includes a cognitive demarcation of the ways in which others attempt to construct black female experience, entitlements, and "reasonable expectations" based on their knowledge of existing social contracts and our "place" in the hierarchical ranks of a world that is intensely race, class, and gender stratified. As black women, we have had to process the meaning of our "otherness" as propagated by the larger society. In addition, we witness daily how this "otherness" is reflected in law and in legal institutions. For example, the diversity debate, which focused particularly on the lack of black women on Harvard's faculty, was carried on in the national media without an internal spokesperson among us. The

We needed to believe that she would always be there to stop the injustice, to organize resistance, to pave the way. . . so we could follow.

But now she's gone, murdered by living, and we are all surprised by her untimely suicide, because we assumed the strong always survive. . .but they don't. . .

not always.

⁵ Linda Greene, *Tokens, Role Models, and Pedagogical Politics: Lamentations of An African American Female Law Professor* 6 Berk Women's L J __ (1991).

⁶ Cheryl A. Wall, ed, *Introduction: Taking Positions and Changing Words*, in *Changing Our Words* 1 (1989). Wall's introduction speaks about black women writers and their critical self-consciousness about positionality, which, she asserts, is defined by a construction of race, gender, class, and ideology that may place us at the margins of the academy but does not ultimately determine the stance we take.

paucity of black female law professors at elite schools became the center of a discussion in which we were not invited to participate. This collection of essays epitomizes what we might have said if presented with a meaningful opportunity.

Through the national media black women law professors hear many refer to our achievements in terms of how they will or should inspire young black women. We are seen as "much needed role models" for these women, and little more. Such coverage implies that we are commissioned to the academy for that reason alone, and sends an unsubtle message that, on the balance sheet of honorable mentions, we are running an intellectual deficit. If our service is undertaken merely to assure young black women that if they work hard enough and play by explicit rules, they too will reap the rewards of a beneficent society, we have been made part of a lie. We are *not* merely votive models; those of us who are distraught at the intellectual dishonesty found in the law and legal institutions posit as our primary task the development of strategies to move the concerns that we have as black female academicians closer to center stage.

What are our concerns? Can they be prioritized? Do we owe allegiance to others for our opportunity to "join the party?"⁷ Are we anything more than a microcosm of subgroups, of *out groups* that want desperately to be *in*? The answers to these questions will be surprisingly varied depending upon which black female law professor is asked. After all, in many ways we members of the Collective are very different. Geographically, most of us live on the East Coast in cities with significant minority populations, yet some of us live in Midwestern cities with black populations as low as three percent. Our political viewpoints span most of the continuum, with some of us left-leaning, others moderate, and a few almost conservative. There are even some neo-vegetarians, religiously intolerant of political scrabble, amongst us. Likewise, we have made lifestyle choices of every variety: some of us are mothers, a few of us are lesbians who choose to remain "closeted,"⁸ and a number of us

⁷ Frances Lee Ansley, *Stirring the Ashes: Race, Class and the Future of Civil Rights Scholarship*, 74 Cornell L Rev 993, 1005 (1989). The "party" is the scene where events take place in a polemical tale about affirmative action written by Ansley. Introducing the tale, she states, "In the endeavors of understanding and persuading, metaphor has often seemed to serve more fruitfully than the circuitry of equal protection doctrine."

⁸ The term "being in the closet" refers to a state of public denial or deliberate camouflage of one's sexual orientation toward members of the same sex. A number of theories have been posited about why black lesbians remain "closeted" at rates seemingly much higher than their white counterparts. Many believe that although one's lesbianism might be clear to any astute observer (evidenced by things like having one special female friend with whom you live beyond the "acceptable age for roommates," or by spending enormous amounts of time together, especially on holidays and overnight, and by the absence of a discernable male lover) there is one unspoken rule for acceptance of black lesbians. As stated by Barbara Smith, "You can play it, but don't say it. That's the sentiment that capsulizes the general stance of the Black community on sexual identity and orientation. If you're a lesbian, you can have as many women as you want . . . but just don't say anything about it or make it political."

have married interracially or will in the future.⁹ We demonstrate varying tastes in our style of dress and hair. Several of us wear braids, a style predominantly worn by black women,¹⁰ but many choose styles similar to those traditionally worn by white women. In short, there is no typical black female professor of law.

While we acknowledge the existence of multiple consciousness,¹¹

Barbara Smith and Jewelle Gomez, *Taking the Home Out of Homophobia: Black Lesbian Health*, in Evelyn White, ed, *The Black Women's Health Book* 201 (Seal Press, 1990) ("*Black Women's Health*").

Community expectations demand a commitment to the cause of ending racial oppression which greatly diminishes concern for any issue, such as gay liberation, that could divide us politically. Cheryl Clarke, *The Failure to Transform: Homophobia in the Black Community*, in Barbara Smith, ed, *Home Girls: A Black Feminist Anthology* 197 (Women of Color Press, 1983).

See also Harlon Dalton, *AIDS in Blackface*, 118 *J Am Acad Arts & Sci* 205, 217 (1989). Dalton suggests that homophobia in the black community is an instrument for policing relations between the sexes. He describes it as a "powerful cultural impulse to weaken black women and to strengthen black men." After providing a careful exposition of the state of black male-female relations in the post slavery/Jim Crow era, Dalton surmises that "openly gay men and lesbians evoke hostility in part because they have come to symbolize the strong females and the weak males that slavery and Jim Crow produced . . . lesbians are seen as standing for the proposition that 'black men aren't worth shit.'" One of the most salient of political issues for black women is the question of whether any choice in sexual partners that ignores black men constitutes a betrayal to the "cause."

