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When Will Black Women Lawyers Slay the Two-Headed Dragon: Racism and Gender Bias?

Wilma Williams Pinder*

"Racism remains the most debilitating virus in the American system and the consequences spill over into almost every facet of life."¹

I. INTRODUCTION

Lawyers are often analogized to knights because of the many characteristics they share. Both groups of "warriors" dedicate themselves to causes for which they fight. Skill and courage are essential characteristics in order to succeed in the fight or battle. Some of the most notable and romanticized knights were those of the Round Table. They were admired for their courage, strength, loyalty to a sovereign, and service to damsels in distress and to others in need of their protection.

Of particular importance was the knight's willingness to be bound by a code of chivalry. Indeed, a knight was thought to be the epitome of chivalrous conduct and bravery, willing to fight against great odds, willing to battle any nemesis or foe.

Artists often portray the knight engaged in battle with a fearsome,

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1. Litwack, Leon F. Professor of History, University of California at Berkeley. Litwack is a nationally respected academic and Pulitzer Prize-winning author of *Been in the Storm So Long: The Aftermath of Slavery*. Litwack's current work focuses on race relations in the South from 1890 to World War I, and their effect on current policy. He states: "The brutalizing effects of more than two centuries of slavery and another century of legal segregation and miseducation continue to shape race relations today. Racism remains the most debilitating virus in the American system and the consequences spill over into almost every facet of life." (This information was taken from the March 6, 1993, program information, prepared by the California Alumni Association and the UC Berkeley Foundation).

multiheaded dragon whose winged and scaly body brandishes deadly claws. Only the greatest knight, girdled in armor and helmet, wielding a proven sword, could be expected to slay the fire-breathing dragon.²

In real life, the knight's conduct did not always resemble the idealized behavior described by minstrels and transformed into legend. Indeed, knights had a code of honor, loyalty, and chivalry which they reserved for members of their own class; they frequently abused "people of low birth."³

Modern-day knights wear custom-made or off-the-rack suits, instead of metal armor, into battle. In place of a sword, they carry a briefcase filled with "weapons" that were honed and tempered by the U.S. Constitution and fortified with statutes, codes, and *stare decisis*. Instead of the moors or castle walls, the new battleground is the courtroom. The cause to be defended usually involves individual rights or the acquisition of property and wealth, since all but the most recalcitrant knaves have been vanquished.

However, like the knights of old, today's lawyer also has a separate code of chivalry for those not of his "class." He treats minority and women lawyers in a discriminatory manner, showing preference for those of his own racial or gender group. Those discriminatory actions are as menacing and threatening as any dragon that ever stalked the earth. The two-headed dragons, of which I speak, are no longer mythical creatures. These twentieth century dragons have new shapes and bodies, which manifest themselves as racist and sexist attitudes, stereotypes, bias, and prejudice. Some people claim that they cannot see these dragons; others readily see them for what they are. These dragons live in the caves of one's mind. They feed in fertile valleys on a diet of hatred, fear, bigotry, and ignorance; they grow strong and foster distorted convictions in those that tolerate their presence.

To my regret, these dragons are not easily slain or put to rest; they have survived a great civil war and several urban riots. Now, they believe themselves to be invincible. They have faced hundreds of arrows, in the form of civil rights laws and affirmative action plans, yet they endure. These dragons are known to me, and to other Black⁴ women lawyers, on

2. Shortly after President Bill Clinton was elected to office, a *Newsweek* cover sketch depicted him astride a white steed, in armor and brandishing a sword. At his feet were four fire-breathing dragons. *Can Clinton Tame Washington?* NEWSWEEK, Nov. 30, 1992. *Newsweek* readers were left wondering whether Clinton's magic sword is big enough to vanquish the nation's troubles.

3. Joel T. Rosenthal, *Knights and Knighthood*, 11 WORLD BOOK ENCYCLOPEDIA 351 (1989).

4. The word Afro-American is always capitalized. See WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 62 (1988). The word "black" is usually not capitalized when referring to black Americans. See *id.* at 155. It is my practice, and prerogative, to

a personal, first name basis: we call them racism and gender bias.

While most White male attorneys pride themselves for upholding the rights of their clients and protecting the financial interests of major corporations, this same group often restricts the rights of others and impedes the upward mobility of minority and women attorneys. The fact that these male attorneys, who have sworn to uphold the Constitution, would stoop to practice racism and gender bias—against fellow attorneys, no less—adds insult to injury.

Are you one of the oppressors, or are you committed, by forthright words and deeds, to ending these practices? It is my hope that this essay will help you to understand the problem, examine your convictions, and strengthen your resolve to rectify the situation.

