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# FAILING TO MENTOR SAPPHIRE: THE ACTIONABILITY OF BLOCKING BLACK WOMEN FROM INITIATING MENTORING RELATIONSHIPS

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This Article was presented as part of a work-in-progress at the First National Meeting of the Regional People of Color Legal Scholarship Conference: *Celebrating Our Emerging Voices: People of Color Speak* (March 25-27, 1999). It is one Article in a larger project discussing and analyzing Professor Smith's experiences as a novice Black female professor at Boston College Law School. The other articles are: Pamela J. Smith, *When Sapphire Meets Socrates at the Intersection of Race, Gender & Authority*, 6 Wm. & MARY J. GENDER & L. 53 (1999) (discussing how the synergism of negativity created by racial isolation, retrenchment, the presumption of incompetence, and the Sapphire and Mammy myths raises the risks that Black women will face hostility in the classroom from primarily white students), and Pamela J. Smith, *The Tyrannies of Silence of the Untenured Professors of Color*, 33 U.C. DAVIS L. REV. 1 (1999) (discussing how institutions silence untenured professors of color with a tenuous promise that one day they will obtain tenure). She is also working on an article that defines hostile workplace environments in academia, taking into account student racial harassment and institutional non-responsiveness, that may violate Title VII of the Civil Rights Act of 1991. This work-in-progress is tentatively entitled *The Denial Before the Denial: Black Women and Revelations of Tenure Delays and Informal Denials as Violative of Title VII's Prohibition Against Hostile Workplace Environments*.

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## ABSTRACT

This Article focuses on a unique aspect of the topic for the *UCLA Women's Law Journal* Spring 2000 Symposium: *Textbook Sexism: Discrimination Against Women in Academia*. In particular, Professor Pamela J. Smith contends that the failure to mentor Black women in academia is a form of discrimination that should be separately actionable under Title VII of the Civil Rights Act. She argues that the failure to mentor Black women in academia stems in part from the social barriers created by the implicit stereotypes of Black women held by their senior white colleagues. For example, Black women are perceived as angry, threatening, and intimidating, qualities displayed by the fictional character Sapphire in the *Amos 'n' Andy* show. Further, Black women are generally viewed as incompetent. Together, these stereotypes prevent the creation and development of transracial mentoring relationships between Black women and their senior colleagues, many of whom remain primarily white and male. In addition to the social barriers that prevent Black women in academia from being mentored, institutional barriers also hinder Black women from developing transracial mentoring relationships. One example of an institutional barrier is the failure to assign Black female academics to active and important committees by which they can interact with senior white colleagues in order to destroy negative stereotypes and thereby receive meaningful mentoring. Professor Smith opines that institutions will only use their power to facilitate transracial mentoring relationships when personal stories of mentoring discrimination are effectively linked to these social and institutional barriers. Her article begins the process of linking mentoring discrimination with the barriers Black women face.

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### I. INTRODUCTION

"Lack of mentoring is one of the biggest barriers to advancement. You don't 'climb' to the top — you're coached, counseled, pushed and supported into senior ranks."<sup>1</sup> This is particularly true for outsiders like Black women.<sup>2</sup> In juxtaposition to the necessity for mentors lies the reality that Black women are denied mentors and are, therefore, denied the opportunity to be coached, counseled, pushed, and supported into senior positions. Black women are denied opportunities to initiate mentoring relationships with senior colleagues because of age-old stereotypes and myths that portray Black women, as a whole, as unintelligent, angry, threatening, intimidating, and not in need of coaching, support, and other career assistance.<sup>3</sup> In essence, Black women are denied mentoring because we are perceived as mod-

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1. Tamina Davar, *Sister Stats: Two New Studies Yield Some Controversial and Eye-Opening Findings About Asian American Business Owners and Corporate Managers*, A. MAG., Nov. 10, 1998, at 42 (quoting Peggy Nagae).

2. See Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 241, 241 (1989) (defining outsiders as "outgroups" whose "marginality defines the boundaries of the mainstream, whose voice and perspective — whose consciousness — has been suppressed, devalued, and abnormalized."); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 324 (1987) (positing that scholarship should "look[ ] to the bottom to adopt[ ] the perspective" of those who have experienced discrimination); Mari J. Matsuda, *Public Responses to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320, 2323 n.15 (1989) (defining outsiders as historically and traditionally oppressed groups, such as people of color, white women, and homosexuals, among others); see also Mary I. Coombs, *Outsider Scholarship: The Law Review Stories*, 63 U. COLO. L. REV. 683 (1992).

3. See *infra* Part III.B.1–2 (discussing the presumption of incompetence and the Sapphire myth as social barriers to mentoring).

ern day Sapphires (*i.e.*, angry, threatening, intimidating, unintelligent, Black, and female).<sup>4</sup>

Like many articles written about the working lives of Black women, this Article is experiential, theoretical, and legal in nature. For many Black academics, race is a personal and theoretical reality. We live with racism daily.<sup>5</sup> We study, research, and write about it in order to understand why it continues to exist and how we can survive and excel in spite of it. This Article explores the barriers that Black women face as we seek mentors. It sets forth a theory that the presumption of incompetence and the Sapphire myth act as near insurmountable barriers to mentoring. It uses my experiences as a novice Black female law professor at Boston College Law School (BCLS) to highlight barriers to mentoring. It is through my lived experiences that I understand the importance of mentoring and the myriad of ways that mentoring can be denied.

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4. For a more complete discussion of the presumption of incompetence and the Sapphire myth, see generally, Pamela J. Smith, *Teaching the Retrenchment Generation: When Sapphire Meets Socrates at the Intersection of Race, Gender & Authority*, 6 WM. & MARY J. GENDER & L. 53 (1999) [hereinafter Smith, *When Sapphire Meets Socrates*].

5. See Elizabeth A. Klonoff & Hope Landrine, *Cross-Validation of the Schedule of Racist Events*, J. BLACK PSYCHOL., May 1999, at 231 (reporting that based on a survey of 520 Black people of all ages, socio-economic classes, and education, "96% of Blacks reported experiencing some type of racist discrimination in the past year, 98% reported experiencing racism at some point in their lives, and 95% found racism to be stressful"); see also JOE R. FEAGIN & MELVIN P. SIKES, *LIVING WITH RACISM: THE BLACK MIDDLE CLASS EXPERIENCE* (1994) (using interviews to show the effects of racism on middle-class Blacks in employment, housing, education, etc.); Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 HARV. L. REV. 817 (1991) (reporting on the racialized aspect of purchasing automobiles, which disadvantages Blacks); Reginald Leamon Robinson, *The Racial Limits of the Fair Housing Act: The Intersection of Dominant white Images, the Violence of Neighborhood Purity, and the Master Narrative of Black Inferiority*, 37 WM. & MARY L. REV. 69, 101 (1995) (explaining and exploring the fact that "Blacks continue to suffer the trauma of hostile physical and psychological separation and the reinforcement of the view that black self-conception and identity are inferior to that of whites"); Anne Carothers-Kay, *Home Loan Criteria Could Be Skin Deep*, DES MOINES REG., June 16, 1996, at 1 (discussing the practice of racial discrimination in approving home loans); Robert Jackson, *Race A Key Factor in Loan Denials, CU Study Finds Blacks and Hispanics making at least \$50,000 Rejected More Than Twice as Often as Anglos*, ROCKY MOUNTAIN NEWS, Apr. 7, 1993, at 4A (finding that Black and Hispanic loan rejection rates are more than twice the rejection rates for similarly situated whites); Jamal E. Watson, *NAACP Targets Bias in Lending; Homeowning Dream Nightmare for Blacks, Mfume Contends*, BALTIMORE SUN, Aug. 8, 1998, at 1B (reporting that the 1997 Home Disclosure Mortgage Act Report revealed statistics indicating that almost 59% of Blacks were denied mortgage loans in 1997).

Certainly, this Article recognizes the wonderful research done on mentoring in general, especially in academia.<sup>6</sup> Yet, while I acknowledge the research on mentoring, I do not want to be confined by it because much of it does not adequately tell the stories of individual Black women, the problems we face with mentoring and mentors, and the obstacles we must overcome in order to initiate mentoring. This Article tells such a story with a theoretical and legal perspective, explaining why barriers to mentoring exist and providing a legal remedy for Black women who are denied mentoring.<sup>7</sup>

I understand, given my experiences at BCLS, that “[j]ust as one often must pay a penalty merely for being a Black woman, so too one may incur sanctions or penalties as an untenured professor.”<sup>8</sup> Not obtaining a mentor is one of the penalties that untenured Black female professors face because of the intersection of race and gender.<sup>9</sup> Furthermore, unless one has received adequate mentoring as a junior Black female professor, one also incurs penalties and sanctions for not being professionally integrated into one’s academic environment. After all, mentoring helps minimize the vulnerabilities caused by race, gender,

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6. Much of this research is cited herein to lay the foundation for mentoring in general and to show how mentoring can be denied. See *infra* Part II (defining mentoring, its characteristics, aspects, and phases).

7. I have no intention of trying to set forth systemic suggestions that would help Black women obtain mentors. I do not suggest that formal mentoring programs be created. Rather, this Article attempts to provide Black women who are denied mentoring, or blocked from creating relationships that would initiate mentoring, a legal remedy.

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

9. The articulation of this race-gender intersection owes its genesis to various seminal articles. See Regina Austin, *Sapphire Bound!*, 1989 WIS. L. REV. 539 (1989); 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; Judy Scales-Trent, *Black Women and the Constitution: Finding Our Place; Asserting Our Rights*, 24 HARV. C.R.-C.L. L. REV. 9 (1989); Peggie R. Smith, *Separate Identities: Black Women, Work, and Title VII*, 14 HARV. WOMEN’S L. J. 21 (1991); Judith A. Winston, *Mirror, Mirror on the Wall: Title VII, Section 1981, and the Intersection of Race and Gender in the Civil Rights Act of 1990*, 79 CAL. L. REV. 775 (1991); Cathy Scarborough, Note, *Conceptualizing Black Women’s Employment Experiences*, 98 YALE L.J. 1457 (1989). See generally CRITICAL RACE FEMINISM: A READER (Adrienne K. Wing ed., 1997) (setting forth scholarship by women of color and about women of color).

and being untenured, especially in academia.<sup>10</sup> Without mentoring, these historical vulnerabilities are exacerbated.

If mentoring is denied or blocked, individual personal stories, rather than statistics or anonymous narratives, must be told. It is these personal stories that will be actionable under the law. Statistics and anonymous accounts can supplement or support personal stories, but they cannot entirely replace them in a court of law. And it is in the courts of law that we may equalize the risks that Black women face in the world of work, especially academia, because they are denied mentors. Black women's risks of being denied mentors will be balanced against institutions' risks of facing lawsuits for failing to equally provide mentors or blocking the creation of mentoring relationships for traditional outsiders.<sup>11</sup> Perhaps the threat of litigation or actual successful litigation will lead to necessary systemic reform.

On the theoretical level, everyone seems to recognize the need for junior people, regardless of industry, to have mentors. After all, mentoring can be used to support or destroy existing power structures. It can also be used to exclude traditionally oppressed groups or it can be used to include them. Unfortunately, studies show that mentoring continues to be used to exclude traditionally oppressed groups because only junior white men are readily mentored, as they are selected most often by senior white men, especially in academia.<sup>12</sup> In contrast, "[m]any black and other minority faculty have not experienced the advantages of true protégé-mentor relationships."<sup>13</sup> Black women, other women of color, men of color, and white women still struggle to find

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10. See M. Carole Pistole, *Mentoring Women's Academic Careers: Using a Family Model to Enhance Women's Success*, *INITIATIVES*, vol. 56 no. 2 1994, at 29 (suggesting that mentoring can affect academic success for women).

11. See *infra* Part VI (discussing the failure to provide mentoring as actionable under Title VII).

12. See, e.g., Jonathan R. Alger, *Minority Faculty and Measuring Merit: Start by Playing Fair*, *ACADEME*, July-Aug. 1998, at 71 (stating that "[s]tudies show that informal mentoring relationships usually develop between senior and junior colleagues who have much in common, because people tend to seek out younger versions of themselves when imparting their wisdom and experience"); see also Karen Cameron Scanlon, *Mentoring Women Administrators: Breaking Through the Glass Ceiling*, *INITIATIVES*, vol. 58 no. 2 1997, at 39, 40.

13. James H. Wyche & Henry T. Frierson, Jr., *Minorities at Majority Institutions*, *POL'Y F.*, Aug. 31, 1990, at 989, 990; see also James E. Blackwell, *Networking and Mentoring: A Study of Cross-Generational Experiences of Blacks in Graduate and Professional Schools*, in *IN PURSUIT OF EQUALITY IN HIGHER EDUCATION* 146 (Anne S. Pruitt ed., 1987) (discussing mentoring among Black students in graduate and undergraduate programs).



and strengthen mentoring relationships regardless of industry. Indeed, "[m]inority and [white] women employees often continue to be shut out of this [old white boys'] network for at least part of their working lives, unable to find older executives willing to coach them, protect them and push their careers."<sup>14</sup> As a result, white women and people of color are not coached, supported, or counseled into senior ranks as readily as white men.<sup>15</sup>

This Article explores some of the barriers to initiating mentoring relationships that Black women in particular face, using legal academia and my experiences as an illustration. Part II of the Article explores the aspects of mentoring that are most relevant and most insurmountable for Black women and other outsiders in the academy,<sup>16</sup> focusing on the autonomous nature of teaching that requires active participation by institutions to ensure that mentoring occurs equally. Part III of this Article reveals and analyzes some of the social barriers that prevent Black women from having equitable and quality contact with senior white colleagues out of which mentoring relationships can be initiated. Part IV reveals and analyzes some of the institutional barriers that ensure that Black women do not have sufficient contacts that may serve as a mechanism to initiate mentoring relationships with senior white colleagues. Part V of this Article suggests that institutions make a choice to succumb to societal barriers and stereotypes when they fail to facilitate the mentoring of its junior Black females.

Given this choice and the fact that Black women appear to bear the entire burden of institutions' failure to mentor equally, Part VI of this Article argues that failing to provide a mentor or blocking access to a mentor should be actionable under Title VII of the Civil Rights Act of 1991 (Title VII)<sup>17</sup> since, as one court has stated, "it is perfectly believable that a supervisor could act out a discriminatory animus by . . . refusing to serve as a mentor or advisor for anyone but members of his race or sex."<sup>18</sup> Given the importance of mentoring and the reality that it can be denied or provided based on categories protected by Title VII, it is time that outsiders begin to assess the illegality of an institution's fail-

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14. Selwyn Feinstein, *Women and Minority Workers in Business Find a Mentor Can Be a Rare Commodity*, WALL ST. J., Nov. 10, 1987, available in 1987 WL-WSJ 297478 \*1.

15. See Davar, *supra* note 1, at 42.

16. See *supra* note 2 (defining outsiders and listing some outsider scholarship).

17. 42 U.S.C. § 2000e-2 (1994).

18. *Prizevoits v. Indiana Bell Tel. Co.*, 882 F. Supp. 787, 794 (S.D. Ind. 1995).

ure to equally provide access to mentors. It is time, therefore, that we begin to provide Black women potential legal remedies when they are denied the opportunity to be coached, counseled, and supported into senior positions.<sup>19</sup> Through this Article, I hope to suggest one way that Black women can make institutions accountable for their action (or inaction) in failing to mentor Sapphire or those who are perceived as Sapphires.

## II. THE VEHICLE TO SUCCESS: MENTORING AND PATRONAGE

### A. *The Characteristics of Mentoring*

At its core, mentoring involves an intimate relationship between a junior person and a senior person.<sup>20</sup> In its true form, mentoring involves active participation in another's career. It is more than providing information or support at some ambiguous point in the future.<sup>21</sup> Mentoring is an intimate, almost familial, relationship between two individuals. It is paternalistic and hierarchical in nature.<sup>22</sup> It usually begins and grows at the behest of the mentor as the two parties engage in some common task.<sup>23</sup> A mentor selects a protégé who reminds the mentor of himself when he was much younger, because the mentor desires to facilitate the success of someone he believes can be successful.<sup>24</sup> If a mentor informally selects his protégé, the selection occurs "naturally," in that the mentor selects someone with whom he is comfortable, with whom he would enjoy working, and whom he believes he can help.<sup>25</sup> Unfortunately, whether a mentor is comfortable with a potential protégé and believes that a potential

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19. See Davar, *supra* note 1, at 42.

20. See generally Kathy E. Kram, *Phases of the Mentor Relationship*, 26 *ACAD. MGMT. J.* 608 (1983).

21. See generally Mary Jo Bona et al., *Show Me How to Do Like You: Co-Mentoring as Feminist Pedagogy*, 9 *FEMINIST TCHR.* 116, 118 (1995) (explaining that mentoring involves active and not passive participation).

22. See generally Cheryl D. Fields, *Black Peer Mentors, Cooperative Advocacy Beneficial to Morale*, *BLACK ISSUES IN HIGHER EDUC.*, Oct. 17, 1996, at 24 (advocating for Black peer mentoring to supplement the traditional hierarchical mentoring with senior white colleagues). *But cf.* Pistole, *supra* note 10, at 29 (rejecting the hierarchical model of mentoring and suggesting a more family-centered model).

23. See generally Kram, *supra* note 20, at 614-21 (discussing how the mentoring relationship is initiated and describing the other phases of the mentoring relationship).

24. See Alger, *supra* note 12, at 71.

25. See Scanlon, *supra* note 12, at 40.

protégé has the ability to be successful, is inextricably related to race and gender.<sup>26</sup>

There are formal programs that attempt to mirror informal mentoring relationships. In these formal programs, a corporation or company selects the mentors and/or protégés through an official selection program.<sup>27</sup> While perhaps necessary given societal barriers and stereotypes, these formal mentoring programs are not as successful as the "natural" informal mentoring relationships for several reasons.<sup>28</sup> Because a mentor does not select his protégé, the mentor may resent having to spend time and effort on a person that he does not believe will be successful or with whom he does not feel comfortable.<sup>29</sup> Further, the mentor may be less willing to invest the time and attention that is necessary to develop the intimate relationship that mentoring requires. Finally, a mentor forced into a relationship with a protégé may be unwilling to be actively involved in the protégé's career.<sup>30</sup> Thus, while some organizations provide formal programs, informal mentoring produces the best results and diminishes any resentment and discomfort that the mentor may feel toward his protégé, especially if that protégé is a traditional outsider. After all, the active and personal investment that a mentor makes in his protégé cannot be mandated by company policies or programs.

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26. See *infra* Part III (discussing the social barriers to Black women initiating mentoring relationships with senior white colleagues).

27. See Shimon-Craig Van Collie, *Moving Up Through Mentoring*, PERSONNEL J., Mar. 1, 1998, at 36 (reviewing examples of formal mentoring programs); CATALYST, MENTORING: A GUIDE TO MENTORING PROGRAMS AND PRACTICES 31-52 (1993) (discussing formal mentoring programs at large companies like AT&T, CIGNA, Procter & Gamble, and Colgate-Palmolive Company) [hereinafter CATALYST, A GUIDE TO MENTORING].

28. While providing formal mentoring programs is an option that some organizations take, informal mentoring produces the best results because the mentor selects his protégé and can feel more personally invested in this person's career. See, e.g., Pamela Y. Dykes, *She Works Hard For Her Money: The Experiences of African-American Women in the Workplace*, in NATURE OF A SISTUH: BLACK WOMEN'S LIVED EXPERIENCES IN CONTEMPORARY CULTURE 91, 93 (Trevy McDonald & T. Ford-Ahmed eds., 1999) (discussing, among other things, the obstacles that Black women face in obtaining mentoring and noting that informal mentoring is the most effective).

29. See *infra* Part III (discussing the presumption of incompetence and the Sapphire myth as barriers to mentoring because whites presume that Black women are unintelligent, angry, and not likely to be successful).

30. See *infra* Part III.A (discussing the racial discomfort between Blacks and whites that prevent natural mentoring from occurring, without active and concerted intervention).

It is based on comfort and selection that can only be created if opportunities for interaction are fostered.

Despite the preference for informal mentoring, organizations can create formal mentoring programs as long as they are aware of the risks.<sup>31</sup> After all, given the choice between formal mentoring programs and no mentoring, the choice must be formal mentoring, especially for Black women, because of the benefits that accrue to those who are mentored.<sup>32</sup> Thus, if organizations desire to create formal mentoring programs, they should mirror the informal mentoring relationship as much as possible. In particular, the organizations should provide access to mentors but not create or mandate the actual relationship.<sup>33</sup> For instance, an organization can have a formal program to ensure that traditional outsiders like Black women are formally assigned to sit on committees with potential mentors, but not specifically assign a mentor unless and until a relationship develops.<sup>34</sup>

Programs to facilitate informal mentoring are best because through the informal mentoring relationship the protégé receives the most active, personal, and intimate support and thus, more concrete short-term and long-term benefits.<sup>35</sup> At most, therefore, institutions should create formal mechanisms to ensure that everyone has equal access to senior colleagues so that informal mentoring relationships can begin and grow. In this manner the mentor's selection of protégés will not be overly interfered with, and mentors will be more likely to actively and intimately involve themselves in the protégés' career.

In addition to true informal mentoring, there are many other types of mentoring. E-mentoring is making headway into the

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31. See generally Margaret H. Bahniuk & Susan Kogler Hill, *Promoting Career Success Through Mentoring*, REV. BUS., Mar. 22, 1998, available in 1998 WL 20215672 (discussing the benefits of mentoring and suggesting mechanisms that employers can use to facilitate mentoring opportunities); Van Collie, *supra* note 27, at 36; CATALYST, A GUIDE TO MENTORING *supra* note 27, at 31-52.

32. See, e.g., Georgia Chao et al., *Formal and Informal Mentorships: A Comparison of Mentoring Functions and Contrast with NonMentored Counterparts*, 45 PERSONNEL PSYCHOL. 619-36 (1992) [hereinafter Chao, *Formal and Informal Mentorships*].

33. See Bahniuk & Hill, *supra* note 31.

34. See *infra* Parts III-IV (discussing the social and institutional barriers that prevent mentoring from automatically occurring between Black women and senior white colleagues).

35. See *infra* Part VI.D (discussing the substantive and long term benefits that mentoring has on employment success).

traditional mentoring relationship.<sup>36</sup> Co-mentoring is also available as a mechanism that purportedly better suits women's learning styles.<sup>37</sup> Along with these two mentoring alternatives, commentators also suggest peer mentoring as a viable alternative to the normal hierarchical relationship between mentor and protégé.<sup>38</sup> Others suggest that mentoring should be changed to a more family-centered model to better fit women's needs.<sup>39</sup> The success of these other types of mentoring relationships depends upon whether they provide mere information or also provide the coaching, sponsorship, and other career advantages that informal mentoring provides. Untraditional mentoring relationships such as e-mentoring, however, may not provide the two primary aspects of informal mentoring that are the necessary components to successful mentoring relationships.<sup>40</sup> The primary aspects of mentoring are discussed below.

### B. *The Aspects of the Mentoring Relationship*

Traditional informal mentoring has two primary aspects: career advancement and psychosocial integration.<sup>41</sup>

Through career functions, including sponsorship, coaching, protection, exposure-and-visibility, and challenging work assignments, a young manager is assisted in learning the ropes of organizational life and in preparing for advancement opportunities. Through psychosocial functions including role modeling, acceptance-and-confirmation, counseling, and friendships, a young manager is supported in developing a sense of competence, confidence, and effectiveness in the managerial role.<sup>42</sup>

This Article focuses exclusively on the career advancement aspect of mentoring because the career functions of mentoring provide the most direct vehicle to ensure that novices are

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36. See Stephanie Armour, *Mentoring with a Twist: Workers Connect On Line*, USA TODAY, Aug. 18, 1999, at B1.

37. See Bona et al., *supra* note 21, at 118.

38. See, e.g., Claudia A. Limbert, *Chrysalis, A Peer Mentoring Group for Faculty and Staff Women*, NWSA J. 86 (1995); Fields, *supra* note 22, at 24.

39. See Pistole, *supra* note 10, at 29.

40. Further, untraditional mentoring relationships that merely provide information do not provide the active day-to-day participation that a protégé needs. Nor do they provide necessary continuous and accurate information about a specific institution's culture or provide sufficient insights and entree into a specific industry's senior people.

41. See generally Kram, *supra* note 20.

42. *Id.* at 613-14; see also KATHY E. KRAM, *MENTORING AT WORK: DEVELOPMENTAL RELATIONSHIPS IN ORGANIZATION LIFE* 1-56 (1985) (discussing the mentoring relationship's functions).

coached, supported, and assisted into senior ranks. Although the psychosocial aspect of mentoring is important in general, the professional aspect is more important to Black women's professional lives.<sup>43</sup> The particularly subjective nature of tenure promotion in academia (and most other industries) highlights the need for well-connected professional mentoring. After all, Black women who are new to academia need professional assistance to acquire the right committee assignments and to receive blocking and protection from negative student evaluations.<sup>44</sup> Black women need senior colleagues to provide opportunities within their schools, departments and the university so they can be professionally recognized and promoted. Black women need to be introduced to the right people within the university and within the community at large. These career functions allow Black women or other traditional outsiders to obtain additional credentials and marketable skills that they can use to demand promotion, change jobs, or prove illegal discrimination in violation of Title VII.

