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The Anatomy of a “Pantsuit”: Performance, Proxy and Presence for Women of Color in Legal Education

*Deleso Alford Washington*¹

Ode to A Good Sister In Memory of Lutie A. Lytle²

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² An original previously unpublished poem written by Author. Lutie A. Lytle is America's fourth black woman lawyer and became the first female law professor in 1897; she is the first black woman licensed to practice law in the South as well as the first black female member of a national bar group. See Dorothy A. Brown, *Faith or Foolishness*, 11 HARV. BLACKLETTER L.J. 169, 176-177 (1994) (reviewing J. CLAY SMITH, JR., *EMANCIPATION: THE MAKING OF THE BLACK LAWYER, 1844-1944* (1999)). See also J. Clay Smith, Jr., *Black Women Lawyers: 25 Years At the Bar: 100 Years in the Legal Academy*, 40 HOW. L.J. 365, 396 (1997) (noting that “Lutie A. Lytle became the nation's first woman law professor”); Lewis L. Laska, *Our Sordid Past: Anecdotes of Tennessee's Legal Folklore*, TENN. B.J., May-June 1995, at 26, 28. (citing *Only Colored Woman Lawyer in America*, MAIL & BREEZE, Sept. 17, 1897, in John W. Ripley and Robert W. Richmond, *Topeka at the Turn of the Century*, SHAWNEE COUNTY HIST. SOC'Y BULL., No. 52, June 1975, at 92); *Miss Lutie Lytle*, TOPEKA DAILY CAPITAL, Sept. 15, 1897; *Lutie Lytle's Luck*, TOPEKA DAILY CAPITAL, Oct. 27, 1898 (indicating that Lytle taught domestic relations, evidence, real property and criminal law in the law department of Central Tennessee College, which offered law classes from 1879 to about 1910).

I am a Good Sister!
I have earthed many students with my wisdom and spiritual insight
I have run a good race with mental strength and physical might;
all while lecturing, during both day and night
I am nothing but the Truth!

I am a Good Sister!
I have withstood historical lies told about me;
My light so bright, those who were blind
could not help but see
the depths of my emotional tenacity;
I am nothing but the Truth!

From the bottom of my feet
to the top of my head;
I was born to transform minds from my royal seat;
I am a Good Sister
I am nothing but the Truth!

Today, I extend and not reinvent
the spirit of the Good Sisters before me –
on whose shoulders I stand
I am nothing but the Truth!

I am You
And
You are me.
Speaking and Living
as Good Sisters
Teaching and Giving
nothing but the Truth!

I. Introduction

During the 2009 annual meeting of the Association of American Law Schools (AALS), the Section on Women in Legal Education presented a session entitled "The Cleopatra Syndrome: Golda, Indira, Bella, Shirley, Margaret, Geraldine and Hillary: Educating Women for Leadership Roles in the 21st Century." The forum specifically addressed aspects of leadership and women. In my contribution to the session, I utilized the ongoing discourse surrounding Hillary Clinton's choice to wear a "pantsuit" during the 2008 Presidential campaign as a background to address perceptions of power, notions of identity performance and the presence of Black women in the legal academy.

This essay is intended to begin a dialogue on how the presence of women of color standing at the intersection of gender, race and class can don a pantsuit or not and still experience under-discussed social realities that influence the attainment of 21st Century leadership roles in the legal academy. In other words, "to profess"³ as raced and gendered law professors amidst jurisprudence that historically claims not to see race⁴ or

³ See Pamela J. Smith, *Teaching The Retrenchment Generation: When Sapphire Meets Socrates At the Intersection of Race, Gender, and Authority*, 6 WM. & MARY J. WOMEN & L. 53, 55 (1999) (exploring "the effects [of] racial isolation, retrenchment fervor, the presumption of incompetence, and the negative Sapphire myth have on the ability of Black women to successfully and easily navigate the waters of legal academia").

⁴ *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting). Justice Harlan's dissent is the most often cited source of the Court's judicial recognition of a notion of colorblindness: "[o]ur Constitution is color-blind and neither knows nor tolerates classes among citizens." *Id.* However, it should be noted that the less often cited portion of Justice Harlan's dissent indicates his ability to not only see race but comment on its inherent benefits, for example, he notes in the prior sentence:

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great

manifestations of the vestiges of institutional racism; not to understand gender and how society “dresses” her for work,⁵ and

heritage and holds fast to the principles of constitutional liberty.

Id. at 559.

For counter perspective on the notion of “colorblindness” see Neil Gotanda, *A Critique of “Our Constitution Is Colorblind,”* 44 STAN. L. REV. 1 (1991). Gotanda points out:

To be racially color-blind, on the other hand, is to ignore what one has already noticed. The medically color-blind individual never perceives color in the first place; the racially color-blind individual perceives race and then ignores it. This is not just a semantic distinction. The characteristics of race that are noticed (before being ignored) are situated within an already existing understanding of race. That is, race carries with it a complex social meaning. The proponents of color-blind nonrecognition do not acknowledge this aspect of racial consciousness when they describe their “neutral” decisionmaking processes.

Id. at 18-19.

