

“ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE”¹

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In 1982, African American feminists, writers, and educators Gloria T. Hull, Patricia Bell Scott, and Barbara Smith co-edited a foundational volume of essays designed to map a program for African American women’s studies and research on issues ranging from racial bias and sexism, to homophobia entitled: “*All the Women Are White, All the Blacks are Men, But Some of Us Are Brave*.”² We reflected on that volume when we accepted the *Fordham Law Review*’s invitation to take part in its *Online* symposium honoring 100 years of women at Fordham Law School. Hull, Scott, and Smith, demonstrating an early understanding of the need for intersectional analyses when addressing questions of race and gender, spoke to their current context, observing, *inter alia* that:

As Black women we belong to two groups that have been defined as congenitally inferior in intellect, that is, Black people and women. The paradox of Black women’s position is well illustrated by the fact that white-male academics . . . are trying to prove “scientifically” our racial and sexual inferiority. Their overt or tacit question is, “How could a being who combines two mentally deficient biological identities do anything with her intellect, her nonexistent powers of mind?” Or, to put it more bluntly, “How can someone who looks like my maid . . . teach me anything?”³

Their intervention in the literature on race and gender in the early 1980s raised critical questions about the place of African American women in both the civil rights movement and the feminists’ struggle for acceptance and

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1. ALL THE WOMEN ARE WHITE, ALL THE BLACKS ARE MEN, BUT SOME OF US ARE BRAVE: BLACK WOMEN’S STUDIES (Gloria T. Hull et al. eds., 1982) [hereinafter ALL THE WOMEN ARE WHITE].

2. *Id.*

3. *Id.* at xxiv.

equal rights under the law for women. Indeed, for women of color, their race and gender intersect to produce unique challenges that neither white women nor men of color must overcome. Significantly, though, this intersectionality and the many questions Hull, Scott, and Smith posed in their collected volume have yet to be answered.

Given this truth, we—two black women who, with our colleague, Professor Tanya Hernandez, lead the Center on Race, Law & Justice launched three years ago this month—were very pleased about the program for the fall 2018 event that officially launched the 100 Years of Women at Fordham Law celebration. In addition to comments from female graduates from earlier decades and a brief film documenting the contributions of Fordham women, the schedule included comments by Tanyell Cooke, a member of the Black Law Students Association and the current Student Bar Association President. Cooke spoke eloquently and movingly about the path that she, with the help of a devoted great-grandmother, made from the harsh streets of Southeast Washington, D.C., to George Washington University and then Fordham Law School. In doing so, she spoke directly to her personal story and how she came to become part of the Fordham community. Equally importantly were the questions Cooke implicitly raised about the nature of the challenges she encountered during her time at Fordham and those that she can anticipate upon her departure, when she and her classmates enter the legal profession in earnest.

This semester, the Center on Race, Law & Justice will work with Dean Mathew Diller and others at the Law School to honor two African American women who achieved great success in their legal careers, but who also had experiences that made clear the difficult path that African American women and other women of color have made to the legal profession: Ruth Whitehead Whaley and Eunice Hunton Carter. When she graduated in 1924, Whitehead Whaley became a rare breed of lawyer, one of only a small number of black women attorneys in the country.⁴ She was the Fordham Law School's first African American graduate, as well the first black woman both to practice law in the state of New York and to be admitted to the bar of North Carolina, the state of her birth.⁵ Over the course of a more than forty-year career in the legal profession, Whitehead Whaley was among the most celebrated black attorneys of her generation, becoming a successful appellate advocate, an expert in civil service law, and eventually rising to the role of Secretary at the New York City Board of Estimate, where she served with distinction for more than twenty years.⁶ Her success—which also included being active in democratic politics, Vice-President of the influential National Council of

4. Ruth Whitehead Whaley, *Women Lawyers' Lot Not Easy: She Must Balk Both Color and Sex Bias*, N.Y. AGE, Oct. 29, 1949, at 58.

5. Obituary, *Ruth W. Whaley, 76, Lawyer and City Aide*, N.Y. TIMES (Dec. 25, 1977), <https://www.nytimes.com/1977/12/25/archives/ruth-w-whaley-76-lawyer-and-city-aide.html> [<https://perma.cc/S5BD-EY3G>] [hereinafter Whitehead Whaley Obituary].