To the extent that political myopia only partially accounts for the invisibility of black lesbian experience, it seems plausible that black professional lesbians, as much as their white counterparts, have to contend with the hegemonic force of hetero-sexism within. Adrienne Rich has written persuasively about the control of consciousness:

The assumption that "most women are innately heterosexual" stands as a theoretical and political stumbling block for many women. It remains a tenable assumption, partly because lesbian existence has been written out of history or catalogued under disease; partly because it has been treated as exceptional rather than intrinsic; partly because to acknowledge that for women heterosexuality may not be a "preference" at all but something that has had to be imposed, managed, organized, propagandized, and maintained by force, is an immense step to take if you consider yourself freely and "innately" heterosexual.

Adrienne Rich, *Compulsory Heterosexuality and Lesbian Experience*, in Elizabeth Abel & Emily K. Abel, eds, *The Signs Reader: Women, Gender & Scholarship* 139, 156 (U Chi Press, 1983).

⁹ The subject of interracial marriage, a source of tension in the black community, is addressed in the work of Derrick Bell. Of particular concern is the rising number of professional black women who are choosing to marry white men. Derrick Bell, *The Race-Charged Relationship of Black Men and Black Women*, in *And We Are Not Saved* 198 (Basic Books, 1989). In the general community there have been varying reactions to interracial couples. One interpretation of black women's views on interracial relationships appears in an essay by Louise Meriwether, *A Happening in Barbados*, in Mary Helen Washington, ed, *Black Eyed Susans/Midnight Birds* 160 (Anchor Books, 1990).

¹⁰ Most of the literature written by black women about their hair includes commentary on struggles to overcome preoccupation with European styles of beauty. Discussions vacillate between the child within who always wanted long (and sometimes blond) hair and the adult who notes the extreme hypocrisy of a society that often fails to openly acknowledge black women's beauty but nonetheless rewards white women who wear their hair braided, tan their skin, and inject collagen in their lips for thickness. For discussion about the conscious choice of one black woman to rediscover her hair, and a summary of the legal disposition of two cases in which black women have been fired for wearing their hair braided, see Paulette Cauldwell, *A Hair Piece* (unpublished as of this writing, but on file with author; the article was presented at the first annual workshop on Critical Race Theory). See also Alice Walker, *Oppressed Hair Puts a Ceiling on the Brain*, in *Living by the Word* 69 (cited in note 2), in which Walker discusses how she came to the decision to wear her hair in the style known as dreadlocks.

¹¹ See Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential*

our discussions only skim the surface of elements contained in our bifurcated race-gender consciousness. When we come together, we make the deliberate choice of shedding our garments of difference, because we assume we have a common purpose and adequately defined goals. To the extent that we talk about potential plans for redressing any grievances we have, such plans are easily discarded if they appear at all to threaten the cohesiveness of the group. The unstated beneficial purpose of all our quarterly meetings is to provide a level of support that many jokingly refer to as a "reality checkpoint." We are drawn together out of a shared need for community, and this community we guard ferociously. After all, where else can black female professionals turn and only *occasionally* be treated with indifference? What determines our positionality and establishes our commonality is not congruence of personal aspirations but structurally reproduced similarities in our professional experience.¹²

Many of our experiences with the faculty and students are surprisingly similar and converge in a number of ways. Faculty members who represent the majority are traditionally moderate or conservative and tend to treat us and our scholarship as though we are on the fringe of every marginally decisive issue because they fail to see race and gender implications in the policies they judge as neutral. From the right, we are admonished that we have been sucked into a sort of interest group politics that is counterproductive to our reported objectives, which include healing racial wounds. From the left, faculty members ask the question, "If the goal is to expose and struggle against the core of mass oppression, why are you so resistant to class analysis?" White feminist faculty members, the overwhelming majority of whom are women, ask whether we do ourselves a disservice by emphasizing our differences such that we end up privileging racial oppression, when black and white women alike are oppressed by a patriarchal structure that specializes in divide and conquer tactics.¹³ Black male colleagues frequently assume that all of our

Method, 11 *Women's Rts L Rptr* 7, 9 (1989). Matsuda covers elements of what has been termed dual consciousness when discussing issues of race, and multiple consciousness when confronting what Kimberle Crenshaw has termed "intersectionality." 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, 166 (1989) ("*Demarginalizing*"). At best, multiple consciousness enables one to view the world from the experience of multiple oppression or advantage. Under this theory, a poor, black lesbian who is a Jewish socialist would offer insight into the world not available to those who belong to only a single marginalized category.

¹² The reproduced experience has been described by Guyora Binder as a product of an instrumental culture in which people are encouraged by the existing social structure to behave in ways which reproduce that structure. Therefore, since those who embody legal institutions develop their social-group identities aided by the instrumental structure, they (like everyone else) have limited opportunities to develop their identities outside of the instrumental culture or in association with others. Guyora Binder, *Beyond Criticism*, 55 *U Chi L Rev* 888, 906 (1988).

