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Moving Ground, Breaking Traditions: Tasha's Chronicle

Angela I. Onwuachi-Willig

United States District Court for the Northern District of Ohio

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MOVING GROUND, BREAKING TRADITIONS:
TASHA'S CHRONICLE

Angela I. Onwuachi-Willig*

This Note uses a fictional dialogue to analyze and engage issues concerning stereotypes, stigmas, and affirmative action. It also highlights the importance of role models for students of color and the disparate hiring practices of law firms and legal employers through the conversations and thoughts of its main character, Tasha Crenshaw.

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INTRODUCTION: TASHA

"Excuse me, are you waiting to see Professor Lincoln?"¹ I asked softly of the student waiting outside the professor's office. He stood tall with curly blonde hair. Engrossed in his own thoughts, he failed to hear my question. I repeated myself, "Excuse me, excuse me . . ."

"Oh," he said, swinging his head around in surprise, "were you speaking to me?" His voice, although kind, was high-pitched; he spoke with almost a shrill.

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I wish to thank Professor Deborah Malamud, Jacob Willig-Onwuachi, Alex Romain, and Jeannine Bell for their many useful comments.

1. In this chronicle, Professor Lincoln is the sole Black professor at Elite Law School, a private law school in the United States. Low representation of minority law professors is common among the nation's elite law schools. See generally Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537, 539, 556 (1988) (analyzing data gathered from updating, through the addition of data from the 1986-87 academic year, a study of law school faculty composition originally done during the 1980-81 academic year). The data "demonstrates that minority professors in general, and Black professors in particular, tend to be tokens if they are present at all; that very few majority-run schools have significant numbers of minority teachers; and that minority teachers leave their schools at higher rates than do their white colleagues." *Id.* at 539.

For a further critique of tokenism on law school faculties, see DERRICK BELL, *The Unspoken Limit on Affirmative Action: The Chronicle of the DeVine Gift*, in *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* 140 (1987).

"Yes. I was wondering if you were here to see Professor Lincoln. I have a lunch appointment with him. . . ."

"Oh yeah, I'm here to see him. Hi, I'm Dwight, Dwight Backlash." The student smiled, pushing his right hand towards me.

Shaking his hand, I introduced myself, "My name is Tasha Crenshaw."

"Nice to meet you, Tasha." He then joked, "Take a number. I've been waiting for nearly twenty minutes. I think some 1L is in there 'teaching' Professor Lincoln the law." We both laughed. Dwight then turned around and stood silently.

Feeling restless, I decided to start a conversation. "So Dwight, how much longer do you think we'll have to wait?"

"I'm not sure," Dwight responded. He hesitated a bit and then stared at me closely, trying to place my face. "Hmmm . . . Are you in Professor Lincoln's Labor Law class? I haven't noticed you in there." Chuckling, he asked, "You a 3L?"

I smiled, "No, I'm not a 3L; I'm a 2L. And you haven't seen me in Professor Lincoln's class for a good reason. I'm not in it. In fact, I've never had Lincoln for a class." I bent down, pulled my backpack off my shoulders, and rustled through my bag to look for a pen to jot down a note to myself.

Dwight fidgeted with his hands, perhaps feeling uneasy because of my lack of eye contact. He wrinkled his nose, slowly twisted his lips, and uttered carefully, "Oh . . . then I suppose you're here to give Professor Lincoln your condolences. . . . I mean . . . our class gave the professor a card and small gift the other day. You know, just to say 'hang in there.'" Dwight then laughed under his breath, slapping the bottom of his palm on his forehead. "What am I saying here. . . . I guess 'condolences' is too strong of a word, huh? It sounds like someone died or something . . . and Lincoln, well he's such a strong and smart guy. I don't think he's going to let the racist graffiti of some crazy nutso bring him down."² Dwight then gazed at me, waiting for my approval.

I stuttered through my response, feeling equally uneasy. "Actually," I nodded my head slowly, "I . . . I suppose you're right, Dwight. Professor Lincoln will survive this. . . . After all, he's done it all his life, hasn't he? Unfortunately, he has no choice but to endure it. Whoever wrote those words on his door . . . well, what I mean is, I'm not so sure that this 'nutso' is any different than the average Joe.

2. See Jackie Payne & Amanda Smith, *Timeline of Activism Around Issues of Race, Gender and Sexual Orientation*, RES IPSA LOQUITUR, Winter 1997, at 4 (noting that, in 1996 at an elite law school, the office door of a Black law professor was defaced with the racist slur: "Nigger Go Home") (on file with the *Michigan Journal of Race & Law*).

Things like this happen all the time and right here in this law school, too.”

Dwight stared at me in disbelief. He then snippily remarked, “You can say that again. I mean, not about ‘Lincoln’s nut,’ but about all the nuts emerging around here. The students here seem to have lost their minds. Walls, protests, demands, storming the Dean’s office³ . . . I mean, really, is that the way to solve the problem? I think they’ve almost made things worse. Now no one can say or do anything around here without being accused of being racist or sexist. What’s with all the finger-pointing? You know, I was bothered by the graffiti too, and I . . . I feel sorry for Lincoln,” Dwight pleaded, motioning towards me, “and for you; that vandalism never should have happened, but . . . oh, I don’t know what I’m saying.”

I jerked my head and sighed deeply. I was not in the mood for a debate today. Clearly, Dwight’s intentions were good, but his remarks annoyed me, so I responded anyway. “Well, there’s really no need to feel sorry for me or for Professor Lincoln, Dwight. I mean, in a way, you should really feel bad for all of us. Don’t you think? This ‘supposed nut’ hurt you as much as he hurt me and Lincoln. To be honest, I don’t think the students here have gone mad at all. You know, I’m sort of thankful to this nut. He . . . or she forced the entire school to talk about race—finally. For once, people can’t just ignore it.” I laughed to myself, “At least, for a few days, that is, until *they* decide the problem is fixed.”

Dwight dropped his hands to his side, letting his arms swing loosely for a second. I could sense that he desperately wanted out of our conversation. He then blurted in his defense, “No, Tasha, that’s not . . . I think you’re misunderstanding me. I’m not at all saying that we shouldn’t talk about race. All I’m saying is, that if communication is the key, then we’re failing miserably. How can we communicate when everyone here is feeling stifled?” Dwight paused, smiled, and then, hoping to tone down our disagreements, joked. “And I bet Professor Lincoln’s feeling pretty stifled in there with that 1L. How much can one person be expected to take? Better yet, how much longer do we have to wait?” Dwight laughed, rotating his index finger between the two of us. “You and I are the ones

3. Following the real-life incident described *supra* note 2, two students organized around the issue and formed an ad hoc committee on issues of race, gender, and sexual orientation. This committee sent out an open roll-call asking faculty to help change the institutional environment at the law school and was responsible for the creation of a graffiti board in a main hallway where students were encouraged to record their experiences and viewpoints. In addition, at an open faculty meeting, students of color, women, and gay and lesbian students voiced their outrage with the institutional culture of the law school. *See id.*

who deserve to be in there. *We* actually have *real* problems—like jobs and loans⁴ and figuring out just how to escape from this hellhole.”

I giggled at Dwight’s jokes while closely studying his face. I was intrigued by our discussion, and I wanted us to continue our conversation, to speak openly with each other. I wanted to say to Dwight, “Conversation at Elite is not suddenly being stifled. It’s just that a silenced group is beginning to claim its voice.” I wondered if Dwight could or did understand that I, as a student of color, always felt stifled in the law school—having to worry about the racial images that emerge during class discussions,⁵ about how a professor may react to my criticisms about how racism should impact or affect his analysis and teaching of the law,⁶ and about just what other students and professors thought about how I got into Elite.⁷ Dwight,

4. See generally Lewis A. Kornhauser & Richard L. Revesz, *Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt*, 70 N.Y.U. L. REV. 829 (1995) (discussing the role that debt plays in students’ career choices).

