

SISTERS IN LAW: BLACK WOMEN LAWYERS’ STRUGGLE FOR ADVANCEMENT*

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TABLE OF CONTENTS

INTRODUCTION.....	1777
I. NOT MERELY A PROBLEM OF NUMBERS	1780
II. THE STRUGGLE TO PORTRAY A PROFESSIONAL IMAGE	1782
III. STEREOTYPES IN THE WORKPLACE	1785
IV. STEREOTYPES OPERATING OUTSIDE THE WORKPLACE	1790
CONCLUSION	1793

INTRODUCTION

Many observers of the legal profession have noted that the number of women graduating from law school and entering the legal profession has increased significantly in the past two decades.¹ Nonetheless, women still

* The idea for this title originated with Virginia G. Drachman’s book entitled: *Sisters in Law: Women Lawyers in Modern American History*, which borrowed its title from nineteenth century women lawyers who often referred to themselves as “sisters in law.” VIRGINIA G. DRACHMAN, *SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY* (1998). However, I place emphasis on the word “Sisters” because I use it as a colloquialism to refer to black women. I am uncertain of the origin of the use of the word “sister,” often pronounced “sistah,” to refer to black women, but it has been embraced by black women to refer to our collective selves. See generally Regina Austin, *Black Women, Sisterhood, and the Difference/Deviance Divide*, 26 NEW ENG. L. REV. 877 (1992); Tamala M. Edwards, *Sister Power: What Turn-of-the-Century Black Women Can Teach Us*, ESSENCE, Mar. 1999, at 82, 82; bell hooks, *SISTERS OF THE YAM: BLACK WOMEN AND SELF-RECOVERY* (1993); see also MELISSA V. HARRIS-PERRY, *SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA* (2011).

** Professor of Law and Associate Dean for Academic Affairs, The Pennsylvania State University. I owe thanks to Renee Knake and Hannah Brenner of Michigan State University College of Law for inviting me to participate in this Symposium on Gender and the Legal Profession’s Pipeline to Power. I also want to thank my Dean, Philip J. McConaughay, for his mentorship and professional support despite the racial and gender differences that divide us. I give special thanks to my children, Payton and Christopher Pratt, for their constant love and support of my professional endeavors. Finally, I thank my fellow “sister in law” and friend, Denelle Waynick, and my colleague, Victor Romero, for their comments on an earlier draft of this Essay.

1. Jacquelyn H. Slotkin, *Rabenmutter and the Glass Ceiling: An Analysis of Role Conflict Experienced by Women Lawyers in Germany Compared with Women Lawyers in the*

comprise a very small minority of lawyers in leadership positions in large corporate law firms, *Fortune 500* companies, and law schools.² So while the presence of women in law school and the legal profession has improved greatly, the uncomfortable reality is that women tend to occupy positions in the legal profession that subordinate them to men.

Commentators offer several explanations for the position of women in the legal profession. Some argue that women aspire to leadership positions in the profession at lower rates than men and this explains the low numbers of women in leadership positions.³ Others argue that structural barriers create a “glass ceiling” or a “leaky pipeline,” which prevents many women from achieving positions of leadership in the profession.⁴ One example of a structural barrier is a profession that requires working in excess of 2,000 hours a year despite the awareness that many women simply cannot meet this requirement due to family responsibilities.⁵ Others point to gender stereotypes in the workplace that stigmatize women as less ambitious, less productive, or less competent, and prevent them from receiving the work

United States, 38 CAL. W. INT’L L.J. 287, 310 (2008) (noting that the number of women graduating from law school has increased since 1984 to nearly half of all graduates).

2. See Deborah J. Cantrell et al., *Walking the Path of the Law: How Law Graduates Navigate Career Choices and Tolerate Jobs That Fail to Meet Expectations*, 14 CARDOZO J.L. & GENDER 267, 277 (2008) (citing CATALYST, WOMEN IN THE LAW: MAKING THE CASE (2001), available at <http://www.catalystwomen.org/knowledge/titles/title.php?page=le>) (noting that women who hold in-house counsel positions are more likely than men to hold subordinate positions within the corporate legal department); see also EEOC, DIVERSITY IN LAW FIRMS (2003), available at <http://www.eeoc.gov/eeoc/statistics/reports/diversitylaw/lawfirms.pdf>; Deborah L. Rhode, *Myths of Meritocracy*, 65 FORDHAM L. REV. 585, 585-87 (1996) (lamenting that proportionate representation of women is lacking in law firm leadership and in law school leadership because law schools have few full tenured professors and deans who are women). *But see* Laura M. Padilla, *A Gendered Update on Women Law Deans: Who, Where, Why, and Why Not?*, 15 AM. U. J. GENDER SOC. POL’Y & L. 443 (2007) (discussing the steady progress in the number of women assuming the role of dean in law schools yet inquiring whether there is a tipping point for including women at this level of leadership); Fiona M. Kay & John Hagan, *Cultivating Clients in the Competition for Partnership: Gender and the Organizational Restructuring of Law Firms in the 1990s*, 33 LAW & SOC’Y REV. 517, 518-21 (1999) (discussing how women are disproportionately represented among non-equity lawyers in law firms).

3. Mindy G. Farber, *Women Lawyers as Leaders*, LAW PRAC. MGMT., Jan.-Feb. 1995, at 34, 35-36 (asserting that many women lawyers never aspire to leadership roles in their profession).

4. See S. Elizabeth Foster, Comment, *The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?*, 42 UCLA L. REV. 1631, 1634-58 (1995) (examining reasons for the continuing effect of the glass ceiling on women’s advancement); Joan Brockman, *The Impact of Institutional Structure and Power on Law and Society: Is It Time for a Reawakening?*, 37 LAW & SOC’Y REV. 283, 283-87 (2003).

