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FOREWORD: MAKING MAKEUP MATTER

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I. THE TRIVIALITY OF MAKEUP

A number of our colleagues responded to the news that we were hosting a conference on makeup and employment discrimination with incredulity. What does one have to do with the other? Surely, issues of makeup and dress are trivialities—aesthetic personal choices that reside beyond the remedial reach of anti-discrimination law. Surely, an employer is free to formalize dress and appearance standards. Many of us might think it silly for an employer to do so, several of their arguments ran, particularly because, in most employment settings, the market would disfavor the practice. But "silly" and "illegal" are not the same thing. Thus the question: Why devote an entire day to an ordinary, personal, and seemingly "natural" self-presentational activity that so many women perform? Asked another way, why a conference on makeup—and why within the halls of the Duke University School of Law?

To us, Duke was a particularly appropriate location for this conference. More than a decade ago, Katharine Bartlett, currently Dean of Duke Law School, authored a foundational article on discrimination based on appearance choices.[1] The article made a big splash, provocatively raising the question of whether discrimination claims based on dress and appearance standards are cognizable under Title VII, the federal law that prohibits discrimination on the basis of, among other aspects of identity, race and sex. For the most part, courts had answered that question with a resounding "no." And to a large extent, their reasoning centered on two ideas: (1) that employers have broad latitude to define the professional boundaries of their workplaces and that grooming standards are a reasonable way for them to do precisely that; and (2) that Title VII protects identity characteristics that are immutable (for example, phenotype) or that implicate a fundamental right (for example, marriage). Dean Bartlett's article challenged both ideas and in the process helped to generate an entire body of literature that explores the nexus between sex discrimination, on the one hand, and dress and appearance standards, on the other.

Dean Bartlett's article has once again returned to the limelight, thanks in no small part to the Ninth Circuit case, *Jespersen v. Harrah's Operating Co.*[2] The case involved a female bartender, Darlene Jespersen, who Harrah's Casino effectively

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1. Katharine T. Bartlett, *Only Girls Wear Barrettes: Dress and Appearance Standards, Community Norms, and Workplace Equality*, 92 MICH. L. REV. 2541 (1994).

2. Jespersen v. Harrah's Operating Co., Inc., 444 F.3d 1104 (9th Cir. 2006) (en banc).

terminated because she refused to comply with the casino's mandatory makeup rule. Dean Bartlett found herself on both sides of the dispute; both the defendant and the plaintiff cited her article. More than that, her work figures prominently in every subsequent article on the case. The conceptual and doctrinal purchase of Dean Bartlett's work, and her role in shaping how dress and appearance cases are litigated, made Duke Law School a particularly appropriate site for engaging this topic.

But that still begs the question of why a conference on makeup and grooming in the first place. Why an investment in making makeup matter? The existence of a body of cases in which plaintiffs invoke an employer's grooming policy to ground their discrimination claim does not, without more, establish the importance of those cases. Why should we care about makeup and other dress and appearance standards? What, finally, is at stake?

The *Jespersen* case provides at least a partial answer. Trivial though the subject of makeup supposedly is, the *Jespersen* litigation garnered an enormous amount of attention as it wound its way from the district court, to a three-judge panel of the Ninth Circuit, and then to the Ninth Circuit en banc. Indeed, even before this conference was held, several articles, notes, and comments had been written about this case. This attention standing alone would seem to suggest that makeup—which appears to be such a simple little thing—might not be so simple after all. Bound up in Darlene Jespersen's refusal to wear makeup is a broader question about identity performance: Can an employer require its employees to engage in gender normative behavior by requiring them to, among other things, comply with a specific set of grooming requirements, such as the makeup regimen that Harrah's imposed on its female bartenders? Asked slightly differently, can an employer use makeup and grooming standards to inscribe our sex identities with gender normative social meanings—for example, that male employees are or should be masculine (or at least not feminine) and that female employees are or should be feminine (or at least not masculine)?

For us, then, grooming standards *can* (but needn't always) function to regulate and give content to our identities. Grooming is one of the ways in which, wittingly or not, we bring our identities into being. What a woman wears to work is not just a signification on style or sartorial preference; it is a signification on gender. This is why women in corporate settings—and certainly women who are litigators—still think about whether and when to wear trousers. And even when women are not consciously thinking about how their sartorial choices inscribe their gender, their interpellation, that is, how people respond to them—how they are "hailed"—is a function of what they wear. To the extent that dress and appearance play this gender-constitutive role, grooming standards *can* (but needn't always) function as an axis along which identity discrimination occurs. Dean Barlett's seminal article argues as much, and we have explored similar ideas in our own work. The *Jespersen* case reveals how this line of reasoning maps onto specific doctrinal developments in Title VII law, which is why we organized the conference around the case.