⁵ See generally Devon Carbado, Catherine Fisk & Mitu Gulati, *Foreword: Making Makeup Matter*, 14 DUKE J. GENDER L. & POL’Y 1 (2007). The authors argue that:

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.

Id. at 2.

Katharine T. Bartlett, *Only Girls Wear Barrettes: Dress and Appearance Standards, Community Norms, Workplace Equality*, 92 MICH. L. REV. 2541, 2551 (1994) (positing that “[d]ress and appearance expectations are pervasive and persist even in the absence of mandatory codes. These constraints are popularly attributed both to the advertising images with which the society constantly is bombarded, . . . and to the assumptions and values of the patriarchal culture . . .”). See also *Jespersen v. Harrah’s Operating Co., Inc.*, 444 F.3d 1104 (9th Cir. 2006) (en banc) (involving a female bartender at Harrah’s who was terminated because she refused to comply with the employer’s mandatory makeup rule).

how entrenched notions of power (i.e., white maleness) affect her running for the highest elected office in the United States or navigating the legal academy.

I approach the issue of Black women's experience within the legal academy from a Critical Race Feminist perspective by utilizing the narrative of a fictitious law professor, Alisha Jones. Through the use of literary conceit, I describe the reality of women of color who wake up already clothed --in multiple identities⁶ with both outsider and insider notions of performance while navigating the legal academy.

II. A Woman's Pantsuit as a Proxy for Power

The United States presidential election of 2008 offers a fertile backdrop for exploring a narrative which addresses intersectional⁷ dimensions of gender, race, class, and leadership.

⁶ Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989). Matsuda attributes the term, "multiple consciousness" to the multiple or intersectional identities that women of color possess.

⁷ See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (addressing the marginalization of women of color through the utilization of a race or gender analysis); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1245 (1991). Professor Kimberle Crenshaw coined the term "intersectionality" to express as she puts it:

that many of the experiences Black women face are not subsumed within the traditional boundaries of race or gender discrimination as these boundaries are currently understood, and that the intersection of racism and sexism factors into Black women's lives in ways that cannot be captured wholly by looking at the race or gender dimensions of those experiences separately.

Id.

For more discussion on the concept of intersectionality and its impact on multidimensionality and other new complexity theories, see generally, Darren Lenard Hutchinson, *New Complexity Theories: From Theoretical Innovation To*

With Hillary Clinton and Barack Obama running for president, the historic race to the Oval Office exposed traditionally marginalized gender and race based discourses on the readiness of a woman and a Black man to lead this country.⁸ I propose that a gendered lens will enhance our ability to analyze the vast amount of discussion on a woman's choice to wear a pantsuit⁹ while running for the highest elected office in the land, as well as support a Critical Race Feminist (CRF)¹⁰ perspective to examine the notion of identity performance for women of color in the legal academy.

Doctrinal Reform, 71 UMKC L. REV. 431 (2002). Hutchinson suggests that the theoretical dimensions of multidimensionality "offers several conceptual and substantive extensions to intersectionality." *Id.* at 439. See generally Mary Jo Wiggins, *Foreword: The Future of Intersectionality and Critical Race Feminism*, 11 J. CONTEMP. LEGAL ISSUES 677 (2001). The Journal of Contemporary Legal Issues Symposium on Intersectionality and Critical Race Feminism held at the University of San Diego School of Law on October 6, 2000 explored the theoretical and practical possibilities of intersectionality and critical race feminism. *Id.* at 678. See also Devon W. Carbado & Mitu Gulati, *The Fifth Black Woman*, 11 J. CONTEMP. L. ISSUES 701, 705-10 (2001) (identifying five distinct types of intersectionality as "identity intersectionality," "experiential intersectionality," "discrimination intersectionality," "political intersectionality," and "multiracial intersectionality.")).

⁸ Madeleine M. Kunin, *Who's Ready For a Female President?* WASH. POST, Jan. 11, 2008 at A17, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/01/10/AR2008011003273.html>; CBS Poll, *Ready For a Black President?*, June 4, 2008, available at <http://www.cbsnews.com/stories/2008/06/04/opinion/polls/main4151937.shtml>.

⁹ Zane WaltZ, *Pantsuits and Hillary Clinton: A Detailed Analysis of the Pantsuit*, ASSOCIATED CONTENT, May 19, 2008, available at http://www.associatedcontent.com/article/775049/pantsuits_and_hillary_clinton.html?cat=7.

¹⁰ Adrien K. Wing & Christine A. Willis, *From Theory to Praxis: Black Women, Gangs, and Critical Race Feminism*, 4 AFR.-AM. L. & POL'Y REP. 1, 4 (1999). Critical Race Feminism provides an additional voice to existing critical jurisprudential perspectives, such as critical legal studies and critical race theory. *Id.* Critical Race Feminism "stresses conscious consideration of the intersection of race, class, and gender by placing women of color at the center of the analysis and reveals the discriminatory and oppressive nature of their reality." *Id.* See generally Adrien K. Wing, *Introduction to CRITICAL RACE FEMINISM: A READER* 1 (1997); Leila Hila, *What is Critical Race Feminism ?*, 4 BUFF. HUM.