5. See Carrie Menkel-Meadow, *Culture Clash in the Quality of Life in the Law: Changes in the Economics, Diversification and Organization of Lawyering*, 44 CASE W. RES. L. REV. 621, 632-33 (1994).

opportunities that would allow them to showcase their skills and earn promotion.⁶

When women lawyers are disaggregated into distinct racial groups, we see that the challenges confronting women lawyers, as a whole, are not always the same in nature or degree. There are common patterns to gender that unify women lawyers in their struggle for professional advancement, but not all women perform or experience gender in the same way. Many of the challenges confronting women lawyers of color are unique and different from the challenges confronting white female lawyers. For women of color, race is not merely an added layer that makes them subject to additional challenges, but rather a component of their identity that intersects with gender to expose them to unique challenges.⁷ This reality was revealed in the ABA's 2010 study of women of color in law firms. In that study, the ABA found that women of color in the legal profession fare worse than white women and men of color.⁸ For example, while 17% of law firm partners were women in 2004, only 4% were women of color.⁹ This Essay calls for more racially disaggregated inquiries into the experience of women lawyers in an effort to more accurately identify the unique experiences and challenges of women of color, and the degree to which those experiences vary depending upon the racial background of the woman lawyer.

This Essay examines the experience of black women lawyers and argues that this group confronts unique challenges arising from the intersection of their race and gender. The racial identity of women lawyers matters because it creates a unique context in which a particular group of women experience the legal profession. This is not because each racial group possesses some essential characteristics that make all of its members the same.¹⁰ Rather it is because each racial group has a unique history that locates it within the law and the larger society and positions it relative to the

6. See Nicole Buonocore Porter, *Re-Defining Superwoman: An Essay on Overcoming the "Maternal Wall" in the Legal Workplace*, 13 DUKE J. GENDER L. & POL'Y 55, 58-66 (2006) (focusing on the stereotypes surrounding women as family caregivers).

7. For the genesis of the theory of intersectionality, see Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139; Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1244 (1991); RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 51-56 (2001) (explaining the concept of intersectionality in critical race theory); and Richard Delgado, *Rodrigo's Reconsideration: Intersectionality and the Future of Critical Race Theory*, 96 IOWA L. REV. 1247, 1259-63 (2011).

8. JANET E. GANS EPNER, *ABA COMM'N ON WOMEN IN THE PROFESSION, VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS* (2006).

9. *Id.* at xi.

10. For a discussion of race and essentialism, see Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585-90 (1990).

dominant racial group.¹¹ Moreover, each racialized and gendered group has a unique set of stereotypes assigned to it that influences how others view and interact with members of that particular group.¹² The result of this is that black women have a different position and experience in the legal profession when compared not only to their white female peers, but also when compared to other women of color. In other words, the level of abstraction matters when attempting to identify challenges confronting women lawyers of color and the solutions that may aid in overcoming those challenges. This Essay explores some of the unique obstacles to professional advancement black women lawyers confront and suggests some modest measures for grappling with some of these obstacles.

I. NOT MERELY A PROBLEM OF NUMBERS

Black women are not newcomers to the legal profession. The first African American woman to become a lawyer, Charlotte E. Ray, graduated from Howard University School of Law and was admitted to the bar in 1872, less than a decade after the end of race-based slavery.¹³ Despite the presence of black women in the legal profession for over a century, one challenge that continues to confront black women lawyers is entry to the profession. Admittedly, since the 1970s there has been steady improvement in the number of black women becoming lawyers. In the two decades between 1970 and 1990, the number of black women lawyers increased dra-

11. See Gary Peller, *Race Consciousness*, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 127, 127-30 (Kimberle Crenshaw et al. eds., 1995).

12. See generally CLAUDE M. STEELE, WHISTLING VIVALDI: HOW STEREOTYPES AFFECT US AND WHAT WE CAN DO (2010).

13. J. Clay Smith Jr., *Part 1: Law and Its Call to Black Women*, in REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS 9, 9 (J. Clay Smith Jr. ed., 1998). It should be noted that although Howard University School of Law was an institution formed around a mission of racial equality, it is reported to have resisted the admission of women when it was first founded. KAREN BERGER MORELLO, THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA 1638 TO THE PRESENT 145 (1986). It was reported that Charlotte Ray was only admitted to the law school because she submitted her application as "C.E. Ray" thereby concealing her gender. *Id.* However, this interpretation of Ray's experience is disputed. See J. Clay Smith Jr., *Black Women Lawyers: 125 Years at the Bar; 100 Years in the Legal Academy*, 40 HOW. L.J. 365, 366-72 (1997). Professor Smith contests the assertion that Charlotte Ray used her initials on her admissions application to avoid any discrimination against women that might exist. See *id.* at 370. According to Professor J. Clay Smith, many black Americans developed the practice of using initials in order to make it impossible for whites to call them by their first names, and thereby command the respect of whites. *Id.* at 370 n.27. Even before the bar would admit black women as licensed lawyers, black women were legal advocates; Lucy Terry Prince is believed to be the first black woman to address the U.S. Supreme Court as a lay advocate in 1795. Jean H. Toal, *Great Women, Great Chiefs: Remarks*, 74 ALB. L. REV. 1583, 1584 (2011).

matically from 446 to over 11,000.¹⁴ As more black women enter the legal profession, it is likely that more black girls and young black women will aspire to become lawyers. In a recent qualitative study on African Americans in the legal profession, one black female lawyer study participant said that it was not until she saw a black female judge on an elementary school field trip that she realized that she too could be a judge someday.¹⁵ This statement speaks to the importance of young black girls and women seeing their intersecting identity represented in the legal profession, which signals to them that they can achieve that particular position in life. Currently, young black girls and women see more examples of black women in the legal profession than ever before. Moreover, it should be noted that compared to black men entering the legal profession, black women are faring quite well. Currently, black women in law school outnumber black men three to one.¹⁶ Yet given the declining numbers of black enrollment at U.S. law schools in recent years, the profession should be concerned with potential regression in the number of black women who are entering law school and becoming lawyers.¹⁷ Being mindful of and working to improve the