Although the psychosocial aspect of mentoring adds to the richness of the professional mentoring relationship, it is not essential.<sup>45</sup> In fact, due to racial discomfort, many Black women report having little actual social contact with their senior white

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43. See, e.g., Stacy Blake, *At the Crossroads of Race and Gender: Lessons from the Mentoring Experiences of Professional Black Women*, in MENTORING DILEMMAS: DEVELOPMENTAL RELATIONSHIPS WITHIN MULTICULTURAL ORGANIZATIONS 83, 91 (Audrey J. Murrell et al. eds., 1999) (reporting how white male colleagues were able to provide professional support to Black women but less likely to provide psychosocial support).

44. Psychosocial mentoring would also require Blacks and whites to overcome the geographic and cultural barriers that residential resegregation demands. See generally, GARY ORFIELD ET AL., DEEPENING SEGREGATION IN AMERICAN PUBLIC SCHOOLS (1997) [hereinafter ORFIELD, DEEPENING SEGREGATION] (discussing residential and educational segregation); GARY ORFIELD, THE GROWTH OF SEGREGATION IN AMERICAN SCHOOLS: CHANGING PATTERNS OF SEPARATION AND POVERTY SINCE 1968 (1993) [hereinafter ORFIELD, GROWTH].

45. While commentators have opined that female mentors provide more psychosocial support than male mentors, that has not been my experience. See generally Nancy J. Struthers, *Differences in Mentoring: A Function of Gender or Organizational Rank?*, in GENDER IN THE WORKPLACE 265, 266 (1995) (analyzing the scholarship that draws or refutes this conclusion). In my experience, the intersection of race and gender determines the extent to which senior colleagues, regardless of gender, are willing to invite a junior person of color into their personal lives. In my experience, senior white women are less likely to mentor a junior Black woman than are senior white men. See generally Blake, *supra* note 43, at 83-104 (explaining the difficulties between Black and white women that prevent true mentoring). One author has opined that the mentor's rank, rather than gender, will determine whether the mentor will provide psychosocial mentoring. See Struthers, *supra*, at 269-71.

colleagues.<sup>46</sup> Without career advancement assistance, Black women — who are considered outsiders, Sapphires,<sup>47</sup> and generally presumed to be incompetent — will not obtain acceptance from their colleagues.<sup>48</sup> Thus, Black women in particular need the direct career benefits that a mentor will provide, such as sponsorship; coaching; protection from harm; challenging assignments; and exposure to higher-ups, role models, and counselors.<sup>49</sup> For this reason, this Article focuses exclusively on the barriers that Black women face in initiating career advancement mentoring relationships.

### C. *The Phases of the Mentoring Relationship*

Regardless of the type of mentoring that exists or the benefits that are received from it, mentoring in its true form involves several stages: initiation of the mentoring relationship (primarily by the mentor), cultivation of the relationship as the mentoring relationship deepens, separation as the relationship loses its usefulness to the protégé, and redefinition.<sup>50</sup> While all phases of the mentoring relationship are important, a mentoring relationship must begin before any of the other phases are relevant. This Article focuses exclusively on the initiation phase of mentoring because Black women state they are denied mentoring opportunities,<sup>51</sup> which suggests that Black women face barriers to initiating mentoring relationships.<sup>52</sup>

Initiation of mentoring occurs when the relationship between the potential mentor and protégé begins. Initiation can

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46. See *infra* Part III.B.4 (discussing the race-gender discomfort that acts as a barrier to social interactions between Black women and white colleagues).

47. See *infra* Part III.B.2–3 (discussing the Sapphire myth). See generally Smith, *When Sapphire Meets Socrates*, *supra* note 4, at Part III.C (1999) (discussing the Sapphire myth and how it impacts Black women's interactions with students).

48. See *infra* Part III.B.1 (discussing the presumption of incompetence). See generally Smith, *When Sapphire Meets Socrates*, *supra* note 4, at Part III (1999) (discussing in greater detail the presumption of competence and incompetence).

49. For a recitation of the roles that a mentor performs for a protégé, see Belle Rose Ragins & Dean B. McFarlin, *Perceptions of Mentor Roles in Cross-Gender Mentoring Relationships*, 37 J. VOCATIONAL BEHAV. 321, 328–29 (1990). See also CATALYST, A GUIDE TO MENTORING, *supra* note 27, at 7–9, 31–52.

50. See generally Kram, *supra* note 20, at 613–14. See also KRAM, *supra* note 42, at 47–104 (discussing the stages in a mentoring relationship).

51. See *infra* Part III.A (revealing the importance of mentoring Black women, but also showing that Black women are not being mentored).

52. Once Black women have quantitatively and qualitatively proportionate access to mentoring, the obstacles Black women face in these other stages of mentoring need to be studied, researched, and written about.

occur around “common work tasks” and assignments.<sup>53</sup> In academia, there are very few common tasks and assignments among colleagues. Due to the autonomous nature of teaching, committee assignments are generally the only qualitative professional opportunity that colleagues have to substantively interact with one another. While mentoring relationships can arise in many other contexts (e.g., “a direct hire interview . . . and a direct reporting relationship created by unrelated promotional decisions or through recommendations from peers”<sup>54</sup>), the initiation phase basically involves some quantitative and qualitative interaction between the potential mentor and protégé. In academia, assignments to active committees facilitate this type of interaction. On the other hand, inactive or blocked committee assignments form formidable barriers to initiating mentoring relationships, especially for traditional outsiders like Black women.<sup>55</sup> Given the importance of committee assignments to initiating the mentoring relationship in academia, this Article also discusses the institutional barriers erected by institutions that fail to provide committee assignments.<sup>56</sup>

The second stage of mentoring is cultivation. Without access to potential mentors in informal settings, mentoring relationships may not develop or progress into the cultivation stage of mentoring, which involves much of what is understood as true mentoring — the active, intimate, and supportive relationship between mentor and protégé.<sup>57</sup> In order for a mentoring relationship to progress from the initiation stage to the cultivation stage, the protégé must have numerous opportunities to show the potential mentor that his initial hopes and aspirations for the protégé are justified. In essence, additional access to senior colleagues creates opportunities that a potential protégé can use to deepen and enrich the relationship, thereby creating a true mentoring relationship. Without these enrichment opportunities, a potential mentoring relationship can be unnecessarily stuck in a prolonged initiation phase. As a result, true mentoring never develops.

Because the initiation phase lasts from six months to a year,<sup>58</sup> a protégé basically has this limited amount of time to at-

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53. See Kram, *supra* note 20, at 615.

54. *Id.*

55. See *infra* Part IV.D (showing how committee assignments can be used to actively block access to potential mentors).

56. See *infra* Part IV.

57. See Kram, *supra* note 20, at 616–17.

58. See *id.* at 614.



tempt to move an interaction into a true mentoring relationship. In this limited amount of time, a protégé has to show that she is worthy of being mentored. If this occurs, this moves the relationship into the cultivation stage. The richest part of mentoring, cultivation, usually lasts from two to five years as the mentor invests more activity, time, resources, and emotion into the protégé's career.<sup>59</sup>

Potential protégés stranded in a prolonged initiation phase of mentoring receive fewer career-related benefits and fewer psychosocial benefits than those who have progressed to the cultivation phase of the mentoring relationship.<sup>60</sup> Unfortunately, those stranded without mentors or stranded in a prolonged initiation phase are traditional outsiders, because traditional outsiders face numerous social and institutional barriers to initiating the mentoring relationship and to progressing an initiated relationship to the cultivation phase. The realities of the dearth of mentoring faced by many traditional outsiders and the reasons why outsiders are not mentored are discussed below.

### III. THE SOCIAL BARRIERS TO MENTORING SAPPHIRE AND OTHER OUTSIDERS

#### A. *The Importance of Mentoring Black Women and Other Outsiders*

Despite the need for equal access to mentoring, most outsiders are not given such opportunities. In management positions, outsider groups such as Black women struggle to find quality mentoring.<sup>61</sup> White women lack quality mentoring opportunities as they aspire to educational administrative positions.<sup>62</sup> African Americans continue to need quality mentoring to become and

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59. See *id.* at 616-17. While Kathy E. Kram suggests that the cultivation stage lasts from two to five years, it may be longer for people of color, especially Blacks who "may require visible and active support [from their mentors] much further into their careers . . . due to the existence of prejudices in the organization that tend to impede black mobility and places [Blacks] in the position of proving and re-proving their competence." David A. Thomas, *The Impact of Race on Managers' Experiences of Development Relationships (Mentoring and Sponsorship): An Intra-Organizational Study*, 11 J. ORGANIZATIONAL BEHAV. 479, 482 (1990).

60. See Georgia T. Chao, *Mentoring Phases and Outcomes*, 51 J. VOCATIONAL BEHAV. 15, 23-24 (1997).

61. See, e.g., Yolanda S. White, *Understanding the Black Woman Manager's Interaction with the Corporate Culture*, 14 W. J. BLACK STUD. 182, 185 (1990). See also Dykes, *supra* note 28, at 93 (discussing, among other things, the obstacles that Black women face in obtaining mentoring).

62. See, e.g., Scanlon, *supra* note 12, at 39.

remain college administrators.<sup>63</sup> Women, especially women of color, need mentoring in academia to obtain tenure.<sup>64</sup> New lawyers also need mentoring, although mentoring is generally provided along traditional race and gender lines such that white men are the race/gender subgroup most likely to be mentored.<sup>65</sup> Thus, regardless of the industry or job type, newcomers need mentors to help them learn about and advance within their institutions. Some newcomers are denied mentoring, however.

Because certain groups are outsiders, mentoring or patronage becomes crucial for them to access power. This has been particularly true for African American professionals. Indeed,

One of the ways African Americans associate with power is by acquiring a patron, or in some cases having a patron imposed on them. Patronage, seemingly a universal concept, has had some peculiar manifestations in African American history. It has been argued that patronage in the slave South was part of the slaveholder's paternalistic vision of himself as an "authoritarian father," and that Blacks shared or endorsed this vision

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63. See generally Carl R. Bridges, *The Characteristics of Career Achievement Perceived by African American College Administrators*, 26 J. BLACK STUD., 748, 759-60 (1996) (describing the mentoring that some college administrators received and provided, and showing that 54% of those who responded to the survey had mentors, but that 41% did not, and also showing that 71% believed a mentor was crucial or very important to their advancement to an administrative position). See also Kim Allen et al., *African American Women in Educational Administration: The Importance of Mentors and Sponsors*, 64 J. NEGRO EDUC. 409, 417 (1995) (describing the mentoring experiences of Black women who are educational administrators, and noting that 3 out of the 8 who responded specifically on mentoring noted that they had never had a mentor).

64. See, e.g., Sharon R. Bowman et al., *Developmental Relationship of Black Americans in the Academy*, in MENTORING DILEMMAS: DEVELOPMENTAL RELATIONSHIPS WITHIN MULTICULTURAL ORGANIZATIONS 21-46 (Audrey J. Murrell et al. eds., 1999); Christy Chandler, *Mentoring and Women in Academia: Reevaluating the Traditional Model*, 8 NWSA J., Fall 1996, at 79-100; Janice Schoen Henry et al., *A Formal Mentoring Program for Junior Female Faculty: Description and Evaluation*, 56 INITIATIVES, 1994, at 37.

65. For excellent commentary on mentoring among lawyers, see Desha Jackson & Peter Tu, *Why Aren't There More Minority Partners?*, N. J. L. J., May 25, 1998, at 24, 24-25 (reporting that there are so few minority partners in New Jersey law firms because associates lack quality assignments, mentors, and opportunities to develop business opportunities, all of which are necessary to become a partner), G. Melton Mobley et al., *Mentoring, Job Satisfaction, Gender and the Legal Profession*, 31 SEX ROLES 79 (1994), David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 496, 565-70 (1996) (discussing the importance of mentoring, as well as the barriers to mentoring that Black lawyers face in corporate law firms), and Kate Marquess, *Diversity '99: Mentoring: The Key to Recruitment and Retention of Women, Minorities*, CHICAGO LAWYER, May 1999, at 4 (highlighting the importance of mentoring for new lawyers and for lawyers making their way through the practice of law).

— ideas perhaps impossible to verify in the context of slavery. Whether the active or the passive interpretation more accurately describes the interaction between African Americans and whites, patronage is part of the history of race relations in this country.<sup>66</sup>

In the United States, patronage will continue to be important for African Americans because of the outsider status race and gender require in a racialistic society.<sup>67</sup>

Patronage is, therefore, the sharing of power with novices who are not yet in power. Due to its hierarchical nature, mentoring is a form of patronage in which the powerful and connected mentor the powerless and unconnected. Mentoring also mirrors patronage because mentors also actively guide and coach protégés in an intimate relationship that mirrors a traditional familial relationship between father and child.

Mentoring, indeed patronage of any sort, will help Black professors, traditional outsiders within the legal academy, to overcome the presumption of incompetence held by others, the lack of credibility that Blacks suffer in general, and institutional isolation.<sup>68</sup> This is particularly true for Black women. "Black women have rarely been beneficiaries of support and help from their work colleagues . . . . Black women are the race and gender group that is least likely to receive mentoring from the highest status employers, namely white men."<sup>69</sup> In light of this, Black women's initial race, gender, and novice vulnerabilities do not diminish over time and in fact may be exacerbated due to the dearth of mentoring. This appears to be true because regardless of the context, Black women are having difficulties locating and

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66. Anita Faye Hill, *Marriage and Patronage in the Empowerment and Disempowerment of African American Women*, in RACE, GENDER AND POWER IN AMERICA: THE LEGACY OF THE HILL-THOMAS HEARINGS 277 (Anita Faye Hill and Emma Coleman Jordan eds., 1995) (footnote omitted). Given the similarities between mentoring and patronage, commentators have suggested that mentoring, advising, and patronage fall on a continuum, with mentoring being the "most intense and paternalistic" and role models being the least effective. See Eileen C. Shapiro et al., *Moving Up: Role Models, Mentors, and the "Patron System,"* SLOAN MGMT. REV., Spring 1978, at 51, 55 (stating that sponsors and guides also fall on this continuum).

67. This is not to suggest that the author believes that Black people need to be subordinate to white people. Rather, this is to highlight the realities of the mentoring relationship and the outsider status that many Blacks continue to hold, which demands that they have vehicles to access power to ensure retention and promotion.

68. See *infra* Part III.B.1 (discussing the presumption of incompetence).

69. Janis V. Sanchez-Hucles, *Jeopardy Not Bonus Status for African American Women in the Work Force: Why Does the Myth of Advantage Persist?*, 25 AM. J. COMMUNITY PSYCHOL. 565, 571 (1997).

acquiring mentors. "Not only do women of color find it harder to get a mentor, . . . they also view an influential mentor as far more crucial [to success] than do white women executives . . ."70 In essence, Black women need mentors because they are race/gender outsiders,<sup>71</sup> but their very outsider status prevents trans-racial mentoring from occurring automatically. For instance, women executives who were polled cited the following as some of the most important factors in receiving a promotion:<sup>72</sup>

Race/Gender	Influential Mentor/Sponsor	Informal Networking with Influential Colleagues	High Visibility Projects
African American	47.0%	32.0%	54.0%
Hispanic	38.4%	29.6%	46.0%
Asian American	42.0%	34.5%	48.6%

Although these mentoring activities are presented in this chart and the study as if they are separate and distinct from mentoring itself, they are all related to the career functions that a mentor provides to a protégé such as informal networking opportunities, sponsorship, coaching, and high visibility assignments.<sup>73</sup> Thus, given these categories, Black women are career vulnerable because they are being denied high visibility assignments, informal networking, and influential mentoring by senior colleagues.

Despite the fact that most Black women reported that a mentor was crucial to their success, almost half of those who were surveyed reported that not having a mentor was a barrier to success.<sup>74</sup> This is the reality for many working Black women.

70. CATALYST, WOMEN OF COLOR IN CORPORATE MANAGEMENT: A STATISTICAL PICTURE 15 (1998) [hereinafter CATALYST, A STATISTICAL PICTURE].

71. See *supra* note 2 (defining outsiders).

72. See CATALYST, WOMEN OF COLOR IN CORPORATE MANAGEMENT: DYNAMICS OF CAREER ADVANCEMENT 9 (1998) [hereinafter CATALYST, DYNAMICS OF CAREER ADVANCEMENT]. But see Gail M. McGuire, *Do Race and Sex Affect Employees' Access to and Help from Mentors? Insights from the Study of a Large Corporation, in MENTORING DILEMMAS: DEVELOPMENTAL RELATIONSHIPS WITHIN MULTICULTURAL ORGANIZATIONS* 105–20 (Audrey J. Murrell et al. eds., 1999) (concluding that white women and people of color have similar access to help and mentoring as white women).

73. See generally Kram, *supra* note 20, at 613–14 (reporting that the career function of mentoring includes these activities).

74. See CATALYST, DYNAMICS OF CAREER ADVANCEMENT, *supra* note 72, at 10.

They are denied mentoring and the positive benefits of being mentored. As a result, they are less likely to be retained or promoted on par with their peers.<sup>75</sup> Because of this, Black women, as a whole, continue to occupy low level and low paying positions, regardless of industry and education.<sup>76</sup> This is particularly true for Black women in legal academia, where the dearth of Black women at the senior level demonstrates that Black women in legal academia are not receiving substantive mentoring. The following chart lists the positions of Black women in legal academia for the 1997-98 academic year.<sup>77</sup>

Administrative and/or Faculty Position	Number of Black Women	Percentage of Black Female Law Teaching Population
Deans	1	7.1%
Associate Deans, without Professor Title	2	3.2%
Associate Deans, with Professor Title	4	5.7%
Assistant Deans, without Professor Title	21	11.5%
Assistant Deans, with Professor Title	0	0.0%
Professors (with tenure)	66	8.1%
Associate Professors	89	17.8%
Assistant Professors	46	15.4%
Visiting Professors	6	10.9%
Lecturers and Instructors	25	9.3%

The above numbers reveal that Black women do not fare any better obtaining senior positions in legal academia than in other industries.

To ensure that professionals of color are retained and promoted, mentoring must move beyond natural or automatic selec-

75. See generally Bureau of Labor Statistics, U.S. Department of Labor, *Facts on Working Women, Black Women in the Labor Force* (visited June 1, 1999) <[http://www.dol.gov/dol/wb/public/wb\\_pubs/bwlf97.htm](http://www.dol.gov/dol/wb/public/wb_pubs/bwlf97.htm)> (reporting that as of 1996, there were only 1.6 million Black women in managerial and professional positions). See also U.S. CENSUS BUREAU, *STATISTICAL ABSTRACT OF THE UNITED STATES* 416 (1995) (reporting that as of 1994, there were only 1,297,000 Black women, regardless of education, in managerial and professional positions).

76. See Pamela J. Smith, *Part II — Romantic Paternalism — The Ties that Bind: Hierarchies of Economic Oppression that Reveal Judicial Disaffinity for Black Women and Men*, 3 J. GENDER, RACE & JUST. Part II.B (1999) (discussing the continued economic exploitation of Black women).

77. Association of American Law Schools, *Statistical Report on Law Faculty and Positions for Law Faculty Positions: 1997-98*, at Table 1B (visited July 1, 1999) <<http://aals.org/statistics/tlb9798.html>>.

tion because such informal social opportunities only favor white men. With people of color still facing numerous social and institutional barriers, institutions must aggressively create opportunities designed to facilitate interaction between junior professionals of color and senior white male colleagues. Otherwise, the “[s]tudies show that informal mentoring relationships usually develop between senior and junior colleagues who have much in common, because people tend to seek out younger versions of themselves when imparting their wisdom and experience.”<sup>78</sup> It should not be too difficult to understand that those senior white colleagues, regardless of gender, will automatically informally mentor those who share the same race and gender. Similarly, senior white colleagues, regardless of gender, will automatically mentors those who are like them due to social barriers like race and gender discomfort, the presumption of incompetence, and negative behavior myths.

The white male senior faculty member seldom sponsors white women and almost never serves as a mentor to black women . . . . [R]esearch indicates that a mentor chooses a protégé who is most similar to him in physical attributes, values, and personal characteristics. Black women, who are so physically and culturally different from white males, stand little chance of benefiting from [informal] sponsorship [and mentoring] in academia.<sup>79</sup>

Black women are distinct from senior white colleagues because of race and/or gender. While they are different from white males based upon race and gender differences, they are also distinct from many white women because of race. These race and/or gender differences create barriers to automatic mentoring that cannot be overcome unless institutions exert considerable effort to equalize Black women’s access to senior white colleagues.

Due to the autonomous nature of academic jobs in particular, mentoring is essential because “[m]entoring new faculty members can make or break their academic careers.”<sup>80</sup> Ideally,

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78. Alger, *supra* note 12, at 71.

79. Jacqueline Jordan Irvine, *The Black Female Academic: Doubly Burdened or Doubly Blessed?*, in *STEPPING OFF THE PEDESTAL: ACADEMIC WOMEN IN THE SOUTH* 109, 115 (Patricia A. Stringer & Irene Thompson eds., 1982); *see also* MULTICULTURAL WOMEN ATTORNEYS NETWORK, *THE BURDENS OF BOTH, THE PRIVILEGES OF NEITHER* 30–31 (1994) (noting that white men may mentor everyone but a woman of color because “after all, white women look like their mothers, sisters and wives and minority men can at least use the same locker room. But white males have nothing in common with women of color.”).

80. C. Aisha Blackshire-Belay, *The Status of Minority Faculty Members in the Academy*, *ACADEME*, July-Aug. 1998, at 30, 33; *see* Wyche & Frierson, *supra* note

senior colleagues, regardless of race, will actively reach out to informally mentor Black junior colleagues. Unfortunately, trans-racial and transgendered mentoring does not occur automatically between Black women and senior colleagues who do not share their race and/or gender. Due to race/gender differences, there are many social barriers that prevent mentoring from occurring automatically between Black women and senior white colleagues. Some are explored below.

## B. *The Social Barriers to Mentoring Black Women*

### 1. *The Presumption of Incompetence as a Barrier to Mentoring*

Mentoring and other forms of patronage will remain an important part of the future of this country as African Americans seek level playing fields in all professions and all industries. This is particularly true in academia due to the presumption of incompetence that negatively impacts most professors of color.<sup>81</sup> Due to the presumption of incompetence, professors of color face

a predisposition to assess minority performance in a negative or hypercritical fashion, an intolerance for even small mistakes committed by minorities, [and] a proclivity toward denying minorities the deference or presumption of competence normally accorded to white male law professors. [In essence, they face a]n anti-minority mindset, . . . a set of negative biases held against minorities either consciously or unconsciously.<sup>82</sup>

Whether consciously or unconsciously held, the presumption of incompetence determines the extent to which professors of color will be mentored. Mentoring to overcome the presumption of incompetence is a necessary part of the survival and success of

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13, at 990 (stating that without a mentoring relationship new faculty's professional development is severely hampered).

81. See Derrick A. Bell & Richard Delgado, *Minority Law Professors' Lives: The Bell-Delgado Survey*, 24 HARV. C.R.-C.L. L. REV. 349, 349 (1989); Derrick A. Bell, *Diversity and Academic Freedom*, 43 J. LEGAL EDUC. 371, 377 (1993) (opining that the minority presumption of incompetence is the most difficult challenge professors of color face and setting forth one author's experience at Stanford in 1986 where his different teaching style was interpreted by students to mean that he was incompetent; his Stanford colleagues, instead of supporting this nationally renowned Black professor, supported the minority presumption of incompetence); see also Albert T. Quick & Kent Lollis, *Retention of Minority Professors: Dealing with the Failure to Presume Competence*, 10 ST. LOUIS U. PUB. L. REV. 361, 363 (1991).

82. Roy L. Brooks, *Anti-Minority Mindset in The Law School Personnel Process: Toward an Understanding of Racial Mindsets*, 5 L. & INEQ. J. 1, 2-3 (1987) (footnote omitted).

professors of color as they interact with students and colleagues.<sup>83</sup>

The presumption of incompetence acts as an inflexible barrier to mentoring because it allows society to make a blanket and nearly inflexible determination about who is competent and who is incompetent.<sup>84</sup> Unfortunately, the determination of who is incompetent disproportionately affects Black people, especially Black women. While “[i]t is a blatant example of racism or sexism to assume that anyone not like you must be incompetent and, conversely, anyone who is like you must be competent,”<sup>85</sup> this assumption forms a reality for Black women as they interact with white colleagues on the job. In fact, the presumption of incompetence negatively impacts outsiders, namely white women, Black people, and other minorities, regardless of industry.<sup>86</sup> Black women face intellectual denigration because the gendered presumption of incompetence is exacerbated by the race-based presumption of incompetence and vice versa.<sup>87</sup> For white women or Black people the presumption of incompetence is egregious. Due to the intersection of race and gender, however, the presumption of incompetence is particularly harmful for Black women.

Throughout the past three and a half centuries, America’s black women have been perceived primarily as sexual beings who have no modesty, virtue, or intelligence, and little claim to respect or power. Characterized by an “image of mindlessness,” . . . and “belonging to two groups historically labeled as intellectually inferior—women and blacks—[African American women] continue to find their intellectual capabilities doubly discredited.”<sup>88</sup>

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83. See Smith, *When Sapphire Meets Socrates*, *supra* note 4, at Part III (discussing the presumption of competence and incompetence that is race-gender based).