6. *Id.*; see also FORDHAM LAW, SCHOLAR DESIGNATIONS (July 2015), http://www.fordham.edu/download/download/id/811/scholar_designations.pdf [<https://perma.cc/5YF4-KWA3>].

Negro Women, and the founder of the Negro Business and Professional Women's Club—offered no protection from the discrimination many attorneys of color faced during that era.⁷

Indeed, Fordham, the law school where Whitehead Whaley had found a home among the children of immigrants and other women intent upon becoming lawyers, proved to be an early site of racialized treatment. In correspondence back and forth with the estimable W.E.B. DuBois—one of the nation's foremost African American scholars and advocates for racial justice and equality—she detailed the events and actions taken by the Law School librarian and administration that kept her from being recognized as the rightful winner of a prestigious book prize.⁸ Ongoing research by Todd Melnick, the current librarian of the Maloney Library at Fordham Law, reveals that the prejudice Whitehead Whaley suffered as she prepared to leave Fordham, which in many other respects had been extremely supportive of her, was a major topic of discussion in black newspapers and communities across the country at that time. This said, such treatment was, by no means, limited to Fordham. As J. Clay Smith observed in his book exploring the lives and experiences of early African American lawyers, Whitehead Whaley was often mistaken for the criminal clients she sometimes represented in her early days of setting up a legal practice “until local judges got used to seeing a black woman appear before them.”⁹

The other graduate to be honored this semester, Eunice Hunton Carter, also met with obstacles in the law. Another daughter of the Jim Crow South, Hunton Carter graduated from Fordham Law School in 1934 as an evening student who worked full-time at the Emergency Unemployment Commission, while also raising a child.¹⁰ A graduate of Smith College, Carter is the subject of a new book written by her grandson, Yale Law Professor Stephen Carter.¹¹ The book chronicles Eunice Hunton Carter's incredible career in fascinating detail and with useful historical context, making it plain to readers just how unique and important her career trajectory was at a time when the idea of a woman, let alone a black woman, rising to the top of the legal profession or ascending to high political office was inconceivable to many, and virtually unheard of anywhere in the United States.¹² Hunton Carter—who later in life became involved with the United Nations and international human rights and gender issues¹³—played a central role in the government prosecution of Mafia boss Charles “Lucky”

7. See Whitehead Whaley Obituary, *supra* note 5.

8. See Letter from Ruth Whitehead Whaley to W.E.B. Du Bois (June 7, 1924) (on file with the University of Massachusetts Amherst Libraries).

9. See J. CLAY SMITH, JR., *EMANCIPATION: THE MAKING OF THE BLACK LAWYER 1844–1944* 405 (1993).

10. STEPHEN L. CARTER, *INVISIBLE: THE FORGOTTEN STORY OF THE BLACK WOMAN LAWYER WHO TOOK DOWN AMERICA'S MOST POWERFUL MOBSTER* 60, 64 (2018).

11. See *id.* at 34. Hunton Carter's great-granddaughter, who helped with research for the book, will give remarks at the event honoring the two graduates.

12. See generally *id.*

13. *Id.* at 259.

Luciano.¹⁴ Indeed, her work as a prosecutor under Thomas Dewey—who would later become Governor of New York and a candidate for the Presidency—produced evidence of Luciano’s role in illegal prostitution, information that ultimately proved instrumental in securing his incarceration.¹⁵ As critical as she was in that prosecution, however, Hunton Carter consistently ran up against discrimination and missed out on opportunities because of both her race and gender over the course of her career.¹⁶

Decades after Whitehead Whaley and Hunton Carter left their mark on the legal profession, African American women and other women of color in the legal workplace continue to face not only discrimination on the basis of race, but also on the basis of gender. The depth of the problem was illustrated poignantly in a 2019 *New York Times* article that addressed the lack of women of color in partnership at large law firms and highlighted one major firm that added exclusively white individuals, only one of whom was a woman, to its ranks this year.¹⁷ The lone African American woman partner at the firm described her feeling of isolation: “[e]very day going into a conference room where you are the only one—maybe the only woman, maybe the only black person, that can weigh on you.”¹⁸

Many have documented the experience of African Americans in law firms, including their difficulty finding mentors and the significant barriers to promotion and advancement that they face.¹⁹ Still other studies document the implicit bias of law firm partners and the added scrutiny they apply when reviewing the work of associates of color, leaving these associates feeling unsupported and as though they have no margin for error. In one such study, fifty-three law firm partners were asked to review a memo containing several grammatical and substantive errors. Twenty-four of the partners were told

14. *Id.* at 100, 104, 142–50.