¹³ See Martha Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 *U Fla L Rev* 25, 40 (1990). Fineman explains that any number of characteristics shape women's lives and concludes that analytical problems in feminist theory

interests are mutual, or that, whatever our disagreements, they should never be aired in public. Our loyalty to a cause, to *the* cause, is often questioned, since our politics, as yet, are loosely defined. While standing in the forefront of the Civil Rights Movement, black men demanded complete allegiance, warning that we would hinder progress in the black community if we created a strong alliance with white women as a means of addressing our needs.¹⁴ In retrospect, some might agree: the major feature of black feminists' critique of white feminists is the latter's failure to acknowledge their own racism in the present, the roles they have played in the subordination of black women, and how they continue to reap benefits from distancing themselves from the issues that matter most to black women.¹⁵ But when we try to discuss issues of sexism, paternal-

arise when we separate out a few differences, particularly race, and create a hierarchy of oppression. She would argue that a white woman who is also on welfare is not legitimately placed in the dominant group of society, nor is she always more privileged merely because of her skin color. She sees a development, perhaps in feminist theory, where each internal group is urging a unifying source or sources of oppression as the only "true" oppression and seeking to silence others.

But see Alice Walker's essay, *One Child of One's Own: Meaningful Digression Within the Work(s)*, Gloria T. Hull, Patricia Bell Scott, and Barbara Smith, eds, *All the Women Are White, All the Blacks Are Men, But Some of Us Are Brave* 41 (Feminist Press, 1982) ("*All the Women Are White*"). Walker's essay provides a direct response to Fineman's argument because she points out that many black women strongly assert their non-feminist stance. This fact, of course, provides no basis for asserting that black women who are feminists seek to privilege racial oppression. Instead she observes that:

White women who are truly feminist . . . are largely outnumbered by average American white women for whom racism, inasmuch as it assures white privilege, is an accepted way of life. Naturally, many of these women, to be trendy, will leap to the feminist banner because it is now the place to be seen. What was required of women of color, many of whom have, over the centuries, and with the best of reasons, become racialists if not racists themselves, was to learn to distinguish between who was the real feminist and who was not, and to exert energy in feminist collaborations only when there is little risk of wasting it.

To the extent racism is still posited by black feminists as a stumbling block for white feminists, we are reacting to white women's persistent equating of racism with a mere individual unwillingness to behave in a civilized manner toward blacks. Barbara Smith puts into context the locus of black feminist resistance:

It's not white women's fault that they have been raised, for the most part, not knowing how to talk to black women, not knowing how to look us in the eye and laugh with us. Racism and racist behavior are our white patriarchal legacy. What is your fault is making no serious effort to change old patterns of contempt — to look at how you still believe yourselves to be superior to Third World women and how you communicate these attitudes in blatant and subtle ways.

Barbara Smith, *Racism and Women's Studies*, in *All the Women Are White* at 49.

¹⁴ See Linda Powell, *Black Macho and Black Feminism*, in *Home Girls: A Black Feminist Anthology* (cited in note 8). Powell's article is a review of Michelle Wallace's book, *Black Macho and the Myth of the Super-woman*. In addition to asserting the dubious status of the book as a serious contribution to black feminism, she goes on to discuss reviews of the book in major magazines by black men known to be "anti-feminists." She notes that criticism proceeded from a "[r]anking of oppression" which states that without a doubt, racism is more important than sexism and that the American media-machine is creating concern about sexism in the black community. See also Wallace's article, *A Black Feminist's Search for Sisterhood*, in *All the Women Are White* at 10 (cited in note 13). Wallace discusses the widespread attitudes about black political agendas and the media coverage of black writers during the Civil Rights Movement, and urges black women to be "wary of smiling white feminists."

¹⁵ Rape provides a volatile example of an issue that affects us differently. A ready example: as much as I have heard about the Central Park rape, I have never heard the victim's name; I do

ism, and patriarchy with black men, we are more often than not met with a subtle level of hostility. At times I have encountered the genuinely asked question, "Just how are black women oppressed within our own community?"¹⁶ Some have even asked if we feel that the movie based on the book *The Color Purple*, written by black feminist Alice Walker, was unnecessarily degrading or even significantly harmful to the image of black men.¹⁷ Yet the works of black males (e.g., Eddie Murphy and

know that she is an adult. In contrast, after the gang rape of a black minor in New York a short time ago, investigators did not name the incident after the section of town in which the crime occurred, but instead called it "the Tawana Brawley case." Historically, the treatment of rape victims and the prosecution of rapists has always been inextricably bound to race in the United States. See Alice Walker, *Advancing Luna and Ida B. Wells*, in *Black Eyed Susans/Midnight Birds* at 313 (cited in note 9); Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stan L Rev* 581, 598-601 (1990); and *The Rape of Black Women as a Weapon of Terror*, in Gerda Lerner, ed, *Black Women in White America* 72 (Pantheon, 1972).

In modern feminist politics there appears to be a total inability to critique the combined forces of racism and sexism. Here are two examples. First, white feminists have been reluctant to voice their anger about or perception that black women have not expressed sufficient outrage over the advocacy of violence and degradation of women in Rap music. Any number of things could account for the lack of commentary: they feel silenced by white feminists, they believe that black women have more pressing political agendas, or they believe this music reflects sentiments about black women only, and therefore poses no significant threat to them.

Secondly, a striking feature of the rape of the woman in Central Park is that progressive white women either made a conspicuous effort to declare a mischaracterization of the rape as a racially motivated crime, or ignored the blatant sexism and concerned themselves with issues of racial politics. By asking whether the rape would have occurred if the jogger had been black, we might have gained more insight into the increase in random sexual violence. Instead, those who might be best positioned to provide insight from a somewhat neutral perspective seemed equally enthralled by the race problem and merely queried whether the young men involved would be able to obtain a fair trial.