84. See *id.* (showing how older white men are presumed to be the most competent, followed by younger white men, white women, men of color, and women of color).

85. Don Williamson, *Racism Lurks in ‘Presumption of Incompetence’*, SEATTLE TIMES, April 12, 1992, at A10 (discussing how the general public presumes that Blacks are incompetent whenever they assume “high-level or even mid-level positions”).

86. See generally Smith, *When Sapphire Meets Socrates*, *supra* note 4, at Part III.

87. See *id.*

88. Adele Logan Alexander, “*She’s No Lady, She’s A Nigger*”: *Abuses, Stereotypes, and Realities from the Middle Passage to Capital (and Anita) Hill*, in RACE, GENDER AND POWER IN AMERICA: THE LEGACY OF THE HILL-THOMAS HEARINGS 3, 5 (Anita Faye Hill and Emma Coleman Jordan eds., 1995); see also ABA COMM’N ON WOMEN IN THE PROFESSION, UNFINISHED BUSINESS: OVERCOMING THE SISYPHUS FACTOR: REPORT ON THE STATUS OF WOMEN IN THE LEGAL PROFESSION 6



Because of this specific race/gender intellectual marginalization, Black women must bear the effects of others disrespecting and discounting their intellect on a daily basis.

In our society African American women must face the presumption of incompetence every day. It doesn't matter what credentials we bring to the table — degrees, experiences, letters of recommendation, and so on; there is little or no exemption from the presumption. We live with the insulting notion that we are a mistake or a quota project of sorts. We are presumed incompetent until we walk on water, and then we hear it's because we don't know how to swim or we are too intimidating or aggressive. In the meantime, others are presumed competent until they show otherwise, and then they have the luxury of forgiveness.<sup>89</sup>

Thus, the presumption of incompetence that burdens Black women is unforgiving and inflexible despite Black women's actions or actual qualifications.

Given the existence of the presumption of incompetence and its prevalence in society, Black women will not be automatically selected by mentors. In fact, the presumption of incompetence will act as a powerful barrier to prevent Black women from interacting successfully with colleagues to create rich mentoring relationships.<sup>90</sup> After all, mentors generally choose to mentor someone who represents a younger version of themselves or someone they believe they can assist to succeed. It is highly unlikely that a potential mentor will think that a younger version of himself is a person who he believes or perceives to be incompetent. Most senior people simply are not likely to believe that they are on the negative side of the presumption of incompetence. Further, it is unlikely that a potential mentor will waste any time or effort on a person he believes to be so incompetent

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(1995) (reporting that "even though certain assumptions of incompetence or weakness are leveled at women generally, or at minority males, neither group has to weather both sets of stereotypes the way multicultural women do"); Mary-Christine Phillips, *Free Speech? People are Paying Top Dollar to Hear Others Talk*, BLACK ISSUES IN HIGHER EDUC., Apr. 20, 1995, at 8, 15 (stating that "Black women have been seen as all body, no mind") (quoting bell hooks, *Black Woman Intellectual*, in *BREAKING BREAD: INSURGENT BLACK INTELLECTUAL LIFE* (bell hooks & Cornel West eds., 1994)).

89. Jetola E. Anderson, *Presumption of Incompetence*, in *SISTER TO SISTER: DEVOTIONS FOR AND FROM AFRICAN AMERICAN WOMEN* 7, 7 (Suzan D. Johnson Cook ed., 1995).

90. See Linda S. Greene, *Tokens, Role Models, and Pedagogical Politics: Lamentations of an African American Female Law Professor*, 6 BERKELEY WOMEN'S L.J. 81, 86-87 (1990-91) (discussing the presumption of incompetence that binds Black female academics).

that she cannot be assisted to achieve success. If one's entire group is deemed unintelligent or incompetent, Black women are not going to be "coached, counseled, pushed and supported into senior ranks"<sup>91</sup> because those who generally coach, counsel, push, and support believe that Black women are inflexibly incompetent. In essence, Black women will not be automatically selected by potential mentors because the presumption of incompetence concludes that Black women cannot be successfully mentored, i.e., they cannot benefit from mentoring. It is no wonder, then, that Black women constitute the group least likely to be mentored while viewing mentoring as absolutely crucial to their success.<sup>92</sup> The presumption of incompetence, therefore, affects whether Black women will be able to find a mentor automatically or with relative ease, either through their actions or the actions of the mentor.

The presumption of incompetence is a societal phenomenon. It affects all Black women and unfortunately informs all potential mentors. If mentoring is ever to occur between Black women and potential mentors, the effects of the presumption of incompetence on how mentors select protégés must be recognized and addressed. This is where formal programs that facilitate interaction between Black women and senior colleagues can help create opportunities for Black women to initiate mentoring with senior colleagues. After all, with a mentor or a patron to attest to their competence or potential within an organization, Black women have an opportunity to destroy or minimize the presumption of incompetence in one environment or an entire industry.

Another social barrier that prevents Black women from initiating mentoring relationships is the Sapphire myth. By perceiving Black women as loud, argumentative, aggressive, bitchy, stubborn, and quick tempered, society considers Black women as Sapphires if not in name, then in deed.<sup>93</sup> Just as the presumption of incompetence inflexibly determines whether Black women will be mentored by casting aspersions at their intelligence, the Sapphire myth acts as a barrier to prevent mentoring from occurring by casting aspersions at Black women's behavior.

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91. Davar, *supra* note 1, at 42 (quoting Peggy Nagae).

92. See *supra* notes 75–80 and accompanying text (discussing the importance of mentoring to Black women but revealing the reality that Black women are being denied mentoring).

93. See *infra* Part III.B.2 (discussing the Sapphire myth as a barrier to mentoring).

## 2. The Sapphire Myth as a Barrier to Mentoring

Sapphire was the sarcastic fictional character in the *Amos 'n' Andy* show who was constantly denigrating those around her.<sup>94</sup> But today Sapphire is more than the specific character in *Amos 'n' Andy*. Sapphire has come to mean any Black woman who is perceived as threatening, intimidating, angry, and unintelligent. Indeed,

Sapphire [is] a more generally employed appellation for the stereotypical BLACK BITCH—tough, domineering, emasculating, strident and shrill. Sapphire is the sort of person you look at and wonder how can she possibly stand herself. All she does is complain. Why doesn't that woman shut up?<sup>95</sup>

Others have agreed with the generalized nature of the modern appellation of Sapphire — none are positive. One commentator defined Sapphire as “the wise-cracking, balls-crushing, emasculating woman, [who] is usually shown with her hands on her hips and her head thrown back as she lets everyone know who's boss.”<sup>96</sup> Another characterized Sapphire as “devoid of maternal compassion and understanding [as well as] tough, efficient, and tireless.”<sup>97</sup> Sapphire is perceived in such a negative light that one commentator has labeled her “Sinister Sapphire.”<sup>98</sup> As such, Sapphire is described as “nagging, shrewish, castrating, dangerous and ‘treacherous toward and contemptuous of black men.’”<sup>99</sup> These types of negative generalizations about Sapphire coincide with the stereotypes about Black women in general. Sapphire is in effect a Black woman.

When white female undergraduates were polled in the early 1980s, they “reported their belief that society regards Black women as more dirty, hostile, and superstitious than white women.”<sup>100</sup> These negative portrayals of Black women have not

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94. See generally Austin, *supra* note 9, at 542.

95. *Id.* at 539–40.

96. Marilyn Yarbrough, *Cassandra and the 'Sistahs': The Peculiar Treatment of African-American Women in the Myth of Women as Liars*, 3 J. GENDER, RACE & JUST. — (forthcoming Winter 1999).

97. DEBORAH GRAY WHITE, *AR'N'T I A WOMAN? FEMALE SLAVES IN THE PLANTATION SOUTH* 166 (1985).

98. See Shelby A.D. Moore, *Battered Woman Syndrome: Selling the Shadow to Support the Substance*, 38 HOW. L.J. 297, 333–35 (1995) (discussing how Black women are perceived as either Sinister Sapphire or the Black Amazon).

99. Vernetta D. Young, *Gender Expectations and Their Impact on Black Female Offenders and Victims*, 3 JUST. Q. 305, 308 (1986).

100. Rose Weitz & Leonard Gordon, *Images of Black Women Among Anglo College Students*, 28 SEX ROLES, 19, 26 (1993) (citing a 1985 study by Landrine).

changed with time.<sup>101</sup> For example, in 1991, when over 400 sociology students<sup>102</sup> at Arizona State University were asked to rate the perceived characteristics of Black women and other women (*i.e.*, white women), the results fell along traditional stereotypical lines, with Black women being perceived as loud, aggressive, quick tempered, bitchy, and talkative, among other negative traits,<sup>103</sup> as evidenced below:<sup>104</sup>

Black women (n=236)	Percent Polled
Loud	38
Talkative	23
Aggressive	22
Intelligent <sup>105</sup>	22
Straightforward	18
Argumentative	14
Stubborn	14
Quick-tempered	12
Bitchy	11
Too many Children	11

These characteristics individually and collectively define all Black women as Sapphires. In fact, this caricature of the dominating, threatening Black woman is one which has historically

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101. The negative stereotypes about Blacks as a group have also not changed. According to a study about student stereotypes and personal perceptions about Blacks, there has been little positive progress since the 1930s in how Blacks are negatively stereotyped. See Patricia G. Devine & Andrew J. Eliot, *Are Racial Stereotypes Really Fading? The Princeton Trilogy Revisited*, PERSONALITY & SOC. PSYCHOL. BULL., Nov. 1995, at 1139–50.

102. According to the author of the study, those polled represented students from all over the country, not differing greatly from similarly situated undergraduate students nationwide. The study polled 406 undergraduates. Almost 80% responded. Of those, 55% were male, 45% were female, 96% were under 25 years of age, 2% were Black, 3% were Asian, 8% were Hispanic, 1% was American Indian, and 84% were white. See Weitz & Gordon, *supra* note 100, at 23.

103. See *id.* at 20–21; see also Faye Gary-Harris, *Racial Myths and Attitudes among white Female Students at the University of Florida*, in STEPPING OFF THE PEDESTAL: ACADEMIC WOMEN IN THE SOUTH 99 (Patricia A. Stringer & Irene Thompson eds., 1982) (exploring white females' attitudes and myths, primarily about Black women in 1980); Anita L. Allen, *On Being a Role Model*, 6 BERKELEY WOMEN'S L. J. 22, 37 (1990–1991) (opining that “black women, like black men, are often presumed to be at the bottom of the intellectual heap”).

104. Weitz & Gordon, *supra* note 100, at 20–21.

105. This intelligence selection for Black women was 23 percentage points lower than the intelligence selection for white women. See *id.* Therefore, Black women are considered much less intelligent than white women.

saturated both the popular and scholarly literature.<sup>106</sup> Thus, when ninety-five percent of the students surveyed above described Black women as threatening, they were in fact finding the Sapphire in all Black women.

The Sapphire myth is relevant here because though there was some diversity provided in the answers to the above study, 95% of all those who responded to the survey characterized Black women as threatening, which forms the heart of the Sapphire myth.<sup>107</sup> Further, all of the characteristics attributed to Black women cast aspersions at their behavior. None of these characterizations of Black women bode well for those Black women who desire to seek and obtain a mentor. They will negatively impact a Black woman who attempts to actively obtain a mentor by asking a senior colleague to be a mentor because her request may be perceived as unduly aggressive and threatening. After all, if aggressiveness is perceived as intimidating or threatening, then whatever actions a Black woman takes to obtain a mentor may solidify the image of her as angry, aggressive, intimidating and threatening — in essence a Sapphire. Since threatening forms the heart of how Black women are perceived, then this threatening image acts as a powerful barrier that may ultimately preclude transracial interactions from occurring between Black women and many senior white colleagues, regardless of gender.

In addition to the threatening and intimidating behavior characteristics, Black women are also perceived as being angry. In fact,

Encompassed in the image of the African American woman as the Sinister Sapphire and the Amazon is the "angry black woman." Dr. Walker indicates that many whites commonly view African American women as angry. They fear black anger. They may also perceive many normal African American cultural modalities, such as speech patterns and gestures, as signs of anger which they interpret as personally threatening to them.<sup>108</sup>

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106. See Patricia Bell Scott, *Debunking Sapphire: Towards A Non-Racist And Non-Sexist Social Science*, in ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE 85, 85 (Gloria T. Hull et al. eds., 1982).

107. See Weitz & Gordon, *supra* note 100, at 27; see also Nancy S. Ehrenreich, *O.J. Simpson and the Myth of Gender/Race Conflict*, 67 U. COLO. L. REV. 931, 941 (1996) (noting that Black women are considered "dominating, promiscuous, and irresponsible").

108. Moore, *supra* note 98, at 334 (citing and quoting LENORE E. WALKER, *TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* 206, 206-18 (1989)).

This anger characterization also acts as a barrier to Black women obtaining a mentor because a mentor may fear and avoid this presumed anger and because mentors presumably select those who are not emotionally risky, given the intimate relationship between the mentor and the protégé. A person whose facial expression, mode of speech, and gestures are considered to be angry may be too risky for a potential mentor to initiate a relationship. Further, the perception that a person is angry will also impact whether a relationship, once initiated, will progress to the cultivation stage of mentoring. The bottom line is that mentors are not going to mentor people they fear due to the perception that the potential protégé is easily enraged, or who they perceive is intimidating or threatening.

In addition to these Sapphic behavioral characteristics that hinder mentoring relationships, Black women generally are presumed to not need help and assistance from others.

### 3. The Superwoman and Black Amazon Myth as a Barrier to Mentoring

Inherent in the Sapphire myth is the conclusion that Black women are “tough, efficient, and tireless.”<sup>109</sup> Given this, Black women are treated as Black Superwomen or indomitable Black Amazons.<sup>110</sup> Due to their tirelessness, courage, and efficiency, Amazons and Superwomen do not need help from others to facilitate their success. Given this tirelessness component of the Sapphire myth, presumably all a Black woman needs to do is to exert more personal effort and for a longer period of time to attain the success she desires. Given Sapphire’s propensity to work tirelessly, efficiently, and alone, she neither needs nor requires assistance from others. The Black Superwoman and Black Amazon components of the Sapphire myth, therefore, allow senior colleagues to assume that Black women will survive and excel without their assistance despite insurmountable odds and obstacles. Thus, when colleagues see Black women struggling against the odds or with these obstacles, they are less likely to provide assistance, believing that all she needs to do is become the tireless and indomitable Superwoman or Black Amazon to succeed. This is particularly true in academia.

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109. WHITE, *supra* note 97, at 166.

110. See Moore, *supra* note 98, at 333–35.

The black female academic is plagued by the stereotype of the strong, independent, sometimes verbally abusive matriarch. The presumption is that she is equipped with extraordinary survival skills that enable her to single-handedly manipulate her hostile environment. This stereotype, linked with overt and covert prejudice and hostility, results in the exclusion of the black female faculty member from sponsorship, aid, and formal and informal avenues of professional communication.<sup>111</sup>

Accordingly, because Black women are perceived to be tireless Superwomen and Amazons, they are perceived as not needing the mentoring, coaching, sponsorship, and protection that mentoring provides. Coupled with the behavioral characteristics that portray Black women as angry and threatening, senior white colleagues can comfortably and erroneously believe that if they offer help to a Black Superwoman or an Amazon, she may become offended and unleash her anger at them, thereby threatening and intimidating even her senior colleagues.

Mentoring presupposes that the protégé is a novice, in need of help, and will accept the assistance of senior colleagues when it is offered. All behavioral components of the Sapphire myth, however, present obstacles to Black women being perceived as women in need of assistance and who are flexible enough to accept help if and when it is offered.

Additionally, the negative behavioral characteristics inherent in the Sapphire myth allow whites to generalize about Black women. It eliminates the need for them to ascertain whether individual Black women possess the characteristics of bitchiness, aggressiveness, quick temperedness, sarcasm, tirelessness, and incompetence. It allows senior white colleagues, regardless of gender, to inflexibly assume that a Black woman is too risky to mentor because of her presumed negative behavior and lack of intelligence. After all, who wants to mentor a person who is likely to go off at a moment's notice because of her quick temperedness, who is always complaining and bitchy, who is unnecessarily aggressive and demanding, who is angry, who is likely to be unintelligent, and who is sarcastic? Given the fact that Black women are not receiving mentoring regardless of industry but especially in legal academia,<sup>112</sup> apparently few, if any, white colleagues are comfortable enough or courageous enough to mentor Black women perceived as angry, sinister Sapphires.

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111. Irvine, *supra* note 79, at 114-15.

112. See *supra* notes 75-80 and accompanying text.

Thus, the Sapphire myth, coupled with the presumption of incompetence, acts as a near insurmountable obstacle for African-American women who need and desire mentoring from senior white colleagues, regardless of gender.

#### 4. Race/Gender Discomfort as a Barrier to Mentoring

Many Black women who have written about their experiences in academia indicate that transracial social interactions within their institutions remain problematic due to race/gender discomfort that acts as a barrier to mentoring. In academia, as is the case in most industries, there is a gendered aspect to exclusion from social interactions.

The thread running through many of the stories that women told was a sense of disconnectedness. Frequently female faculty were not invited to go out to lunch or drinks after work, or included in other important venues for informal communication. With many of the informal networks precluded, women have greater difficulty in acquiring information about the department and informing the department about their own activities, research in particular. Without accurate information, the individual is likely to be less attuned to departmental politics, needs, and goals, while the department and institution, in turn, are likely to make judgments based on limited data and to rely more heavily (if unconsciously) on preconceptions and stereotypes.<sup>113</sup>

Information regarding promotion and the institutional culture are shared among those at these informal gatherings. If Black women are denied the opportunity to informally interact they miss out on crucial information, which in turn negatively impacts promotion opportunities. Further, without having some contact with Black women, senior colleagues, many of whom are white, rely on the presumption of incompetence and negative myths to determine if Black women are worthy of promotion, mentoring, and information. My experience is perhaps indicative of the experiences of many Black women who face institutional isolation, invisibility, and a dearth of information when excluded from informal gatherings.

At BCLS, like many Black female professionals, I experienced a race/gender disconnect with many senior white colleagues, regardless of gender. Unlike my white male and white

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113. Deborah Olsen et al., *Women and Minority Faculty Job Satisfaction: Professional Role Interests, Professional Satisfactions, and Institutional Fit*, 66 J. OF HIGHER EDUC. 267 (May 1, 1995).



female colleagues, I am not invited to many outings.<sup>114</sup> I am not invited by white male colleagues to play tennis, golf, basketball, hand ball, or any sport. Nor am I regularly invited to coffee or lunch with many white colleagues, regardless of gender. Indeed, I would bet that most white men (and perhaps many white women) are not comfortable going to lunch alone with me — an educated Black woman perceived to be a Sapphire.<sup>115</sup> As a “precautionary” measure someone else has to come along.

For instance, at BCLS, faculty meetings were and are generally held on Fridays. During my first year of teaching in 1995, I had a conflict every Friday; I had a class and needed to prepare. As a result, I missed just about every meeting and missed what I thought were many valuable opportunities to bond with many colleagues (since I have no other opportunities to interact with colleagues regardless of race or gender). During my second year at BCLS, I decided to make much more aggressive and concerted efforts to have lunch with each white colleague I had not gotten to know the year before.<sup>116</sup> The first senior white male colleague I invited called a white female peer and wanted to know why I wanted to have lunch with him. I guess he needed to ascertain my motive or agenda for lunch and did not feel comfortable asking me directly. He, I assume, needed an interpreter, here a white female colleague, one who could tell him about this *threatening* Black woman.<sup>117</sup> I guess he felt comforted since we actu-

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114. This invisibility regarding invitations to social outings and social mentorings seem indicative of many Black women's experiences. See, e.g., Yanick St. Jean & Joe R. Feagin, *Racial Masques: Black Women and Subtle Gendered Racism*, in *SUBTLE SEXISM: CURRENT PRACTICE AND PROSPECTS FOR CHANGE* 179, 196–97 (Nijole V. Benokraitis ed., 1997) (describing a Black female professor's exclusion from social outings outside of the work environment and quoting the professor as stating “they haven't been unfriendly, but they certainly haven't taken it upon themselves to welcome me or anything else. I've been waiting around a long time.”).

115. See Gloria T. Hull, *I'm Not Shouting 'Jubilee': One Black Woman's Story*, in *ROCKING THE BOAT: ACADEMIC WOMEN AND ACADEMIC PROCESSES* 57, 58–59 (1981) (discussing how she does not attend lunches, among other activities, with her colleagues).

116. I did not know that aggressiveness for Black women is perceived as negative, further solidifying the perception that aggressive Black women are considered that much more like Sapphires. See *supra* Part III.B.2–3 (discussing the Sapphire myth as a barrier to transracial mentoring).

117. There is a risk of being “close” to a white female colleague. The closeness allows her to be your official “interpreter” to senior white colleagues, encouraging them to talk to her about you instead of talking directly to you. After all, why talk to you when they can talk to someone they feel much more comfortable with based upon shared race or shared race/gender?

ally had lunch, although at the last minute he invited others along.

The second white male colleague ensured that we ate lunch in the faculty lounge. In fact, he insisted on it. Further, although I had offered him a range of days and times on our appointed date, he stated that he would have to leave very early. However, when we arrived in the lounge and many other senior white men were present, he stayed well past the time at which he initially stated he had to leave. Yet, we were never “alone” and I did not have a chance to ask him about his interests or to ascertain if we had anything in common. Further, the senior white colleagues talked amongst themselves. I was entirely excluded from the conversation, except as a silent audience member.

Neither incident created an opportunity for transracial/transgendered bonding. Both showed the existence of some race/gender discomfort. After the second lunch, I realized that some of my colleagues were very uncomfortable socially interacting with me, especially alone. There are exceptions, but those who are generally uncomfortable appear to be the norm. In order to ensure my continued psychic health, I discontinued my requests for lunches.<sup>118</sup> I was rarely invited by white colleagues and therefore I had few opportunities to informally interact with senior colleagues. As a result, much of the information and opportunities that were provided informally to my similarly situated white male and female colleagues were never provided to me or provided in an untimely manner.

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118. In the Spring of my third year (1998), I went on research leave. I visited a law school in the Midwest as a visiting scholar and felt generally welcomed. I was invited to lunch with colleagues, regardless of race and gender. Although there were some people not as forthcoming, generally most of the people there were very welcoming. Additionally, I was a Visiting Law Fellow at St. Hilda's College of Oxford University. Like my Midwest experience, people were open, friendly, and welcoming. Based on the positive nature of this experience, I decided that when I returned to my BCLS environment, I would work harder at establishing closer relationships with my colleagues, Black, Asian, Hispanic, and white, male and female. In preparation for this, while at Oxford, I sent travelogues to people, nice chatty e-mails about what I had done, was doing, and intended to do. Additionally, I sent individual e-mails to just about every colleague inviting him or her to lunch, coffee, or tea. This second attempt at getting to know people via social interactions was somewhat more successful. I do not know to what I should attribute the success. Perhaps my prestige had increased, diminishing the presumption of incompetence, due to the fact that I had been at Oxford. Despite this, I had more teas, lasting 15-20 minutes, than I had lunches. I still did not receive many invitations from my colleagues to lunches, dinners, or other social events. They accepted my invitations to tea, but did not extend any of their own.

This is the reality for many Black women. Black women are provided little to no timely institutional information. In sharp contrast, white colleagues, especially those who are male, quickly hear and learn of opportunities, committee assignments, research leaves, coteaching opportunities, and many other institutional benefits in a timely and consistent manner, due to their consistent informal interactions with senior colleagues. The outsiders, especially Black females, will be the last to acquire this much needed information and access to institutional benefits.<sup>119</sup> This untimely access to information affects Black women's survival and success since it only increases chances for failure and the propensity to blame the person denied the information. Indeed, "[t]he slower the access [to information and opportunities], the more intense the victim-blaming-victim-thinking on the part of . . . [the] black woman."<sup>120</sup> This should be particularly true in those environments, like academia, where one's primary role is autonomous, without consistent qualitative interactions with others.

Unfortunately, due to the social barriers discussed above, Black women are not invited to many social events to interact with senior colleagues. Black women, therefore, have fewer opportunities to obtain much needed information and mentoring than are provided to similarly situated white colleagues. Black women have few opportunities to destroy or minimize the obstacles that the social barriers present. Thus, because of the social barriers, white colleagues are uncomfortable with Black women. Because of this race/gender discomfort, Black women do not interact regularly with senior colleagues. As a result, white colleagues remain hypercritical of, hypersensitive around, and uncomfortable with Black women, all of which negatively affects Black women's careers because of the dearth of information and opportunities provided informally. The presumption of incompetence, the Sapphire myth, and racial discomfort act as hidden barriers to initiating automatic informal mentoring between se-

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119. See Jesse Brinson & Jeffrey Kottler, *Cross-Cultural Mentoring in Counselor Education: A Strategy for Retaining Minority Faculty*, 32 COUNSELOR EDUC. & SUPERVISION 241, 245 (1993) (discussing the socio-cultural barriers that will preclude automatic transracial mentoring from occurring and concluding that one of the barriers is lack of access to information).

120. St. Jean & Feagin, *supra* note 114, at 195.

nior white colleagues and junior Black women.<sup>121</sup> Yet, even in the face of these realities, Black women who are denied mentoring encounter many people who advise that all Black women need to do is become more aggressive; Black women need only ask for a mentor in order for one to be provided. This advice, however, contains assumptions that need to be revealed.