Our numerous discussions of *Jespersen*, and our reflections on our own work and on the broader literature in this area, suggested to us that scholars had only scratched the surface of a host of complicated questions relating to grooming standards and discrimination law and theory. Consider, for example,

these: If we are right that the imposition of grooming standards can constitute sex and race-based discrimination, precisely when is this the case? In other words, what is our doctrinal test for determining which sex and race discrimination claims based on formal or informal grooming standards are cognizable? Further, assuming that one can set forth a manageable framework to answer the foregoing cognizability question, what kind of evidence is needed to prove the claim? Finally, are courts an appropriate venue for deciding which identity performances an employer can demand? That is, do we want judges determining the permissible boundaries of gender-normativity? Clearly, the preceding questions are not exhaustive. Indeed, our previous articles have hinted at others. Our thinking was to employ a conference to push forward on some of the difficult and largely unanswered questions that the makeup and grooming jurisprudence raises. The *Jespersen* litigation—and the attention it has received—convinced us that such an event was in order and timely.

But would our colleagues in the discrimination field agree? The employment discrimination literature is vast and disparate. We worried that, given our scholarly interests and prior publications, a motivation bias was shaping our sense that a conference on makeup and grooming was a must-do—a kind-of categorical imperative. This troubled us. We decided to test the waters. To do so, we sent out feelers that we were thinking about organizing a conference on makeup and grooming but that we did not have the resources to reimburse the participants for airfare or accommodations. Nor would we be in a position to dish out other goodies such as honoraria. Our thinking was that if our colleagues at other institutions were willing to attend on their own dime, that would provide some assurance that there was a "there there."

We organized the conference. And they came.

This takes us back to the point of departure for the foreword—the ostensible triviality of makeup. In the interest of full disclosure, we should make clear that we included "makeup" in the title precisely to engender the "Isn't this trivial?" reaction. Our hope was that the discussion in the conference itself would demonstrate—at least to those willing to listen—how an everyday and ubiquitous practice like wearing makeup could be an important element in thinking about the construction of gender in contemporary society. The same goes for dress, hair styling, and the gamut of "personal" identity "choices" people make everyday.[3] To put the point more directly: a conference on makeup could help to demonstrate that the decisions we make about how to dress (and the decisions employers make about how employees should dress) socially construct identities.

It almost goes without saying that race and gender are social constructions. Most people share the observation. Indeed, even the Supreme Court now comfortably rehearses the idea. Yet few of us—even those committed to feminism, critical race theory, or cultural studies—have endeavored to explain exactly what that means. While providing a complete answer is beyond the scope of this Foreword, the point we want to stress here is that identity performances are one of the ways in which our identities are socially produced.

3. We put "personal" and "choices" in quotes because we are aware that our identities are not just personal; nor are they simply a function of a kind of freedom of choice to be.

Jespersen, and the grooming cases more generally, can be employed to make this point. We viewed this conference, then, as an opportunity to think not only about the relationship between grooming and sex discrimination but also about the constitutive role grooming plays vis-à-vis race, gender, and other aspects of the self.

One way to think about grooming and the social construction of identity is to invoke the fact that it is common to hear assertions that people are more or less black or feminine or religious because of the way they dress, speak, or wear their hair. The frequency of these articulations suggests that most if not all of us—including managers who make hiring or promotion decisions—distinguish among people within the same identity groups based on self-presentation choices that implicate grooming. Some institutions will prefer the "really black" guy; others will want the black guy who "acts white." Both categories of black men remain intelligible as black. But the social meaning that attaches to their specific and individual identities is shaped, at least in part, by performative criteria, including those associated with grooming. Blackness is not monolithic. Through grooming, and other self-presentational choices, the men in the example above—members of the *same racial group*—can become *differentially black*.

A number of implications flow from what we have said thus far. First, definitions of race and gender are not fixed. How we understand both race and gender shifts as a function of the daily individual choices people make on such matters as dress and hair style. That leads to the second point. Individuals do not behave in isolation but rather act as a function of societal pressures and constraints. Some identity performances are rewarded and others are punished. There is an incentive for people to perform their identities to receive the carrot and avoid the stick. The third point is that this system of reward and punishment is structured around social understandings of particular identity performances. More concretely, if bald heads are perceived as a sign of virility, then lots of men will begin to shave their heads; if covering one's hair is a sign of female religious devotion, then women in religious communities will begin to cover their hair. In other words, the social norms of society drive identity performances, which in turn instantiate the social norms.