15. *Id.* at 115.

16. *Id.* at 203.

17. Noam Scheiber & John Eligon, *Elite Law Firms’ All-White Partner Class Stirs Debate on Diversity*, N.Y. TIMES (Jan. 27, 2019), <https://www.nytimes.com/2019/01/27/us/paul-weiss-partner-diversity-law-firm.html> [https://perma.cc/E35P-RYYE].

18. *Id.*

19. See, e.g., Aviva Cuylar, *Diversity in the Practice of Law: How Far Have We Come?*, AM. BAR ASS’N (Sept. 26, 2018), https://www.americanbar.org/groups/gpsolo/publications/gp_solo/2012/september_october/diversity_practice_law_how_far_hav_e_we_come/ [https://perma.cc/MP58-GMDD]; Scott Flaherty, *Law Firms Took Steps Forward in Diversity in 2018, Not Leaps: Report*, AM. LAWYER (Jan. 9, 2019), <https://www.law.com/americanlawyer/2019/01/09/law-firms-took-steps-forward-in-diversity-in-2018-not-leaps-report/> [https://perma.cc/8LCW-CNZQ]; Liane Jackson, *Race And Gender Bias Is Rampant In Law, Says New Report That Also Offers Tools to Fight It*, AM BAR ASS’N J. (Sept. 6, 2018), http://www.abajournal.com/news/article/race_and_gender_is_bias_rampant_in_law_says_new_report_that_also_offers_too [https://perma.cc/5P9J-APA6]; Leah Rodrigues, *Lawyers Are Facing Persistent Racial and Gender Bias at Work, Survey Shows*, GLOBAL CITIZEN (Sept. 7, 2018), <https://www.globalcitizen.org/en/content/lawyer-racial-gender-bias-study-2018/> [https://perma.cc/TLD5-9Q8Y]; Karen Zraick, *Lawyers Say They Face Persistent Racial and Gender Bias at Work*, N.Y. TIMES (Sept. 6, 2018), <https://www.nytimes.com/2018/09/06/us/lawyers-bias-racial-gender.html> [https://perma.cc/BL5E-VDDF].

that the writer was a black man, while twenty-nine were informed that the writer was a white man—both men were named Thomas Meyer. According to the study, the reviewers gave the memo ostensibly written by a white man a 4.1 out of 5 rating, but gave the same memo supposedly written by a black man a 3.2 out of 5 rating, and identified nearly twice as many spelling and grammatical errors. The partners commended the white Thomas Meyer for his “potential” and for being a “generally good writer,” whereas the black Thomas Meyer was denounced as “average at best” and in need of remedial assistance.²⁰

Clearly more needs to be done to achieve race and gender equity in the work place, and we are still a long way away from fully realizing the dream of a truly intersectional approach to conceptualizing and addressing the challenges of African American women that Hull, Scott, and Smith imagined in “*All of the Women Are White, All the Blacks are Men, But Some of Us Are Brave*.”²¹ There has, thankfully, been movement in the right direction. For example, law professor Meera Deo, recently published a book chronicling the plight of women of color in legal academia.²² Her book joins a rich literature that includes scholarship documenting the challenges of law professors of color and others in the classroom, a place often not considered during discussion of the legal profession.

In light of these and other critical interventions, our strong sense is that a unique opportunity to enhance further intersectional gender and race representation in the legal profession exists. The 100-year anniversary of the matriculation of women at Fordham Law School is the ideal moment to redouble our research efforts and to develop new programs that address structural inequities, biases, and sexism. We cannot afford to allow another generation of attorneys—women of color who carry on the legacy established by Whitehead Whaley and Hunton Carter—from achieving full equality and inclusion at all levels of legal education, training, and practice. The costs of inaction are simply too high. In other words, we must, as Ruth Whitehead Whaley and Eunice Carter were, be “brave” in battling the obstacles in legal education and the profession overall that deny opportunities for women of color.

20. Debra Cassens Weiss, *Partners in Study Gave Legal Memo a Lower Rating When Told Author Wasn't White*, AM. BAR ASS'N J. (Apr. 21, 2014), <http://www.abajournal.com/news/article/hypothetical> [https://perma.cc/BCB9-NBGX].

21. See ALL THE WOMEN ARE WHITE, *supra* note 1.

22. MEERA E. DEO, UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA (2019).