

# **Reflections on *Presumed Incompetent: The Intersections of Race and Class for Women in Academia* Symposium—The Plenary Panel**

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#### ACKNOWLEDGMENTS

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spirit that writing [and living] as an independent thinker would require.”<sup>1</sup> I thank my home institution for providing travel funds that assisted my attendance at the symposium. *A mis hijos les agradezco su apoyo incondicional y consejos siempre positivos—ustedes continúan siendo mi inspiración. Finalmente, a mi madre, que siempre me ha acompañado en las buenas y en las malas, le dedico mi contribución en estas páginas.*

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My responses here benefited greatly from: advice given to me over the years by my phenomenal mentors, including my dear mother Minnie L. Perkins Dorsey Moore and Boston College Law School Professor Emerita Ruth-Arlene H. Howe; feedback from the 2013 STEM (Science, Technology, Engineering and Mathematics, including Social Sciences) Women of Color Conclave, sponsored by a generous grant from the National Science Foundation, which funded my participation and that of other contributors to *Presumed Incompetent*; and wise, discerning observations of our Conclave plenary panel moderator, Dr. Kelly M. Mack, who thoughtfully guided us through an honest and provocative discussion of *Presumed Incompetent*. I appreciate the support of faculty scholarship from Mississippi College School of Law, which provides pre-publication and post-publication grants.

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1. Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 5 MICH. J. RACE & L. 847, 872 (2000) (citing bell hooks, *Talking Back*, in GLORIA ANZALDÚA, MAKING FACES, MAKING SOUL: HACIENDO CARAS 207-08 (1990)).

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## I. INTRODUCTION—PROFESSOR REYES<sup>2</sup>

*Presumed Incompetent* was produced thanks to the vision and commitment of its editors: Dr. Gabriella Gutiérrez y Muhs,<sup>3</sup> Dr. Yolanda Flores Niemann,<sup>4</sup> Carmen G. González,<sup>5</sup> and Angela P. Harris.<sup>6</sup> This symposium came to fruition because the *Berkeley Journal of Gender, Law & Justice* invited the two law professor editors, Professor Harris and Professor González, to convene a distinguished group of scholars from Canada and the United States to expand and deepen the conversation initiated by the book. The very successful day-long symposium and the publication of the resulting articles were made possible by the resources, time, and dedication provided by the University of California

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2. During the symposium, the moderator and the panelists felt comfortable identifying on a first name basis; the audience consisted of mainly other professors and some law students. However, in this Article, which will be accessed by a broader audience, including law students, for posterity, we use our formal academic titles and last names. See Mary-Antoinette Smith, *Free at Last! No More Performance Anxieties in the Academy 'cause Stepin Fetchit Has Left the Building*, in *PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA* 415 (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, Carmen G. González & Angela P. Harris eds., 2012) [hereinafter *PRESUMED INCOMPETENT*] (explaining that some women of color insist on students calling them by their academic titles inside and outside the classroom to challenge the resistance by some to recognize us as professors).
  3. Associate Professor in Modern Languages and Women's Studies, Seattle University.
  4. Senior Vice Provost and Professor of Psychology, University of North Texas.
  5. Professor of Law, Seattle University School of Law.
  6. Professor of Law, University of California, Davis School of Law.

Berkeley School of Law, the *Berkeley Journal of Gender, Law & Justice*, the *Seattle Journal for Social Justice*, the Thelton E. Henderson Center for Social Justice, and the generous support of the law firm of Munger, Tolles & Olson. Finally, the audience, a mix of academics and students, supported the symposium and traveled from all over the United States to attend and be a part of a historical event where we acknowledged the pain and victories of colleagues, and recognized that there is still much work to be done.

The contributors of the book deserve special recognition for their courage in coming forward and telling their stories. Over forty writers contributed to *Presumed Incompetent*, including African American, Asian American, Latina, Native American, and White<sup>7</sup> women, and a few men in a variety of academic disciplines. The stories in the book validate the experiences of many faculty members who have gone through or are currently going through some of the trials and tribulations documented and illustrated throughout the book.<sup>8</sup>

The contributors to this book find themselves disciplined by colleagues, students, or administrators whenever their assigned and/or claimed identities

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7. This Article capitalizes Black and White in the same way as African American, Asian, and Latina or Latino when the terms are used to refer to race. See Maritza I. Reyes, *Constitutionalizing Immigration Law: The Vital Role of Judicial Discretion in the Removal of Lawful Permanent Residents*, 84 *TEMPLE L. REV.* 637, 672 n.268 (2012) (citing Laura Ho et al., *(Dis)assembling Rights of Women Workers Along the Global Assembly Line: Human Rights and the Garment Industry*, 31 *HARV. C.R.-C.L. L. REV.* 383, 384 n.5 (1996)).

8. Some of the tactics in the macro and microaggressions playbook include: negative evaluations; excessive new course preparations; race and gender hostility from students and colleagues; harsh criticism of scholarship; negative encounters with colleagues and administrators during job activities; lack of affirming or protective responses from senior colleagues and administrators in the face of student or colleague hostility; anonymous hate e-mails that are not investigated by the administration; cover-ups of wrongful conduct; name-calling like “arrogant” and “bitch” by colleagues and administrators; competition from visitors with core bread and butter course in the same semester; isolation from the community by not being assigned to substantive committees; denial of institutional support despite repeated requests; foreclosure of opportunities to interact with the main university; refusal or delay of funding for scholarship, conferences, and research assistants; placement in smallest or most inaccessible office; failure to respond to memoranda and e-mails seeking assistance or pointing out problems; postponement of research leave when others receive it; refusal to pay for summer research assistance; delay in funding for speaking and works-in-progress presentations; institutional disrespect; changing standards for tenure; lack of mentoring; refusal to acknowledge individual’s institutional efforts or ignoring them or criticizing them; perception by others as institutionally vulnerable due to treatment by administrators; failure to publicize accomplishments when others’ are recognized; denial of race and gender as relevant to the hostility; failure to address internal cries and requests for help; escalation of negative treatment, disrespect, devaluation and denigration (privately and publicly); behind the scenes gossip that taints opinions of others and creates a false and negative reputation; and denial of tenure. Pamela J. Smith, *The Tyrannies of Silence of the Untenured Professors of Color*, 33 *U.C. DAVIS L. REV.* 1105, 1106, 1108, 1109 n.7, 1111-12, 1113, 1124, 1126, 1128, 1131 (2000). Smith describes feeling “stronger and less afraid” after other women of color told her during a conference that her “emotional and mental stress was rational and normal given the intensity, consistency, and ugliness of [her] experiences as a new law professor.” *Id.* at 1120-21.

do not match cultural stereotypes. As the cognitive psychology literature explains, unconscious bias plays a part in the way teachers and students are perceived by others. Given a climate of shared cultural stereotypes and images, it is not surprising that although each of these stories is unique, the authors also describe strikingly similar barriers to their success.

However, just as every unhappy family is unhappy in its own way, each workplace structured by caste has unique features. In the academic workplace, judgments of worth tend to be extremely subjective. Reputation is the coin of the realm, and reputations are built not only by objective accomplishments but through images and sometimes outright fantasies—individual or collective—that cling to the nature of the work and the person being evaluated. Academic judgments, then, are especially susceptible to unconscious bias, although the precise forms this bias takes varies from one institution to another.<sup>9</sup>

The contributors have provided a voice for other professors who are silenced and cannot speak about their own experiences for a variety of reasons.<sup>10</sup> I thank them for speaking truth to power.<sup>11</sup>

Four distinguished contributors to *Presumed Incompetent* participated in the plenary panel:<sup>12</sup>

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9. Angela P. Harris & Carmen G. González, *Introduction*, in *PRESUMED INCOMPETENT*, *supra* note 2, at 4 (internal citations omitted).
  10. The book lists reasons why some would-be contributors decided not to publish their stories: (1) spiritual and psychological wounds; (2) fear of retaliation; (3) reluctance to embarrass colleagues already burdened by institutional inequalities; (4) warnings by mentors about writing based on personal experience because it would be regarded as “un-intellectual;” (5) apprehension about writing in an area outside professional specialization; (6) avoidance of further damage to already tense and fractured professional relationships in home institutions; (7) protection of fragile coalitions among faculty of color; (8) complexity of issues in institutions where people of color have achieved critical mass and subordination is reconfigured rather than eliminated; and (9) benign experiences in comparison to the egregious experiences to which others are subjected. *Id.* at 10-14. Additionally, for some academics, “the price of individual success [is], apparently, silence about the ways in which academic attitudes and institutional practices reproduce hierarchies of race, gender, and class.” *Id.* at 11.
  11. *Speaking Truth to Power* is the title of Professor Anita Hill’s book where she describes her life, including her life in academia, and what she endured as a result of the events and circumstances before, during, and after the “Clarence Thomas–Anita Hill” hearings. ANITA HILL, *SPEAKING TRUTH TO POWER* (1997); RACE, GENDER AND POWER IN AMERICA: THE LEGACY OF THE HILL-THOMAS HEARINGS (Anita Faye Hill & Emma Coleman Jordan eds., 1995).
  12. In addition to the panelists in the plenary session, the following law professor contributors participated in different panels during the symposium: Elvia R. Arriola (Northern Illinois University), The First Generation Roundtable; Deirdre M. Bowen (Seattle University), Historical and Empirical Perspectives on Presumed Incompetence Panel; Ruth Gordon (Villanova University), Building Networks of Allies Panel; and Sylvia R. Lazos (University of Nevada, Las Vegas) Historical and Empirical Perspectives on Presumed Incompetence Panel.

- a. Angela Mae Kupenda, Professor of Law, Mississippi College School of Law;
- b. Angela Onwuachi-Willig, Charles M. and Marion J. Kierscht Professor of Law, University of Iowa College of Law;
- c. Stephanie M. Wildman, John A. and Elizabeth H. Sutro Professor of Law and Director of the Center for Social Justice and Public Service, Santa Clara University School of Law; and
- d. Adrien Katherine Wing, Bessie Dutton Murray Professor of Law, University of Iowa College of Law.

Professor González gave me a charge. She instructed me to come up with provocative questions. I obtained inspiration for my questions from the chapters authored by the panelists and sought to probe and expand the themes of their stories. I provided the panelists with group and individual questions before the panel and quoted the language from their chapters that informed the particular questions. At the plenary session, the audience viewed these quotes via Power Point slides.

The plenary panel proceeded as follows. First, the panelists gave brief opening remarks about their chapters, followed by a question and answer portion, and ended with my closing remarks. Members of the audience submitted questions once the plenary panel discussion began.<sup>13</sup> While this Article is not a verbatim transcript of the plenary panel, all the questions are the same ones posed during the panel. The remarks and answers included here follow a semi-transcript format that allowed the moderator and panelists an opportunity to elaborate further on some of the comments and responses.<sup>14</sup>

## II. OPENING REMARKS—PANELISTS

### A. Facing Down the Spooks—Professor Kupenda

I am delighted to be part of this panel and a contributor to the widely acclaimed *Presumed Incompetent*.<sup>15</sup> My hope is this book will help give a louder voice to women of color faculty and some relief from the many demoralizing

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13. All the questions submitted by the audience were addressed during the question and answer session.

14. This collaboration, written as a law review article, incorporates speaking footnotes and legal citations that support the material in the main text. Well-researched, innovative, narrative writings, like this Article, inform readers about diverse perspectives and realities of law and society that may otherwise be neglected in legal scholarship. See Deborah L. Rhode, *Legal Scholarship*, 115 HARV. L. REV. 1327, 1329 (2002). This type of legal scholarship also broadens the audience to include readers outside of the legal academy who can benefit from academic insights. See Sylvia R. Lazos Vargas, *Critical Race Theory and Autobiography: Can a Popular "Hybrid" Genre Reach Across the Racial Divide?*, 18 LAW & INEQ. 419, 448 (2000).

15. Angela Mae Kupenda, *Facing Down the Spooks*, in *PRESUMED INCOMPETENT*, *supra* note 2, at 20-28.

experiences, unequal treatments, and oppressive environments women of color experience in academia.

My summary is best situated by first asking you to take a look at the beautiful cover of the book. The cover displays a drawing of a woman of many colors. Her beautiful facial expression projects strength and determination. The part of her face that captures me the most are her eyes. Her eyes are wide open, not in fear, but facing her obstacles with courage. These eyes facing the oppression that torments women of color in academia situate the beginning and the end of my chapter.

My chapter is set in my pre-tenure and immediate post-tenure years. When I started teaching law in 1995, I was determined this time<sup>16</sup> to understand the rules and policies. I planned to be successful and to obtain tenure at the earliest point possible. I was only the second Black woman on the faculty at my law school<sup>17</sup> and my entire university. Having grown up in the segregated south,<sup>18</sup> I knew what I might face. Still, I had been hopeful legal academia would, well, follow the law and treat me fairly.

Although I was hopeful, I carefully planned my strategy to do my best to succeed.<sup>19</sup> My first step was to try to understand the institutional expectations. I sought to obtain a copy of my law school's faculty handbook. I encountered suspicion from staff as to why I would want a copy of the rules and resistance from the administration and faculty as they told me all of the tenure standards would be made more rigorous soon. Hearing this made me read the rules, which I eventually obtained, even more carefully. My second step was to follow the steps I learned from the American Association of Law Schools New Law Faculty Workshop I had attended. The sessions encouraged us to focus, and to document our focus, on three widespread requirements for tenure: scholarship, teaching, and service.

I had challenges teaching classes with many White, male, and religiously conservative students.<sup>20</sup> But after getting my teaching on a better track, I focused

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16. Prior to my legal career, I served as assistant professor at two business schools.

17. When I began as a tenure track law professor in 1995, the only other professor of color on the faculty was a tenured, full professor, Black woman; we still have two Black women. We have a newly tenured Asian woman. We have no Black men, Latina/o, or Native American professors on the faculty. However, a Black male was recently hired to join our faculty next year.

18. Angela Mae Kupenda, *Loss of Innocence*, in LAW TOUCHED OUR HEARTS: A GENERATION REMEMBERS BROWN V. BOARD OF EDUCATION 36-42 (M.W. Robinson & R.J. Bonnie eds., 2009); Angela Mae Kupenda, *The Struggling Class: Replacing an Insider White Female Middle Class Dream with a Struggling Black Female Reality*, 18 AM. U. J. GENDER, SOC. POL'Y & LAW 725 (2010) [hereinafter Kupenda, *The Struggling Class*].

19. See generally Angela Mae Kupenda, Essay, *Academic War Strategies for Nonviolent Armies of One*, 4 THE CRIT: A CRITICAL LEGAL STUDIES JOURNAL 111 (2011) [hereinafter Kupenda, *Academic War Strategies*].

20. 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, 977 (1997) [hereinafter Kupenda, *Making Traditional Courses More*



on my scholarship. I again received opposition. The then academic dean preferred I teach all summer, after having had four different course preparations in my first year and new preparations for the following year.<sup>21</sup> After a struggle, I was able to keep my summer free from teaching, as the young White professors were encouraged to do. I completed several works that were accepted for publication in law journals.

So at the end of my second school year when I had my meeting with my then dean, I was expecting a very favorable evaluation, as I had planned to go up for promotion to associate professor, on schedule, at the beginning of year three. My teaching evaluations were now surprisingly good. My service was extreme: the extreme imposition of my service duties had come from the administration, other faculty, White students and nonWhite students, the legal community, and my personally felt sense of duty. In spite of the arduous amount of time and energy required to meet the teaching and service demands, I had written articles, published, and presented. In addition, I had tried to be pleasant and stay out of faculty squabbles. I had even socialized extensively with the White female faculty, attending weekly Bible study lunches at a large, predominantly White church with them. So, I was expecting that my dean would say “great job” and award me a “great job” raise, giving me his support for my promotion bid.

Instead, after reviewing my year, he suddenly turned to me with his pale face growing very red and expressed disappointment:

He did not have any problems with my teaching or service or scholarship. The problem he stated was that I did not tell him and my colleagues enough about my personal life. He said I was beginning to be much too private, just like the other woman of color on the faculty. I assured him that my coworkers did know all the relevant information about me. More importantly, they knew at least as much about me as I knew about them. He wanted me to trust them more with the intimate details of my life. I explained that they already knew those details: I was single, had no children, was close to my family and friends, lived a quiet life, was active in my community, attended church, and enjoyed travel, my books, and the arts.<sup>22</sup>

Somehow this explanation did not satisfy his appetite for private details. So “[g]rowing increasingly frustrated, he leaned forward in his chair, looked me straight in the eye, and, with his ordinarily pale face turning red, he yelled, ‘You must trust us more if you want to succeed here; *there are no spooks behind the door!*’”<sup>23</sup>

I thought, “Did he just say ‘Spooks?’” I became uncharacteristically

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*Inclusive*].

21. My response to this academic dean was indelicate. Kupenda, *supra* note 15, at 23.

22. *Id.* at 20.