5. One example of the disturbing racial images that can emerge in law school classes is furnished by Beth Goldstein.

Kate: (I had an experience in class)—it was a class in which the book contained little problems . . . we set up a scenario where there was a robbery that took place but it was just like A robbed B, the police came and arrested B and C. Well, we had a video, like a little play production. Well, when the video came out, the robbers were all black and the people who were attacked were white and that just took me out of the class entirely for the rest of the period . . . Because I sat there and I was just like whoa! It frustrated me. It seemed like no one else save the person sitting next to me seemed to notice the abnormality of this whole situation. In the book there was no mention of race, no mention of sex but when the video was shown it was black people in the bad role attacking white people. It just shot through me like uh! I was just there angry like, how could anybody show this and not see that it would upset someone. It just took me out of the class.

Beth L. Goldstein, *Little Brown Spots on the Notebook Paper: Women as Law School Students*, 84 KY. L.J. 983, 1021 (1995/1996).

6. A professor should consider racism and its effect on the teaching of the law because it can have a profound effect on how students, particularly minority students, learn the law. See, e.g., Lani Guinier et al., *Becoming Gentlemen: Women’s Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994). As Guinier et al. note:

[s]ome students noted that when a professor used the word “nigger” in a hypo during a first-year class, none of the African American students spoke up. These African American students were silent even as white students copied the professor’s language in responses modifying the hypo. Several African American and Asian American students reported getting physically “hot” but remained quiet because of the burden of being a group spokesperson.

Id. at 46 n.117.

7. Tasha’s concerns over the opinions of others as to her path to law school are echoed in Goldstein’s narrative account of the experiences of students with academic

however, seemed bothered by the entire discussion, so I decided not to push it—not today, at least. Like Dwight, I had other things on my mind. “Well, Dwight, it sounds like we’re here for the same reason. You here to talk to Professor Lincoln about jobs, too?” I questioned.

Dwight shook his head and rolled his eyes in jest. “Unfortunately, yes. I’m here to get some advice about law firms, interview season—the whole enchilada. These law firms only seem to care about two things: whether I have good grades and a position on the *Law Review*.⁸ I have neither, so I haven’t had much luck with my interviews. I’ve had several callbacks, but no offers yet. And being White and male hasn’t helped me out either.”⁹ Dwight

support programs that are designed to ease the transition into law school for minority students. Goldstein, *supra* note 5, at 1021.

Meg: . . . I read this article in the student newspaper before I went to class. So I go in the class and all I see is white men and I’m looking at them, I’m going well, do you think like that? and that’s all I can think about. It was an article about affirmative action and it talked specifically about law schools. It wasn’t particularly this one, and how we had so many privileges, and we weren’t meeting the standards and I expected that (perception) when I got here. I really expected that. I’ve been reading all about it and I really expected that attitude. . . . It was the first time I was actually faced with it but I could not concentrate. . . . I read the paper. I shouldn’t have read the paper before I went in, but I read the paper and I missed a whole hour’s worth of class because of it. A whole total hour. I couldn’t concentrate at all and those are the kinds of things that you have to deal (with). You shouldn’t have to and maybe I should have blown it off but it gets pretty personal after a while; . . .

Id. at 1022–23; see also Charles Murray, *Affirmative Racism*, in *MORALITY AND MORAL CONTROVERSIES* 523 (John Arthur ed., 1993) (arguing that preferential treatment for minorities has encouraged a new species of racism). Murray writes:

[t]he most obvious consequence of preferential treatment is that every black professional, no matter how able, is tainted. Every black who is hired by a white-run organization that hires blacks preferentially has to put up with the knowledge that many of his coworkers believe he was hired because of his race; and he has to put up with the suspicion in his own mind that they might be right.

Id. at 529.

8. See generally Daniel G. Lugo, *Don't Believe the Hype: Affirmative Action in Large Law Firms*, 11 *LAW & INEQ. J.* 615, 624–25 (1993) (discussing the inappropriateness of the credentials that law firms seek in potential associates).

9. The idea that White males are becoming an endangered species in schools and in the workplace is popular in the current political atmosphere. See, e.g., Thomas Glenn Martin, Jr., *UCLA School of Law Admissions in the Aftermath of the U.C. Regents' Resolution to Eliminate Affirmative Action: An Admissions Policy Survey and Proposal*, 18 *CHICANO-LATINO L. REV.* 150, 156–57 (1996) (“Opponents of affirmative action claim that today . . . the policy has gone too far. Whites assert that they are falling prey to,

snickered, paused, and took a side-long glance at me. "How 'bout you? I bet you have more offers than you can handle." Dwight grinned and then winked at me.

At the end of his sentence, my mouth fell imperceptibly open. It was clear that Dwight was joking, but I still felt uncomfortable with his comment. *More offers than I could handle?* Did Dwight think that firms were somehow banging down my door because I was Black?¹⁰ Well, I thought, maybe Dwight isn't joking. Maybe deep down, Dwight really means it. *More offers than I can handle?* My eyebrows raised, knitted, and relaxed in succession. I told myself: Tasha, calm down. Stop being so defensive. It's only a joke.

The thing was, Dwight's joke just wasn't funny, especially now. Finally, I replied to his comment, my eyes looking down, "Well, um . . . I have several firm offers but none that I feel good about, Dwight. To be honest, I'm just not excited about the whole firm thing. I'm not looking forward to being any law firm's token," I asserted slowly and strongly, peering into Dwight's eyes. "And I'm here to talk to Lincoln about his experience as a minority in a large law firm. I'm sort of hoping that he can, at least, make me feel better about the whole thing. Deep down, though, I think I won't like working at one of those places."

Dwight appeared a little perturbed by my complaints and darted back at me, "Well, that's nice, but there are many of us who would just be happy to have the choice."

I slowly swept my right foot on the floor. I could feel the guilt just sinking in. Was I now being an insensitive jerk? "Look, I didn't mean it like that, Dwight. I just meant . . . I'm just having a few anxieties about being the only Black or one of very few Blacks at a law firm. I'm happy with the options alone, but working at one of those firms would be like law school times ten for me, and I'm not sure I want to subject myself to that kind of torture again. You know . . . well, I guess you really don't know . . . look . . . I understand how you feel and what you're saying. That interviewing room is a mess. It seems to be causing trouble for everybody."

I looked up only to see that Dwight's eyes were fixed on the professor's door. "Good, that 1L is finally done yapping his mouth off!" he rejoiced. "Well, I'll see you around, Tasha. Oh, and don't worry. I shouldn't be long. Professor Lincoln will probably just tell me that I'm hopeless and send me on my way."

and being discriminated against by the very same programs designed to compensate minorities.").

10. See generally Lugo, *supra* note 8, at 618 (quoting an anonymous White student at the University of Minnesota as saying, "first they took my spot at Harvard, now they're taking my job offers").

"Yeah, I'll see you later," I smiled, angry at Dwight for his insensitive jokes and at myself for making excuses for my options. Minority hiring . . . humph—the new talk of the law school, and exactly what I needed to discuss with Professor Lincoln.

I. MEETING PROFESSOR LINCOLN

Within minutes, a more relieved Dwight opened the door. Looking past me, he waved good-bye and said, "He's all yours."

I flipped my hand in a quasi-wave, still fuming over Dwight's opinions and my comments. Then Professor Lincoln stuck his head out of the door to yell, "I'll be with you in a second, um, um . . ."

"Tasha Crenshaw," I reminded him.

"Right, right," he stepped into the hallway, putting on his coat. "Crenshaw, huh? Are you by any chance related to Geneva and Rodrigo?"¹¹

The right side of my mouth curved slightly. "No, I'm not. Just cursed with the name. Everyone seems to ask me that question. But no, my background is a little more humble. There are no lawyers in my family. I'll be the first."

"Interesting, that's interesting. . . . So, where do you want to go for lunch, Tasha?"

"I have no real preference, do you?"

11. Geneva Crenshaw is a fictional character created by Derrick Bell, author of several books including *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987) and *FACES AT THE BOTTOM OF THE WELL* (1990):

Ms. Crenshaw is portrayed as a talented litigator at the NAACP Legal Defense Fund who suffered a mental breakdown resulting from the stress and physical danger of her work. Years later, her mind suddenly heals, and she emerges from confinement to confront the authors with her own challenging brand of racial and cultural analysis. Out of touch with events for some time, she sees things afresh. Like the child who declares the emperor naked, she punctures myth after comforting myth about progress toward racial justice.