II. ARE CHARGES OF RACISM AND GENDER BIAS HYPERBOLE?

At this point, the doubting Thomas will want to throw up his White hands and shout: "Here we go again! Will 'these people' ever stop complaining? Just look at all the advances Blacks have made and continue to make. What do 'they' want anyway? Claims of race discrimination are exaggerated and unfounded. They are just so much hyperbole!"

Such statements are clear indications to those living with the problem, and to those nonminorities who are aware of and sensitive to the situation, that Thomas does not know what he is talking about. All the Thomases of the world have a great deal to learn, if only they were willing to *learn*.

Currently some junior and senior high schools are conducting an experiment that is aimed at preventing teenage pregnancies, a task almost as arduous as eliminating prejudice and bias. The participating teenagers—usually females—are given a five pound bag of flour or sand, which they must keep in their possession and be responsible for at all times throughout the experiment. The bag represents the teen's newborn baby, born because of her (or his) failure to abstain from sexual activity or to utilize some form of birth control.

The "bag-baby" must be dressed, fed, and cared for in the same manner as a real human baby. If the teen wants to go on a date, she must find and pay a sitter, or she must take the bag with her. It cannot be left

always capitalize the word "Black" when referring to people formerly called Negro and often called Afro-American. Quotations in this article reflect the usage of the original writer or speaker.

alone in a car, checked in with coats, or abandoned on a blanket at the beach while "Mommy" (or "Daddy") frolics in the surf. You probably get the picture. It does not take long for the teenager to realize that "the bag is a drag" and far too much responsibility for her. That is what the experimental program seeks to reinforce.

Nonminority attorneys would better understand racism and gender bias if I could initiate my own experiment. It would be entitled: "I Passed⁵ as a Black Woman Lawyer." The experiment would take the following form: The White male participants would be required to assume the identity of a Black woman lawyer. They would dress in traditional female professional attire, wear a wig, etc., and go about their duties at a firm or governmental office, concealing their male identities. Furthermore, the participants would also have to darken their skin to resemble a Black person. Do not worry about blue eyes giving away one's true racial identity; some Blacks have blue, grey, hazel, green or brown eyes. Of course, brown contact lenses could be utilized to minimize detection. The participants undoubtedly would learn what it feels like *not* to be a "good old boy." They would find that their legal work was more closely scrutinized than before their identity change. Some litigation or business files would be considered too difficult for them to handle, although the opposite was true when they were White males.

While having lunch with their new female associates, the masqueraders would overhear conversations about Blacks and minorities coming from nearby tables. Even the participants' virgin ears would realize that the comments were offensive and demeaning. They might recall having made similar unkind and racist comments under the rubric of "male bonding" or "man-talk." They would wonder: How do Black attorneys tolerate these insults and obstacles?

The participants would find themselves resident experts on everything Black—or thought to be related to Blacks: Malcolm X, crime, Rodney King, gang violence, Black sports and entertainment figures, riots, Watts, and even licorice candy. On the other hand, they would be considered uninformed about many common topics or be forced to defend their opinions.

By assuming the identity of a Black woman lawyer, the participant would find out that things he had taken for granted would no longer be commonplace. Even basic civility would become a rare commodity. Some of the "personal" questions asked of the masquerader would defy

5. See WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 859 (1988). The tenth meaning of the word "pass" is listed as "identifying oneself or accepting identification as a white person though having some Negro ancestry." *See id.* Technically, there is no word to describe a white person identifying himself as a Black person. Apparently Webster, or no one else, could imagine a white person pretending to be Black.

imagination; some remarks would be so stupid that it would be difficult to suppress laughter. At other times, it would take great control to suppress pent-up anger. Finally, the experiment would conclude . . . and not a day too soon for the participants.

The participants who did not have a complete nervous breakdown or quit before finishing the project, would begin to understand that the issue of race and gender bias is not hyperbole.

The effect of discrimination, on an emotional level, is unfathomable to most people not "of color." However, the economic consequences of racism and gender bias are common topics, often analyzed in daily newspapers and periodicals.⁶ It does not take much effort to read and learn about the problem. The challenge is whether you care enough about other attorneys, particularly Black women attorneys, to examine and modify your own views and behavior. In the long run, it is the resolution of this challenge that separates the men from the boys, and the knights from the squires. Our profession needs more knights who can take a stand and who "give a damn."