¹⁶ This question was asked by a self-styled spokesperson for a group of black male law professors at a summer Critical Race Theory workshop. The conversation proceeded until 5 a.m. and I wonder to this day if they really understood the gist of what I was saying, even as I sat there developing laryngitis. Compare bell hooks, *Yearning: Race, Gender, and Cultural Politics* 68 (South End Press, 1990) ("*Yearning*"). hooks explores the works of black male writers who have been hostile to black feminist critiques and posits as the source of resistance the question "whether or not feminist focus on black male chauvinism is harsher and more brutal than critiques of patriarchy in general." She accuses many contemporary feminists, black and white, of acting as though "black male sexism is more heinous than white male sexism."

¹⁷ Alice Walker, *The Color Purple* (London Women's Press, 1983). A senior black male professor from a predominantly black institution asked this during the 1990 Critical Race Theory Conference in Madison, at a seminar on Hate Speech.

See Gomez and Smith, *Taking the Home Out of Homophobia: Black Lesbian Health*, in *Black Women's Health* at 211 (cited in note 8). Their discussion of *The Color Purple* posits that the major problem for most black men watching the movie was seeing women bond. "So," writes Gomez, "it prompted unbelievable scenarios like grown men sitting at conferences debating whether Alice Walker should have been allowed to write *The Color Purple*." Smith adds that a visit to any "emergency room, battered women's shelter, or rape crisis center in this country" would reveal that "*The Color Purple* is mild, bland and minimal compared to what is actually happening to women and children in this society."

See also, Walker, *In the Closet of the Soul in Living By the Word* 78-92 (cited in note 1). Walker provides a detailed account of the criticism she received during the production of *The Color Purple*, and she gracefully and without reservation analyzes the response of black men to the movie.

See also, hooks, *Yearning* at 70 (cited in note 16). hooks highlights a major issue for the political agendas of black feminists: at public conferences and meetings, black female artists come under attack for producing work that "creates" a negative image of black men, while black males like Spike Lee, Eddie Murphy, and Richard Pryor can apparently produce as many negative images as desired and not be attacked. Even more importantly, there is a

Spike Lee) are not similarly attacked for the negative images they produce of black women. Moreover, there has been virtually no discussion about how degradation of women in many Rap music lyrics has been harmful to the images of black men.¹⁸ It seems that black men only voice concern about the negative images of themselves produced by others, namely, by whites or black women. They are less inclined to voice concern when the source of the negative image is other black males.

Students are traditionally our greatest supporters,¹⁹ but are also a source of frustration. Minority students seem to feel that black law professors have a special responsibility to make themselves available whenever needed.²⁰ Interestingly, this occurs most frequently around the time that issues of affirmative action or perhaps the *Dred Scott* decision and the Civil Rights cases surface in constitutional law classes, as well as in other arenas.²¹ The institutions themselves exacerbate the problem by impliedly or overtly requesting black women to play the role of mother hen, at worst, or expert liaison, at best, between the administration and minority students.²² White female students, often exploring

significantly smaller degree of outrage shown for poor images of black women, no matter who produces the work.

¹⁸ This issue, raised by the women this time, highlights the tensions between black scholars. If music that condones violence and degradation of women has no real detrimental effect on the minds of young black men and their perception of black women, then why were there so many *young brothers* in the nation's capital during the Marion Barry scandal wearing tee-shirts that read, "I SAW THE TAPE. THE BITCH SET HIM UP"? For those who do not understand, because "it's a black thing," ask yourselves why a shirt that read, "I SAW THE TAPE. WHITEY SET HIM UP," would not have been more plausible, likely, or accurate.

The debate about Rap music has not yet begun in the black community. The tensions between the issue of sexism within the black community, and racism in the larger community (that led to harassment of groups like 2 Live Crew while ignoring equally offensive white groups such as Guns & Roses) have produced a pre-debate stalemate. As I conduct orientation sessions with first year minority students, I usually suggest that black males take a close look at the substance of the defense offered in the 2 Live Crew trial, as indicia of the black "community standard," and consider whether there exists within the methodology long-term implications for other areas within the struggle. Young black men should be concerned whether the use of Rap music as a broad, unqualified indicator of black community standards might work against their immediate as well as long-term interests. One can easily envision a prosecutor asking a 17 year-old accused of rape whether he agrees that Rap music is reflective of black community standards, if he listens to a certain artist or is familiar with particular lyrics, when he listens to the music, and whether he was listening to it the night of the rape.

¹⁹ See Richard Delgado, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 Harv CR-CL L Rev 349, 359 (1989).

²⁰ Roy L. Brooks, *Life After Tenure: "The Bell-Delgado Survey," Can Minority Law Professors Avoid the Clyde Ferguson Syndrome?* 20 USF L Rev 419, 421 (1986) ("Life After Tenure").

Prominent Native American law professor Rennard Strickland believes that we make a great difference in the lives of our students. Strickland, *Scholarship in the Academic Circus or the Balancing Act at the Minority Side Show*, 20 USF L Rev 491, 499 (1986) ("Scholarship").

²¹ Virginia Taborn, *Law and The Black Experience*, 11 Natl Black L J 267, 269-71 (1988-90). This comment reinforces what I have experienced firsthand when dealing with minority students who have just read the *Dred Scott* decision for the first time. Beyond the general silence in the classroom, there is a silent element of trepidation in the eyes of black students.

²² Rachel Moran, *Commentary: The Implications of Being a Society of One*, 20 USF L Rev 503, 508 (1985-86). See also Delgado, *The Bell-Delgado Survey* at 363 (cited in note 19) (the time spent doing extra work is rarely rewarded during the tenure process); and Strickland, *Scholarship* at 499 (cited in note 20).