Richard Delgado, *Rodrigo's Chronicle*, 101 *YALE L.J.* 1357, 1359 n.4 (1991) [hereinafter Delgado, *Rodrigo's Chronicle*] (reviewing DINESH D'SOUZA, *ILLIBERAL EDUCATION: THE POLITICS OF RACE AND SEX ON CAMPUS* (1991)).

Rodrigo Crenshaw is a fictional character who is the half-brother of Geneva Crenshaw; he was created by Richard Delgado, the Charles Inglis Thomson Professor of Law at the University of Colorado and author of *THE RODRIGO CHRONICLES: CONVERSATIONS ABOUT AMERICA* (1995) and *THE COMING RACE WAR? AND OTHER APOCALYPTIC TALES OF AMERICA AFTER AFFIRMATIVE ACTION AND WELFARE* (1996). The son of an African American serviceman, Rodrigo finished high school, college, and law school in Italy. Like his sister, Rodrigo spent time away from U.S. society, which allows him to see it in a new light. Rodrigo later returned to the United States to pursue an L.L.M. degree and become a law professor. Delgado, *Rodrigo's Chronicle*, *supra*, at 1359 & n.6.

“How about China Palace? It’s just down the street, and the food is pretty good—for the Midwest,” the professor said with a good-natured chortle. We began to walk quietly towards the restaurant. Even though it was thirty degrees outside, I was sweating furiously. Long silences always agitated me. I was racking my brains for a way to share my concerns when Professor Lincoln broke the silence. “Now, what is it that you wanted to discuss? Wait, I remember. You’re working at my old firm this summer, right?”

“Uh . . . well, I’m not really sure,” I answered reluctantly; I didn’t know the professor but was well aware of his background and his opinions on firms. Before law school, the professor had worked for a number of years as a community organizer for a low-income White neighborhood in his wife’s hometown. While at law school, Professor Lincoln worked like a dog at a small company to support himself and his family and still managed to excel academically. He then worked at the prestigious law firm—Lau, Revue, and Ays—before coming to Elite Law School to teach. A rather unusual route for a professor at Elite,¹² but an impressive one nonetheless. Although Professor Lincoln had taken this unusual route through law school and into academia, he firmly believed in the traditional standards of “meritocracy,” as they were called.

Unlike Professor Lincoln, I was the typical Elite Law School student, with the exception of my race and my class. I was young with little “real life” experience. I wasn’t a deadhead, but I wasn’t a scholar either, though some would argue otherwise. I was extremely stressed, depressed, and now neglecting most of my classes to establish a new “race and the law” journal on campus, a huge point of contention for Professor Lincoln. Professor Lincoln did not see the need for a “race and the law” journal at the school. He felt that minority students needed to work to “integrate” the other journals on campus. He also did not think it was wise for minority students and scholars to “pigeon-hole” themselves as race experts.

Nevertheless, I still decided to speak to Professor Lincoln. After all, he was the *only* Black professor in the law school,¹³ and thus the

12. See generally Delgado, *Rodrigo’s Chronicle*, *supra* note 11, at 1361 (describing the qualifications of what law schools espouse as the perfect, law school-teaching candidate).

13. Small numbers of minority professors are the norm among law schools, not the exception. See Chused, *supra* note 1, at 547 n.45 & 556 tbl.1. The need for more minority law professors certainly should not be overlooked. The presence of minority faculty at law schools improves the quality of education for all students. As do all professors, minority professors inject their experiences into their teaching and understanding of the law; thus, they add significant diversity to the law school experience, both inside and outside of the classroom. Additionally, they serve as proof for minority students (and majority students) that minorities can overcome racial hostility and barriers to success within the law. Last, and most important, minority

only person who could really answer my questions. Moreover, I felt most comfortable approaching him, another Black person, with my feelings about race and its role in the hiring process at law firms. So I continued, "Well, Professor, I wanted to talk to you about your firm, other firms. . . . I guess, just law school and work in general. You see, I'm having a hard time right now with my classes and school, and most of all, deciding where I should work this summer. The stress just keeps building, and I don't think I'll ever make the right decision. My pocket and my mind tell me to play it safe, work for a firm . . . but my heart, and my ethics, my community back home tell me to try public interest law."¹⁴

All of a sudden the professor stopped. "Wait one second. I think we're here. Hold on to that thought," Professor Lincoln uttered as he opened the restaurant door.

The hostess kindly greeted us and led us to a small booth in the corner. Professor Lincoln studied his menu while I nervously looked at mine. For a brief moment, I considered leaving, but I couldn't think of a good excuse.

"May I take your order?" the waitress asked, interrupting my thoughts. I ordered the Garlic Tofu, and the professor ordered the *Yu Shian* Chicken. We sat quietly for a few minutes.

The professor then commented on my order, "Tofu? You eat that stuff?"

"Um . . . well, sure, it's actually pretty good." My body trembled slightly as I mumbled back an answer. "Most places don't prepare tofu properly, but they do a pretty good job of cooking it here. . . ."

professors serve as role models for their minority student counterparts. See generally Saul A. Green, *Access to the Academy: The Absence of Minority Faculty at Michigan Law Schools*, 73 MICH. B.J. 306, 306 (1994) (discussing the report to Representative Assembly by the State Bar of Michigan's Special Committee on Expansion of Underrepresented Groups in the Law, Special Commissioner Committee on Task Forces Recommendations, and the Standing Committee on Legal Education); Okechukwu Oko, *Laboring in the Vineyards of Equality: Promoting Diversity in Legal Education Through Affirmative Action*, 23 S.U. L. REV. 189, 209-11 (1996) (discussing the value of minority law professors).

In this Note, Tasha perceives herself as being very different from her "mentor," Professor Lincoln. Thus, one may wonder why she does not seek out a White professor whose views are more aligned with her own. There are several reasons why she goes to Professor Lincoln. First, Professor Lincoln has experienced life, law school, and firms as a Black person. Whether or not he chooses to deal with race issues in the same way she does, he has experienced racism firsthand and therefore has been in either the same or similar situations. Additionally, he understands what it is like to be one of the "colored" few.

14. See David B. Wilkins, *Two Paths to the Mountaintop? The Role of Legal Education in Shaping the Values of Black Corporate Lawyers*, 45 STAN. L. REV. 1981, 1992-93 (1993) (discussing the obligation that Black law students have to undertake civil rights work and suggesting methods that law schools can utilize to help shape that commitment).

Whew! Thank God! The waitress finally came back to save me from my rambling. She placed our food before us, and Professor Lincoln looked across at me in amazement. "That was quick. And your dish . . . it actually doesn't look as bad as it sounds." The professor laughed but stopped immediately—after he noticed that I had not joined him. Then, a look of seriousness appeared on his face. "Tasha, I hear your concerns, really I do, but there's nothing much I can tell you. You have to do what you want to do. All I can say is that I had a great time working at Lau, Revue, and Ays, and I'd love to see you work there." The professor pressed his lips together, the tips of his lips curved upward.

"You know my stance. Working at an elite law firm can only help you, no matter what you want to do. There, you'll be practicing with the cream of the crop,¹⁵ and you can only learn in that kind of environment. Why not try it out? Go to my firm this summer. You never know. You may like it. And while you're there, you'll get some good, technical training. It definitely won't be a waste of your time. But not going there could be. Don't get me wrong. I'm not saying that public interest work would be a waste either. I support public interest work as much as the next guy, but it's hard to move from being a public interest lawyer to being a corporate lawyer, not the other way around. And to be honest, Tasha, I don't think that public interest firms have the resources or the money to give you the time to learn and become the best lawyer you can be." The professor paused, glanced at me, and apparently noticed the confused expression on my face. "Oh, I'm sorry, Tasha. I'm not sure I've helped you much. I probably should have asked you about your concerns before I blabbered on with my speech about how great law firms are. So go ahead, shoot, tell me about your concerns."