Since you cannot participate in my hypothetical experiment, all you can do is examine your views and actions. Would it surprise you to find out that you are practicing racial and gender bias discrimination? You may be too genteel to discriminate openly or you may hide your actions out of fear of a lawsuit. Remember, all racists are cut from the same cloth, and they wear that cloth daily. It does not matter whether the cloth is pulled over the head and worn Ku Klux Klan style, worn on the bench as a black robe, or fitted as a fine English worsted suit; the cloth does not hide racism and bias. There is a saying: If you are not part of the solution, you are part of the problem.⁷

6. Shawn Hubler & Stuart Silverstein, *Schooling Doesn't Close Minority Earning Gap*, L.A. TIMES, Jan. 10, 1993, A1, A16-A17. The authors concluded that "[w]hites earn more at all levels" *Id.* at A1. Further, "California's minorities earn substantially less than Anglos—a disparity that challenges the long held tenet that education is a key to equality." *Id.* "For every dollar earned by Anglos working full time . . . their African-American counterparts averaged about 74 cents." *Id.* The disparity between Anglos and African-Americans with master's degrees was \$8,903—"enough to buy your teenager a new compact car." *Id.* at A16. Moreover, some of the largest disparities in income levels were among professionals such as doctors and lawyers who have spent years in school. *Id.*

7. Constance Casey, *A White Man's Journey Through Black America*, L.A. TIMES, Jan. 29, 1993 (reviewing WALT HARRINGTON, *CROSSINGS: A WHITE MAN'S JOURNEY INTO BLACK AMERICA* (1992)). The review states:

Driven by his fears for those closest to his heart, his son and daughter,

III. THE ECONOMIC AND PSYCHOLOGICAL CONSEQUENCES OF RACISM AND GENDER BIAS

A 1989 *TIME* cover story attempts to describe the dilemma, if you will, of the Black middle-class.⁸ Black attorneys usually fall into this convenient, ambiguous classification. “[W]hile the nation’s attention focused on the plight of the urban underclass, millions of black Americans marched quietly into the mainstream, creating a vibrant middle-class with incomes, education and life-styles rivaling those of its white counterpart.”⁹

Many Blacks have defined “middle-class” as being two or three pay-checks away from foreclosure or some imagined financial disaster. The lingering recession has made footing on the middle-class ladder very precarious, irrespective of race or gender. Still, Black attorneys are more familiar with the “last hired, first fired” syndrome than are nonminority attorneys. Blacks have long known that gainful employment does not insure advancement from associate to partner, or from deputy to assistant or chief attorney. They lived under the glass ceiling and could define the term, long before it became a feminist buzzword.

“Glass ceiling” is a euphemism that means minorities and women are prevented from advancing beyond a certain level in many professions, especially law. Black women lawyers are held back, economically and in terms of responsibility, by factors and practices totally unrelated to their performance, experience, and capabilities. You will not find this practice in print, but you can observe it both in private corporate firms and in the government. A few Black attorneys will rise quickly to the top, while the majority remain stagnant, irrespective of effort or talent.

In most instances, this failure to advance up the ranks is linked to race and gender bias. Black attorneys often find themselves looking up

Walt Harrington set out to listen to the voices of black people in America. The children’s mother, Harrington’s wife of 10 years, is black, and his son and daughter describe themselves as “tan and bright tan.”

When Harrington overhears a racist joke, he realizes suddenly, “This idiot’s talking about my children.” He sees that a racist cop or judge could shape their lives and feels “an urgency for justice that I couldn’t feel as only a white man . . .” *Id.*

Not having read the book myself, I do not know if it has any value other than it raises at least one interesting question: Must miscegenation exist before a white man can care about the life and rights of a Black? I certainly hope not, since that “solution” is no solution. Alex Haley’s novels that have been made into mini-series, *Roots* and *Queen*, painfully illustrate how generation after generation of Blacks have had to fight, literally, for advancement in this country, notwithstanding the mixing of blood between whites and Blacks.

8. Richard Lacayo, *Between Two Worlds*, *TIME*, March 13, 1989, 58-68.

9. *Id.* at 58.

through the glass ceiling at other attorneys whose "track records" and education are no greater than their own, often far less. If you doubt the validity of this assertion, then I implore you to heed the Native American epigram: "Walk a mile in my moccasins."

The California Law Business (CLB) routinely charts the number of minorities and women working at the top twenty law firms in southern and northern California. A recent survey illustrates the plight of minority attorneys, Blacks in particular: "Minority attorneys are inching forward in a predominantly white profession."¹⁰ Unless you are a snail, the above statement is no reason to celebrate. Why should Blacks be inching forward? We are the largest minority, we speak the King's English, we have more than paid our dues and carried our weight in this society, yet we are only inching forward instead of taking giant steps, leaps, and bounds.