23. *Id.* (emphasis added).

speechless, averting my eyes from his deeply reddened face. Later that evening, I recounted this meeting to a close friend. My friend said I should have told my dean, “You’re right; there are no spooks behind the door because right now the spooks are staring me in the face.”<sup>24</sup> I now know most definitely: my friend was correct—yes, the spooks were out in the open and they often bring their relatives out, too. Throughout my academic career, I have been haunted by these spooky ghosts. “[T]he ghosts of Jim Crow; the goblins of slavery-like, [W]hite, presumed superiority; and ghouls of sexism, racism, and classism just will not leave me alone!”<sup>25</sup> My chapter considers the spooks from times past that continue to haunt us, even in the law’s hallowed ivory tower. My chapter reflects on the terrifying “I want My Mammy” ghosts; frightening experiences flying with the White female ghosts and their disappearing acts; and bloodcurdling “Just Be Our Negro” ghosts.

When I have been scared by these ghosts that won’t just go and rest in peace, I was often rendered speechless, or I just refused to open my eyes and see them. The last story in my chapter tells how my dear mother, Mama, taught me to deal with them. Mama’s lesson for me came as I was in a very racially oppressive work environment, and I was also troubled during this time by nightmares of ghost-like figures chasing me. These spooks disturbed my sleep, and I was dealing with racially oppressive ones at work. Therefore, I was in a state of exhaustion. I confessed my nightly, and daily, troubles to my mother. Mama told me that the next time I dream about these scary creatures, I should “make myself acutely aware of their presence, stop running, turn around, and face them down.”<sup>26</sup> I did so, and the nightmares in my sleep went away. And, I followed this same advice at work. Facing down the spooky oppressive daytime circumstances diminished their control over me and enlarged my power and freedom.

So, women faculty of color must be more aware of injustice, stop running, turn around, and, like the woman’s face on the book cover, with courage and eyes wide open face down these spooks of injustice.

### B. Silence of the Lambs—Professor Onwuachi-Willig

On occasion, people ask me about the title of my chapter in *Presumed Incompetent*.<sup>27</sup> My chapter has the provocative title, *Silence of the Lambs*.

24. *Id.*

25. *Id.*

26. *Id.* at 28.

27. For example, in preparation for the plenary panel, Professor Reyes sent me the following questions about my title:

What do you mean by *Silence of the Lambs*? How did you choose the title? I do not assume that it was the movie. If it was the movie, was it the torture that the women endured? If it was not the movie, does the lamb go quietly to the slaughter house? Or, does the lamb make noise on her way to the slaughter house? Is the outcome

Readers often ask me, “What did you mean by your title? What meaning were you trying to convey with it?” A small part of me always wants to say, “Well, it was just wordplay, a riff off of a popular movie title.<sup>28</sup> It was just a cute and funny name.” To some extent, that response is true.

However, my title also has deeper meaning. When I chose the title, I also wanted to signal to readers that the experience of women in academia, and in particular of women of color and working-class women, can be a form of torture. It is a type of killing, not like in the movie, of course, but a slow killing of sorts—the type that occurs as a result of the everyday negation and microaggressions<sup>29</sup> felt by us on the job. If you consider the premature deaths of many women of color in academia, the title of my chapter, and this particular meaning of my chapter, loses its cuteness and wit. Instead, it reminds us of the very real consequences of such day-to-day harms for outsiders in the academy.

My title is also meant to communicate the fragility of untenured faculty. We think of lambs as soft, fragile creatures that need to be protected and may not cry out on their way to the slaughterhouse. In a sad way, untenured female faculty—and particularly women of color and women of lower socioeconomic backgrounds—are that way—scared, frightened, and unable to speak, even when being led to their slaughter.

Although my chapter does not focus on a wide range of gender- and race-based challenges in academia, my title, and more importantly, my text are also meant to highlight the vast array of challenges that women of color face in the classroom and the way in which those challenges are distinct from those that their White male peers, and even their White female peers, may encounter. In my chapter, I speak briefly of one experience I encountered in teaching a case in one of my Employment Discrimination courses, a case involving a Black woman who filed a lawsuit alleging race and sex discrimination against an employer

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different based on what she does: silence versus noise? Is the ultimate outcome the same—the killing of the lamb? What type of killing in academia? The death of her voice during the pre-tenure years? Or the failure to get tenure, which may provide a permanent silencing? Would you consider explaining this in your 5-minute introduction?

E-mail from Maritza Reyes, Associate Professor of Law, Florida A&M University, to Angela Onwuachi-Willig, Professor of Law, University of Iowa, (Mar. 5, 2013, 10:57 EST) (on file with author).

28. In 1991, Orion Pictures released the movie *SILENCE OF THE LAMBS*, starring Anthony Hopkins and Jodi Foster. The plot in the movie concerns the relationship between an FBI cadet, played by Foster, who seeks the advice of an imprisoned serial killer, Hopkins, in order to capture another killer who is targeting overweight women and then skinning them to make purses and other items. *SILENCE OF THE LAMBS* (Orion 1991).
29. Dr. Derald Wing Sue of Columbia University defines microaggressions as “the brief and commonplace daily verbal, behavioral, and environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial, gender, sexual-orientation, or religious slights and insults to the target person or group.” *DERALD WING SUE, MICROAGGRESSIONS IN EVERYDAY LIFE: RACE, GENDER, AND SEXUAL ORIENTATION* 5 (2010).

who prohibited employees who had customer contact from wearing all-braided hairstyles. In that instance, I remained silent, failing to push and probe my students as I normally would have done with other cases because of how I, a Black woman with locks, feared being both subject and object in my own classroom.<sup>30</sup>

As the many narratives in *Presumed Incompetent* have shown us, such experiences are not uncommon for outsider-teachers in academia. We, as outsiders, often encounter the challenge of having to figure out exactly when to focus on and address issues that implicate race, racism, sex, sexism, class, classism, and other marginalized identity categories and the –isms that flow from them in the classroom.<sup>31</sup> We do so while also trying to minimize the negative impact of the racialized and gendered stereotypes that our students are likely to impose upon us, both consciously and unconsciously, but primarily unconsciously.<sup>32</sup> For women of color in the academy, some roles are simply viewed as unacceptable for them to adopt, while others are expected as a matter of course. For instance, within the classroom, women of color faculty are expected to teach with a smile—what Professor Kupenda referred to as teaching with the “mammy ghost.”<sup>33</sup> For women of color professors, teaching without a smile often results in students’ perceptions of them as hostile or unapproachable—the angry Black woman, the fiery Latina, the Asian American woman who confusingly is not conforming to the image of the model minority, or the savage American Indian woman. As the editors of *Presumed Incompetent* asserted in their introduction, students want women, particularly women of color, to be soft and caring—to be like the nannies or other caretakers whom they recall warmly holding them to her bosom.<sup>34</sup> Or they expect us to be like the

30. Angela Onwuachi-Willig, *Silence of the Lambs*, in *PRESUMED INCOMPETENT*, *supra* note 2, at 145-48 (discussing and referring to Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365 (1991)).

31. See Robert S. Chang & Adrienne D. Davis, *A Epistolary Exchange—Making Up Is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J.L. & GENDER 1, 34-41 (2010).

32. *Id.*

33. Kupenda, *supra* note 15, at 22.

34. Harris & González, *supra* note 9, at 3; see also 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, 125 (1999) (“By being Black and female, students demand and expect that I be Mammy for them at a moment’s notice. 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).’ 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.”); Bernice R. Sandler & Roberta M. Hall, *Campus Climate Revisited: Chilly for Women Faculty, Administrators, and Graduate Students* (1991), at 4, available at [https://www.hws.edu/offices/provost/pdf/campus\\_climate2.pdf](https://www.hws.edu/offices/provost/pdf/campus_climate2.pdf) (asserting that “we expect women to be nurturing, passive, accommodating,” and “‘motherly’ to students and colleagues”).

entertainers of color, who frequently may be the only people of color they “know”—the rappers, singers, dancers, and comedians who put on a good show.<sup>35</sup> The last thing they want is what they perceive to be an agenda-driven woman of color, who too frequently raises concerns about biases related to race, gender, sexuality, and class in the classroom.

Female faculty members of color also encounter frequent challenges to their abilities as scholars, despite their often stellar credentials.<sup>36</sup> And, if they write scholarship that addresses issues of race, gender, sexuality, and/or class, people may even question whether they are real scholars. It is not uncommon for academics to question whether race and gender scholarship is “real” scholarship to begin with. Is it rigorous enough? And, aren’t those women of color just cheating by writing about what they just naturally know (as if being born in Cleveland, for example, automatically makes one a natural historian of the city)? After all, the knowledge comes with the identity, right?

Furthermore, because many individuals who challenge race and gender scholarship often have the privilege of not having to think of such issues, they fail to appreciate that women of color often choose to study such matters, not simply out of interest, but out of a desire to push society further toward equality. For some, the focus of their research is hardly a choice at all.

The sad news is that these challenges to scholars of color look much like those described by the late Professor John Hope Franklin in 1963. Describing the dilemmas of early Black scholars, he wrote the following:

[These early Negro scholars] had faced their dilemma, and they had made their choice. They *had* to combat the contentions of Negro inferiority. They *had* to demonstrate that Negroes were capable of assimilating ideas and of contributing to mankind’s store of knowledge. They made their argument simply and directly. It was as though Whites had said they could not count, and

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35. Professor Fred Bonner II explained how minority faculty face the pressure to entertain, asserting:

I had listened to my nonminority colleagues in nearby offices as they engaged in similar conversations with students. Their discussions centered on issues of academic expectations and rigor. Not once had I heard their students talk about the enjoyability of courses. It was as if they could satisfy students by providing knowledge, while for me the bar was raised. Not only was I to convey academic content, but I also had to entertain students.

One of my colleagues echoed my feeling: “I don’t have the luxury of coming to class with just a book and a smile, like some of my nonminority colleagues. I have to ‘flash and dash’ them with media and PowerPoint, lest they view me as lazy and incompetent.” Another said ruefully, “It would be nice to sit back and just enjoy teaching without all of the extra pressures of trying to be an entertainer, but I guess this is not my lot.”

Fred A. Bonner II, *Black Professors: On the Track but Out of the Loop*, CHRON. HIGHER EDUC., June 11, 2004, at B11, available at <http://chronicle.com/article/Black-Professors-On-the-Track/26193>.

36. *Id.* (noting stories of how students question minority professors’ credentials).

Negroes then counted from one to ten to prove that they could. There were subtle, more sophisticated ways of proving their mental acumen, but if Negroes thought of them, they must have been convinced that such methods would have no effect on those whose arguments were not based on fact or reason in the first place. It must have been a most unrewarding experience for the Negro scholar to answer those who said that he was inferior by declaring: "I am indeed *not inferior*." *For such a dialogue left little or no time for the pursuit of knowledge as one really desired to pursue it.* Imagine, if you can, what it meant to a competent Negro student of Greek literature, W.H. Croghan, to desert his chosen field and write a book entitled *The Progress of a Race*. Think of the frustration of the distinguished Negro physician C.V. Roman, who abandoned his medical research and practice, temporarily at least, to write *American Civilization and The Negro*. What must have been the feeling of the Negro student of English literature Benjamin Brawley, who forsook his field to write *The Negro Genius* and other works that underscored the intellectual powers of the Negro? *How much poorer is the field of the biological sciences because an extremely able and well-trained Negro scientist, Julian Lewis, felt compelled to spend years of his productive life writing a book entitled The Biology of the Negro?*

Many Negro scholars, moreover, never entered any of the standard branches of learning. Perhaps they would have been chemists, geologists, essayists, critics, musicologists, sociologists, historians. But they never were. From the moment of their intellectual awakening they were drawn inexorably, irresistibly into the field that became known as Negro studies.<sup>37</sup>

Finally, with respect to service, women of color find themselves overworked and underappreciated—appointed to every committee under the sun, which puts them at risk of not finishing the scholarship and teaching that form the basis for the award of tenure,<sup>38</sup> as well as the items that Professor Michael Olivas calls the merit badges of the academy.<sup>39</sup> At the same time, women of color struggle with saying no to these commitments, in part because the request comes from a higher-up—the Chair, the Dean, even the President, in some instances—and in part because some of them became professors precisely to fill in the gaps that existed at such institutions when they were students.<sup>40</sup> They want

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37. John Hope Franklin, *The Dilemma of the American Negro Scholar*, in *SOON ONE MORNING: NEW WRITINGS BY AMERICAN NEGROES 1940-1962* 66-67 (Herbert Hill ed., 1963) (emphasis added).

38. See generally Devon W. Carbado & Mitu Gulati, *Temure*, 53 J. LEGAL EDUC. 157 (2003).

39. Michael A. Olivas, *Reflections on Academic Merit Badges and Becoming an Eagle Scout*, 43 HOUS. L. REV. 81, 84 (2006) (contending that "the most exclusionary practices occur in the distribution of the highest level of prestige resources, those of the various merit badges earned or handed out in the daily business of academia").

40. See, e.g., Cheryl I. Harris, *Tributes in Memory of Professor Derrick Bell*, DERRICK BELL

to be the role model and the mentor to the students whom they know need to see them in their positions in order to know that the school belongs to them, too.<sup>41</sup>

Taking into account all of these factors, many of which were addressed and analyzed in chapters in *Presumed Incompetent*, plus the examples that I discussed in my own chapter, part of what I wanted to do with my piece is explain the silence by the young lambs in academia—to convey why they may not always speak when pain is being inflicted upon them. And, I did so through the telling of my two different experiences with pre-tenure meetings—one at my old institution and the other at my current home. In one instance, my Dean, a White male, let me know that he was aware of the classroom challenges that women of color often encounter, and he conveyed to me that those challenges would be acknowledged and accounted for in any evaluation of my teaching. The Dean, who had been advised by and informed by senior faculty of color, assured me that he knew that I, unlike my White male peers, am not presumed to be competent as a teacher and as a scholarly expert in the field who can impart lessons to my students, but instead am presumed to be incompetent in such a role. In the other instance, a senior, White male administrator, though not at all intending to be disarming, informed me that my past record of teaching did not matter—only my one year of teaching evaluations at my new school before I would come up for tenure would matter. The presumption here was that I was operating on a level playing field with my White male colleagues, despite the fact that students of color were and are nearly absent from my institution and that nearly all of my students have never even had a Black teacher of any kind in their lives. There, I stood disarmed, moving from a position of once relative comfort in the classroom to one of discomfort on each day that I walked into my classes with this new burden—this new knowledge of my new bosses' lack of awareness about implicit race and gender bias—on my back. Most of all, there I stood, silent, not raising my concerns about racial and gender bias in evaluations.<sup>42</sup> The lamb on the way to a possible slaughter, I did not scream.

In the end, my primary audience in *Silence of the Lambs* is senior—meaning tenured—female faculty and senior faculty of color. I am speaking

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OFFICIAL SITE (Oct. 15, 2011), <http://professorderrickbell.com/tributes/cheryl-harris/>. In her tribute to the late professor Derrick Bell, Professor Cheryl Harris explained how the absences in her experiences during law school influenced her decision to teach:

So when a friend and colleague told me that I should consider going into law teaching I believed it was possible in part because Derrick had already made it seem possible. Indeed, though teaching law was something I had never contemplated because law school seemed hostile to my preoccupations, Derrick demonstrated that it was precisely because it had seemed so to me, that teaching law might be the right thing to do, IN ORDER TO CHANGE IT. And so, I opened myself to that possibility and shortly thereafter I became the first Black tenure track law professor at my school.

*Id.*

41. *Id.*

42. Onwuachi-Willig, *supra* note 30, at 149-51 (providing a longer version of this story).

mostly to this audience in my chapter about what their more junior peers learn from them and what they pick up from them by watching their actions and signals. For example, junior faculty may pick up the great value of certain silences, which I learned from watching one of my senior male colleagues of color at my first institution.<sup>43</sup> My main message to these faculty members is that they must speak up about their own challenges, past and present, instead of internalizing any shame from them. They must educate those with decision-making authority in their departments and others about such challenges and the means for addressing them, and they must continue to pave the way for those after them. They must speak for those with less of a voice, as the “silences of the lamb are no longer [their] own.”<sup>44</sup> They must speak to enable and help the young lambs avoid the slaughterhouse and eventually grow up, but not such that they become mere sheep in the academy. Instead, these senior colleagues must help their junior colleagues become strong ewes that can turn around to help others who come after them.

### C. Working across Racial Lines in a Not-So-Post-Racial World— Professor Wildman

*Presumed Incompetent*<sup>45</sup> tells the mostly unheard story of women of color in the academy. I thank the book’s chapter authors and editors for telling this story, and especially Angela Harris and Carmen González for their encouragement and for believing that I had something to contribute to this project. So I do want to come out as a White person—not because I am particularly proud of that fact, but because I have had the experience of people assuming that I was NOT White because of the content of my scholarship about race, gender, social justice, and privilege.