I breathed inward deeply, thumping my fingers on top of the table. "Well . . . and I know you may disagree with me here, but . . . I'm just feeling really burnt out right now. I mean, law school isn't exactly easy, especially if you're Black at Elite."

"Tell me about it. I learned that this week," the professor attempted to joke.

I smiled uneasily and continued, "Right . . . like this week, and the week before that and the one before and so on. I'm just tired of being the one on the spot, on target, one of very few trailblazing paths through lily-White institutions. . . . It gets tiring after a while; I

15. See Alex M. Johnson, Jr., *The Underrepresentation of Minorities in the Legal Profession: A Critical Race Theorist's Perspective*, 95 MICH. L. REV. 1005, 1008 (1997) ("The perception within the profession is that these larger firms represent the elite practitioners of the private practice bar. . . . Employment by one of these firms indicates that the lawyer so employed is part of the legal elite.").

feel like I'm running a life-long marathon or something. . . . I mean, what about the things I want to do?"

The professor ran his fingers across his lips, flexing them as he spoke. "You're exactly right, Tasha. What is it that you want to do?" he asked, sincere interest peaked in his voice.

"Well," I paused, thinking for a minute, "I guess I feel pretty silly right now. After all that, all I can say is 'I don't really know.' But I know what I don't want to do. Like I'm pretty sure I don't want to defend big corporations that exploit our communities . . . and I'm pretty sure that I want to work in a place where I can see people who look like me, with my skin color, my concerns, and . . . and then part of me feels like it's my duty not to work for a firm, to do public interest work. After all, I didn't get to Elite all on my own. Lots of Black people helped me get here. And White people too, of course. But . . . I just can't explain it, but you know what I mean, don't you?"

The professor nodded, leaning back into his seat. "Yeah, I think I do, Tasha. And I don't think that any of that should make you feel guilty about working at a firm or pressured to work for the ACLU. What do you think all 'your trailblazing predecessors' wanted for you? They wanted you to do well, excel, improve yourself. Make a better life for you and your family. That's what their help was all about, and you don't have to turn your back on your community to do any of that, Tasha. The pro bono options will always be there for you, and you can serve on boards in various communities, tutor kids like you, you name it. I don't think that you should let any of your concerns limit your choices."

I signaled a small thanks to the professor. His words had refreshed me, but I still felt torn. "Well, it isn't just that, Professor. It's a lot of other things, you know—like, for one thing, I'm not so sure that I should work for one of these firms when they hire so few of us. And in the end, the whole thing only seems to cause more problems for me both here and there. . . ."

Professor Lincoln interjected, surprised by my assertion. "There, I understand. But here? How so here? I can't imagine how . . ."

I quickly dipped my head down. Oops. I had not meant to open up this can of worms, especially in front of Professor Lincoln. Because of his background, he had experienced just as much discrimination from Blacks as he had from Whites, and he easily became upset at the mere mention of any intraracial problems in the Black community. "It's nothing really, Professor, just a few problems, you know in the Black community and all. You know how things can get sometimes."

The professor's eyes were wide open. "No, Tasha, I'm not so sure I do, so why don't you tell me about it? I'd like to know." The professor snorted, pointing up to an imaginary office, "Even though I'm up there most of the time, I still like to think of myself as part of this community."

"Yeah, we do too—though sometimes we wonder," I teased, wishing that one day I would just learn to keep my mouth shut. "You know how it goes. It's just that a lot of Black students at Elite don't have jobs offers yet. And these Black students are kinda coming down pretty hard on those of us who do and are still interviewing. You know . . . the other day, someone had the nerve to tell me that I was taking her job interviews and offers and . . . you know what's funny? I couldn't even get angry at her. Because, on some level, I think she's right. That's just how the token system works, right?"

The professor looked dazed, his eyes bulging open. "No, not at all, Tasha. I'm really shocked to hear about this. I mean, I know how things can get sometimes but . . . Black students at Elite really don't have jobs? Why not?"

I was amazed at the professor's reaction. He was not at all phased by the conflicts within our community, but rather at Elite's Black students' difficulties in obtaining jobs, a clear indication of the problem's seriousness.

The professor then continued, "I know it used to be really hard for us.¹⁶ But I thought things had changed a lot from the past. At least, I'd like to think that the opportunities were much better now. Why wouldn't any Elite students have jobs, Black or White? Are Black students really having that much trouble finding good jobs? What do you suppose students are doing to cause . . ." I began to drift off. Professor Lincoln was famous for giving "pick-yourself-up-by-the-bootstraps" speeches.

Instead of ignoring him, however, I eventually decided to interrupt him gracefully. "Well, it's still very difficult, Professor, and we're not doing anything to make it that way either. . . . Being Black hasn't become any easier over the years, especially in law school. I mean, sure, there are a lot more of us here but most of us haven't been able to obtain your credentials . . ."

The professor must have anticipated my response, immediately jumping in to defend himself, "Tasha, as I was telling Dwight earlier

16. See generally Harry T. Edwards, *Personal Reflections on Thirty Years of Legal Education for Minority Students*, LAW QUAD. NOTES, Summer 1994, at 39 (1993) (describing his difficulties in obtaining employment after he graduated from the University of Michigan Law School in 1965). In that same article, Edwards suggests that the situation today is more difficult for minority students because of the perception that they have not achieved success on their own merits. See *id.* at 40.

in my office, people don't have to have my credentials to get a firm job; firms consider a variety of qualifications. I know, I served on my firm's recruiting committee for a number of years. It wasn't . . . well, it didn't happen everyday, but we sometimes hired students with poor 'traditional' qualifications, students who had worked as paralegals before coming to law school, students who had a professor send a recommendation to us, or . . . or maybe we simply found them to be charming. There were a number of things we looked at. . . . It just has to be something else. . . . I just" Professor Lincoln put his head down for a second and slowly ran his hand through his hair.

I then replied matter-of-factly, "Yes, there is a problem, Professor. There are problems. . . . and I don't know how to solve them. But I do know one thing. I'm really bothered by them. And you know" I hesitated, unsure of whether I should reveal my feelings to the professor; I suspected that he would disagree with me, but I was far too upset to remain quiet. Even though I had heard comments like Dwight's many a time and from many a people, they still hurt me, and I really needed to talk to someone, someone who had been there and survived. "You know what's really eating at me? It's not only that we're not getting jobs . . . and it's not like I think firms are discriminating against minorities or anything—at least not overtly. Sure, on average, minority students' grades tend to be lower than White students' and we usually aren't on the 'most prestigious' journals, and . . . well . . . it's the students, I mean, some of the White students. They think that all the firm jobs are going to us—just because a couple of law firms decided to have an after-hours cocktail, 'recruitment' party for minority students. 'They're taking our jobs,' they say. And I just want to yell back, 'Your jobs? Where are we supposed to work?'"

"Just the other day, an anonymous student writer wrote an editorial in the school newspaper, accusing law firms of hiring underqualified minorities and of lowering their standards and those of the legal profession to hire us.¹⁷ You'd think that firms were just handing out jobs to people of color, but most firms"

17. See Deborah L. Rhode, *Myths of Meritocracy*, 65 *FORDHAM L. REV.* 585 (1996) (highlighting the remaining challenges to gender equality in the legal profession). Rhode addresses the resentment of White males towards a perceived bias against them:

Columbia law professor Patricia Williams describes a recent example. "Nobody's hiring white guys anymore," was the unchallenged wisdom of one participant at a meeting of commercial lawyers. Williams surveyed the room of several hundred attorneys. She spotted one other black woman, no black men, no Hispanics, ten Asians, and a "modest sprinkling" of white women. "So who is being hired if not white guys?"

II. THE MYTH OF MINORITY HIRING IN LAW FIRMS

The professor interjected, leaning slightly forward. “Whoa, whoa, wait a minute, Tasha. I know where you’re headed. But I read that article, and you have to be fair. There were some good points in it. I’m just not convinced. The hiring process can’t be as bad as you say it is. Surely there are some minority students receiving firm offers. And in some cases, I even think that firms are ‘overlooking’ conventional qualifications to hire more minorities. For example, my former firm always made a point of inviting back a few minority students every summer, and some of them did not have all the ‘right’ credentials. Other firms must be doing the same.”