Another issue of CLB¹¹ explains the viewpoints of several minority associates. Although the article did not identify the racial or ethnic group of those quoted, I can attest that these remarks represent the views of many Black women attorneys: "We've been decimated [by the recession]. There is a prejudice with minorities. You have to work harder. And if you are a minority woman, God help you. You have to be very strong and dedicated and know that you are trailblazing."¹² Others claim that women are passed over for partnership, and that male associates receive better assignments: "[I]t is not a comfortable environment unless you are a man. There are no role models for women. The women partners there are, no one wants to be like them."¹³ Another woman stated, "I've had men say really offensive things to me. Others are surprised when I do good work."¹⁴ Notwithstanding the frequency of such articles in newspapers or legal journals, the doubting Thomas will be heard to raise his voice in protest: "These women are too sensitive; after all, law is a tough profession. If they can't take the heat, they should stay out of the kitchen [courtroom, law office, practice, etc.]." Former President Truman would turn over in his grave if he could hear his famous statement used to denigrate women. On second thought, Truman might agree, as there were

10. Yvonne Schibsted, *Minorities Move Ahead—but Only Slightly*, CALIFORNIA LAW BUSINESS Nov. 9, 1992, 22 (supplement to the San Francisco & Los Angeles DAILY JOURNAL).

11. Jessica Gynn, *Weak Economy Hits Female Attorneys Hard and Minorities Stay Slightly Ahead of the Recession*, CALIFORNIA LAW BUSINESS, Dec. 7, 1992, 22-23.

12. *Id.*

13. *Id.* at 22.

14. *Id.*

few women lawyers around during his administration.

IV. DO BLACK WOMEN LAWYERS CONSTITUTE AN INVISIBLE BAR?¹⁵

If you are committed to holding back women and minorities, here are some reasons *not* to join the American Bar Association (ABA). In recent years the ABA has gone on record in support of women and minorities. Several commissions¹⁶ were created which have focused on the special problems—or should I say, special challenges—facing these two groups. Numerous hearings and conferences have been held across the nation. The data collected is too persuasive to ignore, even for the doubting Thomases of the world.

Black women lawyers (as well as White, Asian, and Hispanic women lawyers) have testified concerning their treatment at the hands of judges, fellow male lawyers, courtroom personnel, and legal support staff. It is not a pretty picture.

One woman began with the story that she was mistaken for the janitor. [at the courthouse] even though she was dressed in [a] silk dress and [wearing] pearls.¹⁷

Muzette Hill is a young black woman on the fast track: Northwestern University undergraduate degree, Boalt Hall law degree, federal appellate court clerkship, and now associate at a major Chicago law firm. She has been mistaken for a court reporter at every deposition she has ever attended.¹⁸

Northwestern University Law Professor Joyce Hughes recalls her first court appearance. When she entered a section of the courtroom reserved for attorneys, she was stopped by the court clerk. "Defendants aren't allowed back here," he shouted.

Every black woman lawyer has a similar story to tell.¹⁹ They must remember to brandish their briefcases when entering courtrooms in order to appear obviously what they are in fact. Judges often mistake them for "the help" rather than the litigator. Even when they have years of experience, colleagues fail to acknowledge their skills.²⁰

Black women lawyers work in a profession that remains at the top a white man's club.

The more successful they want to be, the further into that club they must bur-

15. See Karen Berger Morello, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA 1638 TO THE PRESENT* (1986). Of special interest to the reader is Chapter 6, entitled *Double Impairment: Black Women Lawyers*, 143-72.

16. See, e.g., COMMISSION ON WOMEN IN THE PROFESSION (in 1988, Hillary Rodham Clinton served as its Chair). COMMISSION ON OPPORTUNITIES FOR MINORITIES IN THE PROFESSION (Dennis W. Archer, formerly Michigan Supreme Court Justice, now a corporate partner in Detroit, MI., served as a former Chair).

17. Focus on Minority Women Lawyers: Developing a National Agenda. January 18-19, 1991. Afternoon Breakout session for Black Women Lawyers, Group VII.

18. Nina Burleigh, *Black Women Lawyers Coping with Dual Discrimination*, June 1, 1988 A.B.A. J. *Women in Law* 64.

19. *Id.*

20. *Id.*

row, paying a price in self-esteem and psyche that wears the thin-skinned right out of the law.²¹

More black women go into the lower-paying legal positions, the government and public-interest jobs where there are more representative cross-sections of the population, than any other group of law school graduates Those who opt for the large, moneyed firms face leading a double life or being put on display.²²

Obviously being "put on display" creates a great deal of tension and pressure for that attorney. If she fails to live up to the "status" heaped on her, she disappoints herself and other minorities may suffer by comparison.

The problems faced by black women are more ingrained than those faced by white women "The profession is dominated by white males, so white females to them represent at least their mothers, or their wives or their daughters. We don't have that kind of leverage to get that authority."²³

My research does not lead me to the conclusion that women attorneys, Black or White, particularly care that the profession "is dominated by white males." They do care, however, about how "these males" treat them professionally. Most White women can look forward to clearing the gender hurdle . . . one day. But for Black women attorneys, even if they clear the gender hurdle, there is still a far more difficult and higher hurdle to jump over—the race hurdle.