##### 5. The Assumptions Behind the Advice to Find Your Own Mentor

Without giving credence to the reality that Black women face inflexible social and institutional barriers to mentoring, some uninformed individuals will continue to give Black women and other outsiders irrelevant and uninformed advice. The general advice given to those who lack but need mentors is “ask,” “be aggressive in seeking mentors,” “don’t simply wait around to be selected . . . select your own mentor.”<sup>122</sup> Behind the advice, however, appears to be the assumption that those who are not being mentored are simply not trying hard enough to be mentored. This advice assumes that merely asking for a mentor will overcome the barriers that the presumption of incompetence and negative stereotypes inherent in the Sapphire myth create.<sup>123</sup> This advice assumes further that institutions are not actively blocking mentoring relationships from beginning between Black women (or other people of color) and senior white colleagues (most of whom remain male). It assumes that senior white colleagues are interested and willing to mentor Black women if only someone would ask them. None of these assumptions are necessarily true.

By not addressing and critiquing these assumptions, institutions that do not provide mentors and colleagues who do not mentor are protected from scrutiny and critique. Further, by continuing to pay homage to these assumptions, we close our

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121. See also Dykes, *supra* note 28 at 105–07 (discussing, among other things, the obstacles that Black women face in obtaining mentoring). See generally Brinson & Kottler, *supra* note 119, at 244–46.

122. See, e.g., Jackson & Tu, *supra* note 65, at 24 (suggesting that minorities should be more aggressive in “connecting with” partners in their firm in order to initiate mentoring); Felicenne H. Ramey, *Mentoring: Its Role in the Advancement of Women Administrators in Higher Education*, BLACK ISSUES IN HIGHER EDUC., Oct. 21, 1993, at 116 (suggesting that women who desire mentors need to “actively seek” them).

123. See *supra* Parts III.B.1–3 (discussing the presumption of incompetence and the Sapphire myth).

eyes to the reality that mentoring begins at the behest of the mentor, not the protégé.<sup>124</sup> By paying blind homage to the assumptions of open and willing institutions and individuals, we also ignore and render invisible the individuals who ask for institutional assistance in creating transracial collegial relationships but who are ignored or denied this assistance. After all, sometimes a Black woman aggressively seeks a mentor. Sometimes a Black woman is actively and aggressively blocked from obtaining a mentor by institutional barriers. Sometimes Black women are blocked from participating in those activities where mentors can get to know them so that mentoring can be initiated. In essence, sometimes the myths and assumptions that are the foundation of the advice to be aggressive are simply not true.

Given the reality of Black women's professional lives, Black women are not being mentored despite this advice and despite their personal efforts. The social barriers of racial discomfort, the presumption of incompetence, and the Sapphire myth provide part of an explanation why Black women are being denied opportunities to initiate mentoring relationship with senior white colleagues. Institutional barriers, explored below, provide another part of the explanation.

#### IV. INSTITUTIONAL BARRIERS AND THE MANY WAYS OF FAILING TO MENTOR SAPPHIRE

Of course, "[i]n a world undivided along racial and gender lines, we would not have the occasion to ponder the relevance of race and gender to [Black women's] role[s] as *professors* of law."<sup>125</sup> Nor would we have to ponder the relevance of race and gender to Black women's ability to initiate quality transracial interactions with white colleagues. We would then not have to critique whether negative stereotypes and myths effect mentoring opportunities for Black women. Unfortunately, we live in a world that makes race and gender relevant to all interactions a Black woman has, which includes initiating mentoring relationships. Further, race/gender is supremely relevant to whether a person will face institutional barriers. After all, race/gender determines the extent to which one is presumed to be incompetent and the extent to which one is perceived as a negative stereotype.

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124. See Scanlon, *supra* note 12, at 43.

125. See Greene, *supra* note 90, at 81.

Due to the perception that Black women are angry, intimidating, threatening, and unintelligent, a Black woman faces powerful barriers to success as she relates to students.<sup>126</sup> She faces equally powerful barriers to success as she attempts to relate to colleagues, administrators, and staff. Indeed, just as the presumption of incompetence stifles Black women's opportunities for success with students,<sup>127</sup> it also stifles the opportunities for automatic transracial interactions with white peers. As an expected result of the presumption of incompetence, a Black woman faces several phenomena of hostility from students.<sup>128</sup> With her peers, however, she faces the phenomena of indifference and invisibility. The phenomena of indifference and invisibility are revealed in academia when colleagues do not mentor Black women on a daily basis, but instead promise support for her tenure with a positive vote years later. This type of passive support is an insurmountable institutional barrier because mentoring requires action, not inaction. Passive support is discussed below.

A. *Recognizing the Need for Active Mentoring to Integrate Black Women into the Institutional Environment*

Perhaps due to the social barriers of racial/gender discomfort, the Sapphire myth, and the presumption of incompetence, most white academics do not have close, intimate relationships with their Black female colleagues. That is certainly my experience at BCLS. Most of my colleagues are "nice." We had fairly pleasant "hi," "bye," and "how are you doing" relationships. Yet this form of surface cordiality and politeness is not sufficient to be called mentoring or support. A polite hello does not impose on an individual or an institution any moral, emotional, intellectual, or professional responsibility to ensure that there is equal information and resources. In essence, passive daily contact is not mentoring in any way, shape, or form. Mentoring involves active participation in another's career, on a day-to-day, month-to-month, year-to-year basis.

There is an emphasis upon action in mentoring. Mentoring cannot be reduced to telling or talking. The mentoring relationship assumes that its participants are located within the

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126. See Smith, *When Sapphire Meets Socrates*, *supra* note 4, at Part V (discussing the hostility Black women receive from students that result in hostile interactions and negative student evaluations).

127. See *id.*

128. See *id.* (discussing the phenomena of credential, appearance, authority, and evaluative hostility that Black women may face from white students).

same context, are acting within it, and that the actions of the mentor can serve as a model for the mentee. While the mentor may also talk about how to do this or that, talking is not enough. The mentor performs for the mentee, presents the mentee with a demonstration, rather than simply offering a commentary.<sup>129</sup>

None of this mentoring behavior is passive. Mentoring requires action and role modeling, showing a protégé how to survive and excel in a particular environment.

Many white academics, however, attempt to circumvent the active commitment requirements of true mentoring by promising their support for a Black female colleague by stating that they will positively vote for her tenure at some unknown point in the future. Colleagues who proclaim that their support will be there in the end via a positive tenure vote are not engaging in mentoring. Mentoring is not passive. Nor is it merely a vote in the end — some years later. A passive person who states that she may vote positively in the end (some three to six years in the future) may do very little positive action on a day-to-day, month-to-month, semester-to-semester, and year-to-year basis. Indeed, a passive person may do very little during the actual tenure process to ensure that others vote positively or to ensure a fair process. A passive person is also subjected to easily changing her mind when support is actually needed for that tenure vote at some point in the future. Support in the end is not enough. It is simply too tenuous, too passive, and comes too late.

Furthermore, rhetoric proclaiming tenure support can quickly become the opposite or acquiescence in discrimination practiced by others (or so I have learned recently as I sought tenure at BCLS). Passive support provides little loyalty and commitment on a day-to-day basis and provides little assurances of a vote or support during tenure. Without having developed actual loyalty and commitment to an outsider, white colleagues are simply too wedded to negative social stereotypes like the presumption of incompetence and the Sapphire myth to actually be supportive in the future. Thus, a promise of support during tenure may quickly become participation in or acquiescence to rank discrimination during the tenure process, leaving the Black woman unprotected, unsupported, and ultimately without tenure.

Moreover, one must survive to make it to the tenure vote at some point in the future. If one is emotionally destroyed during

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129. Bona et al., *supra* note 21, at 118.

the tenure process (either by students, colleagues, or both due to institutional bias, procedural irregularities during tenure, the presumption of incompetence, the Sapphire myth, and race/gender discomfort), one may never make it to the actual tenure vote.<sup>130</sup> If one is not assisted in building coalitions around tenure during one's formative years, then tenure becomes less likely each passing year.<sup>131</sup> Hence, for those outsiders who need active mentoring to survive and excel, having a passive will-vote-for-you-in-the-end white supporter, male or female, is as good as not having any supporters at all. Passive support is in effect a form of institutional and individual cowardice. It allows white colleagues to feel good momentarily by promising support, but does not impose any actual emotional or career obligations on them, which mentoring requires. Passive support of this type is an institutional barrier to mentoring because it offers liberal white colleagues an opportunity to provide a Black woman with feel-good rhetoric without imposing on themselves any responsibilities, actions, or obligations for true support. Passive support removes from white colleagues the emotional impetus to mentor someone who does not share their race and gender. Passive support removes from colleagues the moral responsibility to actually vote positively for tenure in the future. It creates an illusion of support based on words that are not supported by any particular action. Clearly, this passive support has not been successful in helping many Black women obtain tenure legal academia, given the low number of Black women who are currently tenured.<sup>132</sup>

Passive support by its very nature is the epitome of institutional and individual indifference because it presents few opportunities for critiquing existing power structures that are based upon racial and gender discomfort. Further passive support provides no opportunities to critique racial and gender discomfort

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130. I am working on an article that defines the type of hostile workplace environment in academia, taking into account student racial harassment and institutional nonresponsiveness that may violate Title VII of the Civil Rights Act of 1991. This work in progress is tentatively entitled, *The Denial before the Denial: Black Women and Revelations of Tenure Delays and Informal Denials as Violative of Title VII's Prohibition Against Hostile Workplace Environments*.

131. See generally Pamela J. Smith, *The Tyrannies of Silence of the Untenured Professors of Color*, 33 U.C. DAVIS L. REV. 1 (1999) (discussing how untenured professors of color are silenced by their institutions with a tenuous promise that one day they will seek tenure, but that this very silence makes tenure less likely).

132. See Association of American Law Schools, *supra* note 77 (reporting that there are currently 66 full and 89 associate female professors of color, presumably with tenure).



due to the presumption of incompetence and the Sapphire myth. In essence, passive support is "business as usual" where white males receive mentoring, information, opportunities, and tenure and Black women receive very little mentoring, very little information, and almost no positive career support. Passive support is an institutional and individual barrier to mentoring Black women because it requires no actual action or commitment either in the short-term or the long-term.

In addition to passive support, relying solely on senior professors of color to mentor junior professors of color is also an institutional barrier to mentoring. In order to truly invest in the retention of traditional outsiders, institutions must ensure that mentoring is an active institutional endeavor and not an "of color" endeavor imposed on senior faculty of color.

*B. Recognizing that Mentoring Junior Faculty of Color is an Institutional Responsibility and not an "Of Color" Responsibility*

In August 1996 the Association of American Law Schools (AALS) articulated a reasonable strategy for retaining professors of color.<sup>133</sup> It highlighted the importance of institutional patronage and mentoring for people of color:

Many faculties do not have senior minority faculty members, and many minority professors feel that they have few opportunities to work with their non-minority colleagues. The absence of mentoring opportunities for minority professors is particularly detrimental because they often have the greatest need for guidance and support; many minority faculty members confront special obstacles, ranging from racism among their students to feelings of isolation. Therefore, law schools should take an active role in establishing mentor relationships.<sup>134</sup>

The AALS urges law schools to take an active institutional role in helping professors of color initiate and cultivate mentoring relationships. It assumes, however, that institutions need to be actively involved in mentoring junior professors of color because many law schools do not have senior professors of color who will automatically mentor junior professors of color. Thus, if there is a senior professor of color, then mentoring a junior colleague

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133. *Retaining Faculty of Color*, AALS NEWSL., Aug., 1996, at 1.

134. *Id.* at 8; see also MULTICULTURAL WOMEN ATTORNEYS NETWORK, *supra* note 79, at 21, 29-31 (noting that minority female lawyers lack opportunities for mentoring).

should fall solely or primarily on that person since a mentor normally selects protégés who share his race and/or gender.<sup>135</sup> After all, “[s]tudies show that informal mentoring relationships usually develop between senior and junior colleagues who have much in common, because people tend to seek out younger versions of themselves when imparting their wisdom and experience.”<sup>136</sup> Accordingly, senior Black colleagues will seek out junior Black colleagues to mentor, senior Hispanic colleagues will seek out novice Hispanic colleagues to mentor, and senior white colleagues will seek out junior white colleagues to mentor.

Unfortunately, the suggestion that mentoring should only be an institutional endeavor when there are no professors of color ignores the realities of the lives of professors of color, regardless of seniority.<sup>137</sup> Mentoring and patronage must be an ongoing institutional endeavor. Institutions cannot rely *solely* or *primarily* on senior colleagues of color to mentor junior colleagues of color. Even if there is a senior minority faculty member or a critical mass of senior minority members who can act as primary mentors,<sup>138</sup> law schools also need to ensure that a new minority faculty member is integrated into the entire academic community and that she has every opportunity to interact with white colleagues. After all, junior professors of color must interact with the entire community, not just the “of color” community. White male professors remain the majority of senior professors and will remain a majority of those who will vote on tenure, promotion, and retention.<sup>139</sup> Thus, transracial mentoring must occur if institutions expect and desire to retain traditional outsiders like Black women.

Further, it is patently unfair to rely solely on senior professors of color to mentor new professors of color. After all, the same demands and presumptions that pull on a junior professor of color pull with more strength and frequency on a senior pro-

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135. See, e.g., Van Collie, *supra* note 27, at 36 (stating that “the research shows that if we let mentoring continue informally, then 85 percent of the time you get white males mentoring white males. That just leaves too many people out.”)

136. Alger, *supra* note 12, at 71.

137. In addition to the other reasons articulated below, there is simply too much race and ethnic diversity among people of color to assume that automatic mentoring will occur.

138. See *Retaining Faculty of Color*, *supra* note 133, at 1, 8 (arguing that having senior professors of color or a critical mass of professors of color helps retain junior professors of color).

139. See Association of American Law Schools, *supra* note 77.

fessor of color.<sup>140</sup> A senior professor of color might be overwhelmed by student and institutional demands that make her the "unpaid, unsung, overworked dea[n] of minority affairs."<sup>141</sup> For senior Black women, these extraordinary time-consuming duties are magnified since a Black woman is expected:

to be a counselor to individual black and other minority students, as well as a tutor, a friend, a companion and a champion; to be a recruiter for black and other minority group students and for women students; to be available for unscheduled consultation on the "black question", or the "woman question"; to participate in formal and informal seminars on race relations and sex stereotyping; to endure with grace and tolerance both inadvertent and overt racial slurs; to serve on all special committees relating to minority groups and women; and, of course, to teach her regular classes, serve on the regular faculty committees, publish scholarly articles and be "one of the boys."<sup>142</sup>

Given this extraordinary community service, a senior Black woman may not have a lot of time or emotional energy left to mentor a junior Black female. Mentoring requires, after all, active and intimate participation in another's career which presupposes that one has the time and energy to give.

Further, since there are still so few African American senior faculty members on any one campus, "[t]hose who are there are often under stress themselves; they have little time to mentor their younger black colleagues who desperately need the same kind of guidance and advice that their white peers receive."<sup>143</sup>

140. These demands include participating on committees and mentoring students, alumni, and professors of color within and outside of the senior professor of color's institution, field of study, and the law.

141. Linda Crane, *Can We Talk? Reflections of Seven Female African-American Law Professors*, NBA MAG., July 1992, at 19; see also Blackshire-Belay; *supra* note 80 at 34 (noting the difficulties that senior Black colleagues may experience that may prevent them from mentoring junior Black colleagues); Linda S. Greene, *Serving the Community: Aspiration and Abyss for the Law Professor of Color*, 10 ST. LOUIS U. PUB. L. REV. 297 (1991) (concluding that given excessive community service demands, professors of color may find it difficult to meet the requirements for professional advancement, e.g., publication and tenure).

142. Joyce Anne Hughes, *Neither a Whisper Nor a Shout*, in REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS 90, 92 n.17 (J. Clay Smith Jr., ed., 1998) (quoting the AALS, *Proceedings 1973* at 145 (Report of Section on Minority Groups)).

143. Blackshire-Belay, *supra* note 80, at 30, 34. For an excellent recent discussion on stress and African American academics, see Carolyn J. Thompson & Eric L. Dey, *Pushed to the Margins: Sources of Stress for African-American College and University Faculty*, 69 J. HIGHER EDUC. 324 (1998). See also Shawn O. Utsey, *Assessing the Effects of Racism: A Review of Instrumentation*, 24 J. BLACK PSYCHOL.

Thus, the stress of small numbers and high demands bears on all professors of color, regardless of whether they are junior or senior. These stresses and demands may bear more heavily on senior professors of color because they are senior, having survived some of the rigors of being on the tenure track.

There may be other reasons that prevent automatic quality mentoring from occurring between a senior professor of color and a junior professor of color. In addition to all of the above demands, a senior person of color has her own scholarship, networking, and relationship building to create and maintain. A senior minority colleague may not write in the field in which the junior person writes her scholarship. She may also not teach in areas that the junior person has been assigned to teach or has an interest in teaching. For personality reasons, they may simply not get along or not have common interests. Among Black professors, for instance, there is a myriad of potential intra-race conflicts that will affect whether mentoring will occur automatically and continuously. For example, there may be issues of class, color, ethnicity, gender, sexuality, religion, and the like that separate them.

Moreover, just because a person of color is "senior" does not mean that she will escape the presumption of incompetence, institutional indifference, and hostility. Given the effects that this presumption has on the psyche, a senior professor of color may not have a lot left to give a junior colleague of color. And, having made it through the years to become senior does not mean that the senior professor of color has been transracially integrated into the academic community. The institution may have failed the senior colleague in creating, establishing, and solidifying transracial interactions and fostering transracial mentoring relationships. Thus, a senior professor of color may not be able to provide those necessary inroads and prerequisites that are an integral part of mentoring. A senior colleague of color may not be able to mentor because she herself was denied mentoring and may now lack the institutional status and power to be a true mentor.

In essence, relying on senior colleagues of color to primarily mentor junior colleagues of color completely ignores the realities of the day-to-day barriers that people of color face. Seniority,

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269 (1998) (critiquing six mechanisms traditionally used to assess psychological effects of racism on African Americans).

tenure, years of experience, and national reputations have not protected professors of color from racial microaggressions in their institutions. The experiences of Derrick Bell at Harvard and Stanford,<sup>144</sup> Linda Mabry at Stanford,<sup>145</sup> and many others<sup>146</sup> are testaments to the recalcitrance of institutional racism in legal academia and the unwillingness of academic institutions, including law schools, to root out bias and prejudice in their environments. If the experiences of these senior, tenured, and well-credentialed professors of color are any indication, seniority does not provide professors of color, especially Black professors, a safe harbor from institutionalized bias and indifference.

Even if the above barriers do not exist or do not present an insurmountable barrier to a mentoring relationship between junior and senior professors of color, the burden of creating opportunities for transracial interaction must reside with the institution. After all, mentoring provides institutional benefits to those who are mentored. For instance higher salaries, better student and colleague teaching evaluations, and sooner and more frequent promotions are the types of institutional benefits

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144. See Bell & Delgado, *supra* note 81, at 377.

145. See generally Ritu Bhatnagar, *Mabry Speaks Out — Fmr. Law Prof. Alleges Racism*, STAN. DAILY, Feb. 12, 1999 (setting forth allegations made by Professor Mabry that Stanford "is an institution that engages in a pattern of practicing intense bias, which devalues, discourages, and marginalizes people of color").

146. For excellent discussions by Black women who have risked writing about their experiences in academia, see, for example, Cheryl I. Harris, *Law Professors of Color and the Academy: Of Poets and Kings*, 68 CHI.-KENT L. REV. 331 (1992), Vernellia R. Randall & Vincene Verdune, *Two Black Women Talking About the Promotion, Retention, and Tenure Process in Law Schools*, in BLACK WOMEN IN THE ACADEMY: PROMISES AND PERILS 213-26 (Lois Benjamin ed., 1997), Jennifer M. Russell, *On Being a Gorilla in Your Midst, or, The Life of One Black Woman in the Legal Academy*, 28 HARV. C.R.-C.L. L. REV. 259 (1993), and Symposium, *Black Women Law Professors: Building a Community at the Intersection of Race and Gender*, 6 BERKELEY WOMEN'S L.J. 1 (1990-91) (containing 12-15 essays by Black women discussing their experiences as law professors that are useful in understanding the hostilities, prejudices, and biases experienced by Black women professors). See also SHEILA T. GREGORY, BLACK ACADEMIC WOMEN: PROGRESS BUT NO PARITY (1998) [hereinafter GREGORY, PROGRESS]; SHEILA T. GREGORY, BLACK WOMEN IN THE ACADEMY: THE SECRETS TO SUCCESS AND ACHIEVEMENTS (1995) [hereinafter GREGORY, SECRETS]; YOLANDA T. MOSES, BLACK WOMEN IN ACADEME: ISSUES AND STRATEGIES (1989); Okianer Christian Dark, *Just My 'Magination*, 10 HARV. BLACKLETTER J. 21 (1993); Lisa R. Jackson, "We're Fighting Two Different Battles Her": An Exploration of African American Women's Definitions of Self at Predominantly White Schools, J. ADULT DEV., July 1998, at 171; Angela Mae Kupenda, *Making Traditional Courses More Inclusive: Confessions of an African American Female Who Attempted to Crash All the Barriers at Once*, 31 U.S.F. L. REV. 975 (1997).

mentored employees receive.<sup>147</sup> Without formal policies that ensure professional transracial interaction, business remains “as usual” with senior white male colleagues continuing to mentor junior white males. Black women will remain institutional outsiders, unmentored and not professionally integrated into their environments. As a result, their success and careers will be negatively impacted because few senior white colleagues will mentor them automatically and continuously. Further, their institutions will continue to fail to provide vehicles for mentoring to occur. In order to progress beyond the white male “business as usual” model, all barriers to mentoring must be recognized and removed.

“Business as usual” also includes informal policies that fail to facilitate transracial mentoring. As discussed below, informal policies merely exacerbate isolation and do not provide Black women with an opportunity to access senior white colleagues who may be willing to mentor them.

C. *Recognizing that Informal Policies Can Be Used to Isolate and Eliminate Opportunities for Transracial Collegial Interactions*

This part of the Article is experiential, because without narratives we cannot understand the effects of informal policies on Black women who are denied mentoring. Using my experiences at BCLS as an example, I hope to show that sometimes institutions and institutional actors fail to provide access to colleagues that would facilitate the initiation or cultivation of mentoring relationships. Without narratives, we would not be able to reveal

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147. See Ellen A. Fagenson-Eland et al., *Perceptions of Mentoring Relationship*, 51 J. VOCATIONAL BEHAV. 29, 29 (1997) [hereinafter Fagenson-Eland, *Perceptions*] (concluding that new employees who receive mentors “have higher salaries, exert greater influence, have more opportunities, and are more satisfied with their jobs and careers” than those who are not mentored). See also Bahniuk & Hill, *supra* note 31 (discussing the benefits to mentoring and suggesting mechanisms that employers can use to facilitate mentoring opportunities); George F. Dreher & Taylor H. Cox, Jr., *Race, Gender, and Opportunity: A Study of Compensation Attainment and the Establishment of Mentoring Relationships*, 81 J. APPLIED PSYCHOL. 297 (1996) (finding that business school graduates who were mentored (by senior white men) averaged \$16,840 more a year in salary than those MBA students who had not been mentored); Ellen A. Fagenson, *The Mentoring Advantage: Perceived Career/Job Experiences of Protégés versus Non-Protégés*, 10 J. ORGANIZATIONAL BEHAV. 309 (1989) [hereinafter Fagenson, *The Mentoring Advantage*]; Terri A. Scandura, *Mentorship and Career Mobility: An Empirical Investigation*, 13 J. ORGANIZATIONAL BEHAV. 169-74 (1992) (discussing the career benefits that accrue to those who are mentored).

that sometimes Black women follow the common advice by seeking institutional assistance in trying to obtain a mentor and yet such assistance is denied or is unsatisfactory.

As noted above, Black women need professional interactions with their senior colleagues. Yet, due to race/gender discomfort, Black women are not invited to social events with colleagues that would allow them to interact with senior colleagues to obtain information and to access potential mentors. Without such informal professional interactions, a Black woman remains unusual to her white colleagues and the presumption of incompetence and all its stereotypes remain uncontested. She is, therefore, assumed to be unqualified to profess and too risky to mentor. She is also left at the mercy of the race/gender discomfort, the presumption of incompetence, the Sapphire myth, and passive support, all of which will determine whether she will ultimately be retained, promoted, and tenured. Accordingly, whether the university or law school has policies that affirmatively facilitate the transracial integration of professors of color shows whether the university intends to retain them. It may not be an express message, but it is a strong implied message. Informal policies only magnify this message of retention or termination.

I do not necessarily advocate that universities create formal mentoring programs.<sup>148</sup> Rather, I advocate that institutions or universities create formal mechanisms that allow Black women to access senior colleagues such that informal mentoring is facilitated. For instance, a formal mechanism can ensure that committee assignments place Black women with senior white colleagues to facilitate interaction and thus mentoring. This type of formal mechanism is preferred to informal policies because of the need for institutional commitment and action.