I gave the professor an uneasy smile. I was beginning to feel a little attacked. I was not suggesting that law firms and law schools had “enslaved” Black people, just that they, in many ways, had helped to perpetuate many of the inequities existing in the field. But I wanted to smooth our conversation out, so I expressed my regrets to Professor Lincoln, “I’m sorry, Professor, and I hope you are not taking this as a personal attack. Of course, some students of color do receive offers from firms, but most of us don’t. The offers seem to be concentrated among a small group of minority students, the ones who are on the *Law Review* and/or who have good grades.¹⁸ But for the vast majority of us, job prospects look bleak. Even the ABA¹⁹ has denounced the legal community for its failure to hire minority lawyers.”²⁰

Professor Lincoln settled back in his booth, with a look of concentration on his face. “Well, I suppose that’s true but . . .” Then looking back at me, “Is that really how you feel?”

“Yes, absolutely,” I barked, wondering how he could sometimes be so out of touch with our concerns. “Just look at this year’s third-year class. Out of forty Black students, only about half of them have jobs. And this school has a placement rate that’s over ninety

she wonders. “And if white guys aren’t being hired, what on earth makes them think anyone else is?”

Id. at 589.

18. See Linda E. Dávila, *The Underrepresentation of Hispanic Attorneys in Corporate Law Firms*, 39 STAN. L. REV. 1403, 1413 (1993) (exploring the reasons for the underrepresentation of Hispanics in law firms, the steps that have been taken to remedy the situation, and the roles that law firms, law schools, and the Hispanic community can take in the effort to increase Hispanic representation).

19. Tasha is referring to the American Bar Association Commission on Opportunities for Minorities in the Profession. See Frederick H. Bates & Gregory C. Whitehead, *Do Something Different: Making a Commitment to Minority Lawyers*, A.B.A. J., Oct. 1990, at 78.

20. See *id.* at 78.

percent! How can people think we're taking all the jobs when most of us don't even have one?"

The professor reacted as if I had struck him. "Tasha, hold on there"

"No, I'm very sorry, but it's hard for me to hold on. It's so frustrating. I just spent the entire morning interviewing with virtually all-White firms, and I was looking in Detroit, a predominantly Black city! Over seventy-five percent of the people in that city are Black.²¹ There should be plenty of Black attorneys there in firms. But there are none—five percent in a good year. Let's see, whom did I interview with this morning?" I questioned with stinging sarcasm. "Well, my first firm, 250 attorneys—in the heart of Detroit—but with only two Black associates, no Black partners! The second one? Two hundred attorneys, middle of Detroit, one Black partner. . . . What is that, 0.5%? I think I'm seeing a pattern here. Let's not forget the third firm—a branch of your old firm, professor—it has 200 attorneys, and I did not see even *one* face of color, Black, Latino, Asian American, the whole shebang. . . ."

The Professor interjected, "I worked in the D.C. office and there were two of us there, but we were trying to hire one other"

I threw my hands in the air. "I know, I know, but even with three of us, we'd still feel alone. I'd be in the Litigation section, one Black attorney would be in the Corporate section, and the other Black attorney would be in the Tax section, and we would hardly see each other. Who knows? It's possible that we wouldn't even like each other. The point is, Professor, all firms are trying—on some tiny level. But it just isn't enough. Okay, I'll concede a bit; numbers are increasing,²² even your firm's numbers have increased since you left. Instead of only two Blacks, there are now three. But do we really want to call that progress? No way. I just don't get it. I don't understand why, if they're trying so hard and we're trying so hard, the numbers are still so low . . . and it's the same story everywhere: Chicago, Boston, D.C., everywhere. And when I ask firms—oh, and I haven't had one minority interviewer yet²³—about their numbers, any future plans for diversifying their firms, I get one of two responses: the 'ole "Thank you for your time, you

21. See U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE U.S. 44 (1996).

22. In 1960, minorities made up less than one percent of the profession. By 1985, that number had increased to four percent. See MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM* 39 (1991).

23. See generally Michelle Frank & Angela Onwuachi, *Gender and Racial Harassment and Discrimination in the Interview Process* (1996) (unpublished manuscript on file with author) (researching, mainly through the device of a survey, the sexual and racial discrimination of students during the job interview process at the University of Michigan and using the results to form and support conclusions about racism and sexism and the effects they have on the interview process and the individual experiences of women and minorities).

trouble-making Negro' look, or the fidgety, 'well, we would hire more if they were qualified' explanation. . . .²⁴

"You know, I was talking to one of my Black friends the other day about this one firm, which we call the 'Black Mecca' because it has seven Black lawyers, three of whom are partners. Of course, we all are dying to work there, right? But then we stopped and realized just how pathetic we sounded getting all excited about that number when there were 400 attorneys in the firm! Have you ever just looked at the firm employer directory, just dragged your fingers across the strings and strings of zeros?"²⁵

"Professor, firms can't be trying very hard. If they were, there would be more of us working."²⁶

24. For a critique of law firm policies concerning minority hiring, see Valerie Fontaine, *Progress Report: Women and People of Color in Legal Education and the Legal Profession*, 6 HASTINGS WOMEN'S L.J. 27 (1995) (concluding that while formal barriers to entering law school and the legal profession have fallen, more change is required to remove the more subtle barriers that stand in the way of equal access to opportunities at school and in the work force). Fontaine writes:

firms can state that they wish to hire diverse candidates, yet avoid doing so by insisting that those candidates have graduated at the top of their class or be a member of the law review at one of the top 20 schools in the nation. Very few candidates, white or non-white, fit those criteria, which gives rise to the issue of holding candidates of color to a double or at least higher standard because they are more likely than other candidates to have been denied experiences and opportunities that would make them more "qualified." An employer committed to hiring a diverse group of lawyers must re-evaluate its hiring criteria and determine whether other credentials, such as work experience and community leadership, might be equally indicative of excellence.

Id. at 36 (footnote omitted).

25. See generally OFFICE OF CAREER SERVICES, UNIVERSITY OF MICHIGAN LAW SCHOOL EMPLOYER DIRECTORY (1996) (listing firms that interviewed on campus as well as firms that expressed interest in hiring University of Michigan law students but were unable to come on campus). Several scholars have attempted to explain the reasons behind the low number of minorities in law firms. See Ed Cray, *Blacks and Browns in Blue Chip Firms*, CAL. LAW., Oct. 1984, at 35, 35-36 (looking at the situation concerning the underrepresentation of minorities in law firms through the comments and opinions of lawyers, professors, and law school administrators); Robert L. Nelson, *The Future of American Lawyers: A Demographic Profile of a Changing Profession in a Changing Society*, 44 CASE W. RES. L. REV. 345, 378 (1994) ("Minorities pursue different careers than white lawyers, either out of choice or to avoid discrimination."); Michael D. Rappaport, *Placement Patterns of University of California-Los Angeles Law School Minority Graduates*, 7 BLACK L.J. 137, 141 (1981) (finding that Black graduates, in comparison to White graduates, are overrepresented in public interest and underrepresented in law firms and suggesting that, in addition to greater public interest orientation, minority students may have been channeled into not-for-profit work because of diminished opportunities in the private sector).

26. In 1980, there were over a half-million attorneys in the country but less than 2.9% were Black and only 1.7% were Latino. Although 10% of all law school graduates were minorities, less than three percent of attorneys in large law firms were

The professor's countenance darkened, belying his irritation with my rampage. "Tasha, firms can't always overlook . . ."