The reader may think that everything seems to be gloom and doom for the Black woman lawyer. Of course that is not true. We feel the same pride, as any attorney would, when we facilitate a large merger, settle a complicated case, or win a stunning jury verdict. But I would be remiss if I did not tell you that the daily grind is very difficult for many Black women lawyers, especially in the early formative years of practice. We could use more male mentors to help us jump clear of the trenches and move steadily along our career path.

Some law firms have a genuine interest in promoting and maintaining diversity in their workplaces. They attempt to leave at least a crack in the glass ceiling, so that the most tenacious women lawyers can squeeze through. There are statistics which rank firms in terms of percentage of minority lawyers. In the Bay area, Morrison & Foerster has the largest number of minority partners and associates: twenty-five Blacks, forty-one Asians, and fifteen Hispanics. That is twenty-three more minorities than the second-ranking firm, Pillsbury Madison & Sutro, with a total of sixty-

21. *Id.*

22. *Id.*

23. *Id.* at 66.

one.²⁴ Morrison & Foerster also leads with 46.5 percent women.²⁵ In Los Angeles, of the top five firms in percentage of minority attorneys, Graham & James has twenty-four percent minorities, and Lewis, D'Amato, Brisbois & Bisgaard has 15.5 percent.²⁶

In 1992, "the 'average' California partner [was] a White male in his thirties, though twenty-five percent of the new partners [were] female and 9.2 percent [were] minorities. Haight, Brown and Bonesteel had the highest percentage of minority partners, at forty percent, and the same percentage for female partners."²⁷ It is impossible to determine from the above data the exact percentage that constitutes Black women lawyers, since all minorities were grouped together. It is a reasonable assumption that the number is small.

Rachel Patrick, director of the ABA Commission on Opportunities for Minorities in the Profession, believes that "things are getting better for black women lawyers, . . . the outlook is very positive."²⁸ Certainly, she is in the perfect position to monitor the entire spectrum of minority advancement in the legal profession.²⁹

Yet, others do not share Ms. Patrick's optimism. There is more than one publication that warns Black undergrads and law school students about the profession of law. *FULL DISCLOSURE: Do You Really Want to Be a Lawyer*³⁰ is a compilation of articles, some very critical of the profession. One writer, Grace Speights,³¹ divides her remarks into three categories: "The Myth, The Reality, and The Challenge [of legal practice].

"The Myth: [M]any minority law students believe that their race is a positive factor in securing employment. This simply is not the case. Most employers do not go out of their way to seek minority applicants.

"The Reality: Minorities in the legal profession face several ongoing battles throughout their careers. First, there is the battle with racism,

24. See Schibsted, *supra* note 10, at 23.

25. See Guynn, *supra* note 11, at 22.

26. See Guynn, *supra* note 11, at 22.

27. Dewey, Katrina M. Making Partner: A Year That Wasn't, *California Law Business*, pp. 18-19, at 19.

28. Stephanie B. Goldberg, *Reaching Out to Minorities*, A.B.A. J. Women in Law 68, June 1, 1988.

29. I am indebted to Rachel Patrick for sending me a plethora of research material, which has been extensively quoted throughout this paper. Thank you, Rachel.

30. SUSAN BELL, *FULL DISCLOSURE: DO YOU REALLY WANT TO BE A LAWYER* (a compilation of articles for the Young Lawyers Division of the American Bar Association).

31. Grace E. Speights, *I HAVE A DREAM, Minorities in the Profession*, *FULL DISCLOSURE*, at 96-98. Speights is a former judicial clerk to Chief Judge Aubrey F. Robinson, Jr. of the U.S. District Court for the District of Columbia and a litigation associate at Morgan, Lewis & Bockus in Washington, D.C.

which is apparent in the hiring and promotion practices within the profession.

"The Challenge: [M]any of your professors and classmates may not believe that you are qualified to be in law school. They will question your ability and your competence [Y]ou must be aggressive and confident in your abilities and commit yourself to learning the law well [T]he challenge is yours to meet."

The nonminority California law student would be inclined to strongly disagree with Speights. After all, that's not how we treat people out here in sunny California, is it? These same students would concede that Blacks attending law schools in the South (or anywhere outside of California) might be treated in a discriminatory manner. But surely not at UCLA, Stanford, Boalt, USC, Pepperdine, Davis, and Loyola? I strongly encourage you to discuss the issue of bias and racism with current students and graduates of California law schools. It will be an eye-opening experience for you.

Generally, the same racial and gender views one holds at the undergraduate level remain the same at the graduate level. The intense competition generated during law school seems to contribute to inflexibility in many interpersonal areas, including race and gender. Unfortunately, Speights' words of caution to Blacks are still valid today and apparently will continue to be so, well into the twenty-first century.