First, consider the “pantsuit” consisting of a jacket and matching pants -- commonly referred to as business or office attire for both men and women.¹¹ This “uniform” generally allows for little to no individual expression depending upon the institutional culture. However, historians note that the acceptance of feminine trousers and later women pantsuits coincided with an influx of women entering the workforce.¹²

CRF theory reframes the 2008 Presidential election discourse, “women in pantsuits project power”¹³ and leadership, in

RTS. L. REV. 367 (1998) (providing a book review of CRITICAL RACE FEMINISM: A READER (1997) and opining that “the volume offers critical details of how race, gender, and sometimes class, relate in a variety of contexts”); Adrien K. Wing, *Introduction* to CRITICAL RACE FEMINISM: A READER 1 (2d ed. 2003); Marisa Marquez, *Books Received, Critical Race Feminism: A Reader, Second Edition*, 19 BERKELEY WOMEN’S L.J. 323 (2004) (providing a critique of the READER that suggests “Wing seeks to give voice to minority women, whose experiences are generally overlooked by traditional feminism, and to present the important contributions that other fields of critical legal studies have contributed to the feminist discourse”).

¹¹ See WaltZ, *supra* note 9; Te Papa, Collections Online, Pantsuit, Woman’s (Comprising Jacket and Flared Trousers), <http://collections.tepapa.govt.nz/objectdetails.aspx?oid=711160&coltype=history®no=gh015197/1-2&tern=pantsuit> (describing the outfit as a “good example of a popular form of alternative dress for women particular to the late 1960s/early 1970s- the pantsuit”).

¹² *Id.* (noting that “the pantsuit is synonymous with the rise of the women’s movement and became popular particularly with younger women in the early 1970s who even wore it to work”); Posting of Paula Baxter to Blogging@NYPL, Pantsuits and Femininity, <http://www.nypl.org/blogs/2008/07/17/pantsuits-and-femininity> (July 17, 2008).

¹³ Posting by Frank James to The Swamp, Thank YSL for Clinton Pantsuits, http://swamppolitics.com/news/politics/blog/2008/06/by_frank_james_how_many.html (June 2, 2008, 11:57 AM) (contending that “[t]he pantsuit is a perfect uniform for Clinton. To some people a pantsuit is just a pantsuit. But to the cognoscenti, it has been a symbol of women’s empowerment since St. Laurent introduced it in the 1960s”); Patricia J. Williams, *Have Pantsuit, Will Travel*, THE NATION, Aug. 27, 2008, available at <http://www.thenation.com/doc/20080901/williams2> (recalling the “power suit” as the “*de rigueur* uniform for professional women during the 1980s . . . [with]

a way that situates identity performance¹⁴ for women of color in general and Black women in the legal academy specifically with the benefit of both outsider lens and insider lens.¹⁵ The outsider lens reflects the images and stereotypes used to define the “other,”¹⁶ whereas the insider lens is constructed out of necessity.¹⁷

over-compensatory shoulder pads, whose width exceeded those of your average quarterback”).

¹⁴ Carbado & Gulati, *supra* note 7, at 701 (contending that the theory of identity performance is that a person's experiences with and vulnerability to discrimination are based not just on a status marker of difference, but also on the choices that person makes about how to present her difference). See also Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1262 (2000) Cardado and Gulati argue that:

[B]ecause [women and minorities] are often likely to perceive themselves as subject to negative stereotypes, they are also likely to feel the need to do significant amounts of “extra” identity work to counter those stereotypes. Depending on the context that extra work may not only result in significant opportunity costs, but may also entail a high level of risk.

Id.

¹⁵ In this instance, I refer to outsider lens as the societal perceptions of Black women in the legal academy and insider lens as the internal perceptions of Black women in the legal academy as a collective comprised of past and present experiences.

¹⁶ In this instance, the “other” is someone other than the traditional white male running for President of the United States or leading a law class.

¹⁷ A construction of an internal valuing system by Black girls/women to combat an onslaught of degradation and societal racism/sexism is explored in the highly acclaimed literary work of Toni Morrison in *The Bluest Eye* (Alfred Knopf) (Claudia MacTeer, provides the narrative of a Black girl who questions the notion of whiteness as a standard of beauty while the eleven year old protagonist, Pecola Breedlove desires to possess blue eyes, to not only become beautiful, but also to see beauty around and within her harsh reality of black degradation in self, others and the community).

A. Critical Race Feminist Perspective: A Commentary on Commentary

The use of narrative, chronicles, and storytelling are among the tools¹⁸ often used by CRF theorists to deconstruct¹⁹ power relationships and center the voice of the historically marginalized

¹⁸ See Wing & Willis, *supra* note 10, at 3. CRF acknowledges that it relies upon critical race theory to address the notion that “racism is normal and ordinary in American society” and further employs “a technique of storytelling and narrative analysis to construct alternative social realities” that center the distinct and particularized realities of people of color. *Id.* See also Derrick A. Bell, *Who’s Afraid of Critical Race Theory*, 1995 U. ILL. L. REV. 893, 899 (1995) (asserting that “critical race theory writing and lecturing is characterized by frequent use of the first person, storytelling, narrative, allegory, interdisciplinary treatment of law, and the unapologetic use of creativity”). For more on Critical Race Theory, see KIMBERLE CRENSHAW, NEIL GOTANDA, & KENDALL THOMAS, *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (1995), and RICHARD DELGADO, *CRITICAL RACE THEORY: THE CUTTING EDGE* (1995).