My work tries to encourage us—Whites—to learn more about race and racialization in the United States and to provoke a greater consciousness of Whiteness and its role in this race story. This engendering is not a guilt trip, but rather a plea to notice White racial privilege—the benefits that we as Whites receive without our even realizing it.<sup>46</sup> While we may never be able fully to

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43. *Id.* at 143-44 (describing how one colleague taught me, by example, about the power of silence); see also Margaret Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy, and Discourse*, 5 MICH. J. RACE & L. 847, 852-63 (2000).

44. Onwuachi-Willig, *supra* note 30, at 151.

45. The insult of presumed incompetence directed at people of color in the academy is not new. Even iconic luminary Derrick Bell famously battled that presumption as a visiting professor. For one account of that episode see Andrew J. Bates, *Minority Law Professors: Will the Best and the Brightest Continue to Teach?* HARV. CRIMSON, Dec. 17, 1986, at 3, col. 1, available at <http://www.thecrimson.com/article/1986/12/17/minority-law-professors-will-the-best/>.

46. See Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, 49 INDEP. SCH. 31 (1990); TIM WISE, WHITE LIKE ME: REFLECTIONS ON RACE FROM A PRIVILEGED SON (2011); FRANCES E. KENDALL, UNDERSTANDING WHITE PRIVILEGE: CREATING PATHWAYS



understand the privileges Whiteness brings—one privilege being not to notice race or White privilege—noticing is a first step toward fostering that awareness. My chapter in *Presumed Incompetent*,<sup>47</sup> co-authored with Margalynne Armstrong, talks about working across racial lines and the importance of noticing race, including Whiteness—which is, after all, a race—in order to facilitate the possibility of working across racial lines. Ignoring race and the racialization of potential allies may prove an obstacle to creating the necessary trust in a collegial relationship.

The chapter examines the presumption of incompetence that people of color and White women face as law professors. It discusses aspects of law school culture that contribute to the development of this presumption, such as the historical exclusion of all women as professors, the creation of dominant stereotypes of competence like Kingsfield in *The Paper Chase*,<sup>48</sup> and even the outright denial that such a presumption exists.<sup>49</sup> The chapter considers approaches that all members of the law school community can take to work across race and gender lines to break down the presumption, which operates differently across identity categories.

The chapter begins by examining colorblindness and the ongoing salience of race.<sup>50</sup> Next, it explores the significance of the workplace as a site for antiracism collaboration,<sup>51</sup> and then considers ways to build alliance across racial lines by using color insight—the antithesis of color blindness.<sup>52</sup> Color insight urges us to notice race and its context, examine the operation of systems of privilege, unmask perspectivelessness, and combat stereotyping by looking for the “me” in each individual.<sup>53</sup> Finally, the chapter turns to friendships, coalitions, and working together, suggesting ways to lay a foundation for combating the

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TO AUTHENTIC RELATIONSHIPS ACROSS RACE (2d ed. 2013); STEPHANIE M. WILDMAN WITH CONTRIBUTIONS BY MARGALYNN ARMSTRONG, ADRIENNE D. DAVIS, AND TRINA GRILLO, *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* (1996).

47. Margalynne J. Armstrong & Stephanie M. Wildman, *Working across Racial Lines in a Not-So-Post-Racial World*, in *PRESUMED INCOMPETENT*, *supra* note 2, at 224-41 [hereinafter Armstrong & Wildman, *Working across Racial Lines*].

48. See JOHN JAY OSBORN JR., *THE PAPER CHASE* (40th anniv. ed. 2012).

49. Armstrong & Wildman, *Working across Racial Lines*, *supra* note 47, at 224 (noting how centuries of exclusion of women and people of color from academia led to the development of the stereotypical White male law professor and eventually the presumed competence of White men and incompetence of others), 231 (relating an anecdotal conversation describing how one woman aspired to be “as much like men as possible,” measuring competence based on the norm of White male colleagues), 235 (noting that “[i]n its aspiration to achieve a color-blind society, contemporary culture downplays or even denies this racialized reality.”).

50. *Id.* at 226-27.

51. *Id.* at 228-30.

52. *Id.* at 233.

53. See *id.* at 229-30, 233-36 for discussions on “perspectivelessness” and the role of color insight in improving racial equality and cross-racial alliance.

presumption of incompetence.<sup>54</sup>

By acknowledging differences and the influence of race in each of our lives, women professors can move toward deeper understanding, sisterhood, and alliance to combat the presumption. Such alliances can serve as a basis for addressing other professional issues and shared concerns, from effective teaching techniques to work-life balance. The chapter illustrates the presumption's operation and the process of building connection by using issues that women law professors face, as told by a fictitious law professor's experience. These stories weave throughout the chapter.

Readers first met Teresa Vallero, a Black Latina, and her White ally, Jessica Kearny, in the *Privilege Revealed* chapter: *The Dream of Diversity and the Cycle of Exclusion*, depicting the struggle to get Theresa hired at Holmes Law School, despite her stellar credentials.<sup>55</sup> This chapter begins fifteen years later as Theresa muses about conversations about race to promote color insight, in the context of an upcoming tenure vote for Karen Romero. Professor Romero is a younger Latina faculty member who doesn't fit the Kingsfield stereotype.<sup>56</sup> A senior White female professor, a kind of queen bee/White missionary crossover figure, has fueled faculty negativity about Karen, even though this woman—Gladys—views herself as a Karen supporter.<sup>57</sup> Gladys's inadvertent sabotage, coupled with her genuine belief in her own helpfulness, sadly epitomizes many real-life cross-racial relationships. And Teresa and Jessica remind others about Sheila O'Rourke's suggestion "to practice on other people's oppressions."<sup>58</sup> Sheila, who is a White lesbian, tries to speak out on racial justice issues, and she hopes others will do the same if a classroom or workplace dynamic exhibits homophobia or sexism.<sup>59</sup>

The stories told throughout *Presumed Incompetent* underline the urgency for cross-racial alliances. Women of color, the brave and courageous pioneers of these academic frontiers, cannot win this battle for inclusion alone. The dynamics of racial "other"-ing such as stereotypes, stigma, microaggressions,<sup>60</sup>

54. See *id.* at 239-41.

55. See WILDMAN ET AL., *supra* note 46, at 103, 118.

56. Armstrong & Wildman, *Working Across Racial Lines*, *supra* note 47, at 224, 231.

57. *Id.* at 231-32.

58. *Id.* at 239. Sheila O'Rourke has continued to be an advocate of diversifying academia through her roles as Assistant Provost and Associate Vice Provost at the Office of the President, University of California, Berkeley; her nationally recognized tenure as Director of the U.C. President's Postdoctoral Fellowship Program; and as lecturer at the Graduate School of Education at Berkeley. *Sheila O'Rourke*, UNIVERSITY OF CALIFORNIA OFFICE OF THE PRESIDENT (2012), <http://www.ucop.edu/general-counsel/attorneys-staff/bios/sheila-orourke.html>; *Diversity champion Sheila O'Rourke wins national recognition*, LINK (Mar. 20, 2012), <http://link.ucop.edu/2012/03/20/diversity-champion-sheila-orourke-wins-national-recognition/>. Today, O'Rourke serves as appointed Acting Associate Campus Counsel at U.C. Davis and attended the Berkeley conference commemorated by this symposium. *Id.*

59. Armstrong & Wildman, *Working across Racial Lines*, *supra* note 47, at 239.

60. Originally coined by Chester Pierce in the context of cross-racial interactions,

hate speech, and blatant discrimination continue as the fabric of U.S. society. What better place to educate for change than in academic institutions?

#### D. Lessons from a Portrait: Keep Calm and Carry On—Professor Wing

Like everyone else on the panel, I would like to thank the organizers for putting on this wonderful event. Of course, I would like to thank my dear colleagues for editing this powerful volume. Many of the women in this room are my heroes, whether they be older than me in teaching or younger than me, like my brilliant Iowa colleague, Professor Onwuachi-Willig. When I told the University of Iowa Dean, Gail Agrawal, that we had two Iowa people on the opening plenary, a call was placed to the university media people. That was great. I am especially glad that we are here at U.C. Berkeley, because it was the *Berkeley Women's Law Journal* in 1990-91 that published the first issue on women of color in the law, and I had contributed to that issue as a young pre-tenure person.<sup>61</sup> I wrote a small essay and when the issue came out and I read the whole thing, I cried and cried and cried. And here we are now, more than twenty years past that, and when *Presumed Incompetent* came out and I read everyone's essays, I cried and cried and cried. I cried tears of sadness, but also tears of joy, because of the transcendence that these essays and other stories represent. Responding to the experience of seeing all our voices collected in the *Berkeley Women's Law Journal*, I was inspired and became the editor of two anthologies on women of color and the law: *Critical Race Feminism: A Reader*<sup>62</sup> and *Global Critical Race Feminism: An International Reader*.<sup>63</sup> There have been two editions of *Critical Race Feminism*, the last one was in 2003.<sup>64</sup> I do not have the energy or the time to do another edition, but of course all these stories portrayed in *Presumed Incompetent* illustrate that there is a need to update this wonderful material and some of you here were in those volumes as well.

My chapter in *Presumed Incompetent* is called *Lessons from a Portrait: Keep Calm and Carry On*.<sup>65</sup> The title comes from the fact that if you teach

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"microaggression" describes the subtle, non-physical aggression by people of dominant identities (e.g., race, gender, or sexuality) in relation to those less privileged. The microaggressive interaction serves to cement the power relation of dominance. Pierce chose the term as a contrast to *macro*-aggressions, such as lynching or rape. See Chester Pierce, *Offensive Mechanism*, in *THE BLACK SEVENTIES* 265-66 (Floyd B. Barbour ed., 1970) and Peggy C. Davis, *Law as Microaggression*, 98 *YALE L. J.* 1559 (1989) for further discussion.

61. See Adrien K. Wing, *Brief Reflections towards a Multiplicative Theory and Praxis of Being*, 6 *BERKELEY WOMEN'S L.J.* 181 (1990-91). *The Berkeley Women's Law Journal* has been renamed the *Berkeley Journal of Gender, Law & Justice*.
62. *CRITICAL RACE FEMINISM: A READER* (Adrien Katherine Wing ed., 1997).
63. *GLOBAL CRITICAL RACE FEMINISM: AN INTERNATIONAL READER* (Adrien Katherine Wing ed., 2000).
64. *CRITICAL RACE FEMINISM: A READER* (Adrien Katherine Wing ed., 2d ed. 2003).
65. Adrien Katherine Wing, *Lessons from a Portrait: Keep Calm and Carry On*, in *PRESUMED*

twenty-five years at Iowa, you are entitled to have an oil portrait done, a three-quarter length oil portrait. And of course, at first, all the oil portraits were White men, and then there were a few White women.<sup>66</sup> And now my oil portrait hangs in a space that I could not have imagined, and it hangs forever. If you leave the school, if you retire or if you die, it stays. The idea that people twenty years from now would come and say, “Well, who is that woman?” is scary. It is also to me, joyful, and so I wanted to write this essay dealing with how it feels to have hit a twenty-five-year mark when so many of our scholars never make it to twenty-five years. There are some who did not get promoted and some who passed away or retired. On my faculty we have people who have taught fifty years and have told me, “Great, Adrien! You’re at the half-way point.” And in questions, I will address the query, What do you do post-twenty-five years?

My chapter has seven lessons: do more than the minimum; tenure is only the end of the beginning; keep teaching the teacher and teach on a grand scale; service is the rent we pay for living on the planet; we have to be involved in *othermothering*; take care of yourself; and give credit where credit is due.<sup>67</sup>

The first lesson is “do more than the minimum.” As an example of this lesson, many people have met me and they say, “Oh, you were always a great scholar. You always cranked it out,” and I have said, “No, no, no.” It took me two extra years to get tenure; one was because I had a baby and the other was because I was not ready. Some colleagues said I owed four articles, and some said three, and some said only two, so I thought I had better meet the top standard. I had four articles when the time for tenure came, including the Berkeley essay.

The second lesson is “tenure is only the end of the beginning.” There were some people who thought that I would stop publishing after I got tenure—that I had only done the writing because I had to do so. It was only after tenure that I really got going as a scholar, and of course now, I have over 110 publications. Professor Onwuachi-Willig counted them up for me. I cannot even believe I have done that. After tenure, I felt free to write more and more, not less and less.

The third lesson is “keep teaching the teacher and teach on a grand scale.” I have found that our profession never gets stale. Designing new courses, doing different techniques such as simulations or studying abroad enables the students and me to perpetually learn. I have enjoyed taking students to places like Jordan, Egypt, Turkey, London, France, Berlin, Rome, the Hague, and Palestine.

The fourth lesson is “service is the rent we pay for living on the planet,” a saying I got from Marian Wright Edelman of the Children’s Defense Fund. The service can be on many levels including writing reference letters for students or

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INCOMPETENT, *supra* note 2, at 356-71 [hereinafter Wing, *Keep Calm*].

66. Additionally, we have a portrait of George Strait, who was an African American law librarian.

67. Wing, *Keep Calm*, *supra* note 65, at 362-71.

tenure candidates. It can be doing a blind review for a publisher or chairing an American Bar Association (ABA) or American Association of Law Schools (AALS) committee. It can be helping a family in a foreign country, where our money goes a very long way.

The fifth lesson is “we have to be involved in *othermothering*.” Both men and women can mother, i.e. nurture or mentor. It can involve helping everyone from pre-law students to alumni. It can involve taking on children that are not your biological kin as well as assisting relatives.

The sixth lesson is “take care of yourself.” The stress of the academy can lead people to quit, retire early, or pass away at a young age. Finding ways to nourish yourself physically and spiritually while juggling your professional and personal obligations is essential. You cannot help others if you do not take care of yourself.

The final lesson is “give credit where credit is due.” In my case, I could not have done anything the last seventeen years if I did not have the love and support of my partner James Sommerville. Of course, I have also had a lot of help from other family, my colleagues, secretary, research assistants, and friends.

I wanted to mention three things very briefly that I did not talk about in my essay—all relating to sex. I have met professors who implied that I needed a real man—a White man—since Black men do not know how to take care of business. I have had professors discuss their sexual exploits and want to approach my students sexually. Finally, I have been sexually harassed by my own students.

The best or worst stories are yet to be written.

### III. QUESTIONS AND ANSWERS

#### A. The Rule of Silence

*“Senior colleagues, even those who embrace antisubordination ideologies such as Latino/a critical theory (Hernández-Truyol, Harris, and Valdes 2006), often advise their junior contemporaries to remain silent.”*<sup>68</sup>

#### Professor Reyes:

Is it possible that following the “rule of silence”<sup>69</sup> will not protect us? That we may feel even worse if they deny us tenure even after we diligently followed the advice of senior faculty about remaining silent? The answer will always be contextual. What criteria should we use to decide?<sup>70</sup>

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68. Onwuachi-Willig, *Silence of the Lambs*, *supra* note 30, at 142–43.

69. I am coining this term to describe the advice that I have heard at conferences about remaining silent until after tenure. Professor Onwuachi-Willig acknowledges in her chapter that this advice is given even at progressive conferences like LatCrit. *See id.* at 143. I also heard the same advice at a LatCrit conference.

70. From a faculty perspective, I personally cannot comprehend the rationale behind a rule that

### Professor Kupenda:

Yes, very likely a rule of silence will not protect us. Yet, speaking all the time will not protect us, either. I advocate conducting a cost-benefit analysis and breaking silence with a response rather than a reaction.

When we find ourselves in these hostile environments—and I'm using my business school education here—I believe in doing a cost-benefit analysis as to whether to speak. Ask: What are the costs of speaking or not speaking? What are the benefits of speaking or not speaking? Remember: some benefits of speaking will be invisible to the naked eye. For example, a benefit is being able to look in the mirror and see a person of integrity.<sup>71</sup> Another benefit of speaking is knowing that you are doing your part in this arduous journey toward justice. This does not mean we must, or should, speak each time race/gender is implicated. Also, this does not mean we should speak immediately. Even when one chooses to speak, one has choices.

The first choice is to immediately react to what was said or done, in other words to go off.<sup>72</sup> But think about the word react. To react means you handed your power over to another; this other person controls you when you simply react to them, like you are a puppet on a string. They pull your strings, and you react. Therefore, these individuals with their race/gender prejudices are controlling you.