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.²³

In addition to these aspects of our reproduced experience, we encounter circumstances in our daily lives that are deeply personal, sometimes political, and involve the unique problems of the black "underclass." A close look at the socio-structural impediments to a self-determined black middle class forces us to concede that individuals cannot be held responsible for the "collective conspiracy," the crime of indifference, the spirit murdering.²⁴ Very few grow up black in this society without profoundly feeling the desire to make a tangible difference in the lives of blacks in the "underclass."²⁵ One white scholar attending a critical race theory seminar asked, "Why do scholars of color impose upon

²³ My first set of teaching evaluations, from a Trusts & Estates course, included an invitation to have my "rear end massaged after class." The writer further speculated, "with your skills you'd probably put me in traction." This was accompanied by a cartoon featuring this student in a hospital bed in traction. For a detailed account and evaluation of this subject, see Patricia Williams, *The Alchemy of Race & Rights* (Harvard Press, 1991).

²⁴ Patricia Williams, *Spirit-murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism*, 42 U Miami L Rev 127, 129 (1987). As stated in its introduction, this article

[considers] how the rhetoric of increased privatization, in response to racial issues, functions as the rationalizing agent of public unaccountability, and ultimately irresponsibility. My emphasis will be more on the process of exclusion than on reiterating the substantive literature of silenced voices, a body as great as the history of this nation. I will analyze the language of lawmakers, officials, and the public in order to present racial discrimination—so pervasive yet so hard to prosecute, so active yet so unactionable—in a new light.

²⁵ Harlan Dalton has stated that

[W]hether out of social concern or self-preservation, we learned from the start to harness our brains to the problems of the day. We felt the freedom to play with mind puzzles only after the practical intellectual work of the day was done.

Harlan Dalton, *The Clouded Prism*, 22 Harv CR-CL L Rev 435 (1987). Compare Sharon Lewis and Jim Maynard, *If There Can't Be Peace in the Valley . . .*, The Edge 1 (Nov 1990). Milwaukee alderman Michael McGee captured public attention seven months ago by alerting Milwaukee's white power structure that if conditions in the black community do not significantly improve within five years, he and his newly formed Black Panther Militia will take up arms against it. See also Randall Kennedy, *Racial Critiques of Legal Academia*, 102 Harv L Rev 1745 (1989) ("*Racial Critiques*"). Kennedy contends that there is no "minority perspective," and that varying experiences shape black perspective. Skin color alone would not induce sentiments of political or social responsibility and therefore, apathy would be as likely a result.

themselves the burden of only writing articles or producing scholarship that 'makes a difference?' " Almost every black scholar in the room turned to look at him, and like a hollow drum on a warm, dark, night their voices resonated in unison, "Because we can't afford *not* to."²⁶ I had no verbal response to his question; I merely nodded my agreement with the others. Nonetheless, the question prompted in me a sort of forced introspection. (Denise had exactly the same effect on me whenever she spoke in a public forum.) Battling a sense of futility, I wondered, as I often do, if all the pages in all of those volumes written by minority (or any other) scholars ever really make a difference for anybody, anywhere, especially for those who seem destined to remain on the bottom.

The practical and theoretical positions we take on various social issues impact upon the professional lives of minority scholars. For many years now minorities have endured society's admonition to pick ourselves up by our collective bootstraps, and to "become qualified."²⁷ Once formal segregation ended, the nation assumed that, in accordance with Martin Luther King's *I Have A Dream* speech, blacks would blend into the mainstream culture and our collective condition would gradually improve. In legal academia the promise was that lawyers of color seeking law faculty positions would be received by a professorate that was cognizant of how the concept of "traditional standards" had been constructed to bar access to groups which have historically been socially, structurally, and intellectually marginalized.²⁸ Instead, we see a solid connection between societal views of the black "underclass" (that their problems are no longer a product of white racism) and the ideological expectations imposed upon those of us who anticipate recognition for our accomplishments and to be regarded with something more than indifference.²⁹ This connection between the lives of black female law professors

²⁶ This incident occurred at the 1990 conference on Critical Race Theory held in Madison, Wisconsin, on November 9, entitled *Current Critical Race Theory Literature: Premises and Critiques*. For further discussion see Brooks, *Life After Tenure* at 423 (cited in note 20).

²⁷ Nathan Glazer, *Affirmative Discrimination: Ethnic Inequality and Public Policy* 33-76 (Basic Books, 1978); Thomas Sowell, *Civil Rights: Rhetoric or Reality?* 164 (Morrow, 1984); Shelby Steele, *The Content of Our Character: A New Vision of Race in America* 48-62 (St. Martin Press, 1990).

²⁸ AALS law teacher hiring data for the three-year period of 1986-89 shows that, as with most other high-status, high-salaried positions, only a small percentage (7%) of all law teachers are minorities. As late as 1986-87, over one-half of American law schools had one or no minorities on their faculties. Those in the 7% rank have been forced to critique how hiring standards keep changing over time and therefore can hardly be viewed as traditional. Michael Olivas, "Increasing the Numbers," an unpublished speech presented at the American Association of Law Schools' workshop held September 7-9, 1989, entitled "Minorities and Legal Education: Emerging Voices" (copy on file with author).