¹⁹ *Id.* CRF acknowledges that it “draws from critical legal studies the idea of deconstruction along with the critical analysis of the traditional legal canon.” *Id.* For further discussion on the term deconstruction, see J. M. Balkin, *Deconstructive Practice and Legal Theory*, 96 YALE L.J. 743, 744 (1987). Balkin asserts that:

Lawyers should be interested in deconstructive techniques for at least three reasons. First, deconstruction provides a method for critiquing existing legal doctrines; in particular, a deconstructive reading can show how arguments offered to support a particular rule undermine themselves, and instead, support an opposite rule. Second, deconstructive techniques can show how doctrinal arguments are informed by and disguise ideological thinking. This can be of value not only to the lawyer who seeks to reform existing institutions, but also to the legal philosopher and the legal historian. Third, deconstructive techniques offer both a new kind of interpretive strategy and a critique of conventional interpretations of legal texts.

Id.

See also Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515 (1991).

in law and in society.²⁰ CRF²¹ theory not only deconstructs the gendered and racialized experiences of women of color in the legal academy through the use of narrative, but constructs an interpretation of those experiences that shed light on the attainment of leadership skills based upon the collective experiences of Black women. Hence, I purposefully substantiate or support the thoughts of the fictitious speaker through footnotes – so that the narrative can stand on its own.

There was much to-do about the run for Presidential Office and Hillary Clinton's "pantsuit."²² Media pundits and "style experts" discussed the style of Hillary's pantsuits – their shapelessness, sameness of their cut, the longer length and non-cropped preference of the jacket.²³ Even some commentators alluded to a connection between Hillary's pantsuits' uncanny ability to project a Commander in Chief presence.

²⁰ For an excellent discussion on critical race theory and related scholarship, see generally, Athena D. Mutua, *The Rise, Development and Future Directions of Critical Race Theory and Related Scholarship*, 84 DENV. U.L. REV. 329 (2006).

²¹ Wiggins, *supra* note 7, at 678 (arguing that "[CRF] extended [intersectionality] beyond the experiences of Black women, focusing on how race, gender, and class interact for women of color within a system of white male patriarchy and racist oppression"). For further discussion on the future of CRF, see Angela Onwuachi-Willig, *Foreward: This Bridge Called Our Backs: An Introduction to the Future of Critical Race Feminism*, 39 U.C. DAVIS L. REV. 733, 736 (2006) (asserting that "critical race feminists provide the tools for challenging subordination at its core and understanding how various oppressions are connected and interrelated -- setting the stage for truly transformative change in our society"); Margaret Montoya, *Defending The Future Voices of Critical Race Feminism*, 39 U.C. DAVIS L. REV. 1305, 1310-11 (2006) (arguing that "[d]efining the voices of CRF means forming allies in the task of dismantling the barriers of race and gender and having those allies take CRF concepts and use them so that they mean something real for women of color themselves, our local communities, and future generations").

²² Jonann Brady, *A Look Back at Hillary's Year in Pantsuits*, ABC NEWS, Aug. 26, 2008, available at <http://abcnews.go.com/GMA/story?id=5656295>.

²³ Posting of Melissa Segrest to The Style Insider, Three Cheers for the Ladies in Pantsuits, <http://www.thestyleinsider.com/kvue/2008/08/a-cheer-for-pretty-pantsuits> (Aug. 27, 2008).

The discourse inevitably moved to color and the many choices of color of the Hillary pantsuit: from a fire engine Red- purportedly projecting confidence, and dynamic Orange- no doubt emanating determination, to light Lilac- I guess adding a touch of femininity or proclivity toward flowers. The Hillary pantsuit served as a proxy for power irrespective of style or color and speaks to a marginalized discussion of gendered politics and identity performance.

I utilize the theory of identity performance²⁴ to illustrate the existence of an “outsider” identity. The “outsider” identity is one developed over time and fortified in history, law, and the media. The “insider” identity deconstructs the “outsider” constructed identity by acknowledging the lived experiences of women in general and women of color in particular. In order to apply a CRF perspective to the discussion of Hillary’s run for the Presidential office in a “pantsuit,” I utilize a raced and gendered lens to discuss the anatomy of a pantsuit and how it manifests itself in the life of fictitious character, Law Professor Alisha Jones.

(Law Professor Alisha Jones’ morning ritual is to iron her pantsuit before getting dressed to teach her

²⁴ See Carbado & Gulati, *supra* note 14, at 1263. See also Mario L. Barnes, *But Some of [Them] Are Brave: Identity Performance, The Military, and the Dangers of An Integration Story*, 14 DUKE J. GENDER L. & POL’Y 693 (2007) (exploring identity markers of race and gender in the military); John O. Calmore, *Whiteness As Audition and Blackness as Performance: Status Protest From the Margin*, 18 WASH. U. J.L & POL’Y 99 (2005). Calmore

seeks to make visible a white social identity that presents itself as abstract individualism while masking its support from systems of dominance. Against this hidden connection, blacks must not only represent our reality, but also advocate on its behalf to bring some balance to a form of dominant white voyeurism that places us in the ricocheting tension “between hypervisibility and oblivion.”