14. J. Clay Smith Jr., *Introduction: Law Is No Mystery to Black Women*, in REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS, *supra* note 13, at 1, 7. It is unclear how Smith derived this number. Diligent research was unsuccessful in attempting to confirm this number and an effort to ascertain current statistics on the number of black women lawyers yielded an absence of tracking of this statistic. The ABA, the Bureau of Labor Statistics, and the EEOC each collect subsets of data on black lawyers as a group and women lawyers as a group, but none of these sources reported data on the total number of black women licensed as a lawyer or actively practicing law in a U.S. jurisdiction. For the ABA's aggregated statistics on women lawyers, see Comm'n on Women in the Profession, *Statistics from the ABA Commission on Women*, A.B.A., <http://www.americanbar.org/groups/women/resources/statistics.html> (last visited Feb. 18, 2013). For Catalyst's statistics on women in law, see *Catalyst Quick Take: Women in Law in the U.S.*, CATALYST (Oct. 17, 2012), <http://catalyst.org/publication/246/women-in-law-in-the-us>. The EEOC does report some statistics on black women in the legal profession, but these data are clearly underinclusive because they are derived from EEO-1 reports filed by employers with more than 100 employees, and Federal contractors with more than 50 employees, as required under Title VII of the 1964 Civil Rights Act. See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2012, at 394 (2012), available at <http://www.census.gov/compendia/statab/2012/tables/12s0616.pdf>.

15. DOROTHY H. EVENSEN & CARLA D. PRATT, THE END OF THE PIPELINE: A JOURNEY OF RECOGNITION FOR AFRICAN AMERICANS ENTERING THE LEGAL PROFESSION 30 (2012).

16. See *id.* at 126.

17. See DISTURBING TREND L. SCH. DIVERSITY, <http://blogs.law.columbia.edu/salt> (last visited Feb. 18, 2013) (discussing the shut out rate for Latino and black students who seek to attend law school); see also *Web Site Shows Drop in Minority Enrollment at US Law Schools*, COLUM. L. SCH. (Dec. 28, 2007), http://www.law.columbia.edu/media_inquiries/news_events/2007/December07/law_enroll; Leigh Jones, *Minority Enrollment at Law Schools Is Faltering*, LAW.COM (Feb. 6, 2008), <http://www.law.com/jsp/law/careercenter/lawArticleCareerCenter.jsp?id=1202211781492> (noting that the decline in law school enrollment for blacks and Mexican-Americans has fallen by 8.6% over the past 15 years, and

number of black women entering the legal profession is still an important goal, but improving the professional experience and opportunities of black women who become lawyers is the focus of this Essay. Like women generally, the primary problem for black women has not been getting into law school and, subsequently, becoming a lawyer. The primary challenge for black women has been advancing within the profession and ascending to positions of power.¹⁸

II. THE STRUGGLE TO PORTRAY A PROFESSIONAL IMAGE

Presenting and maintaining a professional image is important in the workplace; particularly the professional workplace. All persons in the workplace must contend with the appearance expectations of employers and society. People who are deemed unattractive have a more difficult time obtaining employment and are evaluated less favorably than their peers who are viewed as attractive.¹⁹ To state it bluntly, appearance matters. Since entering the workplace, black women have struggled to present the image of the ideal female worker in order to satisfy employers' desire for all female workers to approximate the normative image of the ideal female worker. The white woman's image with slender body type, European facial features, light skin, and straight flaxen hair has become the archetype of the ideal female worker, especially in the context of the professional workplace.²⁰ While European beauty bias in the workplace affects black women in many ways, the primary challenge for black women in presenting and maintaining a professional image is hair. Because most black women have hair that grows up into an Afro naturally and does not hang down, black women have to go to greater lengths than their non-black female peers in order to con-

that this drop has occurred despite the fact that applications to law school from these groups have remained constant in number and law school enrollment overall has increased); Leigh Jones, *Minority Enrollment Is Faltering*, NAT'L L.J. (Jan. 21, 2008), <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=900005500865>.

18. See generally Deborah L. Rhode, *The Subtle Side of Sexism*, 16 COLUM. J. GENDER & L. 613 (2007) (citing statistics indicating that women do not enjoy the same level of opportunities for advancement as men). Professor Rhode notes:

In law, women constitute about half of new entrants to the profession, but less than a fifth of law firm partners and Fortune 500 general counsels, and less than a third of federal judges and law school deans. The gap widens for women of color, who account for only about four percent of congressional legislators, three percent of full professors, and one to two percent of corporate officers, top earners, law firm partners, and general counsels.

Id. at 614 (footnote omitted).

19. DEBORAH L. RHODE, *THE BEAUTY BIAS: THE INJUSTICE OF APPEARANCE IN LIFE AND LAW* 27 (2010).

20. It is important to note here that there is a beauty bias in the workplace that all women struggle with, including white women. See generally *id.*

form to employers' expectations of straight or lightly curled hair that hangs down. The burden imposed on black women to satisfy white beauty standards is best articulated in Chris Rock's documentary film *Good Hair*, which chronicles how black women have to either chemically treat their hair to get it straight or have straight hair extensions sewn into their hair.²¹ Both processes are very expensive to maintain and chemical treatments can result in hair loss and unhealthy skin conditions.²²

When black women enter the legal profession, they are cognizant that law as a profession and corporate law firms, in particular, are conservative in their perception of what constitutes the image of the professional black woman. Black women lawyers are well aware of the bias held by employers against natural hairstyles for black women.²³ They also know that employers can refuse to hire them or even terminate them once hired if they choose to wear their hair in styles that accommodate their natural hair texture.²⁴ In the elite environments of law practice, the texture and length of a black woman's hair "becomes a proxy for legitimacy and determines the extent to which [she] can 'crossover' from the private world of segregation and colonization (and historically, in the case of black women, service in another's home) into the mainstream of American life."²⁵ Unstraightened or "nappy" hair is viewed, perhaps subconsciously, as evidence of a black woman's inability or unwillingness to assimilate into the conservative profession of law. It tacitly signals to others in the profession that this woman does not really belong. Moreover, since appearance influences evaluations of competence and job performance, an inability or unwillingness to conform one's appearance to the professional ideal may call into question the professional

21. *GOOD HAIR* (Chris Rock Entertainment 2009). In the black community, the phrase "good hair" is often used to refer to a black person's hair that is of a texture that closer approximates the hair of white people, meaning that it will hang down when grown long or at least lay down when brushed. "Good hair" is less kinky, meaning its curls are not as tight and its texture is less coarse and generally does not require chemical treatment to get it to lie down. Black people also often refer to hair as having a "grade" because black hair can vary in curliness and texture along a spectrum from extremely woolly and tightly curled to slightly kinky yet still somewhat coarse, so smooth yet loosely curly, to smooth, silky, and straight.