Like passive support, informal policies hide behind rhetoric because the word *policies* is used, creating an illusion of action when in fact informal policies hide institutional inaction or biased action. Further, the rhetoric of having informal policies to integrate all new professors into the community hides the discretion exercised by administrators who may be uncomfortable with, threatened by, and disrespectful of Black women due to the

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148. While providing programs that create formal opportunities for mentoring is an option that some organizations take, informal mentoring produces the best results.

social barriers presented by the presumption of incompetence, the Sapphire myth, and race/gender discomfort.

BCLS has an “informal policy” to retain and promote white women and professors of color. Like most informal policies, BCLS informal policy lacks detail or contour and is instead implemented based upon administrators’ discretion. Unfortunately, no real activities are undertaken that help to destroy or minimize the effects of the above social barriers. As to retention and promotion of Black professors in particular, little to nothing is affirmatively done at BCLS. As a result, prior to the year 2000, there have been only two Black professors who obtained tenure (one in the late 1970s and one in the late 1980s).<sup>149</sup> Despite these low numbers, according to one of the former Deans, we have an informal policy; this policy, however, only serves to ensure that those who are white and male or white and female receive excessive attention and privileges from the white male upper echelon while others scramble to find out what the privileges are.<sup>150</sup>

The discretionary implementation of informal policies unrealistically requires white colleagues to recognize and move beyond their individual rhetoric of passive support and a positive vote for tenure in the end. In legal academia in particular, the

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149. The tenure of a Black male in the Spring of 2000, is the subject of an article on hostile workplace environment, racial glass ceilings, and procedural manipulations. This work-in-progress is tentatively entitled *The Denial Before the Denial: Black Women and Revelations of Tenure Delays and Informal Denials as Violative of Title VII's Prohibition Against Hostile Workplace Environments*.

The dearth of tenured Black professor at Boston College is not limited to the law school. Currently, there are *only* six tenured nonadministrative Black professors in the entire university and these numbers have remained fairly consistent over the last decades.

150. After my second promotion and tenure meeting at BCLS, in December 1996, I sent an e-mail to the Dean explaining to him that I lacked basic information about what counted at BCLS. I asked him about light loading (whereby one teaches less than what I thought was the required four class load per academic year), a mentor, the type of scholarship that counts, whether the extra community service that professors of color bear counts, the procedure for student evaluations during tenure, and who selects outside reviewers. See E-mail from Pamela J. Smith, Professor, Boston College Law School, to Avi Soifer, Dean, Boston College Law School (Dec. 9, 1996) (on file with author). I explained to the Dean that,

it appears as if everyone senior “assumes” that all of us are receiving or have basic information. Some of us clearly are not getting this basic information. I did not hear of the possibility of a lighter load until last month and [I] talked to 5 people last year [regarding the availability of] grants.

*Id.*



low number of Black women who are currently tenured is evidence of the failure of informal policies, passive support, and individual rhetoric.<sup>151</sup>

From the point of view of the Black professor seeking access to mentors, information, and other institutional benefits, an informal policy does nothing to change the discomfort white people have with Black people.<sup>152</sup> It does nothing to change the learned stereotypes of Black inferiority and incompetence.<sup>153</sup> It does nothing to eliminate the tendency of colleagues to be hypersensitive and hypercritical whenever a professor of color is involved.<sup>154</sup> Nor does an informal policy do anything to ensure the fair retention and promotion of professors of color. An informal policy does not create opportunities for professional integration, which facilitate mentoring. Instead, an informal policy of providing mentoring and other institutional rewards is itself a form of symbolic racism, which "denounces overt forms of prejudice while denying access to resources, information, and sources of support (many of which are informal), essential to success."<sup>155</sup> Consequently, an informal policy is a continuation of institutional failure to ensure that professors of color are given equal opportunity and equal access to institutional information and rewards.<sup>156</sup> An informal policy, therefore, does more to solidify the presumption of incompetence, the Sapphire myth, and race/gender discomfort than it does to destroy them.

Granted, it is conceivable that some institutions may not be aware of the social barriers and the obstacles they present to

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151. Association of American Law School, *Statistical Report on Law Faculty and Positions for Law Faculty Positions: 1997-98*, at Table 1B (printed on July 1, 1999), <<http://aals.org/statistics/tlb9798.html>> (reporting that there are currently 66 Black women who are full professors and 89 associates professors, presumably with tenure).

152. See generally Pamela J. Smith, *Reliance on the Kindness of Strangers: The Myth of Transracial Affinity Versus the Realities of Transracial Pedism*, 52 RUTGERS L. REV. 1 (1999) (explaining why transracial affinity does not exist between Blacks and whites, especially regarding the education of Black children).

153. According to a study about student stereotypes and personal perceptions about Blacks, there has been little positive progress since the 1930s in how Blacks are negatively stereotyped. See Patricia G. Devine & Andrew J. Eliot, *Are Racial Stereotypes Really Fading? The Princeton Trilogy Revisited*, PERSONALITY & SOC. PSYCHOL. BULL., Nov. 1995, at 1139, 1139-50.

154. See *infra* note 167 and accompanying text (citing the AALS stating that students and colleagues are hypercritical of professors of color).

155. Olsen et al., *supra* note 113, at 267.

156. Given this, informal policies that do not create mentoring opportunities for professors of color may violate Title VII if such mentoring is occurring for white men and women.

mentoring for Black women and other outsiders. That cannot, however, be said for BCLS. To no avail, I informed my institution of the connection between the ineffectiveness of informal policies that rely on white colleagues overcoming their own race/gender discomfort, the presumption of incompetence, and the Sapphire myth in order to interact with me as a Black woman and the failure to provide me with timely access to mentoring. In an e-mail to the law school administration, I informed them of the ineffectiveness of informal policies and asked for formal help to facilitate my success. I stated:

The question that I have to ask myself and that I must now ask the institution is: How is the administration and institution going to facilitate my success here? Where is that informal mentoring that is supposed to help ensure that the 3/5 women and minorities that have been hired over the last couple of years will succeed[?] From my point of view the informal mentoring and institutional support have not been evenly applied. It seems to me that through the first couple of years of my teaching here, I have been primarily without a lot of administrative support and mentoring: Through the receipt of a hateful flyer to multiple hate mail letters to student meetings, etc. I have had to "find" support "after" the fact.

Now, I am not "blaming" anyone for anything (though I am sure that this is how it will be taken, which highlights the fact that I should not have to "risk" doing this at all). None of the past can be undone or explained away. And, quite frankly, I do not want to spend a second on critiquing what should have been done, or comparing my support with the support given others. Instead, I want to look to the future.

I would rather spend time discussing "how" I am now going to get the support that I need and deserve. Otherwise, given my past 2 years here, my fear that teaching property is too risky may not be diminished. I will remain a black woman. I will get older, for sure, but if there is a problem with race/gender in the 1L curriculum or in teaching at BCLS in general, changing my teaching style, syllabus, or courses will not insulate me from student "hypersensitivity" and "hypercriticality".

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So, while I appreciate the support I have found over the last two years, I would like the institution to be more proactive and affirmative in my growth here. Thus, the question remains: How is the administration and institution going to facilitate my success here? Where is that informal mentoring that is supposed to help ensure that the 3/5 women and minorities that have been hired over the last couple of years will succeed[?] I think a plan needs to be developed to facilitate my success in

1. Teaching
2. Community Service<sup>157</sup>

Thus, the negative race/gender effect of these informal policies was put directly before the administration, as was the failure of the informal policies to assist in the retention, integration, and promotion of the outsiders hired in the last five years or so. In response to this question and request, there was institutional silence. The administration exercised its discretion, under the informal policies, to ignore my reality and the fact that the informal policies were negatively impacting my career. An informal policy, therefore, not only exacerbates the institutional isolation that a Black woman may experience, but it also allows the institution to ignore its role in that isolation.

Furthermore, integration of a junior professor of color must be a community endeavor that must begin when a novice professor of color is hired and must continue throughout her entire career. Unfortunately, that rarely occurs for Black faculty.

Often, being hired only begins the difficulties of black faculty members. It is disheartening for your white colleagues to feel that they have done you [a] favor by appointing you or for them to look on you as representing the views of all blacks. And being considered an affirmative action hire, and thus presumably "less qualified" than your white colleagues, imposes the burden of having to prove yourself in ways that no one else has to.<sup>158</sup>

Given the presumption of incompetence, Black women are forced to constantly prove themselves as qualified and intelligent. Given the Sapphire myth and its negative behavior components, Black women must also prove that they are open and willing to accept another's assistance.

Institutions must recognize the impact of these social barriers on the lives and careers of Black women and act accordingly by making continuous investments into the careers of Black women beyond passive support and informal policies. After all, social and institutional barriers are many Black Women's daily reality. Academia is no different. Throughout the academic life of a Black woman professor, colleagues may "inconsistently grant and deny her their friendship. Most consciously have to

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157. E-mail from Pamela J. Smith, Professor, Boston College Law School, to James Steven Rogers, Professor and Associate Dean for Academic Affairs, Boston College Law School, (Oct. 22, 1997) (with a carbon copy to Dean Avi Soifer) (on file with author).

158. Blackshire-Belay, *supra* note 80, at 33.

remind themselves that she is their equal. Otherwise, the tendency is to assume her inferiority, to believe that her appointment was unmerited, and was thus nothing more than a grant of their grace."<sup>159</sup> Yet, these reminders of the equality of a Black woman colleague may not occur consistently if institutions rely solely or primarily on informal policies and the individual transracial goodwill of white men and white women. These equality reminders may occur, however, if institutions create formal opportunities for Black women to interact consistently with senior colleagues through, for example, committee assignments and colloquia. The reminders of racial and gendered equality must be continuous and formalized so that transracial interactions are expected. Quantitative and qualitative transracial interactions lie at the center of these racial equality reminders.

Given the existence of the presumption of incompetence and the resulting phenomena of indifference and hostility,<sup>160</sup> as well as negative perceptions and experiences, it is important that transracial opportunities be formalized between junior faculty of color and senior white faculty of both genders.<sup>161</sup> These formal opportunities should impose active obligations and responsibilities on institutions and institutional actors.

Moreover, the success of people of color, especially Black women, depends on formal mechanisms that facilitate communication between them and senior white colleagues. It is a necessary and obvious reality that:

if majority professors sincerely want to retain minority faculty members, they must begin to communicate regularly with them about the tenure and promotion process, the expectations of the academy, and what one has to do to ensure his or her success in an academic environment.

Interpersonal relations are important. Studies reveal that the informal mentoring relationships that develop between senior and junior colleagues are usually based on how much they have in common. White senior professors often seek out white junior faculty members whom they feel they can help.

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159. Russell, *supra* note 146, at 261.

160. See generally Smith, *When Sapphire Meets Socrates*, *supra* note 4, at Part V (discussing the phenomena of appearance, credential, authority, and evaluative hostility that arises between students and Black women due to the presumption of incompetence and the Sapphire myth, among other things).

161. Cf. Blackshire-Belay, *supra* note 80, at 35 (opining that senior white faculty understand overt racism, but "'their own colonized frame of reference hinders them from understanding covert racism.' They do not understand that there can be racism with a smack of 'niceness' about it.").

These senior white professors may be less willing to do the same with their black junior colleagues. Black academics talk increasingly about the "comfort level" of their departments and about how ill at ease majority faculty members are with certain minority professors. Many white academics do not understand this issue, because they have never been faced with it. But personal relationships affect the careers of black faculty members, and if the comfort level of their white colleagues [is not established and/or] is shaken, they may not retain enough support to be tenured.<sup>162</sup>

Unfortunately, due to race/gender discomfort, automatic personal relationships are not created through informal social interactions. Institutions must, therefore, create opportunities through professional and formal means.

Transracial interactions are crucial to the success of minority faculty members. It not only increases stereotype-destroying familiarity, but also increases a white colleague's sensitivity to the experiences of Black women professors, such as student hostility.<sup>163</sup> Moreover, it informs and reminds white colleagues, male and female, that Black women are qualified and entitled to profess. These formal opportunities also ensure that information is provided equally and timely to all junior colleagues, not just to white men. Formal policies that facilitate transracial interactions may force white colleagues and male colleagues to face their participation in transmitting and believing the presumption of incompetence and the Sapphire myth.

Mentoring generally occurs because a senior colleague selects a junior colleague who looks and acts like him. Black women and other women of color are never going to have a shared gendered or racial reality with senior white male colleagues. In order for senior colleagues to surpass the barriers that a different race and different gender present, transracial opportunities must be created so that senior white colleagues can see professors of color at work. They need to learn that a professor of color is competent in a particular area and that an individual Black woman is in reality threatening, unintelligent, angry, and intimidating. Formalized transracial interactions create an opportunity to destroy or minimize the presumption of incompetence. Thus,

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162. Blackshire-Belay, *supra* note 80, at 34.

163. See MULTICULTURAL WOMEN ATTORNEYS NETWORK, *supra* note 79, at 21; Smith, *When Sapphire Meets Socrates*, *supra* note 4, at Part V (discussing hostile encounters that arise between students and Black women due to the presumption of incompetence and other things).

[a]nother purpose for having clearly stated standards [is] to provide a check against the presumption of incompetence that often is applied to minority professors, in contrast to the presumption of competence that is accorded other professors. Faculty and students are often hypercritical in evaluating a "minority professor" performance and may magnify any mistake. Non-minority colleagues often do not recognize the hostility and questioning of ability that colleagues and students can direct at a minority professor. The failure to acknowledge these factors can cause some faculty members and administrators to give undue weight to complaints and to respond inappropriately, such as by offering "enrichment lectures" to make up for the alleged inadequacies in the minority professor's performance. A school can respond in a less demeaning fashion by adhering to published standards and procedures in dealing with complaints and in otherwise evaluating a professor's performance.<sup>164</sup>

One mechanism to formalize the interactions between white colleagues and junior Black females is committee assignments. By creating opportunities for interaction, committee assignments may increase a senior white professor's understanding of the challenges that a Black woman faces. Committee assignments can create formalized opportunities for transracial interactions that lead to the initiation of mentoring relationships between Black women and senior white colleagues. Committee assignments can provide a valuable opportunity for Black women to be groomed by senior peers and to be promoted by the administration to colleagues inside the law school and main campus. Committee assignments are a powerful opportunity to establish relationships that may destroy or minimize the presumption of incompetence. For example, committee work allows Black women to showcase their talents and areas of expertise, thereby demonstrating their competence. Working and communicating with committee members is also a way for Black women to show that they are not inappropriately angry, threatening, intimidating, or unintelligent. In essence, in academia committee assignments are a crucial vehicle to level the playing field between junior white colleagues and junior Black female professors.

While the importance of opportunities for transracial interactions for professional integration and mentoring is fairly apparent, sometimes institutions do the exact opposite. Sometimes institutions create insurmountable barriers to the initiation of mentoring relationships by blocking professional transracial in-

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164. *Retaining Faculty of Color*, *supra* note 133, at 8-9.

teractions. These stories need to be told as a rebuttal to the assumption that white colleagues and white institutions are ready and willing to mentor transracially. The next section reveals how institutions can use committee assignments to block and/or deny mentoring.

D. *Recognizing that Inactive Committee Assignments Can Be Used to Isolate and Block Opportunities for Transracial Collegial Interactions*

Certainly, mentoring can be initiated by many means.<sup>165</sup> In academia, mentoring opportunities are best created primarily through committee assignments due to the autonomous nature of the academic's job. One generally teaches alone, writes one's scholarship alone, and interacts with students alone. The only opportunity for mentoring comes primarily from formal opportunities provided through community service or committee assignments, especially if one is not selected automatically for informal interactions such as sporting events.<sup>166</sup> Unfortunately, as my experiences will show, just as committee assignments can be used to include, they can be used to exclude and isolate.

1. Using Paternalistic and Harmful Protection to Isolate

Despite the need for Black women to have committee assignments or other community service that provides access to potential mentors, some Deans may try to "protect" Black women from excessive community service. Certainly, while a law school "[d]ean must actively protect minority professors from excessive service demands, particularly because such activities often are granted little weight in performance reviews,"<sup>167</sup> excessive protection can in and of itself become part of the problem. In particular, the Dean may engage in negative paternalistic protection reminiscent of historical power relationships between whites and Blacks, especially during slavery. As a result, paternalism becomes condescension.

The dynamics of power are often manifested in the fact that minority professors may feel that senior faculty (consciously or subconsciously) relate to them as low status members who are incompetent or lack the general awareness of how to func-

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165. See Kram, *supra* note 20, at 614-17.

166. See *supra* Part III.B.4 (discussing race and gender discomfort as a social barrier to interactions between Black women and senior white colleagues).

167. *Retaining Faculty of Color*, *supra* note 133, at 7.

tion as a full-time faculty member. Furthermore, they may feel that senior faculty members seem presumptuous and assume that they know what is best for the minority faculty member. This includes the type of courses the minority person should teach; the types of committee(s) one should serve on; the type of service activities one should engage in; and in some cases, whether the minority person has performed sufficiently to warrant merit consideration. Within the framework of power relations this position assumes that one person knows what is best for the other, has superior knowledge and skills, and is perceived as somewhat paternalistic in his interactions with the minority individual.<sup>168</sup>

This type of condescending paternalism is particularly harmful in academia because Deans can use the power dynamic to disadvantage a Black woman in the community by failing or refusing to provide her opportunities to interact with senior colleagues.

Further, Deans can be so protective that they isolate Black females from senior white colleagues. Isolation may exacerbate the barriers that the presumption of incompetence and the Sapphire myth create. Indeed, an institution that does not provide a Black female with an opportunity to interact professionally and transracially with her white colleagues is not leveling the playing field or attempting to retain her. Nor is a institution like this creating opportunities for career-enhancing mentoring. As a result, traditional race, gender, and race/gender vulnerabilities remain. The presumption of incompetence and the phenomena of hostility toward Black women remain unaddressed, unrecognized, and perhaps solidified if meaningful access to senior white colleagues is not facilitated. Without mentoring or having an opportunity to access potential Black female protégés, senior white colleagues develop no emotional connection to Black women colleagues. Without such an emotional connection, Black Women are at risk.

There is . . . a body of literature that indicates that more information and contact with target individuals reduces gender and racial bias . . . and that the closer psychologically supervisors feel to employees, the more likely they are to accurately evaluate ability, success, and performance.<sup>169</sup>

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168. Brinson & Kottler, *supra* note 119, at 245 (discussing the socio-cultural barriers that will preclude automatic transracial mentoring from occurring); see also David Thomas, *Racial Dynamics in Cross-Race Developmental Relationships*, 38 ADMIN. SCIENCE Q. 169-94 (1993) (discussing the historical tension between Blacks and whites that may make mentoring difficult).

169. Sanchez-Hucles, *supra* note 69, at 565.



In essence, the more contact white colleagues have with Black women on a professional basis, the less colleagues rely on harmful stereotypes. In contrast, the less contact colleagues have with Black women, the more they are likely to rely on harmful stereotypes. The amount of contact affects performance evaluations and careers.

It must be beyond dispute that minority professors need to interact with all of their colleagues. While it is indeed crucial to have other professors of color in the school, a new African American woman needs to know all of her colleagues, including both those who share her race and gender and those who do not. After all, the tenure vote will come from the entire community, the majority of which remains white men.<sup>170</sup> Further, institutions must place as much responsibility for retaining young professors of color on senior white colleagues as it does on senior colleagues of color.<sup>171</sup> Committee assignments, therefore, must not only be protective, they must be proactive in ensuring transracial, transgender, and transracial/transgender interactions with senior colleagues. Committee assignments provide a vehicle that allows traditional outsiders, such as Black women, an opportunity to interact with traditional insiders, namely white men.

An institution must protect a Black woman from being overburdened by committee assignments. However, administrators must not be so patronizing and condescending that they provide unsatisfactory committee assignments that deny an African American woman the opportunity to interact transracially, to lead, and to work within her institution. Both ends of the committee spectrum, overburdening and underburdening, are equally harmful to the ability of a Black woman to survive and excel in academia.

Further, without substantive committee assignments that allow a Black female academic to work alongside male and female senior white colleagues, a Black female is left at the mercy of "diversity" activities and doing time-intensive one-on-one student extra-curricular activities, many of which she may find difficult to turn down. While these activities are important to the Black community, other communities, and the Black female herself, they are not valued in legal academia. Further, they take a lot of time, resulting in some Black women being overrun by stu-

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170. See generally Association of American Law Schools, *supra* note 77.

171. See *infra* Part IV.B.

dent needs.<sup>172</sup> As a result, the Black female is forced into doing

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172. In November 1996 I met with the Dean to seek a hiatus from Property Law given the hostility I was receiving from students (which included serial racial hate mail), as well as the great amount of time I was spending counseling my students and numerous others. He equivocated, stating that my hiatus from Property Law would cause coverage problems in 1997. At this same time, I also asked for institutional financial support to take the patent exam. I was told that to study for and take the patent exam in the summer would conflict with the purpose of any grant that I would receive from the school for summer scholarship. I explained to him in my resulting memorandum that the review course took six days and the exam itself one day. Thus, there would be little interference, if any, with the purpose of any grant I would receive for summer scholarship. Nonetheless, to this date, I have not received any financial assistance from the school to pursue taking the patent exam, although I teach Patent Law & Policy.

In addition to these concerns, I also asked for some institutional blocking because I was being overrun by student needs. In a form of "just say no" pattern, the Dean suggested that I help myself because I was a "lightning rod for student interactions." Upon further contemplation of my request and his response, I wrote him a note. On that point, I stated:

Avi [Soifer],

We talked on Wednesday regarding the Patent Exam in August 1997 and a 1 year Property hiatus. You had several concerns that, once I thought about them, I wanted to address more particularly.

...

Third, you mentioned I could help myself (regarding 1L time drain) by not being so open and available to the 1Ls. Unfortunately, that is easier said than done. I am trying to protect myself and serve the students. I hope that these two goals are not mutually exclusive. One of the reasons I wanted to teach in the first year [curriculum] is so that I could be a mentor similar to the mentors I had in law school. I am certain that I was as successful in law school as I was because I had caring mentors like Ray Diamond, Keith Werhan, and Ruth Colker. I know I need to learn how to balance these two competing goals and I am working on it. I fear, however, that if I do not take the time with students and the expectation is there because:

1. we are supposed to have a very humane environment
2. we are supposed to have an open door policy
3. as a female, I am supposed to be more available and understanding
4. as a professional of color, I am supposed to be more available and understanding
5. as both a younger female, professor of color, I am supposed to be more available and understanding

then, I can be subject to other types of queer hostility from students because their expectations are thwarted because they do not have near instantaneous and continuous access to a new, young, black female professor. I fear this perhaps more than I fear not being able to write given 1L needs and desires.

So, help myself. Yes. I am certainly trying *real* hard to do just that. But in trying to protect myself, I do not want to hurt myself. Perhaps this is something the institution can address. I think that this availability stereotype is a problem all women professors and professors of color face, especially those that teach 1L. The recent edition of

activities that do not count, that do not allow her to interact on a transracial basis with senior white colleagues, and that take a lot of time. In essence, she is pushed into performing time consuming, burdensome (mentally, emotionally, and spiritually), demanding, and risky community service, none of which aids retention and promotion. Time spent on demanding community service during one's formative years is time spent away from scholarship and one's scholarly agenda.

If she has an experience like mine, a Black female may feel that she must continue to do these activities because she recognizes the need to create a service and leadership record. This record must be created outside of her department, outside of her school, and perhaps outside of her field or university. As a result, these outside department activities increase her availability and necessitate more availability. It is, therefore, a vicious cycle. She is available to others because she has to be. Her visibility increases her desirability, which increases her workload and decreases time for scholarship.<sup>173</sup> Despite this hypervisibility to students, the Black woman faces invisibility from her institution when she needs institutional protection from burdensome student service or for when she needs opportunities for career-enhancing committees. Given this race/gender-based invisibility, the Black woman's primary struggle appears to be getting institutional actors to see her and her institutional contributions — her Blackness and femaleness in a world that values whiteness and maleness.<sup>174</sup>

## 2. Using Committee Assignments to Actively and Knowingly Block the Initiation of Mentoring Relationships

Perhaps as an effect of the presumption of incompetence, whites perceive minorities as uninterested in serving on impor-

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"The National Jurist" reviewed a book on topics like this and there are other law review articles on similar topics.

Memorandum from Pamela J. Smith, Professor, Boston College Law School, to Avi Soifer, Dean, Boston College Law School (Nov. 1996) (on file with author).

As with my other requests for institutional support and protection, this memorandum was met with silence. There were no promises to run interference if students complained that I was inaccessible. There were no promises to ascertain whether other women and professors of color were negatively impacted by the need to be accessible. There were no requests for the book or the articles mentioned.

173. See St. Jean & Feagin, *supra* note 114, at 193-95 (discussing how Black female professionals face invisibility on the job that acts as a barrier to retention and success).

174. See *id.* at 193.

tant committees.<sup>175</sup> In my situation, however, I constantly informed the administration of my continuing interest in serving the law school and university communities. My requests were to no avail. My attempts to obtain equal and substantive committee assignments stand as a testament to the failure of individual efforts when faced with institutional nonresponsiveness or institutional blocking. My experiences also reflect institutional indifference, hostility, and ignorance, as well as the failure of an institution to respond to constant and logical requests for substantive and active committee assignments. They show how institutions can ignore the known nexus between access to senior colleagues and initiating mentoring relationships. My personal attempts to obtain quality committee assignments are presented here to show how an institution can block mentoring despite numerous requests.