Id. at 100 (citing PATRICIA J. WILLIAMS, *SEEING A COLOR-BLIND FUTURE: THE PARADOX OF RACE* 17 (1997)); Franky Rudy Cooper, *Cultural Context Matters: Terry’s Seesaw Effect*, 56 OKLA. L. REV. 833 (2003) (focusing on the importance of cultural context).

Employment Law class - all while commenting on "The News"). Welcome to a morning in the life of Law Professor Alisha Jones as she prepares to leave her home and perform her duties at The Acme School of Law. Professor Jones among millions of other TV viewers found herself immersed in albeit a one sided dialogue with "The TV Commentator" during the daily doses of media mania on the 2008 United States Presidential Election – The discussion included every topic imaginable, from the color of Hillary Clinton's pantsuit selection to whether Michelle Obama acknowledged color/race when she reconciled U.S. past history and hope in its future.²⁵

1. On Color

[TV NEWS COMMENTATOR]

What color pantsuit will the New York senator pull out of her closet for this crucial speech?

[Professor Alisha Jones]

***As she peers in her closet and then back at the TV News Commentator and says---**

Color ?²⁶

How do you deal with the decision, that there is no decision. I mean no decision as it relates to a

²⁵ Michelle Obama Takes Heat for Saying She's Proud of My Country for the First Time, FOX NEWS, Feb. 19, 2008, http://www.foxnews.com/printer_friendly_story/0,3566,331288,00.html.

²⁶ Judy Scales-Trent, *Commonalities: On Being Black and White, Different, and the Same*, 2 YALE J.L. & FEMINISM 305, 305 (1989). Scales-Trent underscores the notion of "color" in her Author's note suggesting that "[m]any in my family are various shades of brown, as is common in most black families. Many others of us, however, look white." *Id.*

“choice” of color²⁷ nor how that color or its various shades are interpreted in society²⁸--- I mean when you wake up “in color”²⁹ and the colors range from BLUE... I mean “black, black...so black, the family called you- “Blue” (which is now the new affirming “Deep Chocolate”) to YELLOW... which is really considered PINK at birth... so pink somebody thought that your name should be PINKY...and officially placed it on your birth certificate...but not to confuse that shade of YELLOW with the one that can earn you the nickname- “Butter” and lest we not forget waking up DIRTY RED- you know, that funny color – not laughing funny, but funny as in non-descript– somewhere on the color wheel where you could be categorized as another shade of BROWN, but nonetheless treated as “ a Black” but definitely not

²⁷ Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 UCLA L. REV. 1705, 1711 (2000) (discussing the reality of colorism, skin tone discrimination against dark-skinned but not light-skinned blacks, particularly in employment discrimination cases, and noting that “differences in skin tone and phenotype among black people do have meaning in the United States, especially for blacks with the darkest skin tones and the least European phenotypes. Social science studies indicate that blacks and whites, and perhaps other nonwhites, distinguish among blacks based on skin tone”).

²⁸ Angela P. Harris, *From Color Line to Color Chart?: Racism and Colorism in the New Century*, 10 BERKELEY J. AFR.-AM. L. & POL’Y 52, 54 (2008) (contending that “[c]olorism and traditional U.S. racism are inextricably intertwined, yet distinct. . . . The hierarchy employed in colorism, however, is usually the same one that governs racism: light skin is prized over dark skin, and European facial features and body shapes are prized over African features and body shapes”).

²⁹ Trina Jones, *Shades of Brown, The Law of Skin Color*, 49 DUKE L.J. 1487, 1497 (2000) (stating that “with colorism, it is the social meaning afforded one’s color that determines one’s status. With racism, it is the social meaning afforded one’s race that determines one’s status”).

“a white”---particularly as interpreted by the courts for employment purposes.³⁰

Now that’s color³¹ ...waking up and it’s all over you, no choice,³² in the skin you were born in --- and yet be forced to co-exist in a society that prescribes preconceived attitudes and prejudices based upon the color that you manifest. And as my Grandmother Gertrude would say--- “If I tell you a hen dip snuff...you better look under his wing for the can”³³

[TV NEWS COMMENTATOR]

Does Hillary have what it takes to be a Commander in Chief? Can Barack be a President for all of the people?

³⁰Cynthia E. Nance, *Colorable Claims: The Continuing Significance of Color Under Title VII Forty Years After Its Passage*, 26 BERKELEY J. EMP. & LAB. L. 435, 439 (2005) (providing additional support for the argument that color discrimination litigation will play an increasingly important role in the development of Title VII jurisprudence).

³¹ Janis L. McDonald, *Looking In the Honest Mirror of Privilege: Polite White Reflections*, 12 COLUM. J. GENDER & L. 650, 650 (2003) (acknowledging the “failure [of] . . . ‘polite white’ feminists to seriously address the substantive critiques authored by women of color in the last twenty years”).