Understanding the foregoing dynamic is crucial to understanding discrimination in the contemporary workplace. Workplaces are structured around norms. And with respect to professional workplaces, employers typically have an expectation that employees will get along with each other and fit comfortably with workplace. In other words, there is a strong norm of teamwork and collegiality. To borrow from Donald Langevoort, employers want employees who produce grease, not grit.[4] Because, as a general matter, white men are at the helm of the professional workplace, the question of fit turns on one's similarity to and difference from white men. This creates an incentive for institutions to screen for white men based on the assumption that they are most likely to get along with other white men.

4. *See generally* Donald C. Langecoort, *Overcoming Resistance to Diversity in the Executive Suite: Grease, Grit, and the Corporate Promotion Tournament*, 61 WASH. & LEE L. REV. 1615 (Fall 2004).

But Title VII prevents institutions from hiring only white men. Moreover, concerns about diversity militate against the establishment of white male only workplaces. Neither the anti-discrimination constraint nor the diversity constraint means that the employer has to completely subordinate its interest in collegiality and institutional fit. The employer can simply employ performative criteria to screen its applicants for those women and people of color who can produce grease—that is, work comfortably with white men. On the flip side, women and minorities seeking entrance into predominantly white male workplaces have an incentive to signal—again via performative criteria—that they have the capacity to fit comfortably within a workplace with few women or people of color. Currently, Title VII jurisprudence insufficiently engages these dynamics. We thought a conference could help us think through them.

In fact, however, the conference did much more than that. The more than thirty participants raised a number of issues that transcend those identified above. Just a cursory look at the titles of the papers in this volume reveals the range of engagement the conference engendered. We hope you will take the time to read each article. To give you a sense of what's in store, Part II of this foreword organizes the papers (and the discussions that took place at the conference) around several themes. Our analysis is somewhat reductionist. Indeed, if we are certain of nothing else it is that our explication of the themes obscures important nuances. Our apologies in advance to the participants for any discursive violence our thematization performs. With that caveat and apology out of the way, we now discuss the themes.

II. THEMES OF THE SYMPOSIUM

At least the following four themes emerged from the discussions at the symposium and the subset of papers published in this volume: interdisciplinarity, corporate branding, freedom of expression vs. the right to control, and legal indeterminacy. We discuss each theme in turn.

A. Interdisciplinarity

A central theme that emerges from the papers is the thoroughly interdisciplinary nature of the inquiry. Some of the papers explicitly make this point; others do so implicitly by the very nature of their engagement. Virtually every field that has followed the ampersand in contemporary "Law & ___" scholarship is represented here, including economics, business, race theory, feminist theory, sociobiology, philosophy, psychology, sociology, anthropology, and ethics. Had we pushed the envelope further, we could have also included papers from scholars in fields such as literature, film, and cultural studies. It may be that the incoherence and uncertainty of legal doctrine is partly responsible for the richness of the interdisciplinary perspectives; the conventional tools of lawyers (logical analysis of legal doctrine) is so unsatisfying when an area of law is constituted by internal contradictions, when there are numerous lacunae, and when the legal rules themselves are so unclear. It may also be that the interdisciplinary nature of the conference reflects a more general turn that legal scholarship has taken.

B. Corporate Branding

A second theme is the widespread notion of a corporate brand. Of all the social concepts to emerge in the mid- to late-twentieth century, few have been so pervasive as the notion of a "brand"—a particular image (or sound) that is created, disseminated, and legally guarded by business corporations. Employers phrase their most vigorous defense of workplace appearance codes in terms of their need to create a corporate brand, a distinctive image to market to consumers. They argue that their capacity to brand turns on the extent to which they can control, among other things, what their employees wear to work. From the employer's perspective, it is crucial that their employees embody the company's corporate brand. The desire for that embodiment—manifested so clearly in Harrah's requirement that Darlene Jespersen wear makeup—raises profound and difficult questions about the nature of identity, the reach of anti-discrimination law, and the space corporations should be given to define their institutional and public identity.