In 1995, when I began at BCLS, I was provided with committees that did not meet or that required me to work alone. Since I felt that I was being protected, and indeed wanted to be protected, I did not object too loudly. I was assigned to the Appellate Advocacy Committee, which met a couple of times, the Disability Committee, which never met, and the Library/Computing Committee, which also never met. In addition to these formal committees, I was faculty advisor for a new moot court team, judged numerous student competitions, and attempted to do all other activities that would integrate me into my new job. In contrast, the white male who began his employment at the same time as I in 1995 was assigned to the Career Services Committee and the Educational Policy Committee (EPC). Numerically I was assigned to more committees. Qualitatively, since my committees never met and were wholly inactive, my committees were substantively inferior.

Despite my individual efforts to become more integrated into the environment and to develop mentoring relationships with senior white colleagues (regardless of gender), I was dissatisfied and concerned. When I compared myself to the white male who began his employment at the same time as me, I was an institutional stranger; he was an institutional insider. So, in 1996 I requested committees that would allow me to actively and consistently interact with colleagues, thereby creating opportuni-

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175. See Brinson & Kottler, *supra* note 119, at 245 (discussing the socio-cultural barriers that preclude automatic transracial mentoring from occurring).

ties to initiate mentoring and to facilitate information-sharing regarding BCLS's customs and tenure. I wrote the following e-mail to the Dean, explaining why I felt I needed more active committees.

Last year, I was on three committees, all which were pretty inactive.

1. The Appellate Advocacy Committee had 2-3 meetings the entire year, based upon a student's request that more teams be added to our list of teams. Otherwise, the committee did not meet. I did, however, coach the Craven team and benched the Jessup team.
2. The Disabilities Committee had no meetings and did not do anything as far as I can tell. If the committee was active, I was not involved in any such activity.
3. The Library/Computing Committee was also inactive. I had some discussions with Sharon O'Connor about the equipment to be purchased in the library, but these decisions had already been made before I started. I have been working with Joan Shear on use of the computer in my classes, especially Computer Law, but again that was not part of that committee. And, working with Jonathan Thomas to increase the library's selection of Intellectual Property materials. But that was not part of the committee work either.

This year, I would like to be more involved. So, I would prefer the following Committees:

1. Appellate Advocacy, given my interest in appellate advocacy and my coaching of the Craven team and availability to bench the Frederick Douglass and other teams. I think we are also going to try to judge the success of Tom Carey's mini course (non-credit) on brief writing.
2. Disability
3. Library/Computing, given my interest, scholarship and teaching in the use of computers in the classroom. I would eventually like to move to using an electronic book for one of my classes, probably Computer Law in 1998, and for this Spring, the Computer Law class will be using computers quite regularly as part of the course curriculum.
4. Admissions, given my interest in our continued diverse student population and my interest in finding more engineering/scientific students who may be interested in Intellectual Property (IP).
5. EPC. I am interested in working with others to modify or update Fundamentals. And, I would like to continue to work on the Intellectual Property curriculum. As you may know, Fred [Yen], Dean [Hashimoto] and I have been

working on trying to develop a scheme for the IP curriculum. I would like to continue to do this.

Finally, if there is need, I would be also interested in Career Services to help increase our presence in IP.

Let me know if you have any questions about the above.

Pam<sup>176</sup>

I do not know how the Dean reacted to my e-mail because it was met with silence. In my second year, 1996-97, however, I was assigned to the Admissions Committee and not to the EPC. Yet, the Admissions Committee, unlike the EPC, is known for the notorious amount of work that needs to be done and for the fact that one works alone. I was also selected to sit on the Disability Committee, Library/Computing Committee, and the Appellate Advocacy Committee. All were committees I had before. All continued to be fairly inactive. Once again, therefore, in my second year of law teaching at BCLS I was working alone, rather than with senior colleagues. My other suggested committees were ignored.<sup>177</sup> Apparently, my need for more active committees was not explored and was ignored. My need for necessary interactions with senior colleagues to facilitate mentoring was also ignored. Interestingly enough, the fact that my requests were ignored highlighted my need for a mentor. A mentor could have helped me be more specific and selective about the committee assignments I needed. A mentor could have used his or her informal networks to have the informal policies surrounding committee selection activated on my behalf. Unfortunately, I lacked a mentor to help me find my way around the informal policies of committee assignments and the Dean's discretionary committee assignments.

As more time passed, the more I had to rely on the Dean's discretionary implementation of the informal policies for equitable committee assignments, the more I was blocked access to potential mentors and integration into the environment. A horrible catch-22 resulted that perhaps many other Black women face. Mentoring is crucial to professional integration and information

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176. E-mail From Pamela J. Smith, Professor, Boston College Law School, to Avi Soifer, Dean, Boston College Law School 1 (Sept. 1996) (on file with author).

177. The committees are defined with particularity below because although most academic institutions have functionally similar committees, they may be named something different.

gathering. Yet, access to mentors is blocked such that mentoring is not initiated between Black women and senior colleagues.

During my first two years in academia and at BCLS, I wanted to assume that I was being protected and that those who were similar to me in rank were also being protected. I was wrong. Only I was given inactive committees. White colleagues who began their employment at the same time as me, after me, and before me were given institutionally important committees and leadership opportunities. They were given opportunities that would facilitate mentoring and information gathering.<sup>178</sup> The following chart reveals the extent to which the BCLS administration used committee assignments to facilitate or block professional integration. The year the person started his or her employment at BCLS, as well as his or her race/gender is listed in the first column. The committees are listed below for 1996-97, my second year in academia and at BCLS.

Race/Gender And Year Started	1st Committee	2nd Committee	3rd Committee	4th Committee
1996 white woman	Admissions <sup>179</sup>	Career <sup>180</sup>	Education Policy <sup>181</sup>	

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178. See Blake, *supra* note 43, at 83-104 (reporting how crucial it is for Black women to have access to information, guidance, and the support of senior colleagues).

179. The Admissions Committee's task is to "review the files of applicants for admission under policies developed by the committee and approved by the faculty, and . . . make admissions decisions." *Id.*

180. The Career Services Committee "will assist the Office of Placement and Career Counseling in developing career counseling programs and placement opportunities. It will review existing and proposed outreach programs, and will include a Judicial Clerkship Subcommittee." *Id.*

The 1995 white man was also named chair of the Clerkship Subcommittee of the Career Services Committee.

181. The Educational Policy Committee "will continue to review the curriculum, including research and writing components. It will also continue . . . [to] develop[] and review[] the Law School's public interest programs. . . . Three members, as designated by the Chair, in conjunction with three members of the Appointments Committee . . . will make clinical appointment recommendations to the faculty." Memorandum from Avi Soifer, Dean, Boston College Law School, to Faculty, Boston College Law School 5 (Sept. 26, 1996) (regarding 1995-96 academic year committees) (on file with author).

Me: 1995 Black woman	Admissions	Advocacy <sup>182</sup>	Disability <sup>183</sup>	Lib./ Computing <sup>184</sup>
1995 white man	Appointments <sup>185</sup>	Career	International <sup>186</sup>	Publications <sup>187</sup>
1994 white woman	Admissions	Publications		
1994 white woman	Adjunct <sup>188</sup>	Career		
1994 Black man	Adjunct	Admissions		
1989 Asian man	Admissions			
1990 white man	Appointments	Education Policy		

The titles and descriptions of the committees speak to their institutional importance. The Appointments Committee is, of course, one of the most important committees a junior person can be assigned to; it allows members to select visitors and future colleagues. Since the white male was assigned to the Committee, he was given superior opportunities to be professionally integrated into the law school community because he was selected for a committee that would allow him to work intimately with senior colleagues to select future colleagues. Similarly, most, if not all, white colleagues were assigned to active and institutionally important committees. For instance, the Adjunct Committee allows one to engage in some curricular development while working with adjuncts to shore up weaknesses in the curriculum.

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182. The Advocacy Programs Committee "will consider the important role of advocacy programs in the Law School with particular attention to team supervision, selection of competitions, and future plans." *Id.*

183. The Disability Committee "will examine and recommend changes, where appropriate, in Law School practices and procedures concerning disabled students." *Id.*

184. The Library/Computing Committee "will work with the Librarian to consider modernization and acquisitions for the library. It will also be responsible for policies related to the use of computers and telecommunications in legal education." *Id.*

185. The Appointments Committee "will seek and recommend the best candidates for faculty positions, paying particular attention to the affirmative action candidates. The committee will work with the EPC, through a joint sub-committee in recommending clients for the open clinical slot." *Id.*

186. The International Program Committee "will review existing International Programs and will recommend additional selections, if any, among proposed new programs." *Id.*

187. The Publications Committee "will review existing publications policies and will make recommendations to the faculty for changes it deems advisable. It will consider the availability and implications of new technology for publications." *Id.*

188. The Adjunct Committee

will (1) assist adjunct faculty with teaching and scholarship and will seek to integrate them more closely in the intellectual life of the faculty; (2) advise the Dean and the Associate Dean for Academic Affairs in making part-time appointments. It will also review existing use of adjunct faculty and will plan for the future.

*Id.*



Career Services and the Clerkship Subcommittee were particularly important because students were very concerned about employment, it allows one to work with alumni, and BCLS made clerkship an important institutional goal. The Publications Committee, of course, worked with the various journals and law reviews and that year met regularly to change the procedures and qualifications for law review selection. The Education Policy Committee was also very important because it performed strategic planning for curricular development, especially organizing courses into clusters (*e.g.*, International Law). The International Committee was of premier importance because BCLS developed a long-term proposal to obtain additional funding from the university. The proposal selected International Law as its premier objective.

Given the committee assignments, everyone, except most of the people of color, were placed on committees that would allow them to interact with senior colleagues and people who did and did not share their race and/or gender. Junior white colleagues worked with senior colleagues of color and senior white colleagues (regardless of gender). Thus, white colleagues were given superior opportunities to initiate numerous mentoring relationships with senior colleagues or to progress mentoring relationships from the initiation stage to the cultivation stage. Since my committees were primarily inactive and unimportant, it appears that I, the Black woman, was blocked the most.<sup>189</sup> I was provided few, if any, opportunities to be professionally integrated or to initiate mentoring relationships.

Based on the committee assignments, there definitely seemed to be some categorizing and promoting of people through the committee assignments. Thus, in my second year at BCLS, academic year 1996-97, I was once again not provided an opportunity to work with any senior colleagues. That opportunity only appeared to be provided to whites, regardless of gender. The white male, who started at the same time as I, appeared to be promoted by the same administration that was blocking my participation as an institutional player. Clearly, in comparison to me, my white male colleague was mentored more (if his committee assignments were any reflection), and he was receiving the benefits of this mentoring, as evidenced by his continued assign-

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189. When professors of color were surveyed in the late 1980s, they reported that they were given unimportant committees and were rarely given the opportunity to be the chair. See Bell & Delgado, *supra* note 81, at 363-64.

ment to increasingly important committees. Given this type of behavior and the notice given to the administration regarding my concerns about institutional isolation because of inactive committees, it is perhaps safe to conclude that when administrators continued to assign me inactive committees, they did so knowingly and with full knowledge that I was increasingly at risk.

### 3. Using Committee Assignments to Actively and Knowingly Ensure that a Black Woman is an Institutional Stranger

Based on my experience, there is some truth to the supposition that “[a]ppointing women faculty . . . to the less powerful committees, especially those that have little institution-wide or fiscal responsibility,” is an example of “customs, patterns, and practices that . . . have a chilling effect on academic women.”<sup>190</sup> Less powerful or inactive committee assignments are also a way to block mentoring and to accomplish subtle discrimination based on race, gender, or race/gender. After all, in 1996, except for the white man who started at the same time as I started in 1995, everyone else was committee short loaded, either due to the number of committee assignments or the type of committees assigned. My committee assignments, and the lack of transracial interaction opportunities that they provided, stood in complete contrast to the junior white male’s assignments. Although we began at the same time, our experiences were strikingly different. His assignments guaranteed quantitative and qualitative access to colleagues via meetings and subcommittees, which would ultimately positively impact his tenure. His assignments created opportunities that would allow him to develop a positive institutional reputation. My assignments guaranteed that I would not experience professional transracial interaction. My assignments guaranteed continued institutional isolation and visibility. My assignments guaranteed a continued dearth of mentoring.

There may be a host of reasons why the committee disparities existed. The clearest explanation for this sharp discrepancy is racism and sexism combined: access to senior colleagues mentoring for the junior white male and blocked access for me, the junior Black female. Furthermore, allegations that the com-

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190. ASSOCIATION OF AMERICAN COLLEGES, *THE CAMPUS CLIMATE REVISITED: CHILLY FOR WOMEN FACULTY, ADMINISTRATORS, AND GRADUATE STUDENTS* 10 (1986); *see also* GREGORY, *SECRETS*, *supra* note 146, at 82–83 (discussing common barriers Black women face to success in academia).

mittee disparities were designed to protect junior female colleagues do not explain the discrepancy between the committees I received my first and second years and the committees the white woman who started her employment a year after me received.

In her first year on the tenure track, she was assigned active, substantive committees, *e.g.*, the Admissions, Career Services, and Education Policy Committees, all of which were important committees that guaranteed interaction with senior colleagues and opportunities to initiate mentoring. Given this reality, my initial conclusion that I was being “protected” as a new female professor was inaccurate, because white women did not receive this same protection; nor did my white male colleague. Any purported “protection” that was provided to me could have been based on condescending stereotypes and social barriers that centered around race/gender and not on seniority.

Unfortunately, due to the importance of mentoring and the reality that Black women face near insurmountable barriers to initiating mentoring relationships, this “protection” was accruing to my detriment. Regardless of the reason why the committee disparities existed, since none of the other untenured people seemed to be “protected” by the administration from substantive committee assignments, my treatment was difficult to explain and countenance. My institutional isolation also became demoralizing. I was being harmed based upon the administration’s discretionary committee assignments. Yet, I had no institutional redress.

After the second year of being assigned inactive committees that would not further my career at BCLS, I was placed in a quandary. On one hand, I did not want to complain because such a light/inactive committee load would theoretically give me more opportunities to write. Further, complaining or requesting substantive assignments did not seem to help at all because I was ignored. Complaining, therefore, only highlighted my invisibility in the institution and the implicit disrespect that I experienced because I am a Black woman. Institutional silence, inactive committees and unimportant committees sent me a powerful message regarding whether I could overcome my outsider status and the stereotypes that attach to it.

On the other side of my committee quandary, my inactive committees doomed me to be a perpetual stranger to colleagues with whom I did not share race, gender, or race/gender. In effect, the failure to assign me to substantive committees ensured

that I would continue to be a transracial stranger to those colleagues who would ultimately vote on my tenure. It also ensured that I would continue to struggle with initiating mentoring relationships. Given the inactivity of these committees, I feared that I would not have the opportunity to dispel any negative stereotypes or reputations that may have developed.<sup>191</sup> I was not given the opportunity to show that I was (and am) smart, organized, professional, and easy to get along with. In essence, I was not given the opportunity to prove that I was not incompetent or a Sapphire. Instead, my every action or inaction, regardless of the subject or issue was apparently seen through the prism of the presumption of incompetence and the Sapphire myth such that I was perceived as threatening, intimidating, and incompetent. These social barriers, therefore, determined how others would react to me, their comfort level with me, and their perceptions of my persistence or assertiveness in seeking mentoring. These social barriers created immovable institutional barriers that precluded me from obtaining substantive committee assignments.

Further, none of my committee assignments reflected what I was already doing — mentoring students on careers in intellectual property; interviewing, and job searching, providing suggestions to changing our week long introductory course for first year law students; and mentoring students on their Law Review topics, how to clean up the journal, and how to select and research their notes. Based on these activities, I could have easily been placed on the International Committee, Career Services Committee, the Publications Committee, or the EPC.<sup>192</sup> There appeared to be no apparent effort to match my committee assignments with my desires, my interests, my scholarship, my teaching, or my interactions with students. In essence, the committees were simply inactive. The institution appeared to only provide me committee assignments in name because most of my

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191. Given the fact that most mentoring relationships begin fairly quickly when a new person joins an organization, my gut feeling that I was at a disadvantage is probably true. See, e.g., Ronald J. Burke & Carol A. McKeen, *Benefits of Mentoring Relationships Among Managerial and Professional Women: A Cautionary Tale*, 51 J. VOCATIONAL BEHAV. 42, 47 (1997) (reporting that in their study, most mentoring relationships began early on in the career of the mentee).

192. Once again, in an attempt to go around the barriers the institution placed in my way to transracial interactions, I sent an e-mail to each of the chairs of the International Committee, the Career Services Committee, and the EPC. I asserted my interest and told them that I would be willing to participate even if informally. While I was thanked for my interest, when all was said and done, I was not asked for any of my ideas or included in any other way.

committees provided no opportunities for institutional work or contribution.

Given this result in my second year, I was willing to risk being more persistent when my third year began. Once again, I wrote the Dean. Once again, I was given "do nothing committees." During my third year, academic year 1997-98, I was once again initially assigned to inactive committees. In fact, I could not loosen the hold the inactive Disability Committee<sup>193</sup> and the inactive Library/Computing Committee had over me.<sup>194</sup> I was released from the Admissions Committee and was assigned to the Adjunct Committee when the chairwoman specifically requested me.

Perhaps my inactive committee assignments in my third year could be explained because I was going to be on research leave in the Spring of 1998 — perhaps, but not likely. When my committee assignments are compared with other junior people who were also going on research leave that year, there is still a glaring disparity. Those who went on leave that year have an asterisk (\*) by their names. Other than myself, three others went on leave in the Fall of 1997, they were all white. I went on leave in the Spring of 1998. The committee assignments for 1997-98 were as follows:

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193. My complaint is not only that the committees I was selected for were unimportant, but also that they were horribly inactive. For instance, the Disability Committee was probably inactive due to the unimportance of disability issues to the law school, as well as the turmoil in the Dean of Students' Office and in the administration as a whole.

194. My complaint is not of the existence of the Committee, but of its inactivity. I imagine that this committee was inactive due primarily to the excellence and efficiency of the library staff itself.

Race/Gender and Year Started <sup>195</sup>	1st Committee	2nd Committee	3rd Committee
1996 white woman	Career Services	Self-Study Steering	
Me: 1995 Black woman	Advocacy (Fall)	Disability (Fall)	Library/Computing (Fall)
1995 white man*	Appointments	Career Services	
1994 white woman*	Admissions (Spring)	Publications (Spring)	
1994 white woman*	Admissions (Spring)	Building (Spring)	
1994 Black man	Academic Standards	Appointments	
1990 white man	Disability	Self-Study Steering <sup>196</sup>	

As the above table shows, I was the only person, regardless of research leave, who had three committees.<sup>197</sup> Two of my committees were wholly inactive. While my committees were inactive and nonsubstantive, my similarly situated white colleagues had active, substantive committees. The white woman who started in 1995, a year after I began, was selected for the Self-Study Steering Committee and the Career Services Committee, both of which would allow her to interact closely with senior colleagues.

Further, for the half-year that they were not on leave, all of the untenured white professors were given substantive committees or special duties that allowed them to interact with senior colleagues to solidify positive institutional reputations. For instance, later that year, the Dean resigned. The President selected several people to sit on the Dean Search Committee. The 1996 white woman, one of the 1994 white women, and the 1990 white male were selected. No untenured professor of color sat on this committee. Given these assignments, my similarly situated white colleagues were given continued and perhaps increased opportunities to work with senior colleagues within the law school and

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195. The 1989 Asian male listed on the prior chart was no longer untenured in 1997–98, having obtained tenure the year before. He is, therefore, removed from this chart because the chart is designed to show race, gender, and committees of those who were untenured.

196. This person was also placed on the Self-Study UAPC Implementation Subcommittee.

197. It is also interesting to note that the white male who started with me was not given half-year committees like everyone else who was on leave that year. In contrast to myself and the two 1994 white women, the 1995 white male was given committees for the entire year.

the university. They were given increased opportunities to initiate mentoring relationships with senior people throughout the university. I, on the other hand, continued to work primarily alone. These continued disparities existed despite my requests and exhortations to the Dean.

Due to these noticeable disparities, after the committee assignments were made public, I once again implored the Dean to assign me to more active committees so that I could develop relationships with my senior colleagues in order to facilitate mentoring. On September 10, 1997, I e-mailed the Dean as follows:

I am concerned about my committee assignments. They are pretty much the ones I had when I started. Most are completely inactive. My concern is that none of the committees actually involve me in planning for the future of this institution. Nor do they allow me to participate in activities that are at the heart of the institution. This is not to say that disability and library/computing are not or should not be at the heart of the institution. The fact is they are not. Neither committee has met more than one [sic] since I began in 1995.

Given this inactivity, I lack much needed formal opportunities to work with senior colleagues. Relying on informal opportunities has not worked. If I do not have any formal opportunities to work with a number of my senior colleagues, I remain an "unknown," thereby increasing the strong likelihood that people will rely on (or continue to rely on) stereotypes, a single encounter, discussions about a single encounter, prejudices, myths, etc. about me. Without formal opportunities, I do not have any possibility of identifying and thus destroying these stereotypes, myths, etc. as a result, what was a myth can become solidified, thereby becoming reality. You mentioned such a myth when we last talked.

I also feel that unless there is a formal mechanism that allows me to develop relationships with my senior colleagues, my communications will continue to be one way . . . from me to others. Without two-way communications, I cannot be mentored or progress in many ways.

I understand the need to "protect" junior faculty, but it seems that in my case that protection has gone awry. By having inactive committees I may be protected in some sense, but put at great risk in more important ways. I can manage my time and even if I cannot, perhaps it is a skill I need to develop. Thus, if I have inactive committees because I am being "protected," please be aware that I do not need or desire such protection, especially in my third year of law teaching and my third year at BCLS.

I have raised these issues before, to no avail. I have raised them each time we selected committee[ ] assignments in 1996 and 1997.

Perhaps my committee assignments need not be changed this year given my leave in the Spring. But, I would feel that there is a mutual commitment to my being involved in the life and future of this institution if my committee assignments were qualitatively equivalent to the assignments of my peers. From my view, that is not the case. The committee assignments I have no[w] and have had in the past have not allowed me to work with others. The committee is either inactive or the committee requires individualized work, e.g., the Admissions committee (reviewing files) or Appellate Advocacy Committee (advising a team).

I continue to be happy to work with members of the appellate advocacy committee. Peter [Donovan] has been a good chairman and I have enjoyed getting to know him. As a faculty advisor of the Craven team, and my expertise in the appellate advocacy competitions, it is appropriate for me to be on that committee. It would be nice if I had other committees that involved me in the life and future of the law school.

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Given the explicitness of this e-mail, the Dean was placed on notice and given knowledge of the nexus between race/gender, committee assignments and mentoring. This time I was fairly clear in explaining to the Dean that none of my committees were going to allow me to develop relationships with senior colleagues. I was fairly clear on the nexus between committee assignments and mentoring. I was fairly clear that I needed mentoring, but was not being provided it and that my existing committees were acting as barriers to my initiating such mentoring relationships with senior colleagues. In fact, I informed the Dean that my lack of access to senior colleagues for mentoring placed me at a career disadvantage in comparison to my white colleagues. In reply, the Dean stated that he was unaware that I had poor relationships with senior colleagues.

Despite all my prior efforts, the Dean just did not seem to understand or want to understand the fact that I was trying to establish "a" relationship with senior colleagues. I did not as yet have poor relationships with senior colleagues, I had *no* close, comfortable, and informative professional relationships with senior colleagues. As a result, I was not being qualitatively

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198. E-mail from Pamela J. Smith, Professor, Boston College Law School, to Avi Soifer, Dean, Boston College Law School (Sept. 10, 1997) (on file with author).



mentored by senior white colleagues who would ultimately vote on my tenure. As time passed, the cost of continued isolation increased.

After three years of requesting committee assignments, explaining the need for transracial interactions, and citing authority in support of my concerns and needs, it is impossible for me now to believe that any intelligent person did not understand the issues raised. My logical conclusion is that the Deans were not interested in providing a foundation for my much-needed transracial interactions. They were not, therefore, willing to promote my career or to ensure my retention. They were not willing to provide a vehicle that would allow me to interact on a professional basis with any of my senior colleagues. In sharp contrast, they were willing to provide these vehicles to my similarly-situated white colleagues. In essence, while they were willing to provide a vehicle for whites to progress, they were constantly placing insurmountable barriers in my tenure path, thereby ensuring that I would not progress or that I would progress only through excessive individual effort. The costs of discriminatory discretionary committee assignments were borne by me and me alone.

#### 4. Showing the Emotional Career Costs to Being Denied Committee Assignments and Mentoring

After years of making requests, I became too emotionally demoralized to continue to make requests. It was simply too demoralizing to be ignored and to be so poignantly aware of the glaring differences between how I and my white colleagues were treated. Further, I had no institutional redress. I could complain to no one about not being assigned active substantive committees or about how my dearth of committees precluded me from initiating meaningful mentoring.<sup>199</sup> My vulnerabilities due to my race, gender, and novice status were exacerbated by my powerlessness to accomplish professional integration via committee assignments. I could request, but not demand, better assignments because to be demanding, angry, and argumentative placed me at great risk of being perceived as a Sapphire by the very people who were supposed to facilitate my success. So, I gave up. I stopped asking for active committees because asking

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199. I did talk with senior faculty of color and others. All simply stated that I should ask the Dean for what I wanted. I did, of course, but silence and nonresponsiveness inevitably resulted with no redress because committee assignments were within the discretionary power of the Dean and the Academic Dean.

seemed to do nothing to increase the likelihood of my getting more substantive committee assignments.