³² Imani Perry, *Buying White Beauty*, 12 CARDOZO J.L. & GENDER 579, 580 (2006) (discussing the resurgence of skin bleaching by examining how this issue of commercial ‘choice’ to have lighter skin is truly a “provocative view of the intersection of race, poverty, and globalization in the contemporary world”).

³³ A saying amongst storytellers intended to prove to the listener(s) that although the “story” may seem absurd- hens/roosters (farm animals) are not prone to dipping snuff—but if the storyteller says it is so—then it is true and if the listener does not believe the storyteller . . . then he/she can look under the wing of the animal and retrieve the physical evidence.

[Professor Alisha Jones]

***Alisha pulls out the Gray suit and prepares to iron it, then looks at the TV as she sets up the ironing board**

The question is---

Does gender prevent a woman from fulfilling the role of President of the United States, a historically reserved "white male space"---

Now that's gender-based...

***The iron is hot—**

*And furthermore, has any other Presidential nominee been questioned about his propensity to be fair to **all** the people. I mean isn't it just taken for granted that white men would be fair to all.*

Now that's Race-based ...

***She irons the right leg and then the left one.**

2. Beyond the Pantsuit

[TV NEWS COMMENTATOR]

Does Hillary stand a chance? Where does the country stand in terms of race relations? Will voters support a Black man?

[Professor Alisha Jones]

***As she irons her white button down shirt and deals with the Commentator's question**

STAND???

Now, here I STAND at the intersection of Hillraka Street located on Barak Hill- I don't look like or

*sound like Professor Kingsfield*³⁴ - gendered and raced by birth, (presumably incompetent to some)³⁵ and consistently de-classified by some “hairy”³⁶ circumstances (braided³⁷, locked, curly, wavy, long, short, dyed³⁸, flat-ironed, bone straight, afroed, to gray or not to gray) ... as of late Michelle Obama’s so-called “big hair”...channeling Diva memories of Diana Ross and the Supremes, now simply recast as attempting a Jackie Kennedy’s³⁹ “bouffant” flip... Umph!

³⁴ See generally Christine Haight Farley, *Confronting Expectations: Women In the Legal Academy*, 8 YALE J.L. & FEMINISM 333, 343 (1996) (referring to the fact that the “image of the paradigmatic law professor is still Professor Kingsfield from *The Paper Chase*. . . . Women, it is safe to say, do not resemble Professor Kingsfield”). I must add that Black women certainly do not resemble him.

³⁵ Smith, *supra* note 3, at 56 (arguing that “[i]n our world, race and gender remain supremely relevant to whether some professors of law are perceived as too incompetent to profess”). See generally Albert T. Quick & Kent Lollis, *Retention of Minority Professors: Dealing with the Failure to Presume Competence*, 10 ST. LOUIS U. PUB. L. REV. 361 (1991).

³⁶ Paulette M. Caldwell, *A Hair Piece: Perspective on the Intersection of Race and Gender*, 1991 DUKE L.J. 365 (1991) (discussing the issue of Black hair from the perspective of law and politics).

³⁷ See *Rogers v. American Airlines*, 527 F. Supp. 229 (S.D.N.Y. 1981); Dorothy E. Roberts, *The Priority Paradigm: Private Choices and The Limits of Equality*, 57 U. Pitt. L. Rev. 363, 386-87 (1996) (contending that “the Rogers decision illustrates how courts require black employees to assimilate their choices to whites’ cultural expectations in order to keep their jobs”).

³⁸ D. Wendy Greene, *Title VII: What’s Hair (And Other Race- Based Characteristics) Got To Do With It?*, 79 U. COLO. L. REV. 1355, 1390-93 (2008) (contextualizing the term “wanna be” allegedly used by a darker-skinned Black female supervisor toward a lighter-skinned Black female employee because of her skin complexion, choice to dye her hair blonde and wear conservative business attire instead of wearing more “Afrocentric” form of dress and hairstyle like the supervisor in the matter of *Bryant v. Begin Manage Program*, 281 F. Supp. 2d 561, 569 (E.D.N.Y. 2003)).

³⁹ ANN COULTER, *GUILTY: LIBERAL ‘VICTIMS’ AND THEIR ASSAULT ON AMERICA* (2009) (writing about [Michelle Obama]’s obvious imitation of Jackie O’s style- the flipped-under hair).

*Must be a 21st Century social twist on Bo Derek⁴⁰ making Braids beautiful...that's if you refuse to remember Cicely's cornrows.*⁴¹

Yes, politics and the legal academy – performing and presenting, eagerly waiting for a commercial break.⁴²

***She irons the right arm, the left one and then the collar (thinking how Grandma Gertrude would be so proud of her—taking time to look like “somebody” who cared about themselves)**

[TV NEWS COMMENTATOR]

E-mail us your vote.

⁴⁰ Caldwell, *supra* note 36, at 379 (noting that the Court in *Rogers* accepted American Airlines' assertion that Rogers, the plaintiff, adopted a braided hairstyle only after a white actress, Bo Derek, “popularized” it in the movie “10”).