"I'm not asking them to overlook these qualifications, Professor, just to expand them. Look beyond grades and *Law Review*. Consider community service, extracurricular activities, work experience, consider it all, the whole package. *Especially* if doing so will diversify their workplace. Otherwise, what am I or any other minority student supposed to think or feel about going to work for a firm? Who will be our mentors and our role models?"²⁷

Professor Lincoln appeared startled by my display of emotion. I myself was a little embarrassed by my loss of control. The professor responded calmly, "Tasha, you're not telling me anything that I don't know, and . . . and you're talking to me as if I am a child. I mean, do you think that my skin color has somehow disappeared because I'm working at Elite? I worked in one of those firms for many years. Believe me, I've felt lonely too, and I have not forgotten what that feels like. I'm the only Black professor at this law school. I know how you feel. Trust me. But at some point, we have to stop using our Blackness as an excuse. Times are hard for everyone."²⁸ White students are having a hard time getting jobs too. That's why you have editorials about 'underqualified minorities.' People are lashing out. I mean, just take one second and think about it. If you were a White student having a hard time getting a job, wouldn't you be upset if a minority student with lesser traditional qualifications than your own was hired while you were not? Can't you see why some of these students are upset?"

I was surprised by the professor's question, uncertain as to how I should interpret it. "Of course I can understand their frustrations, Professor, but I believe that hiring issues are a little more complicated than that. Not every minority student has lesser qualifications than her

minorities. See Lugo, *supra* note 8, at 620–21. A 1986 survey by the ABA's Task Force on Minorities revealed that more than half of all law firms employed no minority associates and that 78% had no minority partners. In 1994, fewer than five percent of all lawyers in the country were minorities and in the 250 largest law firms in the country, only 2.5% of all partners were minorities. See Valerie A. Fontaine, *Cultivating a Diverse Work Force*, NAT'L L.J., Jan. 10, 1994, at 25, 25.

27. See GEORGIA SUPREME COURT COMMISSION ON RACIAL AND ETHNIC BIAS IN THE COURT SYSTEM, LET JUSTICE BE DONE: EQUALLY, FAIRLY, AND IMPARTIALLY, reprinted in 12 GA. ST. U. L. REV. 687, 728 (1996) ("[T]he need for a mentor does not cease with a student's graduation from law school. Minority lawyers are valuable and positive role models to demonstrate to minority students that they can succeed not only in law school but as lawyers in the profession.").

28. See Carrie Menkel-Meadow, *Culture Clash in the Quality of Life in the Law: Changes in the Economics, Diversification, and Organization of Lawyering*, 44 CASE W. RES. L. REV. 621, 630 (1994) ("[A]fter the expansion of the 1980s, we are currently in a period of 'downsizing' and doom and gloom forecasts for the large firms. Profits are down and many firms have chosen to retain partner profits by reducing associate 'overhead'" (footnotes omitted)).

White counterparts. You certainly know that from your own experience. And just why is it that it's always us taking their jobs? I won't even mention the number of jobs and privileges that Whites have gained at our expense. Instead, I'll ask, just why doesn't this 'underqualification' argument come up about other White students, the big attorney's or law professor's kid, you know? And . . . no, I'll go even further. So what! So what if firms are hiring minorities with average or lower traditional qualifications? Firms hire many White students with less-than-stellar qualifications. They can't only be sticking to these 'desired hiring qualifications.' There aren't enough of these students to go around."²⁹

The professor responded flippantly, as if I had stated the obvious. "Of course, firms aren't only hiring *those* students. That would be silly. Firms have to look at other things, like personality. There are many things to consider, Tasha. There are plenty of students with stellar grades who are annoying, have no social graces, and lack the common sense necessary to be an effective lawyer. . . . That's a given."

I snickered, immediately adding to the professor's argument. We were beginning to think along the same lines, and I was finally beginning to calm down. "But that's just the point, Professor. There are many things to consider. So why place such a high emphasis on grades and journals? Why not consider more things equally? You yourself said that grades and journals weren't necessarily good indicators of success. Why don't firms consider community service or life experience more? Someone who comes from an economically disadvantaged background, or overcame many obstacles just to obtain an education, working to pay tuition, living with and struggling with prejudice and ignorance at the same time . . .

29. Daniel Lugo presents numbers that support the assertion that there are more jobs at top law firms than there are students from the top tier of the top law schools:

[b]y definition of the percentages, there just are not enough people in the top 10% or 25% of the class to fill the hiring needs of all large law firms. In fact, after bids have been made for the top 10% of students at the top 20 law schools, thousands upon thousands of hiring decisions are made by hundreds of law firms. . . . In the U.S., there are 319 large law firms [firms with over 100 attorneys]. If we estimate, on a low average, that each of these firms will hire 10 new attorneys each year, we find that the large law firm group will hire approximately 3,190 new attorneys per year. Now, compare this to the number of top 25% law students available from the campuses of the top 25 law schools in the nation. Roughly, the average size of a class at a top 25 law school is approximately 305 students. Therefore, there are approximately 1,900 students in the top 25% of the class at the top 25 law schools. Clearly, there is a discrepancy of over 1,000 jobs.

Lugo, *supra* note 8, at 626–27 (footnotes omitted).

Anyone, I mean Black, White, anyone—who attended and survived law school in the face of these barriers might become a particularly tenacious lawyer.³⁰ These struggles in and of themselves are a sign of ability. Why do firms insist on remaining blind to these qualities? And even more importantly, why do they assume that these supposed qualifications aren't racially biased or, for that matter, are good indicators of success? . . ."

The professor quickly challenged my arguments, "Tasha, firms focus on these qualities because they have proven to be good indicators of success. Plain and simple. People who do well in law school tend to do good work at firms. If they didn't, firms wouldn't seek them out. I'm not saying that these indicators are the only ones, but they work. You can't possibly think that grades and membership on the *Law Review* are useless indicators of success. Grades can reflect a variety of qualities, including hard work and an ability to analyze legal material quickly. And as far as journal work is concerned—on any journal, not only the *Law Review*—it can indicate a student's ability to write, create, and organize an argument. Or it may reflect her ability to manage time and to put forth a high-quality product."

I nodded my head to show my agreement, wanting the professor to see that our views about firms' hiring criteria were not completely contradictory. "No, no . . . I'm not saying that at all. These indicators are certainly useful, but they aren't the only ones, and in many instances, not even the most important ones. We all know many successful lawyers without these credentials. Johnnie Cochran, for example.³¹ I'll admit that grades and journal work can reflect strong legal ability and thinking, but they also, in many ways, reflect privilege."

The professor paused before responding to my arguments, visibly thinking them over. "Okay, Tasha. You're right. There are many Johnnie Cochrans out there. But more or less, don't you think that we should depend on these conventional qualifications? They protect minorities, if anyone. At least grades and membership on journals are objective and systematic; everyone has a fair shot at

30. See Vance Knapp & Bonnie Kae Grover, *The Corporate Law Firm—Can It Achieve Diversity?*, 13 NAT'L BLACK L.J. 298 (1994) (exploring what is behind the underrepresentation of minorities in the legal profession). "Someone who has been undervalued by professors and fellow classmates, yet completes important educational goals, might well become a particularly tenacious and valuable attorney." *Id.* at 306.

31. Elite firms usually seek recruits from the top 25 law schools. Johnnie Cochran obtained his law degree from Loyola University, a second-tier law school. Throughout his career, Johnnie Cochran has received numerous awards for his outstanding legal talents. For example, he has received the honor of being the Trial Lawyer of the Year and the Criminal Trial Lawyer of the Year in Los Angeles on a number of occasions.

performing well academically and competing to obtain membership on a journal. You can't say that about everything, Tasha."

"But Professor, you can't say that about law school grades and journals either. There's plenty of racial bias within our schools, the way we teach, the issues and ideas we deal with in class, the professors who teach us. . . . Who says everyone has a fair chance in law school? Not everyone starts at the same place. Many minority students have had no exposure to the law, to lawyers, or even professional life before coming to law school. Yet, in the classroom, our classmates and our professors take minimal exposure to the law and the professional school experience for granted. And our professors—most of whom are White and male—assume that their thinking,³² their exam questions, and their grading are all neutral, that they are somehow not raced or gendered.³³ We have to allow for

32. See Anthony R. Chase, *Race, Culture, and Contract: From the Cottonfield to the Courtroom*, 28 CONN. L. REV. 1, 6 (1995) (outlining the "legal discourse of contract law and . . . explain[ing] the unconscious influence that race has on the manner in which we interpret contract doctrine"). Chase writes:

[t]he most resounding effect is that the cultural perspective of most White law students is validated. . . . Many white students easily assume the responsibility of contrived objectivity because it affirms their habits and world view. These students are encouraged and rewarded by the legal community for believing that the dominant views of their culture are fair and unbiased. As long as they do not specifically and consciously address matters of race through thoughts, words, or actions, claims of objectivity shall be sustained. . . . Issues of race are considered inappropriate for classroom discussion and any attempt to bring them to the forefront is seen as a case of special pleading and only serves to widen the gap between the cultures.