²⁹ Randall Kennedy, black professor of law at Harvard Law School, apparently expected during the course of his career to be respected, not treated with indifference. And yet, even with his stellar credentials and the numerous insightful articles that he has written, Kennedy only received national recognition (a full page write-up in the N.Y. Times complete with photograph) after publishing *Racial Critiques* (cited in note 25) in which he trashed minority schol-

is evidenced by our shared experiences in our respective institutions, and often by a keenly-felt need (which we share with other scholars) to advocate practical and theoretical positions that we believe will make a difference in the lives of poor blacks.

All across America, one finds reports and studies on black Americans living in ghettos and trapped in a downward spiral of drugs, violence, and despair. Crack and cocaine-addicted pregnant women, AIDS babies, and increasing poverty and violence in the black community all figure prominently in popular perceptions about the actual problems of the black "underclass." Statistics about the plight of black men—their ubiquity in the criminal justice system and their lack of job opportunities—surface in virtually every discussion of racism in the United States. Most of us who comprise the black middle class feel compelled to do something. Proponents of policies to improve the dilemma of poor, young black men³⁰ are met with an opposing argument that unless something is first done to empower poor, black single mothers (their primary caregivers) nothing will ever permanently insure equality of opportunity for black males. This argument advocates the placement of impoverished women and children at the top of our "theoretical and political agenda[s] for the black poor."³¹ The debate highlights how gender implications are often buried under theoretical assumptions about the long-term results of certain social policies. The collective's focus remains on poor blacks because of their indeterminate as well as immediate need and because we refuse to ignore society's indifference to our shared concerns about discrimination.³²

The dream deferred in every sector of American society impedes the development of a far-reaching political and scholarly agenda that affirms black cultural identity while guaranteeing full rights in a democratic political system. Some of our scholarly efforts try to strike a balance between what I characterize as the Racist Conspiracy Paradigm and the Collective Empowerment Model, and in doing so have portrayed us as

arship and admonished us to pick ourselves up by our collective bootstraps - echoing the views of neo-conservatives.

³⁰ The New York City Board of Education announced that it would pursue a proposal to establish a school that would focus on black and hispanic boys. The school would be located in Brooklyn and emphasize black history and culture, family issues, business skills, and ethical and moral reasoning. The New York Civil Liberties Union and others are opposing the plan on the grounds that it would violate laws banning school segregation and racial and gender discrimination. Mireya Navarro, *Civil Liberties Union Likens Minority-School Plan to Segregation*, NY Times 20 (Jan 13, 1991).

³¹ Crenshaw, *Demarginalizing* (cited in note 11). Crenshaw criticizes the "top down" approach to solving problems of race and sex discrimination because it encompasses only those who are singularly disadvantaged, thereby excluding the multiply oppressed.

³² This indifference is evidenced by many things but most conspicuously by the widespread racial violence and terror in the United States. When the Ku Klux Klan prepared to lynch 19 year-old Michael Donald, in Mobile, Alabama on March 21, 1981, I doubt that anyone asked whether he was the son of a law professor or some boy from the ghetto.

disjointed and contradictory, when in fact we are neither.³³ Black female scholars are attempting to clarify through critical analysis a complex set of theories and ideas that have been refracted through the lens of our multiple consciousness.

The Racist Conspiracy Paradigm acknowledges that our battle to overcome society's long-held beliefs of racial inferiority is like running one long marathon, with hurdles at each mile's end. Because one never knows just how high she will have to jump to clear the next hurdle, she could easily lose heart, especially when there may not be anyone at subsequent junctures to cheer her on. Moreover, in the academic circus,³⁴ some of the hurdles have scorching flames that leap high above the structure, and in order to meritoriously clear the hurdle she must take care never to knock it over, lest she hinder in some way the young women running behind her. Some would even argue that the entire history of American racism from the slavery era up to the morbid plight of today's black "underclass" corroborate an amorphous vision of a racist conspiracy being carried out today just as surely, and with as much determination, as in the 1690s, 1790s, and 1890s. The idea resonated for many during the 1988 presidential campaign. Republican National Committee Chairman Lee Atwater masterminded the "Willie Horton campaign" in an effort to denounce candidate Michael Dukakis as soft on crime and an ineffective leader. The campaign consisted of several televised commercials featuring a black male who had broken into the home of a white couple, terrorized them, and repeatedly raped the wife. At the time of the attack, Horton had been released from a Massachusetts prison on a weekend furlough pursuant to legislation approved by Governor Dukakis. Out of all the themes in Bush's campaign strategies brought to our living rooms via televised communication, this was his only visible connection to the nation's black Americans: throw the savages in jail. For many it was proof of how readily racist ideas are deployed, by diagramming a composite sketch of black American character as a smoldering caldron of lust, violence, and worthlessness.

The Collective Empowerment Model requires the forbearance of Job's wife,³⁵ the courage of Sojourner Truth,³⁶ and the wisdom of Cle-

³³ Patricia Williams, *Alchemical Notes: Reconstructed Ideals From Deconstructed Rights*, 22 Harv CR-CL L Rev 401, 410 (1987) (discussing the rhetoric of rights, Williams contends, "change argued for in the sheep's clothing of stability (i.e. rights) can be effective, even as it destabilizes certain other establishment values (i.e. segregation). The subtlety of rights' real instability thus does not render unusable their persona of stability.")

³⁴ Strickland, *Scholarship* at 493, 497 (cited in note 20). Jumping hurdles could conceivably be a mild requirement in comparison to Strickland's characterization of the burdens of minority professors: "I cannot be a model teacher, an effective, dynamic minority counselor, an understanding community human relations director, a riot control leader, a respected role model, and a Pulitzer prizewinning scholar all at the same time. Mr. Law School Administrator, this is exactly what you are asking of me."