⁴¹ *Id.* Caldwell correctly points out the preeminence of Black women all over the world to braid their hair and specifically notes that the African American actress, Cicely Tyson was the first to wear a braided hairstyle in a nationally-televised media event in the United States, nearly a decade before the movie “10.” *Id.*

⁴² Ashleigh Shelby Rosette & Tracy L. Dumas, *The Hair Dilemma: Conform To Mainstream Expectations or Emphasize Racial Identity*, 14 DUKE J. GENDER L. & POL'Y 407, 408 (2007).

Minority women often feel they must compensate for both their gender and race in attempting to present a professional image that will render them credible to their co-workers. Crafting a professional image entails managing perceptions through a variety of behaviors and grooming decisions. One of the most central decisions in managing perceptions involves how to style one's hair.

Id.

[Professor Alisha Jones]

***As she peers in her closet for shoes- open toe or not? Selects a two tone pump- with a heel high enough for the flare leg pants, yet comfortable.**

Sure? Right? I need more hours in a day to "timely" respond to the e-mails that are waiting for me now. But today- I just need to get through the next class!

***Gray pantsuit on, white button down shirt-crisp**

With a once look over in Grandma Gertrude's three ring hanging wall mirror, now located in her living room. Professor Jones turns around and grabs the gray leopard spotted scarf⁴³ out of her closet, goes to the jewelry box and picks up a silver bracelet from her trip to Ghana and her Sankofa⁴⁴ earrings--puts them on, and as she is about to walk out the door---

⁴³ Mary Whisner, *Gender-Specific Clothing Regulation: A Study in Patriarchy*, 5 HARV. WOMEN'S L.J. 73, 118 (1982).

One writer has commented on the role of clothing in molding not only a person's image, but her essence: "[W]e know that the garment does not *express* but constitutes the person; or rather we know that person is nothing but this desired image which the garment permits us to believe in."

Id. (citing R. Barthes, *Pierre Loti*, in NEW CRITICAL ESSAYS 115 (Hill & Wang eds., 1980).

⁴⁴ The concept of Sankofa is a West African term derived from the Akan people and is "[v]isually and symbolically . . . represented as a mythic bird that flies forward while looking backward with an egg (symbolizing the future) in its mouth. The Meaning of the Symbolism of the Sankofa Bird, www.duboislc.net/SankofaMeaning.html. The symbol means "it is not taboo to go back and fetch what you forgot." *Id.*

Professor Jones picks up her Black fedora hat off the shelf, puts it on and returns to the three ring mirror, closes her eyes and imagines Grandma Gertrude's smile of approval, shaking her head and saying "Caldonia! Caldonia!"⁴⁵

Professor Jones, standing at the door, is prepared to contribute to the forward flow of history—by manifesting her-story. As Black women and women of color in the legal academy, we have a duty to define ourselves beyond the "pantsuit" as a pseudonym for power traditionally relegated to white males. Now the question is... "How will our (non-white, non-male) identity performance impact the legal academy?"⁴⁶

⁴⁵ The song "Caldonia" was ranked #1 on the charts in 1945, and was written by Louis Jordan, "The King of the Jukebox," a pioneering African-American jazz and rhythm & blues musician and songwriter who enjoyed his greatest popularity from the late 1930s to the early 1950s. Last.fm, Louis Jordan, www.last.fm/music/Louis+Jordan. It should be noted that in the legal academy, "Caldonia" could easily be mis-characterized (negatively) or transformed (positively) into the character of "Sapphire." See Smith, *supra* note 3, at 55; Regina Austin, *Sapphire Bound!* 1989 WIS. L. REV. 539, 541 (1989). Austin urges minority feminist legal scholars to

get truly hysterical, to take on the role of 'professional Sapphires' in a forthright way, to declare that we are serious about ourselves, and to capture some of the intellectual power and resources that are necessary to combat systemic denigration of minority women. It is time for Sapphire to testify on her own behalf, in writing, complete with footnotes.

Id. See generally Pamela J. Smith, *Failing to Mentor Sapphire: The Actionability of Blocking Black Women From Initiating Mentoring Relationships*, 10 UCLA WOMEN'S L.J. 373 (2000).

⁴⁶ Farley, *supra* note 34, at 351 ("Law is a social construction that can be manipulated by the dominant group. Law and the law school are institutions that have been created by and for men. As law has been framed by men, it necessarily reflects their experience.").

II. Identity Performance

...where do you dance?⁴⁷

Briefcase prepared the night before, sitting near the door equipped- lap top, jump drive with lecture notes and casebook- placed in the trunk...car in drive.

Destination- The Acme School of Law

Imagine if you will, an Employment Law class grappling with how the court in *Rogers*⁴⁸ would not see beyond rigidly defined “jurisprudential categories”⁴⁹ while experiencing the daily depth and opportunities to evaluate⁵⁰ Law Professor Alisha Jones. She could be dressed in a pantsuit or not – but nonetheless

⁴⁷ Cotton Club, The – 1984 Movie Quotes, <http://www.moviequotes.com/repository.cgi?pg=3&tt=75589> (last visited Mar. 15, 2009) (question posed to Gregory Hines as Sandman Williams, Club tap star); see also Spout, Francis Ford Coppola’s Cotton Club (1984), <http://www.spout.com/films/7141/detail.aspx> (last visited Mar. 15, 2009) (providing a synopsis by looking back to the 1920s-1930s peak of the legendary Harlem nightclub where only Blacks performed and only whites could sit in the audience). The Author poses the question to conceptualize the necessity of performing identity in a particular place, for instance, Professor Jones’ loci is the legal academy.