Id. at 58–59.

33. See generally PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991). In her book, Williams describes a number of race- and gender-biased exams created by White male professors. Some included:

- a tax exam that asks students to calculate the tax implications for Kunta Kinte's master when the slavecatchers cut off his foot.
- a securities-regulation exam in which the professor muses about whether white-collar defendants should go to jail, since "unlike ghetto kids" they are not equipped to fare in that environment.
- a constitutional-law exam in which students are given the lengthy text of a hate-filled polemic entitled "How To Be a Jew-Nigger" and then told to use the first amendment to defend it.
- a description of the "typical criminal" as a "a young Black male with an I.Q. of 87 who is one of eight children and has always lived on welfare and who spends his time hanging out in pool halls with his best friend Slick."
- numerous criminal-law exams whose questions feature exclusively Black or Hispanic or Asian criminals and exclusively white victims.

and value different types of thinking—ideas which include and involve matters of race and gender.³⁴

The professor nodded his head, looking straight ahead. “Okay, Tasha, let’s say I accept your argument. I say ‘Okay Tasha, you’re right about the criteria. Firms are looking at the wrong things.’ It appears from what you’re telling me that even if firms began to hire more minorities, that many minorities have not been exposed enough to law firm culture, the networking, the golf, whatever, to succeed within it.³⁵ Why should law firms spend resources, money, and time on hiring students they feel are not prepared to thrive in their workplace?”

“But, Professor, we are prepared and can succeed in firms, though it may be harder for many of us to do it. And really, I’m not

— many questions depicting gay men as the exclusive spreaders of AIDS, asking students to find the elements of murder.

— many, many questions in which women are beaten, raped, and killed in descriptions pornographically detailed (in contrast to streamlined questions, by the same professors, that do not involve female victims).

Id. at 84–85. The problem with such questions, as Williams argues, is that they:

require Blacks, women who have been raped, gays and lesbians, to not just re-experience their oppression, but to write *against* their personal knowledge. They actually require the assumption of an “impersonal” (but racist/sexist/homophobic) mentality in order to do well in the grading process. . . . [I]t requires students to suppress any sense of social conscience. It requires them to devalue their own and others’ humanity for the sake of a grade.

Id. at 87. In essence, such questions disproportionately require that women and minorities move outside of their experience to perform well on exams.

34. Discussions involving matters of race and gender benefit everyone, minority and nonminority, and can only be avoided by having incomplete and unnatural discussions of legal issues:

[i]n discouraging discussion about the role race plays in judicial decisions and legal doctrine itself, a great disservice is done to all law students. The preconceived notions of race and culture that students bring to law school are not seriously engaged. Lawyers are the individuals who debate, argue and adjudicate the conflicts that arise in our society. Through the depth and scope of their reasoning, they have the potential to change the rules by which our society functions as well as the application of those rules to particular groups or individuals. Lawyers must be able to recognize and interpret other perspectives. When facing a jury, what lawyer would deny the importance of being able to predict human behavior and socially valued habits of thought in many different context?

Chase, *supra* note 32, at 59 (footnote omitted).

35. See Dávila, *supra* note 18, at 1415–21 (describing several reasons why minorities have difficulty adjusting to life at a law firm).

one to shy away from asking firms to change their culture altogether, although I think there's little chance that they will do that. I guess . . . I just know firms can do more—very simple things—to help ensure that minority attorneys thrive in their offices. For example, firms can require diversity training for all attorneys to help create a comfortable and sensitive environment for minority attorneys. Or they may consider taking small steps, like giving minority attorneys the most experienced secretaries to help them adjust to firm life. They could encourage all firm members, not only women and people of color, to act as mentors for minority students. Or they can become involved in or sponsor minority bar groups or committees. Moreover, they can encourage their employees, all of them, Black and White, male and female, to do so. These are just suggestions, and they won't solve all of the problems, but I think they will help.”

III. IS THERE A PLACE FOR MINORITIES IN LAW FIRMS?

The professor shifted in his seat and placed his left elbow on top of the table. I sensed that I had failed to convince him with my arguments. He did not buy them, and he did not think that firms would buy them. “Tasha, I think you're being unrealistic. Firms are businesses. They aren't going to spend money for nothing. What stake do firms have in hiring minorities? They can't waste money on expensive 'sensitivity' training, and they really can't force their employees to endure such things.

I tilted my neck to my right and rolled back my shoulders, feeling tired from our discussion and from thinking about my future. “Perhaps you're right. Maybe I'm not being realistic—in particular about my own feelings. I thought . . . I mean, I hoped that you would convince me to work for a firm. I really did. But firm life, in general, seems really unpleasant, especially for women and minorities. Why would I wish that life on anyone, much less myself?”

“You know what my 3L mentor told me? The associates and partners at his firm over the summer—the ones involved in the summer program—didn't even bother to get his name and face straight for the entire summer. They were constantly confusing him with the other two Black male summer associates, even though their body builds, their hair, and their skin tones were all different.³⁶

36. Hermansen asserts that firms should not assume that racial problems do not exist in their offices and that they should:

[L]isten to the stories of Black female associates who arrive at depositions and are presumed to be the court reporter, of Black male associates at

These lawyers just couldn't see past his race. All they saw was Black. Can you imagine how this 'color consciousness' affected their views of him? I mean, how could they evaluate his work when they did not recognize him as an individual, but just a member of his racial group? Or how will they ever make him partner if all they can see is his race? The entire process seems skewed to me."

The professor simply stared at me. It was clear that he understood my concerns but was not persuaded by them. A smirk then spread across his face, and he laughed to himself.

"What? What? Did . . . did I say something silly?" I asked, feeling rather self-conscious.

"Oh, it's nothing, just ignore me. It was nothing you said, Tasha, just a silly idea of mine," the professor hesitated. He then continued, laughing again, "I was just wondering . . . what would happen if we, people of color, just boycotted firms, just didn't work for them? What if we could stage a successful protest against firms?"

I joined the professor in his laughter, nearly falling off my seat. "You know, it's funny . . . I've often wondered the same thing. I mean, what if we did, all of us, all minorities, people of color—and our allies. Of course, we'd all have to participate to have any significant effect."

Professor Lincoln wrinkled his forehead, confused by my reaction. He did not expect me to entertain his thoughts, but he seemed a little pleased with my reaction. "Tasha, I was only joking. You really shouldn't take me seriously," the professor stated calmly. He then paused and stared at me, realizing my sincerity. "Tasha . . . do you really think a protest could do some good? And why would firms care? According to you, they care little now, and you want us to boycott them? I can't imagine what effect that could have, except for keeping us locked out of positions of power, and, in many instances, keeping us broke. And . . . and how can we expect minorities to move up in the world if we're slamming the doors in our own faces? I think a protest could only make people, in particular Whites, sympathetic ones at that, more hostile to us."

I plopped my hands on the table and leaned forward. "Yeah," I stated, drawing out the word, "but how could a protest hurt anything? The doors are already being slammed in our faces. We're

work on the weekends who are mistaken for messengers, of Asian Americans being told that they speak English very well, or of women who feel it is presumed that they cannot travel or work on big cases because they will not be able to put in the hours.

already marginalized. The workplace is already segregated.³⁷ All this protest would do is make these things clearer. And who knows? It may force firms to recognize, not only how we need them, but how they need us.³⁸ I mean, firms do have many practical and economical reasons for wanting to hire minority attorneys. First and foremost, many minority lawyers are equally as talented as White attorneys, and no firm can afford to miss very many good lawyers. Second, minority business owners want to seek counsel from firms and attorneys who provide fair employment opportunities. By having minority attorneys, firms can gain the business of a wider variety of companies.³⁹ Also, what would firms do if they didn't have us to be

37. See Knapp & Grover, *supra* note 30, at 302 (quoting A.J. Cooper, Jr., a partner in a Washington, D.C. firm and past president of the National Conference of Mayors, as saying "[l]aw firms are among the most segregated institutions in America. . . . The Senate Judiciary Committee should not be asking judicial candidates if they belong to a segregated golf club, but whether they belong to a segregated firm" (footnote omitted)).