22. See Angela Onwuachi-Willig, *Another Hair Piece: Exploring New Strands of Analysis Under Title VII*, 98 GEO. L.J. 1079, 1098, 1116-18 (2010).

23. For a discussion of these biases, see *id.* at 1107-10.

24. *Id.* at 1093-97 (reviewing the employment discrimination case law upholding negative employment action against black women who failed to conform their hair to employers' expectations which were based on the image of white women who have hair that is straight and hangs down rather than hair that is kinky and grows up and out into an Afro). Professor Onwuachi-Willig argues that "black women receive less protection from the law than both white women and black men in their attempts to satisfy society's gendered expectations for appearance." *Id.* at 1105.

25. Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365, 383.

judgment and competency of black women who opt to wear their hair in its non-conforming natural state.²⁶ Ethnic hairstyles for unprocessed or natural kinky hair, such as braids, cornrows, or finger waves, often are viewed as unacceptable presentations of black women who desire to be viewed as professional.²⁷ Accordingly, most black women are confronted with the dilemma of whether to straighten their hair or wear a hairstyle that will accommodate their natural hair. The choice to wear black hair in its natural state is a voluntary assumption of the risk of negative assessments by workplace supervisors and colleagues. Rather than risk having their hair become an impediment to career advancement, many black women cover their natural hair with a wig or chemically treat their hair so that it can be worn in styles that lay down and conform to society's definition of professional womanhood.

It should be noted that not all black women lawyers carry the same burden in presenting a professional image. Those with more Eurocentric facial features, hair texture, and skin color enjoy a degree of white privilege that enables them to more easily approximate the image of the ideal professional woman, and as a result they are less burdened by the bias in favor of European standards of beauty.²⁸ The struggle to portray a professional image is not one contrived by black women. It is a struggle that all women confront.²⁹ Yet black women lawyers confront unique challenges around appearance, especially when it comes to hair, and those who embrace their natural locks find little protection in the law and may suffer negative assessments of competency, thereby frustrating their advancement in the legal profession.³⁰ As more black women with proven records of professional

26. See RHODE, *supra* note 19, at 27-28.

27. See Caldwell, *supra* note 25, at 366 (discussing the case of *Rogers v. American Airlines, Inc.*, 527 F. Supp. 229 (S.D.N.Y. 1981), which upheld the right of an employer to prohibit the wearing of braids in the workplace, despite the fact that this categorical prohibition had a disparate impact on black women with natural unprocessed hair); see also Hollins v. Atl. Co., 188 F.3d 652, 655-57 (6th Cir. 1999) (upholding the action of an employer who refused to permit a black female employee to wear finger waves in her hair despite the fact that the finger waves arguably fell within the employer's grooming policy which required employees to have a "neat and well groomed hair style").

28. In a groundbreaking essay, Peggy McIntosh identified the various ways that her whiteness operated to privilege her in daily life, such as being able to walk into any hair salon and find a hair stylist who can deal with her hair and being able to shop alone and be assured that she will not be followed or harassed by store personnel. Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women's Studies*, in POWER, PRIVILEGE AND LAW: A CIVIL RIGHTS READER 22, 25 (Leslie Bender & Daan Braveman eds., 1995). For more on white privilege, see PAULA S. ROTHENBERG, WHITE PRIVILEGE: ESSENTIAL READINGS ON THE OTHER SIDE OF RACISM 95-122 (2d ed. 2005).

29. See generally RHODE, *supra* note 19.

30. It should also be noted that black women who venture too far from their natural appearance in presenting their hair in the workplace may also suffer negative consequences.

achievement embrace natural hairstyles, employer distaste for black women's natural hair will hopefully dissipate further.

III. STEREOTYPES IN THE WORKPLACE

Appearance-based bias is closely connected to the practice of stereotyping because both incorporate assumptions about an individual based on the individual's physical appearance. While the ABA's study of women of color in law firms reveals that women lawyers of color are likely perceived differently by their professional peers, the professional identity of black women lawyers is shaped, in part, by the particular stereotypes applied to black womanhood.³¹ Regina Austin in her groundbreaking law review article entitled *Sapphire Bound!* used bell hooks's work to articulate and examine the stereotypes that are applied to black women.³² These stereotypes include the domineering and emasculating Sapphire, also known as the strong black woman, who Austin calls the "stereotypical black bitch."³³ The other primary stereotype applied to black women is the hypersexual promiscuous Jezebel who uses her sexual prowess to seduce unsuspecting men, particularly white men, in a plot to extract some benefit from the man.³⁴ The third primary stereotype applied to black womanhood is virtually the complete opposite of Sapphire and Jezebel. It is the desexualized, self-sacrificing and nurturing Mammy.³⁵ Mammy historically is portrayed in media as overweight, dark skinned, with short kinky hair; she is always pleasant in her interactions with others, very patient and kind, and always puts the needs of others before her own.³⁶

Black women lawyers are well aware of the stereotypes that are ascribed to their black female bodies. The 2010 ABA study revealed that women of color often reported that they felt like they could not be themselves in the law firm environment—that they had to downplay their femininity and "mannify" themselves.³⁷ This finding should not be surprising, especially when applied to the lived experience of black women. A recent

See D. Wendy Greene, *Black Women Can't Have Blonde Hair . . . in the Workplace*, 14 J. GENDER RACE & JUST. 405 (2011).

31. See generally GANS EPNER, *supra* note 8.

32. Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539, 571; see also CORNEL WEST, THE CORNEL WEST READER 514 (1999) (describing Jezebel as the "seductive temptress," Sapphire as the "evil, manipulative bitch" and Aunt Jemima, also known as Mammy, as the "sexless, long-suffering nurturer"); CORNEL WEST, RACE MATTERS 83 (2d ed. 2001); HARRIS-PERRY, *supra* note *, at 33.