V. LEARN FROM THREE BLACK WOMEN OF SUBSTANCE:
ALL KNIGHTS OF THE HIGHEST ORDER

The one thing an attorney never has enough of is time. If you are the typical attorney, you are reading something every day, just to keep up with your current billing, cases, and trials. There is a stack of Appellate Reports on your desk that you intend to mull over; then there's all the self-study reading to fulfill your MCLE requirements.³²

In the last few years there has been a lot written about minorities and women. What should you read? What should you believe? The views of Black people are quoted—and misquoted—in a wide range of material. In fact, the ubiquitous bar association journals always seem to have at least one such article. Ironically, most of these articles are not written by Blacks, but "about" Blacks. Nevertheless, you should read something, so

32. Pinder was appointed to the Minimum Continuing Legal Education (MCLE) Committee of the California State Bar, 1992-1995.

start with any articles you come across. Keep an open mind. You could, and probably should, use such articles to initiate a meaningful dialogue with a Black attorney. Remember, you are not trying a case and you are not cross-examining that attorney; you are trying to learn something about someone else's experiences, ordeals, aspirations, and opinions.

To simplify your search for such information, following are excerpts from three interviews conducted by photojournalist Brian Lanker.³³ His work focused on seventy-five renowned Black women from various disciplines who express poignant opinions about this country, their lives, and the two-headed dragons they faced in the past and even today.

CONSTANCE BAKER MOTLEY³⁴
Federal Judge

"[Y]ou can't invent events. They just happen. But you have to be prepared to deal with them when they happen.

"When I was in my senior year at Columbia I got a job as a clerk with Thurgood Marshall, who was then the head of the NAACP Legal Defense Fund. For me that was a stroke of luck because I got in on the ground floor of the civil rights legal revolution." "I got a chance to actually try cases, argue cases in the Courts of Appeal and the United States Supreme Court. You know the average lawyer never even sees the Supreme Court, let alone gets to argue a case there.

"I was a part of a civil rights movement, involved in spectacular legal victories which we are not going to duplicate in the century

"[T]he suggestion that women should be equal and have a job that a man might have touches people in a very sensitive way. It is not as readily accepted as the idea of equality for blacks; I think there is much more trouble with that. That's a really deep revolution."³⁵

YVONNE BRATHWAITE BURKE³⁶
Lawyer, Elected Official

"[W]hen I was in law school at the University of Southern California

33. I DREAM A WORLD—PORTRAITS OF BLACK WOMEN WHO CHANGED AMERICA (Barbara Summers ed., 1989).

34. *Id.* at 65. Constance Baker Motley became the first Black female federal judge when President Lyndon Johnson appointed her to the U.S. District Court in 1966. She served from 1982-1986 as a Chief Judge of the Southern District of New York, and assumed senior judge status in 1986.

35. *See id.*

36. *See id.* at 131. Yvonne Brathwaite Burke was elected to the House of Representatives in 1972, the first Californian congresswoman in twenty years, and the first black woman elected from that state. After three terms, she returned to California and became a public finance specialist and a partner in the firm of Jones, Day, Reavis & Pogue. *Id.* She was elected Los Angeles County Supervisor, 2nd District, in November 1992. In 1992, California elected two non-minority women congresswomen.

(1953-1956), there was an instructor who would have Ladies' Day. There were only five women in a class of seventy-five and on Ladies' Day, we would have to recite all day. The reason was that when the first woman graduate from that law school went to court and the judge got hard on her, she cried. And our faculty said, 'There'll never be another woman who graduates from this school who is not tough.'

"When I graduated from law school, there was not a law firm that would even interview me. There were no Jews in major law firms unless they were Jewish firms. There were no women. There were certainly no blacks in major law firms then. So the thing I have that maybe other people don't have is concrete proof that change comes about

"[I] came along at a time when there was a demand to give men greater visibility and opportunity. In white society they were saying, 'Women can't do it.' In black society, they were saying, 'Women do too much.'

"[W]hen I walk into a room I assume I have to prove myself. I know that. I'm accustomed to that. But I also know I *can* prove myself."³⁷

ELEANOR HOLMES NORTON³⁸
Lawyer, Professor

"I'm a fourth-generation Washingtonian 'Middle class' has to be understood as a cultural phenomenon in the black community. Many people had a striving mentality. Even though they worked in white folks' kitchens or their fathers were laborers, there was a cultural striving that would separate them from people—white or black—who conceived of themselves as being in their proper place.

"Blacks did not define their place by their work, or else all of us would have had to define ourselves as down-and-out. So you defined yourself by who you thought yourself to be."³⁹

37. *Id.* at 131.