Instead of reacting at their whim, I prefer to respond. To respond means I retain my power. Consider the word respond: the word reminds me of the word ponder—to speak after I ponder the appropriate response for me. In addition, I get to choose when to respond. And I get to respond after conducting a cost-

may encourage individuals to act their identities differently before and after tenure. For outsiders, this rule may mean that they are forced to perform their outsider status in ways that satisfy insiders, but this is a skill that some may not be able to or may not want to master. See Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1300 (2000). Additionally, “[t]he strategies outsiders employ will depend on context—factors such as the norms of the institution in question, the specific characteristics of that outsider, and the prejudices he or she is subject to.” *Id.* Ultimately, some untenured professors choose to speak up because it may be the healthier option for them. See e.g., Pamela J. Smith, *The Tyrannies of Silence of the Untenured Professors of Color*, 33 U.C. DAVIS L. REV. 1105 (2000). “People of color risk psychological and physical harm in internalizing discrimination. Those who use self-help to confront it are often compelled to do so as a result of the injury wrought by discrimination and as a self-defense mechanism against further harm.” Terry Smith, *Speaking Against Norms: Public Discourse and the Economy of Racialization in the Workplace*, 57 AM. U. L. REV. 523, 536 (2008) (citations omitted). Moreover, some may decide that “[a]cquiescence in the will of the oppressor by maintaining silence can even constitute complicitous participation in one’s own subordination.” Dorothy E. Roberts, *The Paradox of Silence: Some Questions About Silence as Resistance*, 33 U. MICH. J.L. REF. 343, 356 (2000).

71. See, e.g., Yolanda Flores Niemann, *Lessons from the Experiences of Women of Color Working in Academia*, in PRESUMED INCOMPETENT, *supra* note 2, at 446, 499.

72. See, e.g., MAYA ANGELOU, LETTER TO MY DAUGHTER 101 (2008) (describing a time when the author engaged in a cost-benefit analysis of how to speak her truth in response to a belittling acquaintance).

benefit analysis.

Sometimes, even if you do a cost-benefit analysis and then respond, breaking silence can still be quite costly if you are seeking the favor of some Whites. Some Whites may misrepresent what you said or simply resent the truth. Even in silence and even in carefully worded necessary speech, colleagues may react negatively because of their own prejudice or out of ignorance. I had one White male colleague, who has taught diverse students for many years, tell me he doesn't know anything about Black people, and he publicly told my Asian colleague that he does not know anything about Asians. I wanted to yell, "Go learn something!" I didn't. As another example, I have experienced faculty attacking me in a meeting after insisting I explicitly called them "racists" when I did not. They did not even believe the White faculty who actually spoke up and insisted to them that I never said that. Further, even after I make a cautious and mild comment, I never know who on my faculty will accost me in a hallway, or send me a horrible email. I never know who will stop speaking to me and make a point of this unfriendly slight by speaking to everyone else in the vicinity except me, even in the presence of students. This hurts. Perhaps, whether I speak or not, I, as a woman of color in a very White environment, will pay a cost. Maybe just seeing my Blackness in the ivory tower speaks volumes to some Whites, even when I say nothing.

Essentially, our lives must not be bent on just pleasing those we work with. If it is, we will be discouraged often. Thus, we must reject a rigid "rule of silence." We must also reject being a constant reactionary. Of these points, I am reminding myself, too.

**Professor Onwuachi-Willig:**

I completely agree with what Professor Kupenda said. I appreciate her comments about reacting and responding. From my point of view, there are different ways of responding to different events or comments. There are formal ways of responding. Responding formally may include considering and working on institutionalizing a potential solution or offering a suggestion to the dean or the associate dean about information or programs that may educate others on the faculty or that can have a long-term impact. There are also informal ways of responding to actions or comments. I would encourage faculty, especially pre-tenure faculty, to figure out if there is a senior faculty member of color or two (or an ally who is not a person of color) whom she can trust, and to allow those people to do the speaking for her, if the senior faculty members are willing to do so. Senior faculty can take the hits in ways that the junior person cannot. Tenured faculty members are certainly more familiar with the local politics of the institution, so they will be more savvy and knowledgeable about how to approach any particular situation. My advice to a junior faculty member is figure out who those trustworthy senior faculty are, listen to their advice, and allow them to address any potential problem if she cannot address it herself.

### **Professor Wildman:**

For me, locating the context is the key component to answering this question, because I would ask, “Silence about what?” In her chapter, Professor Onwuachi-Willig writes about “good silences, bad silences, and unforgivable silences.”<sup>73</sup> Professor Kupenda’s compelling chapter speaks to the power of facing the “ghosts” of historical and persistent discrimination and of not being silent.<sup>74</sup> Yet the senior colleagues’ advice to favor silence is grounded in a reality of self-protection. Not all situations call for immediate response. Consulting with others could serve the dual function of providing a reality check on the need to address an issue and offering the potential to build alliances within and across racial lines.

It is important to have friends, both within one’s home institution and within other institutions, to provide perspective and to help answer the question, “What is the right course of action?” If an institutional battle needs fighting, ideally other colleagues—and not the most junior as Professor Onwuachi-Willig said—should lead the charge. At the least, not battling alone could be a more protective and productive strategy if one chooses not to opt for silence. The bottom line remains, “What conduct will make you feel better and most like your own best self?” That very complicated question sometimes results in conflicting answers.

Taking care of one’s self is a subject that Professor Wing writes about in her chapter.<sup>75</sup> I wish someone had explained the importance of that idea to me far earlier than when I finally understood it. And, even now, it is hard advice to follow because of the institutional dynamics that roil students, faculty, deans, and staff in the maws of presumed incompetence.

### **Professor Wing:**

Everyone has said great things. To deal with the need to keep silent, I think you have to find other people to talk to who are outside of the law. It could be your parent, sibling, friend from elementary school, or partner. You have to let it out, or you will suffer from spirit injuries, a subject on which I have written.<sup>76</sup> If you do not let it out, the pain is going to eat you up and could lead to a heart attack, stroke, or suicide. We have had all those things happen in the academy with women of color. But often I find that I cannot actually talk about something the day it happens. I am a morning person, so at five in the morning, I am in the bed with my partner and I will say, “Okay, let me tell you what happened yesterday.” He knows this is how I operate. He has known me for thirty-four years. And so then, I can let it out. But the other thing about that: you have to be

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73. Onwuachi-Willig, *Silence of the Lambs*, in PRESUMED INCOMPETENT, *supra* note 30, at 143.

74. Kupenda, *Facing Down the Spooks*, in PRESUMED INCOMPETENT, *supra* note 15, at 20-28.

75. Wing, *Keep Calm*, in PRESUMED INCOMPETENT, *supra* note 65, at 369-70.

76. See Wing, *supra* note 61; see also Wing, *Keep Calm*, *supra* note 65, at 369-70.



very careful. It could be that your confidante actually lets something slip out to the wrong person, which could be very damaging.

## **B. Women of Color, Color Insight, Silence and Regrets, and the False Self**

### **1. Women of Color**

*"I noted the dual discrimination I felt as a [B]lack female. To me that discrimination was multiplicative, not additive. In other words, I was [B]lack times a woman every day, not [B]lack plus a woman, which implies you may be able to subtract an identity. The discrimination I felt was against me as a holistic [B]lack woman."<sup>77</sup>*

#### **Professor Reyes:**

How do we make faculty understand, including men of color, that we have holistic identities and suffer discrimination because of that combination of woman and person of color? Additionally, how do we fight against the essentialization of the woman of color experiences, the failure to recognize that women of color of different races may face different challenges?<sup>78</sup>

#### **Professor Wing:**

This relevant question permeates our whole career. It is important to note that everyone has identities, so maybe this person cannot understand what it is like to be Black, female, heterosexual, a single parent, disabled, or whatever all my identities are. Yet, they have their own identities, so I always try to raise some identities to which they can relate. For instance, half my students are from the state of Iowa, and anyone in this room knows when you say "Iowa," people are like "Iowa, Idaho, what did you say?" Professors Wildman and Trina Grillo have written about analogizing.<sup>79</sup> We know that being from Iowa is not the same as being a Black woman. For that Iowan, however, whenever they leave the state of Iowa, and they have people belittling the state of Iowa, they can relate to the

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77. Wing, *Keep Calm*, *supra* note 65, at 357.

78. See generally Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581 (1990); Maria L. Ontiveros, *Three Perspectives on Workplace Harassment of Women of Color*, 23 *GOLDEN GATE U. L. REV.* 817 (1993). "[A]s anti-immigrant hysteria sweeps the nation, Latinas are vulnerable to being perceived as 'illegal aliens' and linguistic traitors and may face not only marginalization in academia but verbal and physical harassment by students." Harris & González, in *PRESUMED INCOMPETENT*, *supra* note 9, at 10.

79. Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implication of Making Comparisons between Racism and Sexism (or Other Isms)*, in STEPHANIE M. WILDMAN WITH CONTRIBUTIONS BY MARGALYNNE ARMSTRONG, ADRIENNE D. DAVIS & TRINA GRILLO, *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* 85 (1996).

concept of degradation. If you cannot find some identity that they can relate to, you are never going to get anywhere. I want to try to reach some of them (students and faculty), because these are people of power now or in the future. We need to try to reach them in whatever way we can, even if we have to engage in analogizing.

## 2. Color Insight

*“The existence of presumed incompetence that affects both women of color and [W]hite women should provide a basis for a deeper understanding, sisterhood, and alliance among women and enable work across racial lines to combat the presumption as well as other professional issues. But women can only forge that bond by acknowledging—rather than ignoring—the differences in the presumption’s operation.”*<sup>80</sup>

*“Color insight recognizes that a racial status quo exists in which society attributes race to each member.”*<sup>81</sup>

### Professor Reyes:

Please explain how you arrived at the understanding that you had to recognize your own privilege as a White woman in order to forge bonds with women of color in dealing with the similar presumption of incompetence—what you explained as “color insight.”<sup>82</sup>

### Professor Wildman:

My first reaction to this question was a puzzled, “Understanding? I don’t know anything!” I feel like I am still in the process of hoping to achieve that understanding. I want to emphasize the idea that awareness of privilege really is a life-long learning process and one worth being curious about—both the process itself and the content that one learns and relearns. Some might ask, “Why keep at it, this learning, if one cannot achieve it?” But like balance in a yoga pose, one may achieve it temporarily and the process itself is worthwhile and even joyful.<sup>83</sup>

80. Armstrong & Wildman, *Working across Racial Lines*, *supra* note 47, at 225.

81. *Id.* at 233.

82. Justice Sonia Sotomayor advanced a similar proposition (before she became a U.S. Supreme Court Justice) when she asserted:

[W]e should not be so myopic as to believe that others of different experiences or backgrounds are incapable of understanding the values and needs of people from a different group. Many are so capable. . . . However, to understand takes time and effort, something that not all people are willing to give. For others, their experiences limit their ability to understand the experiences of others. Others simply do not care.

Sonia Sotomayor, *A Latina Judge’s Voice*, 13 BERKELEY LA RAZA L.J. 87, 92 (2002) (emphasis added).

83. See generally Michelle Oberman, “Your Work Will be Your Most Faithful Mistress”:

And the moments when one can retain balance in the pose reward the practitioner, as well. One of the most insidious aspects of White privilege is the ability of the privilege holder to forget that she or he has it, and consequently, not to think about race at all. Remembering to engage in the process can fight that race amnesia.

True friends keep me honest and aware during this process, because listening is a valuable learning tool and I do learn from them. But I also have the desire to learn, and I understand that others cannot do this work for me. Of course, since I'm a professor, I advocate reading to learn about racialization and the history of race in this country, and I continue to read and try to learn more myself.

Practicing viewing situations from other-raced perspectives is also eye opening. In our work together, Margalynne Armstrong and I write about the "racial observation project" that we assign to our students.<sup>84</sup> We tell them to take a twenty-four-hour slice of their life and to observe the race of those around them. We ask them, "How do you decide someone's race? Consider the roles people of different races play."<sup>85</sup>

Margalynne and I posit color insight as the opposite of color blindness, urging each of us to think about race and to consider its meaning and use in society.<sup>86</sup> One aspect of color insight is understanding privilege. At one point during the panel session, Professor Reyes commented that I "had color insight." I was deeply flattered, but I do not feel like I "have it." I am engaging in that lifelong process of seeking color insight and recognition of White privilege. I would like everybody to be engaging in that process.

### 3. Silence and Regrets

*"In becoming forcibly and essentially aware of my mortality, and of what I wished and wanted for my life, however short it might be, priorities and*

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*Thoughts on Work-Life Balance Occasioned by the Loss of Professor Jane Larson*, 28 WIS. J.L. GENDER & SOC'Y 181, 188 (2013) (analogizing the concept of work-life balance to yoga practice: "Balance is not a permanent state of being. It comes and goes, and the best we can do is to take note of the rare and resplendent moments in which all parts of our lives seem to be in balance. The work-life balance narrative seems to suggest the existence of a specific set point, and invites women to struggle to find that point, and perhaps to blame themselves, rather than external structures and unrealistic expectations, when they are feeling out of balance.").

84. See Margalynne J. Armstrong & Stephanie M. Wildman, "Colorblindness is the New Racism": Raising Awareness About Privilege Using Color Insight, in DECONSTRUCTING PRIVILEGE: TEACHING AND LEARNING AS ALLIES IN THE CLASSROOM 63, 69 (Kim Case ed. 2013) [hereinafter Armstrong & Wildman, *Color Insight*].

85. See *id.*

86. *Id.* at 63-68; see also Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635 (2008) [hereinafter Armstrong & Wildman, *Teaching Race/Teaching Whiteness*]; Armstrong & Wildman, *Working across Racial Lines*, *supra* note 47, at 233.

*omissions became strongly etched in a merciless light, and what I regretted most were my silences.*"<sup>87</sup>

### **Professor Reyes:**

In *Sister Outsider*, which you cite in your chapter, Audre Lorde explained that, as she faced her mortality, what she regretted most were her silences. Because the "rule of silence" is often touted as a pre-requisite to tenure, should we assume that a lot of the walking tenured of today abided by this rule and, as such, carry a heavy load of regrets?<sup>88</sup> And why do the walking tenured, the ones who won the game, keep passing down this "rule of silence" instead of challenging it in their own institutions and empowering the lambs?

### **Professor Onwuachi-Willig:**

I would not assume that a lot of tenured faculty strictly abided by this rule of silence. Many people who have tenure were not silent in every instance. What they did is pay attention to the local rules of their institutions. The late Jerome Culp of Duke once said that all tenure is local.<sup>89</sup> No matter who you are, you have to sit back and observe and learn the local rules and customs. People with tenure sat back and observed those around them. They listened to people who were advising them, who were their mentors, about the culture in the institution and how those faculty handled issues in the past. Then, based on their observations and advice from senior faculty, those now-tenured faculty made their own choices about when and where they spoke. I do not think they remained silent—at least not all the time. They simply employed different ways of speaking. They may have been blunt in some instances, or they may have relied on allies and other people in the institution in other situations, but overall, I believe they tried their best to speak when they could not refrain from doing so.

## **4. The False Self**

*"[Mama] said, 'You are so tired [of playing the mammy ghost] because you feel like a clown. You smile when you do not feel like smiling. You bite your*

87. Onwuachi-Willig, *Silence of the Lambs*, in PRESUMED INCOMPETENT, *supra* note 30, at 144 (quoting Audre Lorde, *SISTER OUTSIDER* (1994)).

88. See, e.g., Montoya, *supra* note 43, at 905-08 (telling herself that, if it happened again, she would react differently and confront more openly—for all to see and know what was done to her—a negative situation that she faced during her third year of teaching); Elvia R. Arriola, *Tenure Politics and the Feminist Scholar*, 12 COLUM. J. GENDER & L. 532, 535 (2003) (recounting the trauma caused by her decision to give up the tenure fight at a prior institution); Linda Trinh Võ, *Navigating the Academic Terrain: The Racial and Gender Politics of Elusive Belonging*, in PRESUMED INCOMPETENT, *supra* note 2, at 96-97 (questioning whether silence was the right choice instead of protesting a hiring process that was hostile to women of color).

89. See Chang & Davis, *supra* note 31, at 35 ("It's hard to generalize about tenure because, as Jerome Culp often said, tenure is local and personal.").

*tongue and make no sound when you want to speak. You try to make the casual and watchful observers so comfortable with you, but now you are uncomfortable with this false self. You take care of others' feelings, instead of your own.*"<sup>90</sup>

**Professor Reyes:**

You go on to explain that, if we ignore the calling to embrace the ghost that those in power want us to be or envision that we should be (because of our race and gender), we suffer punishment, such as being accused of lacking collegiality or of harboring irrational anger.<sup>91</sup> As you reflect on your past experiences, which punishment do you think is worse: playing a false self or putting up with punishment for refusing to play the false self?

**Professor Kupenda:**

Definitely suffering the effects of playing the false self is the worse punishment. I have experienced this punishment, which hurts, it seems, my very soul. Sadly, in seeking belonging, I have tried to play this false self many times in my academic career. I have had Whites and people of color try to force a false self on me. And, I have caved into this pressure too often.<sup>92</sup> This false self can take over as women of color academics try to meet the minstrel-like expectations of others. Earlier, Professor Onwuachi-Willig also spoke about the pressure on women of color academics to be entertainers, as opposed to being themselves. Caving into this pressure can leave us in a state of exhaustion.