33. Austin, *supra* note 32, at 540.

34. *Id.* at 570.

35. *Id.*

36. See *id.*

37. See GANS EPNER, *supra* note 8, at 35.

study of African American women reported that 97% of black women acknowledged that they are aware of negative stereotypes applied to black women and 80% of those women surveyed acknowledged that they had been personally affected by these negative stereotypes.³⁸ Black women who become lawyers are no exception; they too are aware of the stereotypes surrounding their gendered racial identity and they are constantly performing their professional identity as lawyers in ways that seek to avoid confirming these negative stereotypes. Black women cannot afford to lose their temper or even assert their positions too strongly because doing so could cause them to be viewed as Sapphire, the angry black woman. In a recent collection of interviews of women lawyers of color, one black female lawyer demonstrated that she was acutely aware of the Sapphire stereotype applied to her gendered racial identity when she stated, “Well, the choice I made early on was that I did not want to be stereotyped as sort of the “big, black, angry woman.” That I am. [laughs] And so I think I made my natural personality—I made myself very, very reserved professionally.”³⁹ As revealed in this testimony, black women monitor and restrict their workplace conduct so as not to be viewed through the lens of a stereotype applied to their gendered racial identity.

Another stereotype that black women lawyers seek to rebut in the workplace is the hypersexual Jezebel stereotype.⁴⁰ The behavior modification necessary to rebut this stereotype might include choosing clothing that does not accent the curves that black women tend to have and rebuffing lunch or other invitations from white male colleagues. Black women understandably want to avoid being cast as Jezebel because such an identity is inconsistent with the professional identity they want to create for themselves, but they may also seek to avoid the Jezebel label for fear that being viewed in this way might subject them to sexual harassment in the workplace. Such a concern is not necessarily misplaced. Psychologists argue that stereotypes fuel sexual harassment, and at least one psychologist posits that racial and gender stereotypes about black women may put them at risk for experiencing sexual harassment and greater negative outcomes associated with the harassment.⁴¹

38. CHARISSE JONES & KUMEA SHORTER-GOODEN, *SHIFTING: THE DOUBLE LIVES OF BLACK WOMEN IN AMERICA* 6 (2003).

39. MONICA R. PARKER, *WHAT IT TAKES: HOW WOMEN OF COLOR CAN THRIVE WITHIN THE PRACTICE OF LAW* 67 (2010) (quoting Lovita Tandy, a black woman lawyer).

40. See *supra* note 32 and accompanying text.

41. See NiCole T. Buchanan, Isis H. Settles & Regina Day Langhout, *Black Women's Coping Styles, Psychological Well-Being, and Work-Related Outcomes Following Sexual Harassment*, 1 *BLACK WOMEN GENDER & FAMILIES* 100 (2007); See also Susan T. Fiske & Peter Glick, *Ambivalence and Stereotypes Cause Sexual Harassment: A Theory with Implications for Organizational Change*, 51 *J. SOC. ISSUES* 97 (1995).

When black women lawyers do become the object of sexual harassment, they may be more likely to suffer in silence, and not file a complaint for fear that the offending male co-worker will successfully deploy the Jezebel stereotype against them and convince others that she welcomed or initiated the sexual advances. Another reason that black female lawyers may suffer sexual harassment in silence is that, for many, they are the primary or sole income earner in their household, which means they are more economically vulnerable and less able to suffer the negative career consequences that come with calling out a male colleague or supervisor for unlawful behavior. Half of married black women earn more annual income than their husbands.⁴² Moreover, nearly half of all black women in the workforce are not married and are the financial head of their household, making them solely responsible for their own financial welfare and that of their children if they have any.⁴³ This status of black women as the primary financial support for black households renders them less able to suffer the loss of employment or the loss of income that may be associated with challenging unethical or illegal behavior in the workplace.

The Jezebel stereotype might also be harming black women lawyers' chances for advancement in large corporate law firms and other law practice settings because it discourages black women from trusting white men. When a white male lawyer takes an interest in mentoring a black female lawyer she has to ask herself—Why is he doing this? Where is this going to go? Does this man have a sexual agenda for me or is he genuinely and exclusively interested in helping me professionally? These questions are only magnified if the white male lawyer is from the South because black girls who are coming of age often receive a warning from their fathers and uncles to beware of the fascination southern white men have with black women.⁴⁴

42. Heather Boushey, *The New Breadwinners*, SHRIVER REP., <http://www.shriverreport.com/awn/economy.php> (last visited Feb. 18, 2013).

43. U.S. BUREAU OF LABOR STATISTICS, LABOR FORCE CHARACTERISTICS BY RACE AND ETHNICITY, 2010, at 2 (2011), available at <http://www.bls.gov/cps/cpsrace2010.pdf>.

44. My own father gave me this admonition when I was in High School. I brushed it off as an unnecessary caution from an overprotective black father who was the product of the long gone Jim Crow era, until I found myself working in a restaurant in college in the South and encountered an old white man who had ordered coffee with his meal. When I asked him how he liked his coffee he responded: "Just like I like my women—black." I later encountered several white men in college who were from the South and who sought sexual involvement with me and who shared a colloquialism with me that had been passed down from their fathers: "Once you go black, you never go back." These experiences confirmed for me that there was at least some truth to my own father's admonition, and that I ought to heed his warning. This sexual interest in black women seems to continue with an apparently large taste for racist pornography involving black women, particularly among southern white male consumers of pornography. An example of such includes the film titled: *Black Slave Girl White Masters*. See Leroy Pelicci, *That's Just Wrong: A Survey of Racist Porn in 2012* and a Proposal for Change in U.S. Law (2012) (unpublished manuscript) (on file with author).