Yet just as I decided to stop asking for more active committee assignments, at the beginning of the academic year 1998, the administration was purportedly interested in getting me involved. Perhaps this was due to the host of memoranda that was on file. Perhaps this was due to the fact that an interim Dean replaced the outgoing Dean. But the new Dean was the academic Dean the year before.<sup>200</sup> He had participated in selecting my inactive committees in 1997-98. He was aware of my numerous requests for more active substantive committees.<sup>201</sup> Given these facts, it was highly unlikely that this new Dean would be more forthcoming than the old one. As I suspected, he was not more forthcoming in his committee assignments.

At the beginning of the 1998-99 school year, the interim Dean met with me and explained that he was aware that I had long-standing issues about inactive committees. He wanted to know my concerns and committee interests. I looked at him in amazement. I explained that my issues were listed in great detail in the memoranda and e-mails dating from 1996. And, my committee interests had not changed.

Despite this new institutional interest, with regard to professional integration and mentoring, I was years behind my similarly situated white colleagues. My requests to redress these disparities had been ignored. Given my response (silence at that time), he said that he had me in mind for the EPC. So, in my fourth year I was assigned to the EPC, which subsumed the place of the Appellate Advocacy Committee and many others. The committee met, but was so large that it became unwieldy and provided little opportunity for me to work closely with senior colleagues. Given its size, it became as inactive, for me, as all of my prior inactive committees were. Once again, I was assigned to the Disability Committee, which remained inactive. I was also assigned to the Library/Computing Committee, which became the Laptop

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200. For the academic year 1998-99 James Rogers acted as both the Interim Dean and the Academic Dean.

201. In December 1997 I wrote the Academic Dean and once again expressed my hope that in the future I would be given more substantive committee assignments. See E-mail from Pamela J. Smith, Assistant Professor, Boston College Law School, to Jim Rogers, Dean, Boston College Law School 1 (Dec. 20, 1997) ("I am hoping that I will be given more substantive committee assignments so that I can get to know many of my senior colleagues on a more quality professional basis.") (on file with author).

Committee. This committee met regularly throughout the fall, but most meetings were scheduled while I was teaching class. After the third meeting was scheduled during my class time, I asked the Chairwoman whether this was going to be the norm. If it was, then I needed to be transferred to another committee. Thereafter, I was able to attend one meeting.<sup>202</sup> This committee only met to complete one report during the Fall of 1998. It did not meet for the remainder of the academic year.

My only transformative committee assignment was to the Alumni Outreach Committee, which is chaired by one of my most active and encouraging supporters, Daniel Coquillette. While I was honored to have the opportunity to work with Daniel Coquillette, most of the others on this committee were personal acquaintances. I appreciated the opportunity to spend more time with these acquaintances; however, doing so did little to facilitate sufficient transracial relationships with the senior white males who remained strangers to me and I to them. Further, the Alumni Outreach Committee did not compensate for the three years I had been denied substantive committee assignments and mentoring.

The fact that I was blocked during my early formative years will forever determine how I will be perceived by senior white colleagues at BCLS and will negatively impact my ability to obtain tenure there. The window of opportunity for me to get to know senior colleagues, to destroy any preconceived notions they may have had about me, to destroy any stereotypes and hostilities they may have had, and to get people to invest emotionally in me and my academic career at BCLS had closed. This window of opportunity was not opened by this one committee assignment in my fourth year. Because I had three years of institutional "experience," I was no longer a new person to the environment. As such, my reputation had already been created and solidified. This reputation may have been based on the social barriers of the presumption of incompetence and the Sapphire myth. Institutional barriers to committee assignments solidified

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202. My hypothesis that the Disability Committee and the Laptop/Computing Committee were unimportant to the life of the institution was solidified in the Fall of 1999 when the new Dean, John Garvey, did not include them as ongoing committees. See Memorandum from John Garvey, Dean, Boston College Law School, to Faculty and Staff, Boston College Law School (Sept. 3, 1999) (on file with author). Since these committees were wholly inactive, I cannot imagine that their absence will be felt.

the effects of the social barriers, i.e., the Sapphire myth, the presumption of incompetence, and race/gender discomfort.

Further, by not assigning me active substantive committee assignments, the institution signaled that I was not expected to be integrated into the environment or to be mentored, perhaps because I was not expected to survive, stay, excel, or receive tenure. This failure to provide mentoring opportunities exposed what may have been the Deans' privately-held racial/gender disrespect. Yet, the effects of private acts of racist/sexist disrespect became public as each year I was denied the opportunity to be institutionally integrated. Each year, my institutional invisibility and devaluation became more noticeable to others within the environment. Students soon realize who is vulnerable and who can be attacked through negative student evaluations, racial meetings, hate mail, racial flyers, and other hostile encounters inside and outside of the classroom.<sup>203</sup> Colleagues and administrators take notice of who is not invited to sit on important committees, who is not being invited to give colloquia, and whose accomplishments are lauded and whose are ignored. As a result, fewer positive benefits, including mentoring, flow to the person perceived as institutionally vulnerable and institutionally expendable. If one is institutionally disrespected, this disrespect ensures that one will not receive substantive mentoring. After all, mentors select younger visions of themselves and/or those they can help succeed.

So, as to whether institutions *should* provide opportunities for transracial interactions through committee assignments, the answer is a resounding yes. Whether institutions do is another matter. I can state that at Boston College Law School, despite all my efforts to inform, cajole, beg, request, or demand active substantive integrating committee assignments that would allow me to develop transracial relationships, the institution was indifferent, nonresponsive, and perhaps downright hostile. Each of my e-mails and memoranda to the Deans described the close nexus between race/gender, committee assignments, mentoring, and professional integration.<sup>204</sup> Most of the e-mails discussed the committee and mentoring disparities that existed between myself

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203. See generally Smith, *When Sapphire Meets Socrates*, *supra* note 4, at Part V (discussing hostile encounters that arise between students and Black women due to the presumption of incompetence and other things).

204. See *supra* Parts IV.D.2-3 (highlighting the nexus for administrators between committee assignment and mentoring).

and my white colleagues.<sup>205</sup> Despite this, each e-mail and memorandum was ignored, and I continued to be assigned to committees that prevented mentoring and ultimately professional integration. Each inactive committee assignment was a testament to the Deans' discriminatory implementation of informal policies, which are subject to such manipulation.

These actions sent a strong message to me and to potential mentors as a whole, that I was not worthy of knowing or working with. The message seemed to infer I was neither intended, nor expected to stay.<sup>206</sup> I certainly was provided with few opportunities that would facilitate or ensure my success. Because my retention and promotion were apparently being blocked, there was no need for me to learn about the inner-workings of the institution or to participate in planning for the institution's future. If I was not expected to stay, there was no need for anyone to expend time and resources to mentor me. Without mentoring I was destined to fail at BCLS.

Many Black women in academia have this experience. Indeed, in academia, as a result of the presumption of incompetence and the resulting colleague-based phenomena of indifference and invisibility, for Black women "[s]eldom is there an assumption of legitimacy or competence. More often the black faculty woman is predestined to fail, and all too often the behavior and attitudes of her peers become a part of the self-fulfilling prophecy."<sup>207</sup> In essence, without active, affirmative institutional intervention and support, an institution sets up a Black woman to fail. Sometimes, in fact, institutional action or inaction may facilitate failure rather than success.<sup>208</sup> When this occurs in substantive areas like mentoring, which has short- and long-term employment benefits, the courts must intervene to ensure that Black women are not solely bearing the burdens and risks for institution's discretionary implementation of informal policies that negatively impact outsiders. Without legal intervention many institutions will continue to decide to succumb to the

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205. See *supra* Part IV.D.3 (discussing the committee disparities).

206. I was also never selected by the administration for any special assignments, such as the administrative Dean search, the Dean search, or the task force to attack the Solomon Amendment.

207. Irvine, *supra* note 79, at 114; see also St. Jean & Feagin, *supra* note 114, at 189-94.

208. Many Black women are ignored or subtly deterred by "supportive discouragement." See St. Jean & Feagin, *supra* note 114, at 193; see also *infra* Part VI.A (discussing supportive discouragement as a form of subtle discrimination).

social barriers and in turn create institutional barriers to prevent Black women from obtaining mentors.

V. THE DECISION TO BUILD A BRIDGE OVER THE BARRIERS  
OR SUCCUMB TO THE BARRIERS TO MENTORING  
BLACK WOMEN

The negative perceptions about Black women discussed above will not change without sufficient and meaningful trans-racial interactions that allow stereotypes to be destroyed. If mentoring relationships and useful collegial relationships are not created, the full retention and professional growth of Black women cannot occur. And given the striking racial history Black people have faced in this country, it cannot be denied that institutional support, such as patronage and mentoring, is crucial. Without active institutional participation, mentoring will occur on a "business as usual" basis that ensures that white males will receive mentors. "Business as usual" can be thwarted if institutions are willing to build a bridge for Black women over the presumption of incompetence and the Sapphire myth. One such bridge is formal policies that facilitate transracial professional interactions between Black women and senior white colleagues. Another bridge is committee assignments that allow Black women to actively work with senior colleagues, especially senior white males who remain the large majority of law professors in the United States. In this manner, colleagues can personally witness the competence, intelligence, and nonthreatening, even-keeled professional demeanor that Black women possess. Interaction will allow Black women the opportunity to overcome the presumption of incompetence and the negative perceptions of the Sapphire myth. Without these bridges, societal barriers can tacitly encourage institutions to not adequately mentor Black women.

Too often, institutions succumb to passive support, informal policies, and social barriers to the detriment of Black women and other outsiders. Too often institutions create or maintain institutional barriers. The dearth of tenured Black women in legal academia and the dearth of Black women in senior positions in other industries is a testament to the continued existence of these barriers and the non-existence of the bridges that are crucial to Black women's success.

Society can no longer fail to understand that the above discussed social and institutional barriers are Black women's daily

reality and that together they act as near insurmountable barriers to prevent mentoring and career success. Lack of mentoring imposes a high risk of failure on all Black women who are actively or passively denied the opportunities to be coached, sponsored, or connected to senior ranks. So far these risks have been borne by Black women alone, with institutions facing little to no risks for their participation in the negative career outcomes facing Black women. That must and will change if courts impose risks on institutions by making institutions that actively or passively deny mentoring liable under Title VII.<sup>209</sup>

## VI. THE ACTIONABILITY OF FAILING TO MENTOR SAPPHIRE

The actionability of institutional refusal to provide or facilitate mentoring needs to be studied thoroughly. This Article is just a beginning. For now, however, several courts have suggested or held that mentoring is a benefit of employment protected by Title VII. Failure to provide mentoring along racial and/or gender lines should be separately actionable as a violation of Title VII.<sup>210</sup> Thus, regardless of the institution or industry, Black women must begin to seek redress from the courts when their organizations fail to provide mentors, fail to provide opportunities to interact with senior colleagues who may become mentors, or block access to mentors. Hopefully, courts will respond in light of the illegality of failing to provide mentoring and other benefits of employment equally.

### A. *Why Failing to Mentor Should Be Actionable: Mentoring As a Term and Condition of Employment*

The basic premise behind the opinions discussing mentoring is the fact that “[i]t is perfectly believable that a supervisor could act out a discriminatory animus by routinely reviewing [white] women and minorities in a harsher fashion or refusing to serve as a mentor or advisor for anyone but members of his race or sex.”<sup>211</sup> Failing to mentor or blocking the initiation of mentoring

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209. The goal of this Article was not necessarily to inform institutions that Black women are being denied mentoring and are in fact blocked from mentors. I believe institutions already know that given the dearth of Black women in senior ranks. Rather, the goal of this Article was to reveal the realities of many Black women's professional lives as they are denied and blocked from mentors.

210. See, e.g., *Jensvold v. Shalala*, 925 F. Supp. 1109 (D. Md. 1996), *aff'd*, 141 F.3d 1158 (4th Cir. 1998); *Prizevoits v. Indiana Bell Tel. Co.*, 882 F. Supp. 787, 794 (S.D. Ind. 1995); *Jensvold v. Shalala*, 829 F. Supp. 131 (D. Md. 1993).

211. *Prizevoits*, 882 F. Supp. at 794.

can accomplish subtle discrimination, because mentoring has substantive employment benefits.<sup>212</sup> One manner in which discrimination against Black women is achieved is through “supportive discouragement.”<sup>213</sup> Supportive discouragement can come in the guise of comments encouraging a Black academic to not write on certain topics or to avoid certain types of scholarship. Supportive discouragement can come in the guise of passive support and informal policies that are implemented at the absolute discretion of administrators. Supportive discouragement can also be disguised as protectionism that denies a Black woman the opportunity to serve on committees that would allow her to develop transracial relationships with senior colleagues. Supportive discouragement can also appear in the form of providing a Black woman with a mentor, but in an untimely fashion. In essence, supportive discouragement and the failure to mentor are sophisticated and subtle ways of accomplishing discrimination based on race, gender, and/or race/gender in violation of Title VII.

Failing to provide a mentor, failing to provide access to potential mentors, and blocking mentoring should be actionable under Title VII because mentoring has substantive job-related benefits in the short- and long-term. For example, in academia, mentored junior faculty receive higher student evaluations and are more quickly integrated into the environment than those who

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212. Potential causes of action under Title VII are, of course, disparate treatment and disparate impact. An employee complaining of lack of mentoring can claim that she was denied mentoring when similarly situated others were not and she could also complain that the policy of providing mentors and assignments that would lead to mentors was applied in a discriminatory manner. *See, e.g.,* *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977) (comparing disparate treatment and disparate impact). Under disparate treatment, an employee claims that she was treated differently than similarly situated peers. *See generally* *Harris v. Forklift Sys. Inc.*, 510 U.S. 17, 21 (1993) (holding that terms and conditions of employment include an “entire spectrum of disparate treatment,” including a hostile or abusive work environment) (citation omitted); *International Union v. Johnson Controls, Inc.*, 111 S. Ct. 1196, 499 U.S. 187 (1991); *see also* *Garcia v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993) (holding that disparate treatment based on the denial of terms and conditions of employment is actionable). Under disparate impact, despite neutral policies, their application falls disproportionately and negatively on protected classes. *See generally* *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971) (holding that Title VII prohibits employment practices that are neutral on their face, but discriminate in application).

213. *St. Jean & Feagin*, *supra* note 114, at 193.



do not receive mentoring.<sup>214</sup> As a result, new employees who receive mentors "have higher salaries, exert greater influence, have more opportunities, and are more satisfied with their jobs and careers" than those who are not mentored.<sup>215</sup> Mentoring, therefore, is and affects basic terms and condition of employment. If white men are primarily mentoring white men, leaving Black women and other outsiders grasping for mentoring opportunities, mentoring has a disparate impact on employees' careers based on race, gender, and race/gender. In essence, because mentoring has substantive short- and long-term positive employment benefits, failing to provide mentors is a subtle way of ensuring white men receive higher salaries, more promotions, better student evaluations, and more career success overall. Failing to provide mentors, therefore, is a subtle way of accomplishing age-old illegal employment discrimination by providing these types of terms and conditions of employment based upon race and gender.

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214. See Struthers, *supra* note 45, at 266 (citing R. BOISE, LESSONS LEARNED ABOUT MENTORING, NEW DIRECTIONS FOR TEACHING AND LEARNING 51-61 (1995)).

There is of course a greater need for law schools and other institutes of higher learning to temper the effects of negative evaluations that a Black woman may receive. Given the presumption of incompetence in academia and the negative stereotypes about Black women, institutions can no longer ignore the basic fact that students will and have given Black women (and indeed women) poorer evaluations than they give to men. Thus, it is fairly clear that race-gender bias infects the evaluative process. Accordingly, this race-gender taint to evaluations must be taken into account. See generally Smith, *When Sapphire Meets Socrates*, *supra* note 4, at Part VI.A (providing strategies to institutions in order to recognize and redress the negative effects the presumption of incompetence and the Sapphire myth have on Black women).

It is my understanding that the potential for bias to infect students' grades was the genesis behind law schools going to anonymous grading. Students feared that a professor may have been biased against them individually, because of race, gender, politics, outspokenness in class, and the like. If we accept students' fear as a possibility that bias may exist, then surely we must begin to accept the equally plausible possibility that students' evaluations are similarly infected by bias that disproportionately and negatively affects Black women. See generally Smith, *When Sapphire Meets Socrates*, *supra* note 4, at Parts II-IV (discussing the sociological phenomena that increases the risks that Black women will have hostile encounters with students that may lead to negative student evaluations).

215. Fagenson-Eland, *Perceptions*, *supra* note 147, at 29. See, e.g., Bahniuk & Hill, *supra* note 31 (discussing the benefits of mentoring and suggesting mechanisms that employers can use to facilitate mentoring opportunities); Dreher & Cox, *supra* note 147, at 297; Fagenson, *The Mentoring Advantage*, *supra* note 147, at 309-320; Scandura, *supra* note 147, at 169 (discussing the career benefits that accrue to those who are mentored).

For many professors of color and people of color in general, the primary problem is initiating mentoring relationships. Once mentoring relationships have begun, it is perhaps less difficult to deepen these relationships and move to the cultivation stage. Unfortunately, the presumption of incompetence, racial and/or gender stereotypes, and general racial discomfort make initiating mentoring relationships difficult. As a result, it is necessary for organizations to institute formal policies to ensure that people of color are given the same or equal access to senior colleagues (often white male), as their similarly situated white male colleagues. If mentoring is and affects terms and conditions of employment such as salary, evaluations, committees, work assignments, and more intimate access to people in power,<sup>216</sup> then it should be incumbent upon organizations to ensure that these terms and conditions of employment promotion and retention are provided in a nondiscriminatory manner. Without mechanisms to ensure that these terms and conditions are provided equally, mentoring will remain a privilege of employment that is provided based upon the “buddy system,” which tends to favor those “buddies” who are white and male.

One court found a system of providing mentoring based upon the buddy system to be “troubling” — presumably because of favoritism.<sup>217</sup> Unfortunately, in that case, failing to mentor was not a central issue.<sup>218</sup> Favoritism applied illegally should be separately actionable under Title VII.

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216. See generally Dreher & Cox, *supra* note 147, at 297 (finding that business school graduates who were mentored — by senior white men — averaged almost \$16,840 more a year in salary than those MBA students who had not been mentored).

217. See *Prizevoits v. Ind. Bell Tel. Co.*, 882 F. Supp. 787, 793 (S.D. Ind. 1995). Unfortunately, in that case the plaintiff was unable to prove that mentoring by the buddy system was pretext for intentional discrimination.

218. Instead, the court found that the employer and defendant had a legitimate reason to terminate the female plaintiff because her performance evaluations were substantially lower than the norm and she had a high turnover rate among her subordinates. Given the existence of legitimate reasons to lay her off, and her failure to show that gender factored into her performance evaluations and subordinate turnover rate, her claim did not present a triable Title VII issue. The court fails to recognize that poorer evaluations are one of the negative effects experienced by those who are not mentored. Failure to mentor or mentoring was a central issue in the seminal cases of *Jensvold v. Shalala*, 829 F. Supp. 131 (D. Md. 1993) and 925 F. Supp. 1109 (D. Md. 1996), *aff'd*, 141 F.3d 1158 (4th Cir. 1998).

In academia, it is fairly uncontested that gender factors into how white women are evaluated and that race and gender factor into how Black women are evaluated by students and colleagues, both of whom are evaluated more negatively than white male colleagues. See Smith, *When Sapphire Meets Socrates*, *supra* note 4, at Parts III

At my institution, administrators seemed to practice favoritism based on race and gender by ignoring or failing to directly respond to my requests for mentoring and active committee assignments.<sup>219</sup> Perhaps it should not be actionable that institutions practice favoritism in this manner. After all, “[f]avoritism and unfair treatment, unless based on a prohibited classification, do not violate Title VII.”<sup>220</sup> There is a proviso. Favoritism cannot be based upon prohibited Title VII categories. Similarly, non-responsiveness and discretionary institutional incompetence that disproportionately affects traditional outsiders, should be separately actionable under Title VII.<sup>221</sup> The law should not allow an institution to be incompetent for Black women and other outsiders and then to be supremely competent for white men such that white men are mentored and traditional outsiders are not. In this same vein, an institution cannot choose to favor white employees over Black employees or men over women, regardless of the employment benefit, without violating Title VII. This basic result should remain the same when the term and condition of employment at issue is mentoring or committee assignments that lead to mentoring.

In my situation, all white colleagues were favored because they received substantive committee assignments and timely mentoring as a result of these assignments. This type of racial favoritism raises an issue of race discrimination.<sup>222</sup> Further, because it appeared that white male, white female, and male colleagues of color were favored regarding the selection of committees and mentors, this form of favoritism raises issues of “sex plus race” or “race plus sex” discrimination under Title VII.<sup>223</sup> Title VII prohibits employment discrimination based on race and/or gender. It states:

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and V (discussing the presumption of incompetence and the Sapphire myth as a sociological phenomena that put Black women at risk of being negatively evaluated by students).

219. *Cf. Andre v. Bendix Corp.*, 774 F.2d 786, 799 (7th Cir. 1985) (holding that a nonresponsive or mediocre supervisor is not actionable under Title VII).

220. *Miller v. Aluminum Co.*, 679 F. Supp. 495, 501 (W.D. Pa. 1988), *aff'd*, 856 F.2d 184 (3rd Cir. 1988).

221. *See Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993) (holding that terms and conditions of employment include an “entire spectrum of disparate treatment,” including a hostile or abusive work environment) (citation omitted).

222. *See supra* note 212 (stating that alternative causes of action for this type of treatment are disparate treatment and/or disparate impact).

223. For cases that analyze the “sex plus race” theory involving Black women’s claims that race and gender interact to make the discrimination they face different

It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin[.]<sup>224</sup>

Thus, if mentoring or committee assignments that give rise to mentoring are "compensation, terms, conditions or privileges of employment," they cannot be assigned or provided based upon prohibited categories such as race and gender. Given the reality that mentoring provides substantive benefits to employees, mentoring should be considered "terms, conditions or privileges of employment" under by Title VII. Again, in my situation, presumably because of mentoring and substantive access to senior colleagues, my white peers may have higher student evaluations,

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from the discrimination that white women or Black men face, see generally *Connecticut v. Teal*, 457 U.S. 440, 455-56 (1982) (recognizing that the sex plus race line of cases continue to have vitality to protect subgroups of employees; at issue was a testing scheme that had a disparate impact on Black women), *Hicks v. Gates Rubber Co.*, 833 F.2d 1406, 1416 (10th Cir. 1987) (aggregating evidence of race and sex discrimination), *Lewis v. Bloomsburg Mills, Inc.*, 773 F.2d 561, 572-73 (4th Cir. 1985) (aggregating race and sex for class action), *Jefferies v. Harris County Community Action Ass'n*, 615 F.2d 1025, 1033 (5th Cir. 1980) (holding that the plaintiff could plead and prove a "sex plus race" cause of action), *Chambers v. Omaha Girls Club, Inc.*, 629 F. Supp. 925 (D. Neb. 1986), *aff'd*, 834 F.2d 697 (8th Cir. 1987) (holding that a private social club could fire a single Black woman who became pregnant without violating Title VII because the employer's no pregnancy rule was a business necessity despite the court's adoption of the "sex plus" theory and despite the court's finding that the rule would disproportionately affect Black women), *Harvey v. Young Women's Christian Ass'n.*, 533 F. Supp. 949 (W.D.N.C. 1982), and *Vuyanich v. Republic National Bank*, 409 F. Supp. 1083, 1089 (N.D. Tex. 1976) (allowing a Black woman to pursue litigation alleging racial and sexual discrimination based on her marriage to a white male). See also *Lea v. Cone Mills Corp.*, 438 F.2d 86, 88 (4th Cir. 1971) (per curiam) (allowing race plus sex to assist the plaintiff); *Anthony v. County of Sacramento*, 898 F. Supp. 1435, 1445 (E.D. Cal. 1995); *Sims v. Montgomery County Comm'n*, 766 F. Supp. 1052, 1099 n.131 (M.D. Ala. 1990) ("Black female officers employed by the Sheriff's Department are in an especially precarious position because they are subjected to both sexual and racial harassment. . . . Moreover, they are also subjected to additional discrimination because of their dual status, which neither the white female officers nor the black male officers must bear."); *Graham v. Bendix Corp.*, 585 F. Supp. 1036, 1047 (N.D. Ind. 1984) (holding that "[u]nder Title VII, the plaintiff, as a black woman is protected against discrimination on the double grounds of race and sex, and an employer who singles out black females for less favorable treatment does not defeat plaintiff's case by showing that white females or black males are not so unfavorably treated"); *Vuyanich*, 409 F. Supp. at 1089 (stating that the plaintiff's allegation of discrimination smacks of sexual as well as racial discrimination"); cf. *Lam v. University of Haw.*, 40 F.3d 1551, 1561-62 (9th Cir. 1994) (holding that an Asian woman could plead and prove a race/ethnicities plus sex case).