One day at work I called my mother and was telling her about how depleted I felt. She told me she thought she knew what was going on, but she said she hesitated to tell me about it as it would sound harsh. After I encouraged her to please explain, Mama said, "You are so tired because you feel like a

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90. Kupenda, *Facing Down the Spooks*, in PRESUMED INCOMPETENT, *supra* note 15, at 23.

91. Workplace "collegiality" is a double-edge sword for women and minorities in subordinated status because they are more likely to be targets of uncollegial behavior (subtle and covert types or discrimination or harassment) and they are also more likely to be accused of uncollegiality as a subterfuge for illegal discrimination. Michael L. Seigel & Kathi Miner-Rubino, *Measuring the Value of Collegiality Among Law Professors*, 1 FAULKNER L. REV. 257, 266-68 (2010) (citations omitted). "A traditional, dominant culture definition of collegiality fails to account for institutional sexism, homophobia, racism, etc., and thus endorses and perpetuates existing cultural norms and castes. Under this 'can't we all get along' formulation, those who transgress the cultural norm of gendered and racial hierarchy appear to be 'impolite' and 'uncollegial' regardless of history, context, or power relations." Sumi Cho, *Race, Sex, and Working Identities*, 39 U.C. DAVIS L. REV. 805, 809-10 (2006). For example, a woman may be labeled as uncollegial if her strong academic personality is viewed as "'pushy,' 'aggressive,' or 'uppity.'" Seigel & Rubino, *supra*, at 266. She may also be setup by being continuously attacked while trying to do her job (being subjected to "constant and continuous institutional denigration"), which forces her to react in her own defense, which the aggressors then use to support stereotypes of the angry Black woman or the fiery Latina. See Smith, *supra* note 8, at 1105, 1115; Amber Fricke & Angela Onwuachi-Willig, *Do Female "Firsts" Still Matter? Why They Do For Female Judges of Color*, 2012 MICH. ST. L. REV. 1529, 1538-39 (2012).

92. Kupenda, *supra* note 15, at 22.

clown. You smile when you do not feel like smiling. You bite your tongue and make no sound when you want to speak. You try to make the casual and watchful observers so comfortable with you, but now you are uncomfortable with this false self.”<sup>93</sup> Mama was right. I was depleted and empty because I had lost my true being as I caved to the pressure of others who wanted me to satisfy their stereotypical notions, or rather, to conform.

This pressure to be someone other than oneself is inevitably confronted when the norm is Whiteness, and one is not White; when the norm is maleness, and one is not male; when the norm is generations of inherited economic wealth, and one is still severely underpaid;<sup>94</sup> and when the norm seems to be pretension, and one is not pretentious. In these instances, there is great pressure to make the self as close to the White male privileged norm as possible.

At times I must remind myself that I do not have to be an entertainer for others and I do not have to try to mimic a White male privileged norm. I remind myself to claim my authenticity. I often keep handy a picture of my three-year-old self. In this picture, I am smiling broadly, feeling pretty, and playfully swinging from the bedpost in the front room of our shotgun house. At that age, I just knew I was wonderful—seeing myself as beautiful, smart, sweet, and strong. This was before some others in America formally and informally told me that in their White privileged eyes I am Black and lesser, in their male thoughts I am female and lesser, and in so many of their minds I am Black female and lesser. With all of these judgments of me, in and out of the academy, it is hard to find my three-year-old confident self again. Don’t worry; I have not given up my search. I see as my personal mission and aspiration, now at age fifty-seven, to return to the pure confidence and personal sense of beauty and joy I had at age three in that picture.

To reclaim this sense of self worth as a Black woman and as a Black woman academic, I often must remind myself to be the authentic person who I hope to be. It is sadly telling that I must remind myself to be who I am. However, I believe I would rather live out my days reminding myself to be my true self, than to daily live out a false identity in the academy.

### C. Mentors

*“[A] new appointee must remember that an appointed mentor may not be a friend who can be trusted.”*<sup>95</sup> *“Secrecy [in faculty procedures] also makes junior faculty more vulnerable to false mentors, who can be most treacherous and are easily bred in schools where anonymous voting occurs.”*<sup>96</sup>

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93. *Id.* at 23.

94. See Kupenda, *Academic War Strategies*, *supra* note 19, at 123-35.

95. Armstrong & Wildman, *Working across Racial Lines*, *supra* note 47, at 230.

96. *Id.* at 236.

*“There are senior people who resent a young person who is a rising star. She may remind them of what they will never be. . . . The senior person may initially have been a mentor of sorts but then backed away when the person being mentored did not stay in her place.”*<sup>97</sup>

**Professor Reyes:**

How should a junior faculty member deal with a so-called mentor who is acting as if he/she is advocating on behalf of the junior faculty member when in fact he/she is actively backstabbing her and undermining her through wrong advice and belittling statements and lies about her to other faculty members?<sup>98</sup> How do we determine who can be trusted inside and outside our institutions?<sup>99</sup>

**Professor Onwuachi-Willig:**

Basically, I believe that junior faculty should trust their intuition. If you are a faculty member now, you have gotten to this point because you have learned how to read people. Trust that you know how to read people. After all, your intuition has worked for you in a lot of situations. Keep paying attention to the cues that people send you. When I was untenured, I tried to pay attention to these cues to figure out whom I could trust. So, what was one of those cues? Well, soon after I moved to the town of the first law school where I was a faculty member, one of my senior faculty colleagues invited me to his house for a picnic. He let me know that other faculty would be present. When I went to his house, I was nervous. After all, I was new; I had no idea what to expect from other faculty or if the people at the picnic would like me. When I arrived, I saw that the picnic was small. There were only a few faculty members there. I had a good time, and I left. What I finally realized a few days after the picnic was that the senior faculty colleague who invited me to his house was communicating to

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97. Wing, *Keep Calm*, in *PRESUMED INCOMPETENT*, *supra* note 65, at 366.

98. Women of color need mentors that actively participate in their careers, “on a day-to-day, month-to-month, year-to-year basis.” Pamela J. Smith, *Failing to Mentor Sapphire: The Actionability of Blocking Black Women from Initiating Mentoring Relationships*, 10 *UCLA WOMEN’S L.J.* 373, 409 (2000). Mentoring must go beyond passive support, such as promising to vote for tenure at a point in the future. *Id.* “Passive support is in effect a form of institutional and individual cowardice.” *Id.* at 411. A mentor must actively ensure that the woman of color survives to make it to the tenure vote. *Id.* “If one is emotionally destroyed during the tenure process (either by students, colleagues, or both due to institutional bias, procedural irregularities during tenure, the presumption of incompetence, the Sapphire myth, and race/gender discomfort), one may never make it to the actual tenure vote.” *Id.* at 410-11.

99. Women have to be careful about trusting “self-appointed” women leaders on the faculty who may use situations to ally themselves with faculty who are attacking the junior professor, including men who have specific views about the “proper” role for a woman on a law faculty.” See Arriola, *supra* note 88, at 535. Some women can actively undermine fellow women, including in their efforts against unjust treatment by their male colleagues. *Id.* It is also important to remember that some White men can be great mentors to women of color. *Id.* at 536 (receiving support from a White professor who advised her, “Write about what you love. If you don’t do that your work won’t be good.”).

me, simply by whom else he had invited to his house, the faculty who I could trust. And, if you try to look for those cues, you will notice that people may be sending you signals, too, about a lot of things, including whom you can trust and whom you can rely on. In terms of the person who is a backstabber, again, I would advise junior faculty to go to trusted allies—those who know the politics of the institution—to get ideas from them. That said, I also would consider subtle ways of communicating to that backstabbing person, “I know you. I see you. They (meaning others on the faculty) don’t know you, but I know you.” Backstabbers are usually worried about being exposed, and if you subtly communicate to them that you could expose them one day, they usually begin to correct their behavior.

**Professor Wing:**

I would presume, at first, trust no one. Everyone in this room, I am sure has made a presumption based on someone’s race or gender or sexual orientation that that person will support me, and we have all found how you can be stabbed in the back by somebody with all of your intersectional identities. So I start out with trust no one, and then you kind of see what is possible. To me, you are only trusting people within a certain context, because it’s in their self-interest, for some of them, that you fail or you succeed. So okay, I trust this person for this gender issue, I trust this person on this race issue, this person is good on sexual orientation, but not on race or gender, and this other person is great because they are in my area of specialty, but not for something else. So you are trusting people for different purposes, and as we know in life, you really only get a few deep, close friends. It could be your family member, or it could be somebody else. I was told, “Get many mentors of different types, so if one person does start freaking out and bad-mouthing you on one thing, you have other people who can say that’s not really correct.”

**Professor Kupenda:**

I agree in great part with what Professor Onwuachi-Willig and Professor Wing said. I will phrase my own personal philosophy on trust a little differently, though. First, I don’t go as far as saying women of color should trust no one. My position is “love all, trust few.”<sup>100</sup> There is a difference between on the one hand giving unconditional love toward someone based on spiritual principles, and on the other hand trusting someone.

Second, I think, we must learn to trust ourselves unquestionably. As women of color we must learn to love and respect ourselves and our intuition, as Professor Onwuachi-Willig stated. While consulting others for wise counsel is important, we must listen to our inner voices, our rumblings that something is

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100. VERONICA RAY, CHOOSING HAPPINESS: THE ART OF LIVING UNCONDITIONALLY 52-53 (1990).



wrong or right. We have survived because we are observant, sensitive, and in touch. Trusting our own intuition honors skills we have learned even from young ages.

Third, as we love all and trust few, remember that trust in others must be earned. Discernment, as to another's trustworthiness, is a talent women of color must nurture for their survival and precious sanity. Discernment as to who we should trust comes from observing people with our eyes open; diligently seeking self understanding; learning from others' stories, as in the stories in *Presumed Incompetent*; and learning from our mistakes. We must trust ourselves enough to trust signals we see. And, we must love ourselves enough to forgive ourselves when we miss these signals. We also must have good trusting relationships outside of our institutions to help us make good choices. We also must work on our trustworthiness, so we can give what we hope to receive.

Finally, we must know when the time has come to respectfully walk away from a former mentoring relationship that is no longer supportive. I write in my chapter about a White female attorney who helped me with a personal matter, but later directly told me that she wanted me to be like her Black nanny.<sup>101</sup> I still respect the help she gave me, but it was time to walk away. I had a wonderful White male mentor, but when he frequently became nasty toward me, even after I tried to discuss this with him, it was time to appreciate the past, but to walk away. I had a White female faculty mentor who I visited with often, but during my promotion bid she told me: "You are on your own; we White women can't help you with any of your problems with racism. But it is going to be fun to watch how it all turns out."<sup>102</sup> It was time to walk away. People come into our lives for a reason, a season, or a lifetime.<sup>103</sup> While some mentors are not lifetime mentors, others are.<sup>104</sup> We must trust ourselves to recognize the difference.

### **Professor Wildman:**

My first response to this question was, like Professor Wing's response, trust no one. But then, looking around at the symposium room, seeing the many people present whom I really trust (and I hope trust me, too) brought me back to the whole idea of alliance and coalition. We are talking about such hard issues, and it is so difficult to face these challenges alone. Being able to find trust in others is important if we want to achieve a truly equitable society. Of course, we cannot be too trusting either – a reality check is also important as we navigate a world with undermining mentors, White missionaries, and queen bees who foster the presumption of incompetence.

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101. Kupenda, *Facing Down the Spooks*, in *PRESUMED INCOMPETENT*, *supra* note 15, at 27.

102. *Id.* at 24.

103. IYANLA VANZANT, July 15, in *ACTS OF FAITH: DAILY MEDITATIONS FOR PEOPLE OF COLOR* (1993).

104. Kupenda, *Academic War Strategies*, *supra* note 19, at 120-21.

As to the undermining mentor, someone besides the junior person must counter the belittling statements and lies, ideally more than one “someone.” But having such allies does beg the question of whom to trust. Some colleagues may be trustworthy on some issues, but not others. Joining SALT<sup>105</sup> and meeting colleagues at their teaching conferences, attending regional people of color conferences, and becoming involved with LatCrit<sup>106</sup> are some of many promising avenues for developing a network outside of one’s own institution.

A key value of a book like *Presumed Incompetent*, when one is trying to figure out how to trust and whom to trust, is the benefit that comes from learning other people’s stories. Every context is different but one can learn so much from hearing about what happens to colleagues.

#### **D. Fighting Isolation, Writing Pre-Tenure, Privileged but Still Silenced, and Problematic Silences**

##### **1. Fighting Isolation**

*“Friendship provides a space for speaking the truth about an institution, rather than suppressing or silencing it. Being able to share personal perspectives trusting that they won’t be denied, even if the friend has different opinions, is a tremendously important support. . . . Friendships are crucial within the stressful environment of the law school. . . . All coworkers have an important role to play in trying to ensure a just environment for everyone. Being an observant coworker, speaking out against observed oppression, and seeking to ensure workplace fairness for everyone may lead to friendship. . . . Friends do not deny the reality that another experiences; rather, they learn about themselves from their friend’s perspective. Color insight provides a tool to deepen the insights that coworkers or friends may gain from each other.”<sup>107</sup>*

#### **Professor Reyes:**

In your chapter you explain that “[c]olor insight recognizes that a racial status quo exists in which society attributes race to each member.”<sup>108</sup> What do you recommend to faculty members who work in environments where color

105. SOCIETY OF AMERICAN LAW TEACHERS (SALT), <http://www.saltlaw.org> (last visited Apr. 25, 2014).

106. LATINA AND LATINO CRITICAL LEGAL THEORY, INC. (LATCRIT), <http://www.latcrit.org> (last visited Apr. 25, 2014). LatCrit is a global community of scholars dedicated to developing and expanding critical, activist, and interdisciplinary discourse on American law and legal institutions that reflect the particular histories and realities of Latinas/os. Since its initial launch in 1995, the group has grown from a series of annual conferences to a collection of initiatives and projects with both a local and global presence. Elizabeth M. Iglesias, *LatCrit Theory: Some Preliminary Notes Towards a Transatlantic Dialogue*, 9 U. MIAMI INT’L & COMP. L. REV. 1 (2001).

107. Armstrong & Wildman, *Working across Racial Lines*, *supra* note 47, at 240-41.

108. *Id.* at 233.

insight is missing, where coworkers do not speak out against observed oppression, where faculty members deny the reality that others experience, and where, consequently, friendships are not possible?<sup>109</sup>

**Professor Wildman:**

This workplace sounds grim indeed. Might allies be present elsewhere in the university—in a faculty of color network, women’s cohort, or a critical theory reading group? Perhaps it is time to start one or all of these university networks. Suggest speakers to invite to campus to speak on race, oppression, working together across racial lines, and similar topics. Many people have travel budgets from their own schools, even if institutional funds are not available. Consider whether the institution would bring in a diversity consultant.

Finding nationally-based support, as mentioned earlier, could help. Attend regional and national conferences like this *Presumed Incompetent* symposium or organize a local group of law professors. Think beyond the profession for some networks; perhaps a church, synagogue, or a mosque would provide someplace to reflect back that reality. Sadly, no magic is available to say, “voilà,” and everything is fixed. But a first step is remembering that addressing these issues is a life-long process. The second priority is not to feel so isolated, to try to talk with some people about strategies for combating the very toxic environment that the question described.

## 2. Writing Pre-Tenure

*“So when the request came from the journal to write a short narrative piece, many advised me against it: ‘This will not help your tenure file.’ ‘This narrative stuff is not law.’ ‘It is a distraction.’ ‘You will seem like you have a chip on your shoulder.’ ‘It will be political suicide.’ Yet something compelled me to accept when every other source said to say no.”*<sup>110</sup>

*“When I wrote my article, I did not know if anyone else felt the same way about the burdens and benefits of academia, but it was cathartic for me to write*

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109. It is difficult to establish friendships in environments where silence about the oppression of others often begets complicity and sometimes empowers evil. See, e.g., Judge Michael B. Hyman, *Don’t Be Silent*, CHI. B. ASS’N REC., Nov. 22, 2008, at 6. It is also difficult to establish friendships in environments where peers become enforcers of gender norms. Cf. Rhonda Reaves, *Retaliatory Harassment: Sex and the Hostile Coworker as the Enforcer of Workplace Norms*, 2007 MICH. ST. L. REV. 403, 412 (2007) (“Peer harassment is an important and underanalyzed component in the maintenance of a woman-unfriendly work environment. While support of coworkers emboldens harassment victims to come forward, risk of alienation or retaliation by peers impedes victims’ willingness to complain. Victims fear not only lack of support from coworkers but fear retaliation by their peers. Peer harassment effectively discourages others from stepping outside the line.”) (internal citations omitted).