38. See I DREAM A WORLD, *supra* note 33. Eleanor Holmes Norton was the first woman to chair the Equal Employment Opportunity Commission; she served during the Carter Administration, from 1977 to 1981. A constitutional and civil rights lawyer, she worked with the American Civil Liberties Union before her 1970 appointment as head of the New York City Commission on Human Rights. She is a graduate of Antioch College and Yale University, and has been a professor at the Georgetown University Law Center since 1982. *Id.*

39. To my dismay, it is a common practice for nonminority lawyers who observe Black lawyers and judges with "upscale" material possessions (attire, jewelry, cars, etc.) to make one form or another of the following comment: Who does she/he think she is? Such a question, rooted in racism, implies that a Black person should not own a particular item; to do so would be beyond the possessor's "proper place."

"[W]hen I went to law school, I got a master's degree in American history and a law degree at the same time, for no reason except that you want to stretch your mind.

"My concept of myself was entirely existential. You keep reaching, you don't know quite where it will lead, so you are involved in the reaching for its own sake.

"You could say race was an obstacle to me, you could say sex was an obstacle to me, but I refused to own them in that way. I was black and female, but I never conceived that those [characteristics] were supposed to keep me from doing what I wanted to do.

"I have not been animated in my life to fight against race and sex discrimination simply because of my own identity. That would mean that one must be South African to fight apartheid, or Jewish to fight anti-Semitism. And I just reject that conception of how struggles should be waged.

"One ought to struggle for its own sake. *One ought to be against racism and sexism because they are wrong*, not because one is black or one is female [emphasis added].

"Black people get their moral authority in this country not simply because they have suffered, but because they understand the suffering of other people in this world.

"In every society in the world, being female has limitations on one's self-development. The untold billions of women who could paint and write and speak and do all the things men do, that's never to be recovered. That's lost to the world.

"[T]he country [United States] has suffered too much from its failure, generation after generation, to take on race, deal with it, and finally set it aside.

"[I] think the Constitution is one of the great documents in the world . . . [W]e ought to look at the Constitution through its metamorphosis—from a document that denied the personhood of black people and denied the political reality of women, to a document that has, in part through war and struggle, come to encompass them and others."⁴⁰

The obstacles encountered by Motley, Burke, and Norton are representative of the ongoing struggles of many Black women lawyers today. Fortunately, these three women were not forced to abandon their dreams and professional goals. Their contributions have benefitted thousands of American citizens.

Racists are usually annoyed when there is even an appearance of economic progress by minorities, especially by Blacks.

40. See I DREAM A WORLD, *supra* note 33, at 147.

IV. YOU ARE EITHER PART OF THE PROBLEM OR PART OF THE SOLUTION

If you want to be part of the solution and help eliminate racism and gender bias, break economic shackles, and end psychological tyranny, there are several avenues you can take to reach those objectives. First, you should increase the number of minorities in your place of employment. Black attorneys, particularly Black women lawyers, have a wide range of experiences which they have wedded to their legal skills, making them especially versatile and flexible in their approach to various practices.

Doubting Thomas will loudly protest: "I do not believe in affirmative action or special recruitments. Every firm or agency should have the best attorneys and not have to accept a minority or a female attorney, if there is a male nonminority attorney who is better qualified."

Based on Thomas' convictions, no minority attorney could *ever* satisfy his qualifications, which are based on unfounded racist beliefs. He assumes that a Black person could never be "the best." Therefore, please consider the following comments before adopting Thomas' limited view of affirmative action:

I think it is important to recognize that we've always had affirmative action programs, but in the past, they've always benefitted white males. It's not new. IT WAS CALLED 'THAT IS THE WAY THINGS ARE.' What makes it so controversial now is that it is directed at those who were out of power.⁴¹

To speak of minorities as having an unfair advantage is to dismiss the advantages white males have always had. It's as though [those who attack affirmative action] are able to carry this *naive idea that we live on a level plain field*. By doing that, they wipe out the reality of racism and sexism. It's much easier to ignore racism and sexism if you aren't subject to it.

*Affirmative action feels unjust to those who have been previously protected.*⁴²

My personal view of the affirmative action issue is simple: Don't make me laugh. If all the nonminority male attorneys who were not "the best" when they were hired, or all those who are not currently "carrying their weight" on the job, were suddenly fired, there would be so many openings at law firms and within the government, that it would take months

41. Danica Kirka, *Affirmative Action: Discriminatory or Merely Unfair*, L.A. TIMES, Feb. 22, 1993 at B9 (quoting remarks by David Wellman, professor of community studies, U.C. Santa Cruz) (emphasis added).

42. *Id.* (quoting remarks by Jolane Godfrey, author of "Our Wildest Dreams: Women Entrepreneurs Making Money, Doing Good, Having Fun") (emphasis added).

to fill those positions.