Rather than risk the relationship devolving toward sexual harassment, black women lawyers may shy away from white males who are willing to mentor them, when the reality is that white men are often the persons best positioned to help black women lawyers advance their careers. Testimonials from women of color who have achieved significant levels of success in law practice confirm the need for black women lawyers to embrace white men as mentors. Latina lawyer Carmen Toledo stated that her mentors in the law firm where she practices are white men “[b]ecause there’s no [other] Puerto Rican woman, I’m the only one here. There are a few other women litigators but it’s so unfair to them. They can’t be expected to be everything to everyone. It’s unfair to expect them to be mentors to everyone.”⁴⁵

Of course, even if the more senior white male lawyer has no sexual agenda and truly wants to mentor the black female lawyer to help advance her career, there is always the perception of others in the workplace with which the black woman lawyer will need to contend. The Jezebel stereotype may provoke others to question the success of the black female lawyer and attribute her success to the fact that she is “sleeping her way to the top.” This assumption, of course, is related to another stereotype about black women, which is that they are less intelligent and less hardworking than non-black lawyers. Unlike Asian American women lawyers who may be viewed through the model minority stereotype,⁴⁶ which attributes hard work and strong intellect to people of Asian descent, blacks labor under the negative stereotypes of laziness and unintelligence. In her book discussing what it takes for women of color to thrive in the practice of law, Monica Parker shared that as an African American lawyer, she is “always worried about being perceived as lazy or not smart.”⁴⁷ Ms. Parker’s worry of having these negative stereotypes assigned to her by others is not unusual. In a recent study of black lawyers seeking to ascertain the challenges they confronted in becoming lawyers, one common challenge identified by study participants was the recognition that others frequently viewed them as less capable of intellectual pursuits than their non-black peers.⁴⁸

If black women lawyers are viewed, perhaps subconsciously,⁴⁹ as less hard working or less intelligent than their peers, any success they achieve is

45. PARKER, *supra* note 39, at 27-28.

46. See generally FRANK H. WU, *YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE* 39-77 (2002).

47. PARKER, *supra* note 39, at 67.

48. See EVENSEN & PRATT, *supra* note 15 at 96-103.

49. For a detailed explication of how our unconscious minds work regarding gender and race, see SHANKAR VEDANTAM: *THE HIDDEN BRAIN: HOW OUR UNCONSCIOUS MINDS ELECT PRESIDENTS, CONTROL MARKETS, WAGE WARS, AND SAVE OUR LIVES* 88-111, 188-229 (2010). See also MALCOLM GLADWELL, *BLINK: THE POWER OF THINKING WITHOUT THINKING* (2005). For more on the way bias unconsciously impacts our conscious thoughts, visit the

at risk of being viewed through a lens of doubt and suspicion. Accordingly, the success of the black female lawyer is continuously at risk of being attributed to being the sexually loose Jezebel or being a less qualified affirmative action beneficiary. While the additional identity work that black women lawyers perform in the workplace is aimed at rebutting negative stereotypes associated with the identity of black women, it may be a double-edged sword that operates to impede their opportunities for professional advancement. The fear of performing in a way that might confirm preexisting stereotypes applied to a particular identity, such as black womanhood, is what psychologists call “stereotype threat.”⁵⁰ Stereotype threat has been shown to undermine the performance of a group of people, including white men, when the group in question is an “ability stereotyped group” in relation to the task they are asked to perform.⁵¹ Black women are an ability stereotyped group when it comes to performing intellectually challenging tasks for long periods of time because they labor under both the stereotype of laziness and unintelligence.⁵² Because black female lawyers labor under these negative stereotypes about their ability, their fear of doing something that might confirm one of these negative stereotypes in the minds of their colleagues may frustrate their ability to perform. Likewise, a simple error such as a typographical error in a legal brief is at risk of being viewed by supervising lawyers as confirmation of the negative stereotypes attached to black womanhood—an oversight due to laziness or lack of attention to detail—rather than excusable human error that all lawyers make from time to time. With the extra identity work that black female lawyers have to contend with while performing their professional roles, it is not surprising that they are not advancing in the legal profession at an acceptable rate; nor is it surpris-

Harvard Implicit Bias Project at <https://implicit.harvard.edu/implicit>. *Project Implicit*, HARV. U., <https://implicit.harvard.edu/implicit> (last visited Feb. 18, 2013).

50. See generally Claude M. Steele, *A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance*, 52 AM. PSYCHOLOGIST 613, 614 (1997).

51. See, e.g., STEELE, *supra* note 12, at 8-10. In one study, white males performed worse on a golf exercise when they were told that the exercise was being performed to test their athletic ability. *Id.* at 8. Because white males are an ability stereotyped group in the area of athletic performance, the men in the test were subject to stereotype threat when golfing and performed worse on the test than when they were told nothing about the purpose of the golfing exercise. *Id.*

52. The laziness stereotype applied to black women is most commonly deployed through the use of the stereotype of the “welfare queen.” See Elijah Anderson, *The Iconic Ghetto*, ANNALS AAPSS, July 2012, at 8, 16. The welfare queen is a black woman who is too lazy to work so she exercises her hypersexual Jezebel tendencies to have babies and collect a welfare payment from the government thereby living off of taxpayers. See *id.* For articles discussing this stereotype more in depth, see *id.*; Gowri Ramachandran, *Intersectionality as “Catch 22”*: *Why Identity Performance Demands Are Neither Harmless Nor Reasonable*, 69 ALB. L. REV. 299, 339 (2005); and Tonya L. Brito, *The Welfarization of Family Law*, 48 U. KAN. L. REV. 229, 234-35 (2000).

ing that many black women lawyers leave the white male dominated corporate law firms in search of more diverse work environments where accomplished black women are less of a novelty.⁵³

IV. STEREOTYPES OPERATING OUTSIDE THE WORKPLACE

Black female lawyers face challenges not only in the workplace but outside the workplace as well, and these additional challenges further impede their struggle for advancement in the pipeline to power. Unlike white women, black women have few close relationships with the group of people who hold most of the power in the legal profession—white men. In this respect, black women are outsiders in the legal profession while white women are insiders.⁵⁴ As all practicing lawyers know, relationships are an extremely important component to cultivating a law practice. Relationships help build a client base, create a professional reputation, and open doors to powerful opportunities. Much has been written about how women lawyers generally are disadvantaged when it comes to forging professional relationships because many of these relationships are fostered on the golf course or in other all male social settings that exclude women.⁵⁵ But white women lawyers generally do have more access to power in the legal profession because of their social relationships with white men. They are their daughters, wives, sisters, and other relatives, and because of these close relationships, white women often have men with power working to aid in the advancement of their career.⁵⁶ White women lawyers are therefore better positioned to leverage the social capital of white men to help advance their careers.