110. Wing, *Keep Calm*, *supra* note 65, at 357.

it . . . . When the issue came out with my first reprints as a law professor, I was so excited. I decided to read the journal from cover to cover. I cried and cried—big heaving sobs—as I poured through each page and discovered that other [B]lack women law professors felt just like me. We were caught between race and gender discrimination . . . . I was affirmed. I was not alone. Many people might not understand our situation, but we were not isolated.”<sup>111</sup>

**Professor Reyes:**

You defied the advice of many when you accepted the invitation to write a short narrative piece about your experiences with race and gender early in your pre-tenure years, yet this piece turned out to open a much needed area of scholarship in the legal academy and gave you scholarly recognition.<sup>112</sup> Do you counsel untenured female faculty of color to engage in this type of cathartic writing, go outside their areas of traditional scholarship (in your case international law), in the pre-tenure years as a way to fight isolation? Do the same thing you did, if it is what they choose to do? Is the risk worth it if it helps them to maintain sanity by providing a tool to address the madness that they may be experiencing?

**Professor Wing:**

Jerome Culp’s statement about tenure is that it is local.<sup>113</sup> You cannot generalize this kind of thing. At some schools, if you wrote something like that, it could be too destructive. You would like to think that, after twenty years of people writing these kinds of essays, all schools would accept it, but many will not. Then, the other thing is that you might write about these issues, but what you do write will be considered totally extra. You may not be able to count anything like that along with your regular articles. Even if it does count, it may be that you write something that infuriates people on a personal level. So unfortunately, you have to be very careful to decide if you want to take these

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111. *Id.* at 358.

112. Scholarship that analyzes feminist issues is sometimes perceived as threatening and resisted by some in the academy. *See, e.g.*, Arriola, *supra* note 88, at 535 n.8 (2003) (describing how her feminist scholarship was trashed internally during the tenure process and how overwhelmingly positive external reviews were discounted because the prominent scholars were characterized as “biased ‘feminists’”) (citing Elvia R. Arriola, *Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self*, 2 HARV. LATINO L. REV. 397, 414-22 (1997)). But, innovative, feminist scholarship, “including the use of Latina autobiography in legal scholarship,” for example, allows scholars and academic discourse to grow and gain energy. *See* Margaret E. Montoya, *Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN’S L.J. 185, 220 (1994). For some scholars, these projects open new themes for analysis in their own scholarship and in the legal academy. *See, e.g.*, Margaret E. Montoya, *Máscaras y Trenzas: Reflexiones un Proyecto de Identidad y Análisis a Través de Veinte Años [Masks and Braids: Reflections About a Project of Identity and Analysis Throughout Twenty Years]*, 36 HARV. J.L. & GENDER 469, 476, 478 (2013).

113. *See supra* text accompanying note 88.

risks. You could also write something for cathartic proposes and not publish it now. You may wait until after you get tenure, or not necessarily decide if you ever want to publish. I am in shock at how many people will find something that I published in 1998 and quote from that. I do not even remember whatever it is I said, but since it's going to be in print forever, and you will not know how it will read in retrospect, you really need to be careful. Fortunately, there are so many of us who can be tenure reviewers for these articles if you do decide to publish them. Derrick Bell reviewed my Berkeley article, and people respected him. I know that his review was crucial for that essay to be accepted by some of the powers that be at my school.

### 3. Privileged but Still Silenced

*“As a [B]lack female academic with more than twenty years of experience in academia, to tell the truth, ghosts have haunted me: the ghosts of Jim Crow; the goblin of slavery-like, [W]hite, presumed superiority; and ghouls of sexism, racism, and classism just will not leave me alone! Beneath the surface of seemingly innocent encounters with supposedly well-meaning [W]hite administrators or colleagues or students, these ghosts linger and haunt me with words and acts that torture my very soul and keep me from being able to experience academia the way a [W]hite male with similar credentials can.”*<sup>114</sup>

#### **Professor Reyes:**

Why is it that women of color who have overcome so much to get to the legal academy are rendered speechless when we are targeted? Do we address the ghosts that haunt us outside of the academic environment differently than in our institutions?<sup>115</sup> Is our reaction to torture different in our institutions than our reaction to torture in other places? Should it be different?

#### **Professor Kupenda:**

I am pausing now and hesitating in my answer. I want my answer and the truth to be that women faculty of color address torture in our law school

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114. Kupenda, *supra* note 15, at 20-21.

115. Women of color experience racial/gender microaggressions even at schools “with a critical mass of people of color and well-known rhetoric for community and equality.” Smith, *supra* note 8, at 1117. Individuals (faculty and administrators) with personal and institutional commitments to equality and social justice “often fail to recognize or address the demoralizing and potentially career-threatening microaggressions that routinely confront women faculty of color.” See Harris & González, *Introduction*, in *PRESUMED INCOMPETENT*, *supra* note 9, at 8. Even women of color who describe themselves as feminists and critical race scholars may enhance their own status by joining in the oppression of other women of color. See *id.* at 12. And, some academics become apologists for oppressors. See, e.g., Trinh Vō, *supra* note 88, at 103 n.12 (documenting an instance where a “male chair” in a gender harassment case informed a woman of color faculty member “that he had taken care of the problem and that [she] had to excuse the behavior of the male minority faculty member since he had been working long hours”).

environments the same way we do outside those environments. Upon reflection, I believe we are less forceful, less likely to face down the spooks in our academic institutions than in other settings. At least, unfortunately, I believe this is the case for me.

I grew up in the Deep South. Even as a girl, I knew it was wrong for my father to be called by his first name by his White boss while he called his boss "Mr." I offered to tell this White man off, hurting my father deeply with my remark.<sup>116</sup> Attending a very White high school in the seventies, I spoke up regularly, though respectfully, for racial justice.<sup>117</sup> Working in a large corporation after college, I sought to have the rules applied to me the same as to White managers. As a law student, I confronted the then-Dean when he publicly announced my grades, without my permission, to persuade the Black Bar that, although he did not have a Black law professor, a Black girl student, to use his words, was doing really well. I also spoke up in my federal judicial clerkships with White southern judges. Working in large corporate law firms, I several times confronted the partners about racial mistreatment.

So, why are we, why am I, more silent as a law school professor with the privilege that brings? Why have I not addressed my legal academic oppression the way I directly confronted oppression in other environments?

I think the answer rests partly in that a law school community is almost like a family, albeit a dysfunctional family. We see oppression, but silence ourselves. We still desire to be embraced in the law school family community, to be accepted, to be rewarded fairly, and to have collegial relationships. As a result, we let much unevenness in legal education slide.<sup>118</sup> I admit it, I want to be liked. And I regard myself as imperfect but highly likeable. Yet, no doubt, I will never receive the faculty collegiality award at my school, regardless of my effort in being helpful, kind, and joyful. When my color enters the room, commonly White faculty and administrators enter armed with racial/gender fears or distaste. Regardless of my work effort, in tangible and intangible ways, it is a losing battle. But, we keep silencing ourselves hoping that others will accept us.

Whether academic women of color find themselves more speechless in our educational institutions than we do in other environments of oppression is a seriously provocative question and one I hope engenders change in me from this day forward. So, I am about to publicly chastise myself, and others who hesitate to address this torture. As I grieve what I will likely never get, I am going to follow the chastising model my mother left us. When my siblings or I had a tough day, especially if the harshness involved race or gender or class, we would informally gather at Mama's huge dining room table, indulge in a snack, and

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116. Kupenda, *The Struggling Class*, *supra* note 18, at 736.

117. Kupenda, *Loss of Innocence*, *supra* note 18, at 40-41.

118. See generally Jonathan Feingold & Doug Souza, *Measuring the Racial Unevenness of Law School*, 15 BERKELEY J. AFR.-AM. L. & POL'Y 71 (2013).

bemoan our situations. My mother would listen for a while, shocked that formally educated White people could be so racist or sexist or both. After listening and empathizing, Mama would give us a booster talk. Each time she would slowly and deliberately explain the work she had done in the homes of the “White folks” to support us. She had always wanted all of her children to get formal educations, so we would not have to clean White folks’ homes for a living, as she did on occasion. When we responded with appreciation but still ruminating the unfairness, Mama would shout, almost, from a spiritual song, “Must Jesus bear the cross alone and all of the world go free, NO, there’s a cross for everyone and there’s a cross for me!”

Mama would then explain more gently that we are not dealing with surviving slavery, or with a *de jure* Jim Crow South. But, maybe our cross is to confront oppression, gather our appropriate response, open our mouths and stand up for ourselves and others where we are and, by doing this, help to create a better world. She was right.

We can respond to the oppression in many different ways. For years, I have written about the oppression. I admit that my oral voice was speechless, or, at most, a whisper, too often within my school. Yet, my written voice was quite audible and I strove for it to be an authentic voice. Another way I responded was to provide a safe space for students seeking equality and justice to grow and achieve. I have encouraged and mentored many students who have published articles addressing oppression. So, I have found my voice by helping others find avenues to share their own principled voices.

Now, in my years as a senior professor, a full professor, I realize it is past time for my oral voice to become louder, too. Professor Reyes’s question is sending me into such deep thought and self-reflection, which is rekindling the passion and courage that I should have as a woman of color academic, especially one who is a tenured full professor.

#### 4. Problematic Silences

*“[T]he decisions surrounding silences are deeply personal. The tenure process is an exhausting one, and each individual must do what allows her to sleep at night during the pre-tenure period. . . . But two questions remain: When are the silences harmful? How can such harm be prevented—at the moment and in the future?”*<sup>119</sup>

#### **Professor Reyes:**

Is silence easier for some than for others?<sup>120</sup> For example, what if a woman

119. Onwuachi-Willig, *supra* note 30, at 143-44.

120. For example, a working-class woman who was raised to resist and speak up against oppression may choose to put all her chips on the table rather than remain silent. *See, e.g.,* Gabriella Gutiérrez y Muhs, *Afterword to PRESUMED INCOMPETENT, supra* note 2, at 501,

of color is comfortable remaining silent and working within the patriarchal system because she was raised in this way and has received benefits because she never questioned it, but another one, in her search for equality, has had to learn to speak up for herself and question patriarchy?<sup>121</sup> Will silence make it easier for the former to sleep at night than for the latter to sleep at night? Is the voluntary silence of the first one a bad silence if, in effect, it serves to silence the second one permanently, if she does not get tenure because she is compared to the one who complies with the “rule of silence”? How do women fight against being pitted against each other in such a situation?<sup>122</sup>

### Professor Onwuachi-Willig:

I am reluctant to say that silence is easier for some women than for others. Certainly, for the women who do not see what is happening to them or other women or other people of color, silence is easier. Ignorance can be bliss. In his *Narrative*, Frederick Douglass once indicated that the more he learned, the more difficult enduring slavery became to him.<sup>123</sup> Generally, the more we know, the

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502-03 (explaining that she learned to speak up because she was raised by feminists and very strong women, including her mother, a cannery worker and a resistance leader in her cannery). Professor Gutiérrez y Muhs learned from her mother’s experiences with union work that “victimization and acting like a victim did not work. Those behaviors and mental pathologies only make the oppressor stronger. [She] did not want to reproduce that way of acting, even in [her] own struggle for tenure.” *Id.* at 503.

121. Women who conform to traditional gender stereotypes (e.g., submission, deference) are rewarded and judged positively under patriarchal norms that view these behaviors as nonhostile; this pattern has been characterized as “selective chivalry” or “benevolent sexism” and serves to reinforce patriarchal norms. Shabnam Javdani, Naomi Sadeh & Edelyn Verona, *Gendered Social Forces: A Review of the Impact of Institutionalized Factors on Women and Girls’ Criminal Justice Trajectories*, 17 PSYCHOL. PUB. POL’Y & L. 161, 187 (2011) (citations omitted). Women are often touted as admirable when they suffer in silence and support men without being acknowledged; it is a badge of honor in patriarchal systems for a woman to do work while remaining silent and accepting subordinate status without complaining. Cf. J. Clay Smith, Jr., *Black Women Lawyers: 125 Years at the Bar; 100 Years in the Legal Academy*, 40 HOW. L.J. 365, 373, 387 (1997) (“Black women have long been leaders in the civil rights movement, but the systematic role that [B]lack women lawyers played in the advancement of equality for themselves and for others has been largely ignored.”). See also Harris & González, *Introduction*, in PRESUMED INCOMPETENT, *supra* note 9, at 3 (explaining that students who expect mothering from Black women professors and colleagues who feel more comfortable treating Latina colleagues like the maid, nanny, or secretary feel threatened and engage in microaggressions when women of color do not act like a mascot, cheerleader, or seductress).

122. “[A]cademic institutions may pit faculty of color against one another by bestowing lavish rewards on one faculty member to avoid accusations of racism when they denigrate another.” *Id.* at 12.

123. Douglass proclaimed:

The reading of these documents enabled me to utter my thoughts, and to meet the arguments brought forward to sustain slavery; but while they relieved me of one difficulty, they brought on another even more painful than the one of which I was relieved. The more I read, the more I was led to abhor and detest my enslavers. . . . As I writhed under it, I would at times feel that learning to read had been a curse rather than a blessing. It had given me a view of my wretched condition, without the remedy.



more we see, which can make it harder for us to remain silent. So, yes, the “clueless” woman’s silence can be really problematic because she is not challenging gendered norms and may, in fact, be reinforcing to others, particularly majority faculty members, that all is well—that nothing is raced or gendered. Her silence, then, often gets used to trivialize what another woman is experiencing. This type of action can be very harmful to women on the faculty as a whole because people often fail to engage in any kind of complicated analysis about why some women are experiencing one thing while others are experiencing a different thing, particularly when both women are from the same group, either the same racial or other group.

But if both women see and understand the sexism, subtle or otherwise, that is taking place on the faculty, I would not assume that the person who seems to be more silent is not also enduring an internal struggle or feeling the harm from the institution’s gendered norms. People do not always have the same ways of communicating. Some people may communicate in a different way or a less forceful or more indirect way than others.

### E. People of Color and the Torture Model

*“Another problem can be that the [W]hites on the faculty may not realize how completely they have ceded a gatekeeping responsibility to the original or more senior persons of color. A thousand small belittling statements over the whole pretenure period may undermine the rising star’s candidacy as what the senior person says assumes disproportionate weight.”*<sup>124</sup>

#### Professor Reyes:

In your stories, the oppressors that you identify were White. As people of color move into administrative positions and reach critical mass in the tenured faculty, some of them, men and women, become oppressors.<sup>125</sup> Should we write about people of color who oppress us?<sup>126</sup> Or, will intragroup and intergroup solidarity efforts silence the lambs even more by enforcing the rule that we do

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FREDERICK DOUGLASS, *NARRATIVE IN THE LIFE OF FREDERICK DOUGLASS: AN AMERICAN SLAVE* 35-37 (1845).

124. Wing, *Keep Calm*, *supra* note 65, at 366.

125. Faculty of color have achieved critical mass in some institutions, but, rather than eradicate racial and gender hierarchy, they have simply reconfigured it. See Harris & González, *Introduction*, in *PRESUMED INCOMPETENT*, *supra* note 9, at 12. “Women of color remain at the bottom of such hierarchies and may even be worse off than in majority-[W]hite institutions because they feel unable or unwilling to denounce oppressors who also happen to be people of color.” *Id.* at 13.

126. This question could be described as “the Anita Hill paradox at the institutional level” — whether a woman of color should tell when her oppressor or oppressors are people of color with institutional power to oppress. See *id.* See also Anita F. Hill, *Sexual Harassment: The Nature of the Beast*, 65 S. CAL. L. REV. 1445, 1446 (1992) (explaining the negative consequences and outcomes for women who “tell”).

not tell on people of color?

**Audience:**

How do you deal with discord among faculty of color and the presumption that you must remain silent to keep the dirty laundry in the house even when some are against you?

**Audience:**

What about circumstances where there exists a lack of racial solidarity among faculty of color. How do you navigate that tension, the culture of betrayal, by what would appear natural allies?

**Professor Kupenda:**

I believe all of us in America have been affected by racism and sexism. Even women of color or nonwhites may act out this racism/colorism/sexism and other -isms against each other. Addressing any lack of racial solidarity can be very difficult when we work under the microscope of White colleagues. On the faculty at my school there is one other Black female professor, who is more senior than me. I am glad that we have worked very diligently to be supportive of each other and to know when our conversations must be taken behind closed doors. I feel like many White faculty were waiting for many years for us to have showy, public disagreements.

Being under the microscope, though, may hinder professors who are not the White male norm from addressing issues where we disagree, which can move us all to fuller equality and to closer ally relationships. Still, we must find ways to address the pain that results from discord among faculty of color. In addition to the circumstances you mention in your question, this oppression may be suffered by women of color even in Historically Black Colleges and Universities.<sup>127</sup> Addressing this oppression and pain requires special thought for several reasons.