C. Freedom of Expression vs. the Right to Control

A third theme in the papers is the conceptualization of workplace appearance regulation as a battle of competing rights. Under this framework, the right of the employee to full self-expression at work, or to equal treatment regardless of race or other identity category, is in contestation with the right of the firm to control its employees. The basis for the employee's right is obvious to lawyers: Freedom and equality are seen as foundational rights. The basis for the employer's right, however, is never fully articulated and therefore remains under-theorized. One leaves the case law still asking: What precisely is the source and the nature of the employer's "right" to manage its business, to tell its employees what to wear, and to prefer to hire workers with one sort of look than another (assuming the preference does not amount to illegal discrimination)? Several of the papers pushed for an answer to this thorny (and one would think foundational) question.

D. Legal Indeterminacy

A fourth theme that emerges from the papers has to do with the difficulty of describing, analyzing, or theorizing the anti-discrimination law that governs grooming regulation. Part of the difficulty is that some of the most fundamental questions about the legality of workplace appearance regulation are unsettled. May an employer legally require or prohibit some or all of its employees from wearing makeup or styling their hair in a particular way? Notwithstanding years of litigation and multiple published opinions, the answer to that question is less clear than is conventionally asserted. While it is true that Darlene Jespersen lost her litigation, and that, over the past few decades, federal courts have developed a body of law upholding some gender-specific and (arguably) race-specific appearance regulations, there is far more uncertainty in the law than the list of plaintiffs' litigation defeats suggests. According to the Ninth Circuit en banc opinion, Darlene Jespersen lost her case not because it is always permissible for an employer to require women to wear makeup and nail polish but rather because her trial lawyer failed to adduce sufficient evidence that the

makeup regimen that Harrah's imposed on Jespersen burdened women more than the grooming requirements imposed on its male employees—cutting fingernails and shaving—burdened men.

The dissent engaged this point as well, suggesting that it would not have been difficult for Jespersen's attorney to prove that the time and expense of complying with Harrah's "Personal Best" appearance policy was greater for women than for men; it's just that his litigation strategy did not reflect that effort. Focusing on the outcome of *Jespersen* might lead one to conclude that employers have broad latitude with respect to grooming policies involving makeup. But the Ninth Circuit made perfectly clear that the equal burdens test is alive and well. Employers should therefore be cautious, particularly because it is reasonable to surmise that, in many instances, a female plaintiff in a grooming case potentially will be able to demonstrate that a particular set of dress and appearance requirements are more onerous on women than they are on men. Still, the evidentiary burden on the plaintiff in such cases is not at all clear.

There are other legal indeterminacy questions that one might raise. Consider the following two. Is a requirement that women wear makeup and nail polish sex stereotyping? If so, is such a requirement illegal? *Price Waterhouse* would seem to answer both questions in the affirmative, at least as applied to candidates for partnership in an accounting firm.[5] Yet reasonable minds differ as to whether *Price Waterhouse* controls the issue of makeup requirements generally, or even if it does, whether the sex stereotyping involved in appearance requirements for cocktail waitresses is different from the sexist remarks made by Price Waterhouse partners trying to explain why Ann Hopkins was passed over for partnership.

Consider now sexual orientation. Here, too, there are unresolved doctrinal issues. Discrimination based sexual orientation would seem to be a clear example of discrimination "because of sex." Yet just the opposite is true: The law is clear that discrimination on the basis of sexual orientation per se is not actionable under Title VII. However, if plaintiffs frame their sexual orientation discrimination claims as sex discrimination their cause of action is potentially cognizable. The question is: Under what circumstances can sexual orientation discrimination claims be re-articulated as sex discrimination claims? Again, there is no clear answer. Nor is the law clear on the anti-discrimination space within Title VII jurisprudence for discrimination claims based on transgender identity, which is sometimes erroneously conflated with sexual orientation.

A final set of questions about uncertainty in the law relate to the commodification of sexual appeal/attractiveness. Several of the papers describe dress and appearance policies that the employer promulgates to make employees more attractive by some standard or another—sometimes by celebrating sexuality (as in the case of casino cocktail waitresses) and other times by repressing, or constraining expressions of, sexuality (by prohibiting tattoos or certain hair styles). Can employers incorporate the sale of female employees' sex appeal into their business plans? While the old Southwest Airlines case answers this question in the negative,[6] the prevalence of the practice in casinos, at

5. Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) (plurality opinion).
6. Wilson v. Sw. Airlines Co., 517 F. Supp. 292 (N.D. Tex. 1981).

