

# FROM THEORY TO PRACTICE: USING THE GENDER-SENSITIVE TRACKING AND MONITORING SYSTEM (“GTMS”)<sup>1</sup>

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## I. INTRODUCTION

### A. Gender-sensitive Tracking and Monitoring

This Article is the second installment on the topic of Gender-Sensitive Tracking and Monitoring (“GTMS”), which stemmed from a presentation made at the Association of American Law Schools

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<sup>1</sup> Faith Jackson and Edieth Wu created the “Gender-Sensitive Tracking and Monitoring System”-- the “GTMS” acronym to describe a process to track and monitor offensive covert and overt behavior by the actor that may be used as direct/circumstantial evidence, if needed, to buttress future allegations of gender discrimination.

(“AALS”) Annual Meeting in January 2015,<sup>2</sup> along with a subsequent Article.<sup>3</sup> The AALS Crosscutting Program, “The More Things Change: Exploring Solutions to Persisting Discrimination in the Legal Academia,” resurrected this important dialogue about persistent discrimination in the legal academy, and solicited strategies that would address both structural and individual barriers. Presenters heard a common theme, and a chilling, shared sentiment reverberated during and after the question and answer portion of the program.

Whether it is the law school’s hiring process, the tenure and promotion process, the hierarchical structure of the law school faculty, or all of it

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<sup>2</sup> Ass’n Am. Law Schools, 2015 Annual Meeting: Legal Education at The Crossroads – Final Program 63–64 (Jan. 2–5, 2015), [https://www.aals.org/wp-content/uploads/2014/12/Program\\_Final.pdf](https://www.aals.org/wp-content/uploads/2014/12/Program_Final.pdf) [<https://perma.cc/BLJ3-988Y>] (The Program follows an innovative format. After short presentations by three speakers, the program transitioned to an “open microphone” session of speakers selected in advance from a “call for remarks”).

<sup>3</sup> Faith Jackson and Edieth Y. Wu, *Must We Deploy Drones in the Twenty-First Century to Target Under the Radar Discrimination Against Minority Women at Law Schools at HBCUs?*, 31.1 COLUM. J. OF GENDER & L. 164 (2017) (discussing the disparate treatment minority women encounter at HBCUs after filing complaints and outlining recommendations to combat this ongoing but often overlooked areas).

together, the....comments expose the persistent discrimination that continues to infect the legal academy. Importantly, however, these Articles do not simply critique existing structures. They offer ideas for reform. This important point—that our goal should be not simply to bemoan the problems that we still face but to take action for change—was the resounding conclusion of the AALS meeting as well.<sup>4</sup>

“In the context of analyzing the tenure wars in the legal academy, war, and its corollary rules and theories, is useful as a framing tool. The rules of war frame the discussion of the metaphorical battlefield on which the tenure wars unfold.”<sup>5</sup> The “GTMS Roadmap” emerged as necessary to assist with navigating internal gender-biased (i.e., sex-biased) complaints within the academy. This Article provides a roadmap and an anecdotal example for all faculty, especially women, who battle the

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<sup>4</sup> Melissa Hart, *The More Things Change: Exploring Solutions to Persisting Discrimination in Legal Academy*, 31.1 COLUM. J. GENDER & L. 1, 6 (2015).

<sup>5</sup> Angela Mae Kupenda and Tamara F. Lawson, ‘*Truth and Reconciliation*’: *A Critical Step Toward Eliminating Race and Gender Violations in Tenure Wars*, 31.1 COLUM. J. GENDER & L. 87, 88 (2015).

internal academic system. Section II discusses the “Chess Not Checkers” concept. Section III addresses external remedies. Section IV offers several recommendations; and Section V concludes that female faculty and administrators must be invited to the table to create “new patterns of thought and behavior.”<sup>6</sup>

#### B. Gender-sensitive Tracking and Monitoring System

GTMS is an internal roadmap.<sup>7</sup> This systematic protocol guides users through effective steps prospectively to gather requisite information that may be needed in the future. GTMS<sup>8</sup> operates with precision comparable to that deployed by Crime Scene Investigator<sup>9</sup> forensics experts to uncover

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<sup>6</sup>BIC offers expanded perspective at CSW, Baha’i World News Service, <http://news.bahai.org/story/1156/>, last visited March 26, 2017 (discussions at the United Nations Commission on the Status of Women); UN Women (Globally, UN Women specifically works to create gender equality and women’s empowerment. G.A. Res. 64/289, ¶49m U.N. Doc. A/RES/64/289 (July 21, 2010) (reissued for technical reason on Sept. 13, 2010).