First, this oppression has been frequently unacknowledged. When I practiced law we had a case where the Black female plaintiff alleged racial discrimination at the hands of a Black supervisor. The White attorneys thought she should quickly lose because the alleged discriminator was also Black. I disagreed. All of us in America, regardless of our Whiteness or non-Whiteness, have internalized the racism, sexism, colorism, and the negative categorizations of Black women and other women of color. For me, a Black woman, I am deeply pained when I see how even some Black women believe the negatives about

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127. For example, my sister, Dr. Loretta Moore, is the principal investigator on a National Science Foundation funded grant, titled *JSU Advance*, designed to improve the climate, especially for women of color faculty in the sciences, at Jackson State University and other Historically Black Colleges and Universities. JSU ADVANCE, <http://www.jsu.edu/jsuadvance> (last visited Mar. 22, 2014).

other Black women and react with oppression. Living in this society has urged us to hold each other back, criticize and judge one another, be jealous of one another for getting a slightly bigger piece of the pie (although many White men, some White women, and maybe even a few of the men of color have bigger slices).

Second, although these conflicts must be addressed, we must do so with political delicacy. We don't want to be the laughing stocks for Whites, or for our differences to be used by others to further divide us. I will never forget my experience as an associate at a large law firm in deposition training. When I held my own against a White male associate, we both were applauded. When I held my own against an Asian male, the attorneys applauded me and openly ridiculed him. When I held my own against a White female associate, the attorneys ridiculed me, with the partners explaining privately to me later (after I approached them for an explanation of their different reactions) that they did not want the White female to cry, as they thought she might be more sensitive. I resented them, but also resented myself as to the deposition against the Asian male, and tried, unsuccessfully, to privately discuss this with the Asian male. I learned a very hard lesson; when dealing with other people of color, especially in public, we must use political delicacy. Still, we must try to address these issues. I am remembering how the issues facing Black women were sadly overlooked for years to show loyalty to the race issue.

Third, we often lack tools to address this oppression and torture from other people of color, without risking harming weak alliances between people of color groups or within specific groups. Still, we must try to form more enduring alliances and to address structural deformities that pit us against one another. Fourth, this torture to be addressed is very painful—painful as it is experienced and painful as we try to address it. The closer people are to us, the more hurtful is their torture of us.

Professor Wildman's points earlier about cross-racial alliances are important here. And so are Professor Wing's earlier points about how to create these alliances by analogizing to others' oppressions when they do not fully understand our own.<sup>128</sup> I think that sometimes, though, we remain silent about the oppression we feel from other people of color, even other women of color, for fear that we will damage fragile alliances. Because this torture comes from what we hope are more trusting places, it hurts so badly and we must address it.

We should write about racial divides between women; we should talk about the gender divides within people of color groups, and even the sexual stereotypes projected onto women of color by other women of color. We should

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128. See, e.g., Angela Mae Kupenda, *The State as Batterer: Learning from Family Law to Address American's Family-Like Racial Dysfunction*, 20 U. FLA. J.L. & PUB. POL'Y 33 (2009) (analogizing the experience of domestic abuse in America to the experience of being African American).

write about racial conflicts with different groups of people of color. Unpacking American-bred racism, colorism, and sexism in all of our relationships is critical. This is a much-needed supplement to our discourse.

I am struggling with my comments—I lack even the language to talk publicly about your question, Professor Reyes. My thoughts are running through so much additional racial pain I have suffered, even at the hands of people of color. This tells me your question is a critical one—and the answer is we definitely must address mistreatments by people of color against other people of color. Addressing it can give us safer and more supportive alliances, which can help to achieve a less nightmarish and more just academy.

**Professor Onwuachi-Willig:**

Plain and simple, some people are just shady. Such people, unfortunately, are just a fact of life. First and foremost, you must have someone whom you can speak to—someone whom you can bounce ideas off of and get an honest opinion from. From there, you can figure out how to handle these situations. Second, you should know and understand that there’s nothing wrong with airing dirty laundry if someone is shady, clearly shady. But, you have to be subtle about it. Don’t do anything that makes you look bad, that makes you lose credibility.

Here’s why I think it’s important to air dirty laundry, though. In *Grutter v. Bollinger*,<sup>129</sup> the Court discusses all of the benefits of diversity in higher education. One of those benefits of diversity is exposing students to the diversity within racial groups.<sup>130</sup> Like in *Grutter*, I think, if there is discord among faculty of color or women on the faculty that can be exposed, such exposure is good because it helps to dispel myths that all women or all people of color support each other. The view that we are all supportive of each other can actually be harmful when it comes to tenure review letters. People give less credit to tenure review letters sent in by people of color or women for that reason. Or they give too much credit to a negative or lukewarm letter by a person of color, without thinking, like they would with White faculty, about what other factors, including jealousy or personal animosity, may be driving such negative or lukewarm comments.

Airing dirty laundry can also help to show why some faculty of color may have a different experience in the classroom than others, why some evaluations for one woman of color may be better than those for other women of color. As the work of Professors Devon Carbado and Mitu Gulati reveals, the difference may be due to how each individual woman performs her identity, including through her dress, appearance, religion, willingness to address difficult issues of race, gender, and/or sexuality, and so on.<sup>131</sup>

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129. 539 U.S. 306, 330-31 (2003).

130. *See id.* at 324-33.

131. *See generally* DEVON W. CARBADO & MITU GULATI, ACTING WHITE? RETHINKING RACE

Basically, I do not think there is anything wrong with airing dirty laundry, so long as it is not done in way that is damaging to one's own credibility. In fact, I think it actually can be helpful in the long run.

**Professor Wildman:**

Privilege studies teach that each of us has the capacity to be oppressive in some scenarios.<sup>132</sup> Feminism also contemplates “the male-identified woman” as someone who allies herself with interests that might be against women more generally.<sup>133</sup> So it should not be a surprise that some people of color might act in an oppressive way. As with all these examples, the question is what to do about it. If you do choose to write about the role of some people of color in continuing oppression, then I suggest being sure to connect that discussion to an analysis of the larger systems of oppression and privilege. Someone perpetrating oppression may have learned that behavior from having been oppressed. Focusing on the broader conversation of inclusion and the kinds of institutions we want to build would contribute insight. The power of a book like *Presumed Incompetent* and a symposium like this one is that they illustrate the range of possible responses to the horror stories. And at least the silence that lets these behaviors occur has been broken. These conversations will hopefully provide support to those struggling against the oppression, as well as to their allies in this building process.

**Professor Wing:**

If you start from my premise that you trust no one and you build out, your cluster on race/ethnicity is not necessarily the whole group, any more than your gender cluster is not going to be all the women. I am an ABA inspector who goes into law schools to make sure they meet accreditation standards. I have inspected many schools ranked from the top to all levels. There are many schools with famous people of color in them who, earlier in their careers, were on the frontline of race issues. Yet, today they are not helpful to the current junior people. And those junior people will tell me, “So and so is famous, but they will not give me the time of day.” It can be that those people who used to be on the

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IN POST-RACIAL AMERICA (2013).

132. See, e.g., Stephanie M. Wildman & Adrienne D. Davis, *Making Systems of Privilege Visible, in PRIVILEGE REVEALED*, *supra* note 47, at 21-23 (using the image of the rubbery, multi-stringed Koosh ball as a metaphor for the many intersecting strands of privilege in every individual). See also Armstrong & Wildman, *Color Insight*, *supra* note 84, at 71.
133. Historically, the term “male-identified” described such women. See Judith Kegan Gardiner, *On Female Identity and Writing by Women*, 8 *CRITICAL INQUIRY*, Writing and Sexual Difference 347, 354 n.13 (1981). Gardiner explains that “[i]n radical feminist ideology . . . male-identified is a term of abuse applied to one’s outgrown past [patriarchal cultural conditioning] or to other women who cast their ‘social, political, and intellectual allegiances with men.’” *Id.* (citing Adrienne Rich, *Compulsory Heterosexuality and Lesbian Existence*, 5 *SIGNS* 645 (1980)). However, the term’s lack of awareness toward transgender people and people with a positive masculine identification has rendered it less useful.

frontline, burnt out. They come in the building, teach, and then get out. So they do not have anything to give to these junior people. This is a tragedy and I do not like airing dirty laundry in certain contexts. So I have a very broad statement in my essay about how people can stab you in the back. There are people that everyone in this room knows, who have actually been very hurtful to junior people who have come to them begging for a little bit of wisdom. So how can we keep these senior people who have done so much for so many of us in a circle where they could contribute and would be willing to contribute? Maybe we cannot. Maybe there are just too many of us with demands on the few very senior people.

#### F. After Tenure and Other Questions

*“What would I write twenty years from now? I hope that we will have advanced by then in terms of our presence in the academy—that the tales that have been written over the past twenty years by women of color professors will be of only historical interest.”*<sup>134</sup>

##### **Professor Reyes:**

What are some of the challenges that female academics of color face later in their careers?

##### **Audience:**

The silence of not describing incidents to protect the identities of aggressors is understandable in a way, but is this the best strategy? Doesn't refusing to speak out about an incident actually encourage further incidents and create more incentives for bad behavior?

##### **Audience:**

Will volume two of *Presumed Incompetent* include men of color? If so, how does and will that change the nature of the conversation?

##### **Audience:**

Please address the presumed incompetence of mothers who are also women of color.

##### **Audience:**

As one of two women of color in my current sexuality studies graduate program, how do I approach leading faculty who are all White about the lack of academic talk, classes, and concepts offered in the program regarding people of color and sexuality, without being deemed the angry Black woman?

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134. Wing, *Keep Calm*, *supra* note 65, at 371.

**Audience:**

As a faculty woman of color, I am often labeled aggressive by senior and junior faculty at times. How do you balance being part of the conversation while remaining true to your values against the possibility of being negatively labeled for speaking up?

**Professor Wing:**

The essay that I want to do for the *Berkeley Journal of Gender, Law & Justice* is about “Past the Silver Jubilee.” I have developed a number of lessons that I have gleaned from professors who have been teaching for twenty-five years or more. Some of those people are White, some are of color, and there are both males and females. I think the list will be helpful not only to people who are already past year twenty-five, but also for those who are pre-tenure, at year ten or at year fifteen and want to know what to do in the future.

I will mention a few points briefly here. The first I call “*Adapt or Die.*” If you cannot adapt as technology and experiential work evolve, you are going to be extinct—maybe literally, but certainly career-wise. So, it is necessary to force yourself to get in tune with the latest trends in the academy. While I also had colleagues mention that we should consider not using technology, I think it is too late for that approach. Using quill pens instead of computers will not make a generation raised on computers think differently than they do.

With respect to substance, it may be necessary to change the courses you teach or the subjects you write on. After September 11, 2001, I started teaching Law in the Muslim World. I needed to become more multidisciplinary and engage with social science literature that I had not considered since I was an undergraduate. I needed to learn about fields I had never studied before. You may need to attend conferences where you are a learner rather than the keynoter or plenary panelist.

A related lesson is to *stay intergenerational*. When most of us start teaching, we are barely older than our students and may be taken for a student. I have reached the point now where even my youngest child is older than my students. I look at *People* magazine and barely recognize any of the celebrities. We must be able to keep up with the cultural references of our students so that our appreciation for what they are saying or doing is nuanced enough to affect what we say to them, down to the very jokes we might use.

Another related point to the last lesson is the need to continue to be committed to good teaching. While it may include the ability to use generationally appropriate references, it may also include the classic Socratic Method. You may experiment in ways that you did not dare to when you were young. While you may engender respect from students due to seniority, you may face disrespect on the basis of your race and gender as you may or may not have when you were younger.

*Continue writing* is another lesson. While the standard law review article

may be a rare activity in later years, you may find that everything from books to blog posts can help to get your message across and keep you in the intellectual mix in your field. Reviewing manuscripts and doing tenure reviews are not visible activities, but can help keep your mental juices flowing.

Then, the next point is the need to continue to *othermother*. I have two biological sons, and I have three other boys older than that who are like my children. I have two other surrogate daughters. So I have a total of seven young people I have mothered. I have eight grandchildren. My oldest grandchild turned fifteen yesterday, and so I have multiple generations that I am mentoring. Even though they are all grown now, the need for *othermothering* continues—careers, marriage, children, family have long since replaced the day to day mothering for minors. With respect to career *othermothering*, it is important to continue to make yourself available to students and colleagues even if you are no longer the only person of color or woman of color. Your wisdom may even be more needed than it was when you were younger.

The other advice I received includes: be yourself; do the same things that got you tenure; be joyful; stay healthy; vary your experiences; be enthusiastic; be humble; never give up; and confront your fears.

**Professor Wildman:**

I just want to tell a quick story about my own learning about the need to “out” this presumption of incompetence about mothers of any race. When my children were young, I was going to be on a panel with Cruz Reynoso, a Professor at U.C. Davis and a family friend who, at the time, was a Justice on the California Supreme Court. I said to him, “Cruz, I’m really happy to be here with you for this panel, but I’m going to need to sneak out because of a childcare failure. I don’t want to interrupt anything but I need to pick up my daughter at school. When the time comes, I will just tiptoe out.” The time came when I had to leave and I was unobtrusively making my way toward the door when Cruz gestured and said, “And here we have an exit to honor childcare.” Of course my first reaction was, “Oh my God, now he’s told everyone.” But then I realized, great teacher that he is, that he was teaching me and everyone in that room that we have to be proud about mothering, that these childcare crises happen to all of us, and that keeping it hidden isn’t helping society to set the right priorities. After reflection, I appreciated that he spoke up. The presumption that you cannot be a mother and do this work—or any work—perpetuates the myth of women’s incompetence.

**Professor Onwuachi-Willig:**

There are a lot of questions in there, so I’ll speak to the one about being the angry Black woman. In some ways, you just have to accept that that is how you’re going to be perceived no matter what you do. I remember the day—some of you in the room got the text from me—when I felt like I officially became the crazy or angry Black woman on my faculty. I have saved that text for myself as a



reminder. There are just moments when you can feel people viewing you that way; those moments are very real and are certain to come if you are the type of person who will raise questions about race or gender. There's really nothing you can do to prevent that stereotype from being imposed upon you.

So, just focus on ways in which you can be your authentic self, maintain your voice, and maintain credibility among your faculty. And, I think there is one thing that you should do to maintain your sanity: Think about taking a break. When you feel yourself cracking under the immense service burdens placed on us, both formally and informally, go to your Dean to request a break. I have had to do that very thing. Being the one person or one of very few people to raise questions about race, class, and gender can be very tiring and burdensome, so taking a break every now and then makes sense.

**Professor Reyes:**

Were you tenured when you requested that from the Dean?

**Professor Onwuachi-Willig:**

Yes, I was tenured. Yes, having tenure with that request is key. It is critical. Tenure is a must for faculty of color, who frequently are the ones raising issues that can make others feel uncomfortable, especially issues concerning race.

To address another question, one more challenge that women of color face is that people often forget that we are mothers. As they are constantly overburdening us with service, administrators and other faculty often forget that we have to take care of our own families, much like they have to take care of theirs. I actually live about seventy miles from where I work, so my kids are not often at my school to be a visual reminder of my responsibilities at home. They are not physically present, but I have pictures of my children all over the board outside my door. I am not certain how helpful these pictures may be, but assuming that my colleagues are being mindful when they walk past my door, they will see that I am a mother of three children—that I'm doing all of my professional work (which is significant), in addition to all of what I do at home.

Finally, to answer the question about men, if the narratives of men of color were added to the book, I think it would be really interesting. I suspect that there would be the same presumption of incompetence for men of color as there is for women of color, but there would also be significant differences. It would be really interesting to learn about the different ways that men of color and women of color handle similar and dissimilar challenges. For example, one of my co-authors, a Black male, has actually kicked students out of his class for poor behavior. When I hear his stories, I always think, "Gosh, I could never do that!" But, he can do that, because he's 6'4", former military, and his students are all respectfully frightened of him. They're frightened of me, but in a different way. With a book that included narratives of men, I think that the dynamics and stories about how we perform our identities would be really interesting and

different.

**Professor Kupenda:**

These audience questions and the post-tenure question are all wonderful questions. I am going to group my answers into three responses for my closing remarks: responses for the pre-tenured or untenured, for the post-tenured, and for us all.

For those without tenure, I want to pass on a few suggestions. Many years ago when I was not tenured and was struggling mightily on the faculty, I received some words of wisdom that I followed up on and which have provided me with continuous support. If you look around your law school and see few you can trust, remember: your community is bigger than your law school. There are faculty at other schools who will mentor you, read your articles, and help you through reading your teaching evaluations. The Bar of color can be of immense support. Students you mentored, and who have now graduated, can provide encouragement. Faculty and others you meet at conferences and in your geographic community can provide you with the support, encouragement, and friendship you may never have within your institution.

For the senior faculty who are tenured, I group the challenges we must face under two categories. I call the first the “ing” challenges: fighting the same race/gender battles over and over in our institutions; facing down the same spooks again post tenure, including the “I want my Mammy” ghosts; waging continuing salary equity battles; and struggling with the unevenness of workload distribution. Having to continue to face down these can make you weary.