³⁵ In a biblical tale this character, after witnessing a steady decline in her husband's fortune (each calamity more tragic than the last) and distraught at the indignity heaped upon one so

opatra.³⁷ This model assumes that having identified the locus of oppression, we must undergo the task of developing a strategy for liberation from all oppression that embraces theoretical revolution. Looking "beyond race *alone*," we seek to understand the connection between the struggles of all oppressed people.³⁸ An example of the Collective Empowerment Model is the concept of the Rainbow Coalition, which attempts to construct a world not of falsely dichotomized competing visions of black and white, but rather one that incorporates red to represent Native American freedom, as well as the blood-stained banners of the American labor movement. Its golden yellow tones embody both Asian American cultural contribution and the blazing sun that symbolizes a bright future for our children through quality day care, nutrition, and education. The emerald green hue embraces much more than a stable economy; it encompasses the pursuit of a healthy ecological environment as found in the Greenpeace movement. Pink represents the freedom train driven by the women's movement, a declaration of independence from male colonial oppression in the "pink ghetto." Pink also colors the triangle symbolizing gay liberation. The rainbow is imbued with the lavender hue of lesbian existence, the sterling shades of security and power for grey panthers, and the rich brown soil of the earth, a salute to this nation's rural farmers. True Rainbow Coalition is, quite simply, a vision of collective empowerment. In pursuit of these goals, Manning Marable suggests that we "discard political perspectives frozen in the lessons of the Civil Rights movement" and prepare to "map a strategy for effective counter-hegemonic power."³⁹

A third model, the Realist Approach, espouses a "neutral observer" mentality; it says that often scholars of color, by *not* bringing to our interpretation passionate viewpoints, are more likely to see the intricate

loyal and righteous, finally admonished her husband to simply curse God and kill himself. As translated in the parlance of this struggle, it follows that while fighting the good fight one must remember that the numbers are greater on behalf of the opposition, largely because of false consciousness, and the motives of the leadership far more sinister than most are willing to acknowledge. Therefore, in fighting this fight you must *be prepared to die*, to become another martyr for the cause, if necessary.

³⁶ Crenshaw, *Demarginalizing* at 152 (cited in note 11). In a section entitled "Feminism and Black Women: Ain't We Women," the author states that despite the inability of feminist theorists to address the substantive needs of black women, they nonetheless "borrow considerably from Black women's history." She describes the moment in history when Truth spoke to an assembly of listeners and "reveal[ed] the contradiction between the ideological myths of womanhood and the reality of Black women's experience."

³⁷ Cleopatra (69-30 B.C.), Queen of Egypt (51-48 B.C. & 47-30 B.C.) was known as a great military strategist in her own right. As co-ruler she remained at the side of Mark Anthony during the battle at Actium until they were defeated by Octavian, after which they both committed suicide. Her wisdom required her to maintain her position as co-leader in the ongoing battles, and after admitting defeat, her dignity required her to take her own life and become a martyr for a cause.

³⁸ Mari Matsuda, Professor of Law from University of Hawaii, "Beyond Race Alone: The Interconnection of All Forms of Subordination," plenary address presented at the 1990 Critical Race Theory Workshop, University of Wisconsin at Madison (Nov 10, 1990).

³⁹ Manning Marable, *A New Black Politics*, *The Progressive* 18 (1990).

patterns of interaction that affect our group socially and politically. Unlike the previous two paradigms, the Realist model requires no balancing or mediating of tensions between one approach and another. Realism serves as a strategic methodology that is self-determined, inward-focused, and intensely pragmatic. As a self-empowering and metaphysically viable political and scholarly pursuit, the Realist Approach refers to the search for truth. Although bias is inevitable in any interaction, our goals are enhanced if we limit the influence of our partisan allegiance on the process. Post-Modern theory suggests that truth, when it can be found, is situated in the symphony of experience.⁴⁰

This third model has been theoretically discarded⁴¹ because many believe that current socialization processes have resulted in a "closing of the American mind."⁴² However, Barbara Omalade⁴³ attempts to show that, in the search for solutions about "blacks in white America,"⁴⁴ placing young black single mothers at the center is only logical. She writes, "nearly everyone who has studied and discussed the black family has focused on its economic destitution and with [sic] its lack of or its possession of strong survival and cultural mechanisms."⁴⁵ Refuting the widespread debilitating characterization of black cultural norms as a problem of unstable families, a weaving of the now infamous "tangle of pathology," and its attendant delinquency (crime, school dropouts, unemployment and poverty) she notes that:

Most [researchers] have failed to discuss the sexist position and oppression of women within the black family and community as powerful rationales for marital breakup. Nor have they included the strengths and

⁴⁰ Robin Barnes, *Race Consciousness: The Thematic Content of Racial Distinctiveness in Critical Race Scholarship*, 103 Harv L Rev 1864, 1870 (1990). (I would like to thank my editor, Christine Lee, for providing the symphony metaphor.)

⁴¹ Paul Chevigny, *More Speech: Dialogue Rights and Modern Liberty*, (Temple Press, 1988).

⁴² Allan David Bloom, *The Closing of the American Mind* 219 (Simon and Shuster, 1987). Part Two, entitled "Nihilism, American Style," includes a section on "the Nietzscheanization of the Left or Vice Versa" in which the author describes ideology as "no longer very distinctly tied to economics, nor is it simply determined. It has been cut loose from necessity's apron strings in creativity's realm. Rational causality just does not, since Nietzsche, seem sufficient to explain the historically unique event or thought."