Hooters, and elsewhere, suggests otherwise. And what about suppressing expressions of sexuality? When may an employer legally do that? The case law does not supply a definitive answer.

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The foregoing themes implicitly reflect some thinking on the part of the participants as to where the identity performance literature might need to go next. Our aim now is to more explicitly discuss that trajectory. To do so, we outline our very tentative thoughts about areas for future research.

III. DIRECTIONS FOR FUTURE RESEARCH

Notwithstanding the variety of papers in this volume and the different themes delineated above, to varying degrees, our discussions at the conference implicitly or explicitly drew upon a conceptual framework that pervades the literatures on law, identity performance, and workplace appearance regulation. Roughly, the framework is that of balance scale. Law operates as the fulcrum. On one side of the law (let's say the left) is the specific identity expression that the employee wants to perform. An example might be wearing one's hair in braids. One the other side of law (let's say the right) is the employer's "no-braids" grooming policy. Law then balances these two sides. To do so, arguments about identity authenticity, culture, and autonomy are weighed against arguments about professionalism, corporate image, profit maximization, and discretion. The question is whether the law should enable people to express their sense of identity—tipping the scales to the left—or whether it should permit employers to repress the expression of identity—tipping the scales to the right. Articulated slightly differently, should employers be permitted to force employees to express their identities in a particular way (for example, by requiring them to wear makeup) or instead allow employees to be true to their sense of self at work (for example, by honoring Darlene Jespersen's request that she be free from Harrah's makeup regimen).

What is striking about this debate is that the equality/liberty concerns almost always argue in favor of allowing the employee to express her identity on her own terms. Thus, many of the scholars who are critical of the *Jespersen* case argue that the law should be employed to liberate Darlene Jespersen from the constraints of Harrah's grooming policy. While, normatively, we are sympathetic to that project (indeed, our own work reproduces this very idea), our sense is that conceptualizing the role of law in this way is both U.S.-centric and artificially narrow. Consider the cases of head scarves and burqas that were the subject of heated debate in Europe contemporaneously with our conference. Surprisingly, neither issue was invoked even once at the conference. While neither head scarves nor burqas have been major public issues in the United States, both have raised profound public policy questions in Western European countries with large Muslim populations (such as France) and even some countries in the Middle East and Asia Minor that are struggling with whether or how to maintain a secular state (Turkey comes readily comes to mind). From an American perspective, when law prevents women from wearing head scarves to school or elsewhere, law is repressing free religious expression and forcing assimilation, both of which are presumptively suspect. This American-centered

approach obscures another role that law can play: enabling freedom—more specifically, preventing the subordination of women by repressive and misogynist religious cultures.

Significantly, we are not suggesting that the story about head scarves and burqas in Europe is a story about European law/norms intervening to liberate Muslim women from their oppressive and backward culture. Nor are we suggesting that Muslim cultures are more misogynist and repressive of women than non-Muslim cultures. We invoke the example of head scarves and burqas only because in the context of those debates there is a vibrant and very public discourse about the extent to which the law should not respect or protect religious and "authentic" expressions of identity when doing so is gender-subordinating. In other words, there is a long line of arguments about achieving gender equality by suppressing (rather than enabling) the performance of identity. As far as we can tell, there is no such parallel line of analysis in the literature on identity performance in the United States.

This is problematic. It is not as though there are no examples of identity performance regulation in the United States that approximate the regulation of head scarves and burqas in Europe. Consider, for example, when a high school or middle school imposes a dress code that prohibits girls from wearing clothes that school administrators consider unduly sexy (short skirts, bare midriffs, etc.). One might reasonably interpret this rule (like the no head scarf rule) as an effort to liberate girls from the oppression of a sexist culture. One might object to such a rule on libertarian grounds, or even on feminist grounds, via arguments that the rule constitutes an attempt to contain and control the expression of female sexuality. Our point is simply that the relationship among law, identity performance, freedom, and equality is not simple. Law neither uniformly liberates nor uniformly oppresses; the performance of identity is not necessarily "free" even when law prevents some institutions (such as employers) from regulating how individuals perform their identity. There are other social forces, not the least of which is culture, that shape the choices people make about how to negotiate their identities. We are not saying that people have no agency—that we are over-determined by culture. On the contrary, much of our work centers on the very idea that there are identity choices to be made. We simply want to caution against assuming, for example, that Darlene Jespersen's decision not to wear makeup necessarily reflects equality-enhancing agency—an unconstrained freedom of choice that is gender-liberating.