The other challenge is, with all of the above going on, keeping our purpose alive and our joy vibrant. Accepting that we may never be truly valued at our institutions is discouraging. As Mama told me, though, we should not let anyone steal our joy,<sup>135</sup> and certainly we should not throw our joy away. Therefore, after tenure, we must challenge ourselves to continue to grow and radiate joy. We can grow by mentoring the next generations, those within and outside our institution. We can grow by freeing ourselves to introduce concepts of race, gender, and class into our teaching. There are so many ways to grow—more than a lifetime’s worth.

For all of us: I do not think we can often change how other people are going to label us. Dr. King said he hoped the day will come when we will be judged by the content of our character, but we cannot control how other people will judge us; that is their problem, even though their problem may cause us pain. But the part about being judged by “the content of our character” is what I am focusing on even more in my life. What is my character? I may not change how they judge me, but I can work on my true character by speaking when it is appropriate for me—when it is time for me—to speak in ways that I can speak,

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135. Kupenda, *Academic War Strategies*, *supra* note 19, at 124-25.

in ways that I believe I can be heard. That part I can work on; the other part—well, let’s just hope that some of them will work on that, too.

#### IV. CLOSING REMARKS—PROFESSOR REYES<sup>136</sup>

The ABA Standard for Approval of Law Schools 212 provides that “a law school shall demonstrate by concrete action a commitment to having a faculty and staff that are diverse with respect to gender, race and ethnicity.”<sup>137</sup> The AALS, in its *Statement of Good Practices for the Recruitment and Retention of Minority Law Faculty Members*, states that a core value of the AALS is a commitment to recruiting and retaining a diverse faculty.<sup>138</sup> It urges that “[l]aw schools should embrace racial and ethnic diversity, including diversity among faculty, as a factor that strengthens the institution and educational mission.”<sup>139</sup>

Organizations like the ABA and the AALS should take an active role in monitoring against the abuse we read about in *Presumed Incompetent* and heard about during the Symposium.<sup>140</sup> They should investigate the oppression suffered by faculty members during the tenure process.<sup>141</sup> “An institution that permits their colleagues to be mistreated instills doubt among faculty of color that they will be treated fairly when it is their turn to be evaluated.”<sup>142</sup> The ABA should review promotion and tenure procedures and decisions as part of its accreditation evaluation.<sup>143</sup> The AALS should actively and consistently report the data on

136. I read many of the chapters in *Presumed Incompetent* in preparation to moderate the plenary panel. These writings helped me to consider the breadth and complexity of the dynamics of power and oppression in academia. The book also helped me to put into context some of my own experiences. These closing remarks encompass my input as a junior faculty member and convey my hope that faculty members, especially lawyers, pay a closer look at their actions and omissions toward subordinated persons.

137. ABA Standard 212(b), ABA STANDARDS FOR APPROVAL OF LAW SCHOOLS 2012-2013, available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2012\\_2013\\_aba\\_standards\\_and\\_rules.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2012_2013_aba_standards_and_rules.authcheckdam.pdf).

138. *Statement of Good Practices for the Recruitment and Retention of Minority Law Faculty Members*, ASS’N AM. L. SCHS., [http://www.aals.org/about\\_handbook\\_sgp\\_rec\\_rer\\_min\\_fac.php](http://www.aals.org/about_handbook_sgp_rec_rer_min_fac.php) (last visited Apr. 23, 2014).

139. *Id.*

140. “The institution of legal academia needs to be held responsible for failing to provide a safer environment for people of color. It is the hostile environments in many law schools that [are] causing legal academia to be a revolving door for professors of color.” Smith, *supra* note 8, at 1123.

141. The threat of denying tenure is a powerful weapon in the hands of those in positions of power, like a Dean or senior colleagues, and it makes abusers of this power “relatively confident and comfortable in [their] belief” that the untenured must remain silent despite their constant racial and gendered attacks. *See id.* at 1115-17.

142. Trinh Vö, *supra* note 88, at 108.

143. At a conference I attended in 2013, a Latino professor disclosed to a group of professors that he received a phone call from an African-American professor asking him to write a bad review on a Latina professor because he “did not like her.” Another senior Latino professor also shared that, even when a professor gets a favorable faculty vote for tenure, some faculty members may try to sabotage her at the university level by going outside the process and trying to convince the provost or president to deny her tenure. These unethical practices and

minority hiring and retention. The last longitudinal study on the rate of promotion to tenure was reported in December 2004 and the findings were very negative for minorities and women of color.<sup>144</sup> The AALS yearly statistical reports on law faculty are not posted in a timely manner. As of the date of this symposium, the AALS website's latest report is the 2008-2009 report.<sup>145</sup> These organizations can do more than pay lip service to the goals of diversity in the legal academy.

We have seen in recent years a growing movement to stop bullying. The concept of workplace bullying was analyzed in legal scholarship fourteen years ago by Professor David C. Yamada, the Director of the New Workplace Institute at Suffolk University Law School.<sup>146</sup> More recently, the *Journal of Legal Education* highlighted workplace bullying in its July 2012 issue, in the Recent Cases and Commentary section.<sup>147</sup> The Journal provided a summary of an article that describes workplace bullying as a form of harassment in academia.<sup>148</sup> In the academic setting, "workplace bullying" has been

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those who engage in them must be exposed internally and externally; some of these offenders may become associate deans or even deans with added institutional power to damage their victims. See Smith, *supra* note 8, at 1123; cf. HILL, *supra* note 11, at 77 (considering, in hindsight, that she could have filed charges when the sexual harassment that she later testified about first happened, although it was risky because the case results were mixed at the time). If these types of actions are not disclosed to their targets, the untenured do not have an opportunity to confront them and the tenure process becomes a sham that is not conducted in good faith. Therefore, tenure decisions are not made "on the merits," but based on personal agendas or even on unlawful discrimination. Ultimately, turning a blind eye to these practices does not serve the best interest of the institutions (including their students), the legal academy, or the legal profession. Cf. Rhode, *supra* note 14, at 1330 ("[F]or scholars in a professional school, at least part of the mission is to advance understanding and promote improvement of their profession and its institutions."). Lawyers, even if they have become legal academics, must call out these practices for what they are: unethical (and often unlawful) violations of due process and fair dealing; otherwise, law professors open themselves to further criticism as inside regulators that do not abide by the rules that they teach to their students (including the ethics rules). See Brent E. Newton, *The Ninety-Five Theses: Systemic Reforms of American Legal Education and Licensure*, 64 S.C. L. REV. 55, 69 (2012) ("The legal academy has proved repeatedly that it cannot effectively reform itself. Because the ABA accreditation authority is the most potent potential agent for change, the Council should return to its status in the early and middle parts of the 1900s, when it was controlled by members of the bench and bar rather than by legal educators.").

144. ASS'N AM. L. SCHS., THE PROMOTION, RETENTION, AND TENURING OF LAW SCHOOL FACULTY (2004), available at <http://www.aals.org/documents/2005recruitmentreport.pdf>.

145. ASS'N AM. L. SCHS., STATISTICAL REPORT ON LAW SCHOOL FACULTY AND CANDIDATES FOR LAW FACULTY POSITIONS (2009), available at [http://www.aals.org/resources\\_statistical.php](http://www.aals.org/resources_statistical.php).

146. See David C. Yamada, *The Phenomenon of "Workplace Bullying" and the Need for Status-Blind Hostile Work Environment Protection*, 88 GEO. L.J. 475 (2000); see also David C. Yamada, *Workplace Bullying and American Employment Law: A Ten-Year Progress Report and Assessment*, 32 COMP. LAB. L. & POL'Y J. 251 (2010).

147. Commentary, *Universities & Other Institutions of Higher Learning*, 41 J.L. & EDUC. 581, 581 (2012).

148. *Id.* (citing Robert J. Tepper & Craig G. White, *Workplace Harassment in the Academic Environment*, 56 ST. LOUIS U. L.J. 81 (2011)).

commonly defined as behavior by a perpetrator that may involve repeated verbal abuse, offensive conduct that may threaten, humiliate, or intimidate a target, or efforts to sabotage a target's performance. As commonly defined, the subject behavior is intentional, results in physical or psychological harm to the target, and makes the target's job performance more difficult. At times, perpetrators, who may include administrators and faculty members, combine their efforts to abuse and harass the target, a phenomenon known as "mobbing."<sup>149</sup>

Workplace bullying may also involve unlawful discrimination on the basis of race, color, religion, sex, or national origin, which is actionable under Title VII of the Civil Rights Act of 1964.<sup>150</sup> "Women [on law school faculties] suffer from differential expectations from colleagues and students and often bear the brunt of their colleagues' bullying behaviors at work."<sup>151</sup>

[Bullying] behaviors include acts that repeatedly and persistently torment a person. These acts may harm a victim's reputation or ability to relate to co-workers or to perform the job. They include social isolation at work, exclusion, devaluation of the work the person does, teasing, insulting remarks, ridicule and gossip, giving the person tasks that are too simple, and exposing the person to physical violence or threats of violence. Because bullying

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149. Tepper & White, *supra* note 148, at 81 (citations omitted).

150. See GARY NAMIE & RUTH NAMIE, *THE BULLY AT WORK* 104 (2000). Sometimes women of color are blindsided by the "racial and gendered assaults" because they expected "to find positive treatment[,] equality" and a "safe environment" in the particular institution and, due to this incorrect assumption, they delayed recognition of the institution's racialized nature. Smith, *supra* note 8, at 1117-18 (2000) (explaining how women of color base their expectations on an institution's rhetoric of support for community and equality). The attacks serve yet another purpose—they disrupt the target's productivity, including as a scholar. *Id.* at 1119.

151. Ann C. McGinley, *Reproducing Gender on Law School Faculties*, 2009 BYU L. REV. 99, 99 (2009). When critics cannot openly attack a woman for being a woman, they use code language, such as accusing her "of being too emotional or passionate." Helena Alviar García, *What Does It Mean to Be a Latina Dean? Reflections from the South*, 48 CAL. W. L. REV. 439, 442 (2012). As for performance expectations, women in faculties are "damned if they do and damned if they don't." If they "perform up to the expectations of male behavior, they are often criticized and disliked" and if they do not perform up to the expectations associated with male behavior, they are "deemed less competent than similarly effective male faculty members." McGinley, *supra*, at 115. "In essence, studies demonstrate that women who occupy 'male' leadership roles [e.g., women faculty members in tenure track positions] either are competent and not likeable or incompetent and likeable." *Id.* (citation omitted). "Both faculty colleagues and students engage in this harsh evaluation." *Id.* Women of color are expected to engage in pleasing behaviors, such as avoiding serious facial expressions and instead walking around with smiles on their faces (*enseñando sus dientes todo el tiempo*—showing their teeth all the time), including throughout serious class discussions about the law. See Kupenda, *Facing Down the Spooks*, *supra* note 15, at 22. For research on how women of color are unfairly and negatively assessed in student evaluations, see generally Sylvia R. Lazos, *Are Student Teaching Evaluations Holding Back Women and Minorities? The Perils of "Doing" Gender and Race in the Classroom*, in PRESUMED INCOMPETENT, *supra* note 2, at 164-85.

perpetrators and victims are both men and women, many early bullying scholars considered bullying not to have a gender component. Newer feminist scholarship posits, however, that while not uniformly performed by men against women, bullying can be, and often is, gendered.<sup>152</sup>

It is time to begin a movement to eradicate workplace bullying and unlawful discrimination in academia!<sup>153</sup> *Presumed Incompetent* and symposiums like this one,<sup>154</sup> followed by concrete plans and actions,<sup>155</sup> could be the start of such a movement. As for faculties, it is time to speak up and stop the abuse and torture.<sup>156</sup> Bullying tactics are often selectively applied and accepted as some type of rite of passage<sup>157</sup> or as a way to make the environment so hostile that targets leave the institution and even the academy.<sup>158</sup> I hope that memorializing the plenary panel discussion in this Article will serve to empower anyone who is facing circumstances and experiences similar to those described in the book. Yes, the torture is real and you are not alone.<sup>159</sup> My wish is that *Presumed*

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152. McGinley, *supra* note 151, at 112.

153. “Latinas and Latinos also need to add their rich voices to the growing body of scholarship that tells the story of the discriminatory treatment that many of us are facing in academia. The Latina/o voices must be joined by Asian men and women, Native American men and women, non-native professors of color, more African American voices, and many, many others. Together, we can create a symphony of voices that show that negative experiences are occurring, and that we object that these racialistic things are occurring to us as individuals and to us as a group.” Smith, *supra* note 8, at 1128.

154. “To transform the world of academia, we must hold on to our outsider values when we get inside, making spaces to bring in others who are on the margins or still outside.” Nancy Cantor, *Part III Introduction*, in *PRESUMED INCOMPETENT*, *supra* note 2, at 221, 223.

155. For recommendations about where to start, see Flores Niemann, *supra* note 71, at 446-99.

156. Studies show that “[t]he threat of sanctions (formal and informal) discourages workers from coming forward to complain about workplace abuses. Workers often fail to complain about workplace abuses because they feel powerless to change their situations.” Reaves, *supra* note 109, at 409 (“Workplace harassment is an effective mechanism to enforce gender norms.”). It is a sad state of affairs when tenured faculty members feel as powerless as at-will employees. And it is an even sadder scenario when some faculty members actually enjoy watching the torture that others are forced to endure. See Kupenda, *Facing Down the Spooks*, *supra* note 15, at 24. Ultimately, “[r]emaining silent in the face of injustice may even turn people into accomplices in injustice.” Roberts, *supra* note 70, at 356-57.

157. Some tenured women referred to “hazing” as “part of [the process for] entering the fraternal and paternalistic institutions” they joined. Gutiérrez y Muhs, *supra* note 120, at 502.

158. Sherrée Wilson, *They Forgot Mammy Had a Brain*, in *PRESUMED INCOMPETENT*, *supra* note 2, at 65, 76; Elvia R. Arriola, “No hay mal wue por bien no venga”: *A Journey to Healing as a Latina, Lesbian Law Professor*, in *PRESUMED INCOMPETENT*, *supra* note 2, at 377, 380. Some women of color, upon encountering the competitiveness, elitism, and cronyism embedded in academia, question whether they belong or whether they want to devote their lives to an academic life. See Trinh Vō, *supra* note 88, at 93; Jessica Lavariega Monforti, *La Lucha: Latinas Surviving Political Science*, in *PRESUMED INCOMPETENT*, *supra* note 2, at 393, 393. Some “supporters” counsel a professor to “accede to unreasonable demands to appease the attackers or leave the institution ‘for her own good.’” Harris & González, *supra* note 9, at 10.

159. More senior faculty members who have gone through similar experiences should disclose their own experiences to newcomers in need of support; otherwise, purposefully avoiding the newcomers’ stories or merely listening, without acknowledging that the abuse is real and

*Incompetent* will ignite a movement in academia, once and for all, to name, face, and confront the wrongdoing that is done to many in the academy, especially to the most vulnerable. Academics must think about how we can contribute to the movement in our institutions and in the academy at large. Surgical nurses have “Code Pink,” a technique whereby surgical nurses, as a group, confront a surgeon after he bullies a fellow nurse.<sup>160</sup> What will be the academics’ code for solidarity in the face of oppression?<sup>161</sup>

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undeserved, is harmful to the newest targets, as it may cause them to internalize the abuse:

Why hadn’t we told anyone? Why did each of us feel that we were alone? Why were we so ashamed of our experiences? Why were we so afraid to speak? We . . . were silenced, feeling alone and feeling ashamed because of the tyrannies of silence, which demand silence and fear in exchange for the tenuous promise of tenure at some point in the future. As a result of our fear of not getting tenure and of being seen as problematic among our peers of color, many of us succumbed to the tyrannies of silence. Individually we learned the heartaches that go along with fear, the isolation that is its companion. The attendant belief that it was you rather than your institution. The attendant demand that one has to remain emotionless and forgiving in the face of continuous racial aggressions. Together we learned that it was not us, that we were not alone and that the very institutions that were harming us were the same ones depending on our silence.

Smith, *supra* note 8, at 1107. The words “tyrannies of silence” in the title of Professor Smith’s article were borrowed from Audre Lorde. *Id.* at 1133 n.1 (citing *The Transformation of Silence into Language and Action*, in *SISTER OUTSIDER: ESSAYS & SPEECHES BY AUDRE LORDE* 40, 41 (1984)). Abusive cycles, if not confronted, are self-perpetuating. See NAMIE & NAMIE, *supra* note 150, at 50.

160. NAMIE & NAMIE, *supra* note 150, at 230. ♦

161. I express my solidarity to my sister in arms, Kieu-Linh Caroline Valverde. She spoke during the symposium’s closing plenary session, when she was undergoing a tenure battle. She paid a high price for her tenure, but she did not give up. Kieu-Linh Caroline Valverde, *Fight the Tower: A Call to Action for Women of Color in Academia*, 12 SEATTLE J. FOR SOC. JUST. (forthcoming 2014). Congratulations to her on a valiantly-fought tenure battle and on a well-earned tenure victory! ¡Si se puede!