⁴³ Barbara Omalade is a black feminist and political activist who lives in New York City. She was a good friend to Denise Carty-Bennia. Besides attending many legal conferences, Omalade has published in numerous legal journals. The focus of this section is on one particular work, *The Unbroken Circle: A Historical and Contemporary Study of Black Single Mothers and Their Families*, 3 Wis Women's L J 239 (1987) ("*The Unbroken Circle*").

⁴⁴ *Black in White America*, ABC News Documentary (Sept 10, 1989) (videotape on file with author). The hour-long program reveals the cultural and economic conditions of the black upperclass, middleclass and those who are confined to the ghetto and comprise what is considered the black "underclass." A researcher who has looked at the images of whites and blacks in America for over twenty years begins the program talking about how difficult it is for her as a researcher, as a mother, and as a citizen in this country, given where we claim we are as a nation, to see the high level of self-hatred known by black children. The program concludes that we have two separate and unequal societies, one white and one black, and that, furthermore, the black community is subdivided into separate and unequal societies, those who have "made it" and those who have not and perhaps never will.

⁴⁵ Omalade, *The Unbroken Circle* at 257 (cited in note 43).

choices of black women as factors in creating and sustaining black single-mother families. . . .

Under the new racism, ideology replaced sociology and rhetoric replaced economic reality in examining black people's condition and position. black single mothers, especially poor teenagers, had become the symbol of all that was wrong with black people and women and their movements. . . .

The new racism promotes the fabrication of an underclass (or is it a permanent caste) system that masks the displacement of the black working class or those denied economic enfranchisement within the society. . . .⁴⁶

Omalade's thesis acknowledges the original models, but she calls for research on the strengths and positive choices of black single mothers. As Martha Fineman points out, the pathological characterization is "prevalent in political, legal and professional discourses that speculate about the impact of single motherhood on the institution of the family in the first instance and the fate of society in the long run . . . [and concludes that it is] the origin of other social phenomena such as crime and poverty."⁴⁷ Omalade's description of a permanent caste system designed to mask displacement of working class blacks is paradigmatic of a racial conspiracy. Her emphasis on the placement of poor black women and children at the axis⁴⁸ of socio-political agendas provides a stronger base from which black Americans can pursue the vision of collective empowerment.⁴⁹ After affirming the basis for struggle engaged in along these lines, she goes on to provide a solid foundation on which to develop a new community-based agenda, one which resists "quick fixes and simplistic answers to complex family problems that require long-term attention and multiple remedies."⁵⁰ The development of a far-reaching political and scholarly agenda that affirms black cultural identity and assures political inclusion demands a search for solutions to the problems that plague poor blacks. As succinctly stated by W.E.B. DuBois, "There

⁴⁶ Id at 257, 260, 274.

⁴⁷ Martha Fineman, *Images of Mothers in Poverty Discourses* at 23-25 (draft, on file with author).

⁴⁸ Crenshaw, *Demarginalizing* at 166 (cited in note 11). Crenshaw states, "If any real efforts are to be made to free Black people of the constraints and conditions that characterize racial subordination, then theories and strategies purporting to reflect the Black community's needs must include an analysis of sexism and patriarchy."

⁴⁹ Moreover, what might prove useful in this extended analysis is an examination of two theories upon which traditional socio-political analysis have heavily relied. The first is the notion introduced by W.E.B. DuBois: that the talented tenth, the smartest and the brightest of black Americans, would lead the rest into the promised land. DuBois' theory is better known, to borrow from the parlance of neo-conservatives, as the "trickle down" effect. The second is part of traditional American leftist ideology about collective grassroots struggle, which claims that after having transformed the lives of those on the bottom, positive cathartic effects on the experience of other group members will heal the wounds inflicted upon those who have been stereotyped by the actions and behaviors of the rest. An examination of the conflicts between these two schools of thought and their potential to limit the scope of black liberation struggles might provide a stronger foundation for current social and political strategies.

⁵⁰ Marian Wright Edelman, *The Black Family in America*, in *Black Women's Health* at 128 (cited in note 8).

is only one sure basis of social reform and that is Truth—a careful detailed knowledge of the essential facts of each social problem. Without this there is no logical starting place for reform and uplift.”⁵¹

Denise Carty-Bennia was an educator in the true sense of the word. Her teaching and speaking skills helped many young blacks identify issues germane to the goal of challenging racial discrimination in legal institutions. She accomplished this objective by example, by precept, and by asking the very tough and unsympathetic questions that no one else dared to ask. Hers was a form of outrageous courage spawned by keen wit and immense intelligence. She brought to her work a critical self-consciousness which prepared her to take on new tasks with a determination born out of her desire to produce and present her very best, foremost and without reservation, to the exact extent that she demanded it from her students. Undoubtedly, by any account of her life, Denise was a much needed role model not because of what she was, a black woman, but because of who she was: a dynamic, inspiring intellectual who had the courage to tell the truth about what she saw in the world. Denise Carty-Bennia was a realist. Not unlike her friend and colleague Barbara Omalade, she was gravely concerned about developing strategies to assist poor blacks in the goals of social and economic self-determination. Denise not only engaged in provocative rhetoric designed to make her audience squirm; she also urged us to pull up our collective shirt sleeves and strive to complete the work that commands our energy in the movement to end racial subordination. I shall cherish the memory of Denise Carty-Bennia, and a part of her spirit will always live within me. The meaning of her life is still unfolding.

⁵¹ Id at 128 (quoting W.E.B. DuBois and Augustus Granville Dill, the “negro artisan”).