In terms of future research, the foregoing suggests that our analysis of identity performance could benefit from more cross cultural and comparative engagements. Obviously, there is the question of how appearance regulation and identity performance differ across cultures. But there are other comparative issues well. The themes of sexuality and of corporate branding through the regulation of employee self-presentation are more relevant to capitalist and consumerist societies like the United States than they are to countries with different economic structures and consumer cultures. Perhaps even the primacy of personal expression that underlies the notion of identity performance as an aspect of freedom and equality is culturally specific. The identity performance literature could be enriched by a more sustained focus on these and other comparatively-framed issues.

A second direction for possible future research might be to explore the myriad ways in which institutions do not merely repress or enable certain forms of identity performance, but actually define the very identity being performed. Consider, for example, an employer that wants both a diverse and a harmonious workforce. As many of the papers in this conference observe, that employer will screen prospective employees for what one might call "palatable difference"—that is, individuals who perform their racial, ethnic, or gender identity in a way that advances a specific institutional need. More research should be directed at the extent to which this screening process can function as a trial of racial determination. As we explained earlier, sometimes the employer will want individuals who are "really black"; other times it will want those who marginally identify as black. Other times still the employer will seek out people who are "black enough"—neither really black nor marginally black—but black enough to perform specific kinds of racial work, such as minority mentoring and recruitment and retention. And still other times the employer will ask itself whether a person counts as black at all. Does a fair-skinned (gentle)man, with a history of advocating racial justice and a grandmother from Nigeria count as black? Such identity determination trials obtain with respect to gender as well. That is, employers can utilize performative criteria to screen prospective employees to determine whether they are "really male" or "really female" or whatever.

The short of it is this: As the employer hires employees in pursuit of its vision of a diverse workforce, it performs multiple trials of racial (or gender or ethnic) determination, deciding (a) what kind of palatable difference it wants, and (b) whether the identity performance of particular prospective employees embodies that difference. Employers do not simply take concepts such as race and gender as fixed and given. Instead, they inevitably modify and redefine them as a function of particular institutional needs and wants. To the extent that prospective employees are aware of these trials, they have an incentive to make themselves evidentiary in a manner consistent with the identity type the employer wants. Scholars should give more empirical and theoretical attention to this dynamic.

Finally, there are future research questions about the very project of legal intervention—questions, that is, about judicial legitimacy and competence. First, the legitimacy question: It is legitimate for judges to decide cases that center on such personal choices as makeup and dress? Are these questions best left to political and cultural processes? These questions are rarely taken up, if at all, in the literature. The competency question, which we raised earlier, is this: Do we think judges have the capacity to decide the central issue at the core of identity performance litigation: whether an employer inappropriately policed the expression of race or gender identity? This question is crucial if it is kept in mind that judges tend to be of a particular demographic in terms of age, gender, race, and economic status. Do we want these judges actively involved in the social constructivist game—deciding which identity performance moves employers can force employees to make, and which moves employees can freely make? While we shudder at the idea of the current crop of judges defining the permissible parameters of identity performances—deciding what moves are in play and what moves are out of bounds—the reality is that, under current law,

judges are already making racial determinations. Scholars in the field should engage the question of whether there is something special about identity performance claims (as distinct from "ordinary" discrimination claims) that makes judicial involvement here especially troubling.

IV. CONCLUSION

We do not presume that this foreword fully captures the richness of the papers in the volume. But we hope that it serves as a useful point of entry to them. As we stated at the outset, the conference was something of an experiment. We are decidedly pleased with the results.

As with most conferences, there was a fair amount of continuity and intertextuality among and between the papers presented. But there were also some important differences—differences about the relationship between employment law and labor law, differences about how to theorize identity, differences about the role of sexuality at work, and differences about the very notion of identity performance. We thank the participants for negotiating those differences collegially and constructively. And we look forward to future collective discussions on these topics.

We cannot conclude this foreword without expressing a special thanks to the students at the *Duke Journal of Gender Law & Policy*, who did a spectacular job organizing the conference and whose voices throughout shaped the very terms upon which we discussed the central issues. Their participation was crucial, and we all benefited from it. We could not be prouder of them. At almost every panel during the day, there were some of us who had been student editors of articles that others on the panel had written and those articles had then served as the impetus for those student editors to make the leap into academia. It is our fervent hope that we will soon be reading articles and sitting on panels with the student editors who organized this conference, or reading cases that they litigated, or hearing about innovative policies that they devise. Already they have left their mark.