⁴⁸ See Michelle L. Turner, *The Braided Uproar: A Defense of My Sister’s Hair and a Contemporary Indictment of Rogers v. American Airlines*, 7 CARDOZO WOMEN’S L.J. 115, 147-52 (2001) (arguing that wearing a braided hairstyle has communicative value). As such, it should be considered protected expression within the meaning of First Amendment jurisprudence. *Id.* Beyond being legally protected expression, the message that braided hairstyles communicates may be liberating not only to the wearer, but also to society. *Id.*

⁴⁹ Angela P. Harris, *Love and Architecture: Race, Nation, and Gender Performance Inside and Outside the State*, 52 CLEV. ST. L. REV. 121, 129 (“For us as lawyers, . . . the question remains open whether the courts can be taught to move beyond the jurisprudence of categories.”).

⁵⁰ Smith, *supra* note 3, at 207-212 (providing strategies for navigating and manipulating the Black woman law professor’s handling of tainted evaluations).

appropriately swayed in proportion to her particular and unique body type, with hair braided on some days, flat-ironed on others and even sporting a natural twist with a few subtle highlights during the summer writing months... because the choice to “work” identity is both personal and political. The presence and lived experiences of Professor Alisha Jones leading the classroom discussion serves as a beginning to provide a venue to construct an alternate reality to the social construction of “law as male”⁵¹ generally and law as a white male specifically.

This is attainable by conceptualizing opportunities to exhibit manifestations of community building necessary to ensure our continued presence in the legal academy.⁵² One such example of framing a notion of leadership in a way that explores identity performance for women of color in general and Black women, specifically in the legal academy, is the purposeful gathering⁵³ of a

⁵¹ Farley, *supra* note 34, at 334-335.

⁵² See, e.g., Symposium, *Black Women Law Professors: Building Community At the Intersection of Race and Gender*, 6 BERKELEY WOMEN’S L.J. 1-201 (1990-1991) (including articles by Emma Coleman Jordan, Anita L. Allen, Margalynne Armstrong, Taunya Lovell Banks, Robin D. Barnes, Angela D. Gilmore, Linda S. Greene, Lani Guinier, Angela Harris, Beverly I. Moran, Denise C. Morgan, Odeana R. Neal, Deborah Waire Post, Wilhelmina M. Reuben-Cooke, and Adrien K. Wing. The collection of essays explores the experiences of black women law professors and their “often conflicting roles in legal academia”).

⁵³ The Lutie A. Lytle Black Women Law Faculty Writing Workshop is an annual gathering of current and aspiring Black women law faculty and Black women law students who are considering teaching law. The workshop provides a space for presenting works-in-progress and, more generally, sharing perspectives on the scholarly enterprise. Lutie A. Lytle Black Women Faculty Writing Workshop, Scholarly in Seattle, June 25-28, 2009. Other notable conference gatherings include: The National Conference on African American Women and the Law in Washington, DC, in 1995 (attended by over 1000 persons and subsequently led a delegation to the United Nations NGO Forum and Fourth World Conference on Women in Beijing); African American Women in the Law, Conference, at Howard University Law School in Washington, DC, in May 2000 (some 250 participants in fifteen workshops provided input into preparation of a Report and Action Agenda for advocacy before the UN General Assembly Special Session on Women); 10th Annual Sylvania Woods Conference, The African American Woman in Law and Legal

group of Black women law professors who have met over the years to discuss particular and unique issues facing Black women in the legal profession and the legal academy. The utility of such gatherings also provides a safe venue to re-focus and re-adjust if necessary, the “insider” identity mentioned earlier.

IV. Conclusion

The lengthy media discussion during the 2008 Presidential election regarding Hillary Clinton’s decision to wear a pantsuit highlighted that the pantsuit served as a proxy for power or white maleness. The ensuing commentary on the many choices of color constituted a lens to construct a CRF critique of the commentary which turned the gaze on the critical areas of concern for the fictitious Black female law professor Alisha Jones. It is through her narrative that a deconstructive technique attempts to address the dominant discourse on the issue of color, in terms of colorism; the notion of exuding leadership qualities by donning a pantsuit, in terms of presumed incompetence from a raced gendered perspective; and identity performance in terms of choice of hairstyle. Ultimately, in order to center the reality of the social construction of race along with its many shades and manifestations of identity we must continue to present consistently marginalized realities that do not neatly fit into a jurisprudential category or the legal academy.

I contend that women of color leading and professing the law class through the jurisprudential maze of “double talk” and “culture blindness,” without becoming the often marginalized character in the facts of the case or the annals of history, epitomize a skilled performer; in other words, “A Good Sister.”

History, at the American University Washington College of Law, in April 2006 (conference included a professional production of *The Trial of One Short-Sighted Black Woman vs. Mammy Louise and Safreeta Mae*, written by Karani Marcia Leslie).