53. Devon Carbado and Mitu Gulati have argued that this additional identity work that people of color often have to perform in the workplace can sometimes rise to the level of constituting a form of racial discrimination. See Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259 (2000).

54. See ANTHONY J. MAYO, NITIN NOHRIA & LAURA G. SINGLETON, *PATHS TO POWER: HOW INSIDERS AND OUTSIDERS SHAPED AMERICAN BUSINESS LEADERSHIP* 198 (2006); see also CHERYL A. SMITH, *MARKET WOMEN: BLACK WOMEN ENTREPRENEURS: PAST, PRESENT, AND FUTURE* 255 (2005) (explaining that white women benefit from relationships founded on power and privilege).

55. See, e.g., Leslie Larkin Cooney, *Walking the Legal Tightrope: Solutions for Achieving a Balanced Life in Law*, 47 SAN DIEGO L. REV. 421, 454 (2010); LAUREN STILLER RIKLEEN, *ENDING THE GAUNTLET: REMOVING BARRIERS TO WOMEN'S SUCCESS IN THE LAW* (2006). When it comes to career advancement, there seems to be a symbiotic relationship between white women and white men, with white women also working to advance the careers of their spouses, brothers, or sons. See, e.g., Sumi Cho, *Understanding White Women's Ambivalence Towards Affirmative Action: Theorizing Political Accountability in Coalitions*, 71 UMKC L. REV. 399 (2002).

56. See DOUGLAS M. BRANSON, *NO SEAT AT THE TABLE: HOW CORPORATE GOVERNANCE AND LAW KEEP WOMEN OUT OF THE BOARDROOM* (2007) (examining the number of women serving on corporate boards of directors of Fortune 500 companies, and noting that of the few women who serve on these boards, several have close relationships with

Black women, on the other hand, rarely have familial relationships with white men, and therefore often lack a person who has both the power and the vested interest in helping them advance. Black women have tried to forge professional relationships across racial lines by collaborating in affinity groups for women in law firms and bar associations.⁵⁷ These groups integrate women of color and help all women support each other through work-life balance and mentoring programs, and they serve an important role.⁵⁸ However, overreliance on affinity groups can be a detriment to black women lawyers because they can create a false sense of security. A women's affinity group is generally populated by the gender group in the firm or legal institution that has been identified as underrepresented in leadership positions, which means that it cannot serve as the sole vehicle for helping black women advance in the workplace. In order to advance in male-dominated institutions, black women have to set aside the gender stereotypes about how they are to interact with white men, because the people who are best positioned to mentor women and advance their careers are white men.

Another social reality that distinguishes black women lawyers from their white counterparts is that most black women who marry, marry black men. Black women are the least likely group of women to marry outside of their race.⁵⁹ This racial loyalty in marriage means that many, if not most, black female lawyers are the primary income-earner in their household.⁶⁰ One would think that this status would earn them extra support at home—a husband who cooks dinner, does the laundry, and is the primary caregiver for the children. Unfortunately for many black women, stereotypes of the black woman are lurking at home and operate to fuel the black man's expectation that his wife will perform all of the traditional “wifely” duties that generations before her did.⁶¹ In an effort not to emasculate black men, black women often take on too much by assuming both the role of primary income generator and primary caregiver for the family. In relation to their family, black women consistently view themselves as “servants of other people's interests,” using words such as “supportive,” “giving,” “under-

powerful white men which likely gave them access to these powerful and lucrative positions).

57. See EVENSEN & PRATT, *supra* note 15.

58. *See id.*

59. RALPH RICHARD BANKS, IS MARRIAGE FOR WHITE PEOPLE? HOW THE AFRICAN AMERICAN MARRIAGE DECLINE AFFECTS EVERYONE 116 (2011) (noting that in 2008, less than one in ten black women who married did so with someone of a different race).

60. *Id.* at 84-85.

61. In her classic essay entitled *I Want a Wife*, Judy Brady artfully articulated the stereotypical duties of the wife as including someone who “will take care of my physical needs . . . keep my house clean . . . keep my clothes clean . . . care for me when I am sick . . . care for me and my children . . . [and] take care of the details of my social life,” just to name a few. Judy Brady, *I Want a Wife*, MS. MAG., 1971 (on file with author).

standing,” “long-suffering,” “loyal,” and “generous” to define themselves.⁶² By “thinking of themselves as loving, giving, and devoted to others, [black women attribute] to themselves the classic characteristics of the Mammy” stereotype.⁶³ And by taking on the double burden of primary income earner and primary caregiver to family, black women assume both the role of Mammy and Sapphire—the strong black woman who nurtures everyone but herself, and as a result can transform, in a pressurized instant, to the angry black woman. This social reality of black family life can unwittingly lure black women into these stereotypical racialized gender roles that operate to undermine their productivity and efficacy at work.

While balancing the demands of work and family are a challenge for most women, the work that takes black women lawyers away from billing hours or advancing professionally is not only work in the home, it is also work in the community. Black women are burdened with the “ethic of giving back” to the African American community whereas white women are generally not burdened with the expectation of performing community service aimed at uplifting their racial group.⁶⁴ As one female scholar argued in 1970, “[Black women] have an obligation as Black women to project [themselves] into the revolution to destroy . . . institutions which not only oppress Blacks but women as well, for if those institutions continue to flourish, they will be used against us in the continuing battle of mind over body.”⁶⁵ When black women become lawyers, they tend not to shed their identity as black women and become “bleached out” professionals.⁶⁶ In oth-

62. HARRIS-PERRY, *supra* note *, at 80-81.

63. *Id.* at 81.