224. 42 U.S.C. § 2000e-2(a)(1).

higher salaries, more institutional power and authority, and higher job satisfaction. In essence, they have superior terms and conditions of employment that were provided along prohibited race and gender lines. Unfortunately, many courts have not addressed access to mentors and mentoring as a violation of Title VII. Accordingly, there is a dearth of jurisprudence and commentary.

*Jensvold v. Shalala*<sup>225</sup> is the seminal case on the actionability of failing to mentor.<sup>226</sup> In *Jensvold*, Dr. Margaret Jensvold served as a psychiatric fellow at the National Institute of Mental Health from July 1987 until July 1989.<sup>227</sup> The fellowship was designed to provide training and experience, presumably to those in their formative years.<sup>228</sup> To facilitate this training, fellows were assigned a preceptor who supervised, trained, and provided guidance, especially in research methodology.<sup>229</sup> This preceptor appeared to be analogous to a traditional informal mentor. Dr. Jensvold alleged that during her two-year fellowship she was denied some of the basic supervision, training, and guidance that the fellowship promised. When her fellowship was not extended for another year, she brought a Title VII action claiming that she had been deprived of the "core benefits" of her fellowship, because her preceptor, Dr. David R. Rubinow,

failed to mentor her or guide her in her research; (ii) failed to apprise her of conferences and professional meetings; (iii) prevented her from participating in important biological research performed in his laboratory; (iv) assigned her to perform a disproportionate number of routine tasks; (v) refused to extend her fellowship for a third year; (vi) discussed her appearance and her former marriage during mentoring sessions; (vii) requested that she consult a psychiatrist; (viii) blocked her attempts to obtain publication credits; and (ix) misappropriated her research ideas.<sup>230</sup>

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225. 829 F. Supp. 131 (D. Md. 1993).

226. For a more detailed factual analysis of this case during and after trial, see Debra S. Katz & Lynne Bernabei, *Practicing Public Interest Law in a Private Public Interest Law Firm: The Ideal Setting to Challenge Power*, 96 W. VA. L. REV. 293, 310-12 (Winter 1993/94) (describing facts not included in the litigation, the litigation strategy, and the lobbying efforts to force the National Institute of Mental Health and the National Institutes of Health to recognize the gender-based discrimination that women were facing in programs at both agencies and in research about women's health in general).

227. See *Jensvold*, 829 F. Supp. at 134.

228. See *id.*

229. See *id.*

230. See *id.*

In essence, Dr. Jensvold claimed that she was denied mentoring.

The defendant filed a motion for summary judgment alleging that Dr. Jensvold failed to state a prima facie case of sex discrimination. The court denied the motion on this point, concluding that material issues of fact existed.<sup>231</sup> Dr. Jensvold presented sufficient evidence to show that she was denied work assignments and mentoring that was qualitatively similar to that received by her male counterparts.<sup>232</sup> For some commentators, this opinion was the first to recognize that “denying supervision, ‘mentoring’ experiences, co-authorship, research support, and other career enhancing opportunities to female employees that are provided to male employees constitutes disparate treatment in violation of Title VII of the Civil Rights Act of 1964.”<sup>233</sup>

In addition to denying the defendant’s motion, the court rejected the defendant’s broad reading of *Page v. Bolger*,<sup>234</sup> that one must allege a violation of Title VII in “ultimate employment decisions such as hiring, granting leave, discharging, promoting, and compensating rather than ‘interlocutory or mediate decisions having no immediate effect upon employment conditions.’”<sup>235</sup> Instead, the court held that the failure to provide mentoring, work assignments, training, and guidance, affected the terms and conditions of Dr. Jensvold’s fellowship and as such were not “interlocutory or mediate decisions having no immediate effect upon employment conditions.”<sup>236</sup> In so holding, the court recognized that mentoring, training, and work assignments were terms and conditions of employment that Title VII protects separately

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231. *See id.*

232. *See id.*

233. Katz & Bernabei, *supra* note 226, at 310–12 (citing *Jensvold*, 829 F. Supp. at 135–36, 138); *see also* Bettina P. Plevan & Pamela Davis-Clarke, *Sexual Stereotypes, “The Glass Ceiling” and Other Employment Law Issues for Lawyers*, 693 PLI/COMM 111, 125–26 (June 9, 1994) (describing the *Jensvold* case as “novel” and indicating that it is a example of “glass ceiling” litigation).

234. 645 F.2d 223, 233 (4th Cir. 1981) (holding that Title VII claims by federal employees must be based upon a final harm). In *Page*, the Plaintiff alleged that the racial composition of a review committee violated Title VII. The court held that “decisions such as those concerning composition of the review committee . . . are simply steps in a process for making such obvious end-decisions as those to hire, fire, to promote, etc.” *Id.* In contrast, providing or failing to provide a mentor is a final step that determines promotion and termination. In fact, failing to provide a mentor based on race/gender can be and should be separately actionable under Title VII as failing to provide the terms, conditions, and privileges of employment, especially if mentoring is such a term, condition, and privilege.

235. *Jensvold*, 829 F. Supp. at 136.

236. *Id.* at 137 (quoting *Page*, 645 F.2d at 233).

from a final discriminatory employment action. Further, the court recognized that the failure to provide equal terms and conditions of employment can lead to negative ultimate employment decisions. Indeed, the court noted that Dr. Jensvold's prior negative treatment throughout her two year fellowship may have led to her being denied an extension of the fellowship. In this vein, the court cited with approval *Delgado v. Lehman*,<sup>237</sup> which held that an employer "cannot use an employee's diminished work performance as a legitimate basis for removal when the diminution is a direct result of the employer's discriminatory behavior."<sup>238</sup> In essence, an employer cannot block an employee from success and then use this lack of success as a reason to ultimately fire or demote her.<sup>239</sup>

In a later opinion upon remand, the court substantively determined the extent to which mentoring or failing to mentor violated Title VII.<sup>240</sup> The court first determined that not everything that comprised the employment relationship constituted "terms, conditions or privileges of employment" as protected by Title VII. Nonetheless, the court held:

Sometimes terms and conditions may be set by an employment contract, whether formal or informal, and any such terms promised to an employee as part of the employment contract cannot be withheld on the basis of gender. Furthermore, even if an employer has no contractual obligation to provide employees with a particular benefit, the benefit may become a privilege of employment if it is provided to some employees. Such a benefit—or incident of employment—similarly may not be provided in a discriminatory manner. Thus, the phrase "terms, conditions, and privileges of employment" includes any benefit that was part and parcel of the employment.<sup>241</sup>

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237. 665 F. Supp. 460 (E.D. Va. 1987).

238. *Id.* at 467 (citations omitted).

239. In the academic context, scholars have also suggested that universities create obstacles for women so that "when it [comes] time for promotion it [will] be reasonable to deny it." Pistole, *supra* note 10, at 29 (quoting M.C. BATESON, *COMPOSING A LIFE*, 54 (1989)).

240. After surviving summary judgment, the case was heard before a jury because it was uncertain whether the Civil Rights Act of 1991 applied to the case. *See Jensvold v. Shalala*, 925 F. Supp. 1109, 1112 (D. Md. 1996), *aff'd*, 141 F.3d 1158, (4th Cir. 1998), *cert. denied*, 119 S. Ct. 447 (1998). However, after the Supreme Court's decision in *Landsgraf v. USI Film Products*, 511 U.S. 244 (1994), holding that the Civil Rights Act of 1991 did not apply to actions occurring prior to November 21, 1991, the *Jensvold* case was reheard. Upon remand, the *Jensvold* court treated the jury's prior verdict as advisory only. *See Jensvold*, 925 F. Supp. at 1112.

241. *Jensvold*, 925 F. Supp. at 1113.

Given this threshold issue, the court then held that mentoring, though not necessarily a contractual term of Dr. Jensvold's fellowship, was a "benefit of the . . . fellowship."<sup>242</sup>

Unfortunately, the court also held that Dr. Jensvold was not denied mentoring, restrictively defined by the court as:

the opportunity to work with a senior scientist on research projects and to receive guidance from the senior scientist on procedures for planning, implementing, recording, and reporting results of the project. In order to receive mentoring, a fellow has to be assigned to work in the lab of a senior scientist and to have the opportunity to join in the lab's work. She also has to have a chance to talk on a regular basis with the mentor, to ask questions, and to receive feedback on her own work.<sup>243</sup>

Based on this definition, the court concluded that Dr. Jensvold had been mentored.<sup>244</sup> She had been assigned to a preceptor. She received assignments in the laboratory. She received assistance from her preceptor with her projects. She met regularly with her preceptor. Her complaint was that her mentoring was unsatisfactory. As to her dissatisfaction, the court stated that "Congress simply cannot legislate that all employment relationships enjoy the best communication or provide the most rewarding learning experience. Title VII can only mandate that employees receive the basic components of the position."<sup>245</sup>

The court did not address, however, the strong possibility that mentoring can be unsatisfactory because of illegal bias (be it gender, race or a combination thereof), which appeared to be the basis of Dr. Jensvold's claim. She was not merely dissatisfied with her mentoring. She believed that her mentoring relationship with her preceptor was poor because she is a woman. Her claim, therefore, would have fit into the language of another court, which recognized that sometimes sophisticated forms of discrimination can occur when a supervisor refuses to be a quality mentor, or a mentor at all, for white women and people of

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242. *Id.*

243. *Id.* at 1114.

244. *Id.* at 1114, 1119-21.

245. *Id.* at 1114. Dr. Jensvold's unsatisfactory relationship with her preceptor is an illustration of the problems formal mentoring programs have when the preceptor is provided a person to mentor, without the mentor selecting this person himself. *See generally supra* Part II.A (discussing the risks of having formal programs that interfere with a mentor's natural selection of who to mentor).



color.<sup>246</sup> The *Jensvold* court's inability to entertain the possibility that poor mentoring can result from illegal biases demonstrates a horrible fault in the court's opinion that will hopefully be addressed and corrected in the future. Despite this fault, the *Jensvold* case is an important one for Black women (and other outsiders) who are denied the basic components of career success through mentoring because it recognizes that biased failure to mentor should be actionable.

### B. *Actionability of Failing to Mentor*

Despite gaps in the *Jensvold* court's reasoning, the court ultimately held that,

[t]he difficulties experienced by Plaintiff do not rise to the level of being deprived of mentoring. She participated in the work of the lab and had the opportunity to learn from the senior scientist. The unfortunate fact that they did not communicate better, or that they differed in their views of the relationship, does not mean that Plaintiff was denied an aspect of the fellowship.<sup>247</sup>

In sharp contrast, I was not given the opportunity to be mentored. Instead of being assigned a mentor as were my white colleagues, I was denied a mentor, and I was denied substantive committee assignments that may have led to mentoring.<sup>248</sup> Therefore, I did not have the opportunity to have *unsatisfactory* mentoring relationships with colleagues because I was blocked from substantive committee assignments. I was blocked from establishing informal mentoring relationships that were provided to my white colleagues.<sup>249</sup>

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246. *Prizevoits v. Indiana Bell Tel. Co.*, 882 F. Supp. 787, 794 (S.D. Ind. 1995) (stating that "it is perfectly believable that a supervisor could act out a discriminatory animus by routinely reviewing [white] women or minorities in a harsher fashion or refusing to serve as a mentor or advisor for anyone but members of his race or sex").

247. *Jensvold*, M.D., 925 F. Supp. at 1121.

248. Courts have held that discriminatory work assignments alone are potential violations of Title VII. *See, e.g.*, *Palmer v. Schultz*, 815 F.2d 84, 97 (D.C. Cir. 1987) (holding that discrimination based upon work assignments states a Title VII claim); *Segar v. Smith*, 738 F.2d 1249 (D.C. Cir. 1984) (holding that plaintiff asserted a valid disparate treatment claim under Title VII for disparities in work assignments).

249. My dearth of committee assignments was not a question of my being dissatisfied with the mentoring I was receiving. I was receiving very little especially when compared to white colleagues. By being denied mentoring, I was denied a basic component of my formal and informal employment contract. Access to mentors can be blocked in multiple ways, two of which are explored here. One is in the failure to provide access to senior colleagues so that mentoring can be initiated. Another is in the failure to provide access to senior colleagues so that mentoring can ripen into

Given the *Jensvold* opinion, which held that terms, conditions, and privileges of employment provided to employees cannot then be denied based upon race, gender, and other protected categories, a concrete argument can be made that mentoring at BCLS should constitute a “term, condition, or privilege” of employment. White untenured faculty received appreciable active substantive committee assignments throughout the formative parts of their academic careers. Accordingly, they had access to potential mentors and were primed for career successes including tenure. Generally, those junior faculty members who are mentored receive higher student evaluations and are more quickly integrated into the environment than those who do not receive mentoring.<sup>250</sup> In addition, new employees who receive mentors “have higher salaries, exert greater influence, have more opportunities, and are more satisfied with their jobs and careers” than those who are not mentored.<sup>251</sup> Mentoring may also determine whether a tenure track professor will receive tenure or not. It can make the difference between poor, inactive committees and superlative, active committees. Committee assignments in turn can make a difference in the quality and frequency of access to potential mentors and in whether mentoring in the initiation stage will be given the opportunity to ripen into the cultivation stage. Given that committee assignments affect access to mentors and mentoring positively impacts salary, evaluations, promotions, and tenure, failure to provide committee assignments and mentoring equally should be separately actionable. To find otherwise allows employers to accomplish subtle discrimination by manipulating the terms and conditions of employment without ultimately firing a person or denying them tenure in academia. It allows an employer to hinder an employee during the early terms of employment, thereby setting her up for ultimate termination in the future.

The *Jensvold* case is particularly relevant to this Article for several reasons. First, the court recognized that mentoring and other indicia of employment are terms and conditions protected by Title VII in the same manner as hires, promotions, and termi-

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the cultivation stage, thereby becoming true mentoring in which the mentor is intimately invested in the career of another.

250. Struthers, *supra* note 45, at 266 (citing R. BOISE, LESSONS LEARNED ABOUT MENTORING, NEW DIRECTIONS FOR TEACHING AND LEARNING 51–61 (1995)).

251. See, e.g., Fagenson-Eland, *Perceptions*, *supra* note 147, at 29.

nations. Even if one is not ultimately fired or demoted, if denied, these indicia of employment are separately actionable.

Second, the courts recognize that work assignments, which are analogous to committee assignments in academia, are terms and conditions of employment. Failure to provide work assignments equally in violation of Title VII is separately actionable from being denied a job, being fired, or being denied a promotion. At BCLS, for instance, community service, which includes internal committee assignments, are part of a professor's job description and can presumably form the basis of a tenure denial. Further, tenure has three prongs, one of which is community service, which includes service to the law school (committee assignments and other activities), service to the university, and service to the community at large.<sup>252</sup> Thus, if one is denied the opportunity to serve because one is not given substantive committee assignments, one's tenure and promotion may be negatively impacted.<sup>253</sup> This is true not only because of the inability to satisfy the community service requirement, but also because racial collegiality will determine how responsive colleagues will be to the entire tenure package, for example, whether colleagues will accept outsider scholarship, such as critical race theory; whether colleagues will discount or minimize negative evaluations that may have been tainted by race and/or gender bias; whether colleagues will allow or create procedural irregularities during the tenure process; and ultimately whether colleagues will desire to be permanently affiliated with a person they do not sufficiently know because of blocked or restricted access. From my experiences, when one is not mentored, all of these things occur, including gross procedural irregularities, biases, and the failure to discount known racially tainted evaluations.

C. *Institutional Control Over Mentoring Opportunities Acts as an Intermediate Decision with Final Effects*

Unfortunately, assignment to committees, special task forces, and other university service is solely within the control of

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252. THE BYLAWS OF THE TRUSTEES OF BOSTON COLLEGE AND THE UNIVERSITY STATUTES 22 (adopted Mar. 7 1980, effective July 1, 1980) (discussing the role that university service has to tenure).

253. See Brinson & Kottler, *supra* note 119, at 243 (discussing the socio-cultural barriers that will preclude automatic transracial mentoring from occurring and stating that in academia collegial support is crucial to subsequent decisions regarding promotion and tenure).

the institution. Thus, an employer has the ability (and perhaps the incentive) to block the success of some of its employees, namely outsiders.<sup>254</sup> Yet, an employer should not be allowed to block an employee from success and then use the lack of success as a basis to ultimately fire or demote her. Sometimes employers do this anyway.<sup>255</sup> In the academic context, for instance, scholars have suggested that universities create and retain customs and policies that are then used to deny promotion in that universities "hir[e] women and then dea[l] with them in such a way that when it came time for promotion it would be reasonable to deny it."<sup>256</sup> This form of subtle discrimination, which does not appear to be directly related to the ultimate step of termination, must be recognized because of the effect these customs and practices have on tenure denial and retention. Intermediate employment decisions and actions, such as failing to mentor, effect whether or not an employee will ultimately be retained or promoted.

Recognizing the discriminatory effects of these intermediate decisions as terms and conditions of employment is crucial in all industries, but especially in academia due to its autonomous nature. Without making institutions accountable for the failure to provide committee assignments that lead to mentors, mentoring in a timely manner, and mentoring that is quantitatively and qualitatively equal, institutions will be able to indirectly violate Title VII by manipulating the terms and conditions of employment. This will leave outsiders in the academy, such as Black women, without legal redress for discrimination that is practiced primarily against outsiders.

The reality of Black women's lives must be recognized by the courts. Sometimes mentoring is requested and denied. Sometimes committee assignments are assigned in a way to perpetuate race/gender disparities and to block access to mentors. When these denials and assignments fall along prohibited Title VII categories, either expressly or through disparate impact, the courts must intervene to make institutions accountable for failing to provide the privileges and conditions of employment equally. Without such external accountability, the terms, conditions, and

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254. See *Delgado v. Lehman*, 665 F. Supp. 460, 467 (E.D. Va. 1987) (citations omitted) (stating that an employer "cannot use an employee's diminished work performance as a legitimate basis for removal when the diminution is a direct result of the employer's discriminatory behavior.").

255. See, e.g., Pistole, *supra* note 10, at 29 (quoting M.C. BATESON, *COMPOSING A LIFE*, 54 (1989)).

256. *Id.*

privileges of employment will continue to be disproportionately denied to Black women and other outsiders. The *Jensvold* court took an initial step in recognizing experiences like mine where access to mentors and mentoring is blocked. Many more steps need to be taken if traditional outsiders are going to have redress for an institution's participation in creating and solidifying disparate employment benefits. Black women and other traditional outsiders must take the next step by placing their experiences before the courts. Only then can courts begin to extend the *Jensvold* ruling to facilitate mentoring opportunities that are currently being denied individual Black women and Black women as a group.

By recognizing the integral relationship between intermediate employment actions like failing to mentor based upon race/gender, and final employment decisions like firing, some courts recognize that manipulating intermediate employment benefits can facilitate a final negative decision. Given this, intermediate actions such as failing to timely provide a mentor and/or failing to provide access to a mentor should be actionable separately from final employment decisions.<sup>257</sup> This is especially necessary given the effect that mentoring has on salary, evaluations, promotions, and ultimate career success.

## VII. CONCLUSION

This Article is in part about me and my attempts to be professionally integrated into Boston College Law School through active committee assignments. However, it is also about institutions and the continued effect that racism and sexism have on mentoring, promotion, and tenure. It highlights how institutions like BCLS can use informal policies to block mentoring from occurring. Without telling this personal story of how I was denied mentoring and revealing how the law can provide a remedy to similarly situated outsiders, my story would be left untold like the many untold stories of Black women who are denied mentoring every day.<sup>258</sup>

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257. There is, of course, an intent requirement in Title VII causes of action, but intent can be established based upon the totality of the circumstances. Thus, intent can also be found through the numerous written communications, which specifically explained the nexus between mentoring and committees and how both were provided unequally. Intent can be found through institutional nonresponsiveness that disproportionately impacts Black women and other outsiders.

258. *See supra* notes 75-80 (providing the statistics showing that Black women, to their career disadvantage, are not receiving the mentoring they need).

Granted personal stories regarding mentoring are not told because there is safety in anonymity and in not identifying institutions or institutional actors. There is also great safety in statistics, such as the collective reality that Black women need mentoring but are not receiving it. Statistics and anonymous accounts,<sup>259</sup> however, do not do enough to apply pressure to individuals and institutions to change or to recognize the barriers that prevent mentoring from occurring between junior Black women and just about everyone else. Merely using statistics and anonymous accounts is a form of silencing Black women who are denied mentoring, making them complicit in the discrimination they face. As Professor Derrick A. Bell, Jr. stated, "we must learn that silent suffering does not beget reform, and the minorities who complain of unfair treatment are sounding an alarm for all."<sup>260</sup> By telling personal stories of blocked mentoring, Black women who risk breaking the silence do a public service by affirming the realities of other Black women who cannot explain why they are being blocked or denied mentors, through no fault of their own.

Without a doubt, there is a continued need for statistics to inform us about the lack of mentoring in all industries. But, there is a concomitant need for us to tell our individual stories so that society realizes the truth behind the statistics: that Black women are not receiving mentoring, that there are real live Black women who try to obtain mentoring, that there are white people and institutions who deny such mentoring, that there are people of color who are not able to mentor due to their own institutional vulnerability, and that there are many institutions that fail to provide vehicles to facilitate mentoring. Personal stories fill in the details in a way that statistics cannot.

Personal stories also show how institutional power is and can be used to block mentoring from occurring for Black women, thereby maintaining age-old power and racial hierarchies. After all, in its most raw form, especially in academia, "[m]entoring is

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259. For an example of anonymous accounts of poor mentoring, see Elizabeth Ervin, *Power, Frustration, and "Fierce Negotiation" in Mentoring Relationships: Four Women Tell Their Stories*, in *WOMEN STUDIES: AN INTERDISCIPLINARY JOURNAL* 447, 452 (June 1995) (telling the stories of four women who had horrible mentoring experiences, but were afraid to be named; as a result, their institutions remain anonymous). These stories, though anonymous, come close to the fear, frustration, and anger that I experienced as I was denied access to mentors at BCLS. See *id.* at 475-79.

260. Bell & Delgado, *supra* note 81, at 349.

an expression of the academic power structure . . . and is organized around educational and professional expectations.”<sup>261</sup> Unfortunately, these power structures and expectations mirror traditional race, gender, and race/gender hierarchies and expectations. Without intervention, mentoring, if denied, can act as a formidable barrier to prevent Black women and other outsiders from participating in these power structures in the short- and long-term. Mentoring can also be used to provide information to white men to ensure their ultimate success and promotion. It can also be used to block Black women’s ultimate success and promotion. Mentoring can also be used to ensure continued uneven access to existing power structures.

It is in helping traditional outsiders access these power structures that senior white mentors are most helpful. “Mentors often are viewed as bridging the gap between men and women, blacks and whites, and managers and rank and file staff.”<sup>262</sup> Without a bridge over social and institutional barriers, Black women in particular are faced with an insurmountable chasm that separates them from their senior colleagues in legal academia (many of whom remain white and male). Many times this chasm is widened by administrators who fail to facilitate bridge-building through formal committee assignments, formal mentoring programs, and formal information gathering sessions. If organizations fail to facilitate mentoring opportunities for Black women and other outsiders, “the research show[s] that if we let mentoring continue informally, then 85% of the time you get white males mentoring white males. That just leaves too many people out.”<sup>263</sup> The people left out are those who will be at a career disadvantage based on their race, gender, and race/gender combination. Too often those left out will be Black women because of the presumption of incompetence and the Sapphire myth that claims that all Black women are angry, threatening, unintelligent, and intimidating.

Given my experiences at BCLS, I was definitely and affirmatively denied access to mentoring at BCLS while other colleagues, especially those who are white, were given mentoring opportunities. My institution (and its institutional actors) failed to facilitate bridge-building and instead ignored and blocked my

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261. Ervin, *supra* note 259, at 474.

262. *Sometimes the Bridge Collapses*, SAN DIEGO UNION-TRIB., Apr. 19, 1999, at C1.

263. Van Collie, *supra* note 27, at 36.

every attempt to acquire necessary committee assignments and career-enhancing mentoring. To those who would advise me to be more aggressive in seeking and requesting mentors, I present the entirety of my experiences in attempting to obtain professional integration at BCLS, coupled with the realities of the social and institutional barriers facing Black women who need access to mentoring. For Black women, aggressiveness is never viewed positively.

A Black woman who aggressively seeks a mentor is one who will rarely, if ever, be mentored because aggressiveness ensures that a Black woman will be perceived as a Sapphire. This perception can be overcome only if institutions provide a bridge that allows a Black woman (and Black women, as a whole), to safely cross over the presumption of incompetence and the Sapphire myth.

When institutions fail to build this bridge to facilitate mentoring, leaving traditionally oppressed groups, like Black women, at a career disadvantage when they are compared to their white male (or white) colleagues; that failure should be separately actionable as a violation of the terms, conditions, and spirit of Title VII. Mentoring is and should be considered a term, condition, and privilege of employment because of the inextricable and supreme role it plays in creating and ensuring employment success, promotion, and tenure. Traditional outsiders should not be forced to wait until they are ultimately fired or denied tenure or promotion before the barriers they face as outsiders is recognized by the courts.

Sometimes institutions actively and illegally fail to mentor. When institutions fail to facilitate mentoring Sapphire, or Black women who are perceived as Sapphires, this failure should be separately actionable to prevent Black women from being further harmed by termination, demotion, or tenure denials.