38. Harry T. Edwards, *A New Role for the Black Law Graduate: Reality or Illusion?*, 69 MICH. L. REV. 1407 (1971) (examining the problem of the underrepresentation of Blacks in the legal profession and looking specifically at why this is, what impact this underrepresentation has on society, and what must be done to raise the numbers of Blacks employed in the legal profession and the role of these attorneys in the effort to increase social justice). Edwards writes:

[i]n this era of intense and expanding conflict, society can ill afford to lose or underutilize Black resources. Frustration dissatisfaction, and disillusionment have built to the point that the legal profession must change to accommodate Black lawyers within all levels of the profession, even if only in response to imminency of social eruption. Blacks will be the engine of Black progress in America; or, to a lesser extent, Blacks will be the engine of societal destruction if there is not sufficient recognition by the establishment that there must be input of the Black vision in the societal process.

Id. at 1431-32.

39. See generally Hermansen, *supra* note 36. Or, they may better their chances of doing business with local or state government agencies, areas in which the number of high-level minorities is steadily increasing. Last, having diverse groups of attorneys presents a positive public image. A number of corporations and government agencies are requiring that their law firms hire minority and women attorneys:

[a]t a 1992 conference of the Association of Legal Administrators, a speaker told of receiving a questionnaire from a potential corporate client surveying the number of minority associates and partners. The corporation was prepared to take the firm's response into account in deciding whether to retain it. Similarly, state and local governments are beginning to insist that the law firms they have hire women and minority lawyers working for them. The San Francisco Redevelopment Agency demanded that Steefel, Levitt and Weiss, a Bay Area firm, hire minority attorneys or lose a profitable real estate contract. After the agency withheld funding, the firm scrambled to obtain minority representation.

Knapp & Grover, *supra* note 30, at 304 (footnotes omitted).

the Black, Latino, Asian, or Native American lawyer at their discrimination trials? I think firms realize the power, the persuasion, in having faces of color at these trials, of having a face of color say that their client does not discriminate against minorities. It happens all the time. A friend of mine worked as a summer associate at a large firm in City Midwest. One day, as he was working at his desk, a partner came to his office and invited him to a trial—just out of the blue. My friend had not worked on the case, nor had he spoken with this partner at length. He hadn't even expressed an interest in this partner's work or area of expertise. Well, it turns out that this case was a race discrimination case. The reason for the invitation became obvious at that point. My friend was to sit there beside this partner and 'be Black,' to silently say to the jury—'Our client does not discriminate. Look, he's even hired a person of color to represent him.' Right?" I laughed.

The professor chuckled with me. "Right, the old 'my best friend—insert lawyer—is Black' trick. Yes, you have a point there. I worked on a case like that, but actually it wasn't that bad. That same position can also be very powerful. There, you have those employers' ears. You can advise them on their policies, tell them when you think they're wrong . . . you can, in a sense, help to improve the work environment for minorities."

I paused, absorbing the professor's rather convincing argument, and then challenged him on his point. "You're right, Professor, but the small help we can give in those positions does not justify our exploitation or our allowing it everywhere else. What if we said no? What if we refuse to be exploited? And we made it known—to everyone—that we were leaving and staying away because of this exploitation, discrimination, and discomfort due to our race? Don't you think that it could, in a sense, destroy all firms' credibility, their reputations in discrimination cases? And couldn't it color their words in the mind of the jury? I mean, then firms could no longer point to us, the tokens, as proof of nondiscrimination.⁴⁰ On a greater level, they could no longer use the few of us who do make it as examples of upward mobility, the achievement of the American dream. There is potential for a massive revolution."

Professor Lincoln simply shook his head in disbelief. Still he responded, pushing my hypothetical further. "But Tasha, that's only a small number of cases. The impact of this 'boycott' would be

40. See James E. Blancarte, *Latino Partner's Perspective on the Need For More Latino Lawyers*, 14 CHICANO-LATINO L. REV. 176 (1994) ("When the firms have a couple of minority attorneys, they believe that they do not need any more. Every firm has a couple of 'us'; it makes people comfortable to have a couple of 'us' sprinkled within the work place at the associate level. In doing so, they feel that they have fulfilled their minimal obligations to society.").

minimal. Firms would soon recover, and again, we would be out in the cold.”

“Sure, firms *would* recover—if that was all the harm we could cause. Just think about it. Our not working for them doesn’t mean that we stop working for us. That’s exactly what we do. That’s what we should be doing anyway. We become the attorneys who bring these discrimination cases. We become the legal counsel for minority businesses. And as a diverse group of attorneys, we set a model of practicing law without hierarchy and with understanding and with respect. Within our own practices, we refuse to marginalize others, whether they be White, women, gay, lesbian, disabled, whatever. Eventually people will catch on, and they will join us. And you are right, minority businesses do not constitute a significant number of businesses in the United States, and our boycott will probably hurt mid-sized firms more than large firms. But at least we can make a dent. We have to start somewhere. Just imagine it. Imagine if every Asian, Black, and Latino company pulled its business away from these firms. And . . . our boycott doesn’t have to be limited to minority businesses. What if our boycott became so powerful that it began to influence the actions of large companies that rely on us, our loyalty . . . companies that rely on Black buyers . . . say Nike, who has a large Black customer base decides to join us to save its market. What if Nike and other companies like it bring their cases, their business, to our firms?”

“Just imagine it. And imagine if all valid—and *there are many*—discrimination claims were pursued. The effect could be tremendous. I think we could really force some firms to change and maybe other businesses too.”

The professor smiled, sitting back in the booth. “I won’t argue with you anymore, Tasha. I’ll admit that this ‘protest’ thing has a little potential, but I don’t think it’ll ever happen. It’s hard enough for us to organize a local parade for Martin Luther King, Jr. Day, much less a nationwide boycott.”

The tips of my mouth curved upwards, expanding past my cheeks, and I leaned forward. “I’m not so sure we can’t do it, Professor. Look around. Our numbers are growing, which means that the number of our businesses will grow too, which means that there will be more of a need for legal counsel, which means more work for us—if we really want it. And if we take it to an international level, the consequences could be even more startling. Our country is becoming more globally dependent, and people of color make up the vast majority of the world’s population.⁴¹ You never know, Professor. We just may surprise you and everybody

41. See JOSEPH WHITAKER, WHITAKER’S ALMANACK 783–87 (1996).

else. I think perhaps, in the future, we will begin to move a little ground and break a few traditions. . . .”

CONCLUSION

I stopped in the middle of my argument, noticing Professor Lincoln's sudden preoccupation. He looked at me and flashed me a quick smile. “Tasha, you may be on to something there. I think it's completely unrealistic, but it's definitely something. And I hate to be rude, but I just caught a glimpse of my watch and noticed that I have to meet my wife in half an hour. I'm sorry, but we'll have to talk later.”

“Wait, hold on . . . Miss, miss, sorry, but we're ready to go now. Can we have the bill?” Professor Lincoln asked, reaching for his billfold. I reached for my purse, but the professor stopped me. “Don't worry, I have it.” He laid money on the table to pay for our meal and generously tipped the waitress.

Then he and I put our coats on and walked outside the door. The professor apologized again, “I'm sorry for cutting you off, but really, feel free to come talk to me anytime.”

“Thanks, I will,” I answered, pleased by his invitation. “You may regret that offer later.” We both laughed.

“Well, I guess I just have to see about that,” the professor responded kindly and then pointed down the street. “By the way, you headed back to the law school now?”

I shook my head, grinning, and winked at the professor, “No, I believe I'm going in the opposite direction.”