64. ELLA L.J. EDMONDSON BELL & STELLA M. NKOMO, OUR SEPARATE WAYS: BLACK AND WHITE WOMEN AND THE STRUGGLE FOR PROFESSIONAL IDENTITY 113-14 (2001); see also Anne-Marie Slaughter, *Why Women Still Can't Have It All*, ATLANTIC, July-Aug. 2012, at 84 (asserting that highly successful educated women today appear to have choices whether to work or mother, but that they can't do both). In this essay, Slaughter presents the challenges of white elite mothers with high power high prestige careers in balancing their careers with the duties of motherhood. *Id.* Slaughter recognizes that she is privileged in that she was not required to maintain her high powered D.C. job in order to support her children financially, and that she has a supportive husband who was the primary caregiver for her children while she was working in D.C. *Id.* at 86. What Slaughter failed to recognize is that her privilege also extends to not having a community imposed obligation to make life better for children living in poverty, and not having a community imposed expectation of helping those less fortunate than herself navigate the legal problems confronting them. Slaughter's privileged racial and economic status insulates her from many concerns that successful black women lawyers confront in balancing career, family, and community.

65. Smith, *supra* note 14, at 7 (alterations in original) (quoting Kay Lindsey, *The Black Woman as a Woman*, in THE BLACK WOMAN: AN ANTHOLOGY, at 87, 89 (Toni Cade Bambara ed., 1970)).

66. See generally David B. Wilkins, *Identities and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV. 1502 (1998) (asserting that the lawyer's code of ethics does not require lawyers to perform their professional identity in a way that bleaches

er words, black women who become lawyers integrate their racial and gender identity into their professional role as lawyers.⁶⁷ This integration results in black women lawyers seeking or accepting opportunities to use their professional identity to advance the interests of the black community. Since entering the legal profession in the nineteenth century, black women lawyers have consistently used their status as lawyer to help uplift the black community. This commitment to community advancement is evidenced in black women lawyers' formation of the National Association of Colored Women Clubs⁶⁸ and the black women's club movement, which sought to protect black children and save them from being adjudicated delinquent in the court system.⁶⁹

This commitment to community is not a historical relic of the past. Today black women lawyers are active in their churches, various civic organizations that promote advancement of blacks, such as the NAACP, and in providing *pro bono* representation to individuals in their community who otherwise might do without legal services. While this community service commitment is an honorable one, and it can help advance a legal career,⁷⁰ it is a commitment that takes time away from billing hours to paying clients or doing other work that operates more efficiently and effectively to advance a legal career. Although black women's families and communities are the beneficiaries of their self-sacrifice, their selfless commitment to family and community comes with a cost. One cost may be black women's health and emotional well-being, but another may be their ability to advance in the professional sphere when they are competing with others who have more support at home and fewer obligations to community.

CONCLUSION

The challenges confronting black women lawyers' struggle for advancement in the legal profession include unyielding appearance discrimination, which defines the image of the professional female in the white woman's image with slender body types and hair that is straight and hangs down. Black women lawyers have started to make their own progress in this area. Those whose positions are secure with partnership, tenure, or a strong

out their cultural or racial identity, and that racial identity can and does coexist in the practice of black lawyers).

67. *Id.*

68. Smith, *supra* note 14, at 6 (noting that both the first black woman lawyer, Charlotte E. Ray, and the first black woman law professor, Lutie A. Lytle, both lent their legal skills to the National Association of Colored Women's Clubs).

69. See Cheryl Nelson Butler, *Blackness as Delinquency*, 90 WASH. U. L. REV. (forthcoming 2013) (on file with author).

70. David B. Wilkins, *Doing Well by Doing Good? The Role of Public Service in the Careers of Black Corporate Lawyers*, 41 HOUS. L. REV. 1, 33 (2004).

track record of superior work are making the personal choice to wear their hair natural, which necessarily means donning “non-traditional” hairstyles in the workplace such as braids, Afros, and finger waves. When non-black peers see successful black women with natural hair, it legitimizes and normalizes the existence of natural black hair in the workplace, so these pioneering women are making it possible for future generations of black women lawyers to worry less about the need to conform to the European beauty bias surrounding hair when performing their professional identity as lawyer. Black women lawyers are also raising their daughters to be proud of their natural hair and to resist the pressure to transform their hair to a non-natural state of straight through chemical processing. But the burden to progress beyond the European beauty bias should not be borne by black women alone. Strict standards of beauty imposed on all women lawyers limit our autonomy in performing our professional identities, so we have to stand up for one another and resist dress codes that require all women to conform to an ideal beauty standard because more can and should be done on the structural level. Law firms and other places that employ lawyers should seek to promote diversity by adopting human resource policies that permit all employees to wear their hair in neat styles that accommodate their natural hair.

Because the professional identity of black women lawyers is also subject to the stereotypes about black womanhood, black women lawyers are working to rebut stereotypes while performing their professional duties. None of the stereotypes confronting black women lawyers will evaporate overnight, but as a profession, we must understand that black women lawyers are aware of these stereotypes and may be shifting their behavior in ways that seek to avoid confirming negative stereotypes about their gendered identity. All women lawyers in the male-dominated professional workplace of law may worry that seeking or accepting mentorship from male colleagues will convey the wrong message about their sexuality to the male mentor and others in the workplace, and black women lawyers may feel a heightened concern around this issue given the sexual stereotypes assigned to their intersecting identity. While sexual stereotypes about women with male mentors do prevail in the workplace, the professional benefits to women in seeking male mentors and cultivating relationships with men in the legal profession are too significant for black women to forego, especially given their lack of relationships with these men outside of the professional setting. Building social capital among those in power in the legal profession is an important step for black women lawyers seeking to advance their careers.

To break free of the stereotypes that bind us, black female lawyers have to take some risks; we have to learn how to ask for help and avoid falling into the role of the Mammy or the Sapphire. We have to risk being viewed as Jezebel as we cultivate professional relationships with male lawyers who are positioned to help advance our careers. Black women lawyers

have to recognize that real strength lies in demanding appropriate support from spouses, colleagues, and community. A failure to take care of self will result in black women lawyers becoming the long-suffering, self-sacrificing Mammy, the result of which is to advance others, but not ourselves.