We lawyers take ourselves too seriously. As the popular saying goes, you do not have to be a rocket scientist to do what most lawyers do. There is no logical nexus between race and gender and one's ability to competently practice law.

Some firms are very successful in their diversification efforts. Others have tried and failed. However, the vast majority have never even tried to increase the number of women and minorities in their firms. A recent article identified effective means of recruiting and retaining minority attorneys. The author's recommendations are excerpted, as follows:

"Look at Your Firm from the Outside-In. Before a firm (or legal department) can commit to hiring people of color it must first understand how it is perceived by them. An awareness of how your firm is perceived . . . will help you to identify and avoid behavior that can be—perhaps incorrectly—viewed as racist or biased

"Initial Impressions Count. Make sure lawyers who recruit on behalf of your firm reflect the kind of diversity you want to achieve, since the applicant of color will be sensitive to whom your firm chooses to represent it [If the firm has no minorities or women, be sure to select a recruiter who is committed to diversity].

"Find Common Ground. Find some common ground with interviewees by looking for shared interests or experiences.

. . . . [Avoid] transparent attempts to find common ground based on stereotypes of what minorities are [assumed] to be interested in.

"Look Beyond the Traditional Criteria of Success. Consider looking beyond grades and law review—the "traditional indicia" of success

"Excellence in job performance or in a project can demonstrate qualities needed to succeed as a lawyer at your firm, such as intelligence, commitment and perseverance"43

Lastly, you, your firm, office, or governmental entity should follow the recommendations The Commission on Women in the Profession made to the American Bar Association:

The Commission urges the ABA to recognize publicly that gender bias exists in the profession and to take affirmative steps to eliminate it. The adoptions of the resolutions will put the ABA on record as reaffirming the principle that DISCRIMINATION IS INCOMPATIBLE WITH STANDARDS OF PROFESSIONALISM. This action is especially important because the Commission found that male members of the profession perceive fewer problems of discrimination, and that men are more likely to regard the issues that greatly disturb women in the profession as silly or trivial.

43. Haratani, Joan A. Primer on Recruiting and Retaining Minority Attorneys. *California Minority Attorney Report*, Nov/Dec, 1992, pp. 1-16, at 1. Roger N. Gordon, Editor, Park Press Desktop Publishing, San Francisco. Haratani is a Partner at Crosby, Heafey, Roach & May in Oakland.

The Commission is confident that all members of the profession, by listening to and validating the experiences and perceptions of women, can increase their own sensitivity to obstacles confronting women and can identify ways to eliminate discrimination"⁴⁴

In August 1988, the ABA House Of Delegates approved the recommendations and resolution of the Commission:

BE IT RESOLVED, that the American Bar Association recognizes that persistence of both overt and subtle barriers denies women the opportunity to achieve full integration and equal participation in the work, responsibilities and rewards of the legal profession;

BE IT FURTHER RESOLVED, that the American Bar Association affirms the fundamental principle that there is no place in the profession for barriers, including practices, attitudes and discriminatory treatment, that prevent the full integration and equal participation of women in all aspects of the legal profession;

BE IT FURTHER RESOLVED, that the American Bar Association calls upon members of the legal profession to eliminate their barriers and to refuse to participate in, acquiesce in or condone barriers to the full integration and equal participation of women in the legal profession."⁴⁵

The issues of racism and gender bias are not insurmountable if you keep in mind that you are a modern-day knight of the highest level. As a knight, you discern right from wrong, and you recognize that discrimination is unquestionably wrong. As an attorney, your professional code of conduct empowers you to redress wrongs and encourage others to take a just stand.

Eradicating racism and bias, on a personal level and in your professional environs, has many benefits. Obviously, it will improve the quality of professional life for Black women lawyers and others, but the "doer" also benefits. A great deal of energy is spent in maintaining racist views and carrying out discriminatory practices. Redirecting that energy might improve your golf game, your health, and your attitude, as well as increase the vitality and productivity of your law practice.

In our profession, we must respect and treat all lawyers as equals, irrespective of race or gender. To do otherwise is chicanery and self-destructive. How can we litigate and defend the social and economic rights of the people of the United States when our own house is not in order? We must struggle together, reason together, and resolve this dilemma together. As a united body, we should set an example for the

44. Clinton, Hillary Rodham, Chair. ABA Commission On Women In The Profession, Report To The House of Delegates (No. 121), June, 1988, pp. 1-18, at 2-3 (emphasis added).

45. *Id.* at 1.

country to follow. We can lead the way by eliminating racism and gender bias from our ranks. In doing so, we will be worthy of the public's trust.

When the two-headed dragon has been slain, and racism and gender bias no longer menace and impede the professional development of minorities and women, then Black women lawyers will be able to join other attorneys as true colleagues. They will be able to remove their armor and put away their swords . . . forever.