<sup>7</sup> “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’  
<sup>8</sup> *Id.*

<sup>9</sup> [CrimeSceneInvestigatoredu.org.](http://www.crimesceneinvestigatoredu.org/),  
<http://www.crimesceneinvestigatoredu.org/what-is-a-csi/>, last visited

covert facts. To successfully respond to unfair promotional practices in the academy, faculty, and administrators must anticipate unfair promotional practices.<sup>10</sup> Anecdotally, Professor Edith Wu, one of the Authors, was successful in her promotion appeal to the Texas Southern University's Board of Regents because she meticulously collected and maintained data addressing promotion and tenure guidelines. This data included the faculty manual, changes to the faculty manual, internal memoranda, faculty meeting minutes, communications between Dr. Wu and administrators, and other documentation. This process may be time-consuming, tedious, and technical. Nevertheless, the tenacity exhibited by the plaintiffs in *Oncale v. Sundowner Offshore Services*<sup>11</sup> and *Ledbetter v.*

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9/18/2017 (expertly utilizes scientific principles to support or negate theories about evidence found at a crime scene; therefore, precision, attention to detail, and keen analytical expertise are essential).

<sup>10</sup> Susan Apel, *Gender and Invisible Work: Musings of a Women Law Professor*, 31 U.S.F. L. REV. 993, 996 (1997) (discussing women who faced discrimination in the academy because the faculty was mostly white males).

<sup>11</sup> *Oncale v. Sundowner Offshore Services*, 523 U.S. 75 (1998) (male filed complaint filed against his employer alleging sexual harassment by co-workers in violation of Title VII of the Civil Rights Act of 1964).

Good Year Tire and Rubber Co.<sup>12</sup> are instructive if gender-based claims are to be successfully mediated or litigated. *Oncale* shows how the court may extend certain statutes to cover situations that are not specifically addressed in the statute. In *Oncale*, the plaintiff argued that Title VII covered a male worker who claimed he was repeatedly subjected to harassment in the workplace by members of the same sex.<sup>13</sup> Prior to *Oncale*, the court rejected this argument by relying on earlier precedent.<sup>14</sup> Ultimately, the Supreme Court rejected the lower courts' decisions and held that Title VII protection against workplace discrimination "because of sex" applied to harassment in the workplace between members of the same sex.<sup>15</sup> Similarly, in *Ledbetter*, the plaintiff argued that each paycheck received constituted a discrete discriminatory act under Title VII.<sup>16</sup> The Court said that it did not.<sup>17</sup> However,

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<sup>12</sup> *Ledbetter v. Good Year Tire and Rubber Co.*, 550 U.S. 618 (2007) (alleging sex discrimination based on Title VII of the Civil Rights Act of 1964 equal pay discrimination violations based on her sex).

<sup>13</sup> *Oncale v. Sundowner Offshore Services*, 523 U.S. 75 (1998).

<sup>14</sup> *Id.*

<sup>15</sup> *Oncale*, 523 U.S. 75 (1998)

<sup>16</sup> *Ledbetter v. Good Year Tire and Rubber Co.*, 550 U.S. 618 (2007).

*Ledbetter* focused on disparate pay, which the plaintiff was successfully able to prove, but unfortunately, she could not recover damages because the statute of limitations had expired.<sup>18</sup> The Court recognized that had she sued within 180 days from the day that the pay decisions were made, she may have recovered.<sup>19</sup> This finding shows that plaintiffs must understand the rules and properly document information.<sup>20</sup> The plaintiffs' legal efforts were later realized by the passage of the Lilly Ledbetter Fair Pay Act.<sup>21</sup>

“We are all created equal and each deserve a chance to pursue our own version of happiness.”<sup>22</sup> If academicians continue to allow courts to dismiss the sufficiency of disorganized or porous evidence to support gender-based claims, then complainants

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> The Lilly Ledbetter Fair Pay Act of 2009, 123 Stat. 5 (2009) (The Act amends the Civil Rights Act of 1964).

<sup>22</sup> Remarks of President Barack Obama on the Lilly Ledbetter Fair Pay Restoration Act Bill Signing, The White House Office of the Press Secretary, January 29, 2009, <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-barack-obama-lilly-ledbetter-fair-pay-restoration-act-bill-signin>. Last visited 2016.

will never move the judicial or legislative branches to address this injustice that continues adversely to affect women. Analogously, litigation that often follows corporate mergers with its legal standardization generally results in settlements,<sup>23</sup> despite the lawsuits lacking merit and often being against shareholders' interests.<sup>24</sup> An alternative argument developed by the legal academy focused on transparency.<sup>25</sup> This academy-inspired argument illustrates how legal scholarship can influence legal development and advancement, even in static topic areas.<sup>26</sup>

## II. CHESS NOT CHECKERS

### A. Chess

In chess, “you move each piece differently based on its ability. However, in checkers, all

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<sup>23</sup> Sean Griffith, *Fair Share*, Fordham L. (2016), at 12.

<sup>24</sup> *Id.* at 17.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 15, 17.



the game pieces move in the same way.”<sup>27</sup> Like chess, in the academy, female faculty and administrators must constantly anticipate senior male faculty’s, and often, the dean’s next moves. If these women play checkers while their superiors play chess, the trickery will quickly consume these women, leaving them unable to recover with time to deploy the GTMS.<sup>28</sup> Preparation is, thus, vital.

In the legal academy, it is not only a game of chess and trickery, but it is also a game intended to destroy women’s brand and credibility. These superiors “will rarely confront you directly. Instead, they will try to hurt you without leaving fingerprints.”<sup>29</sup> Knowledge is power; therefore, women must know and understand the faculty handbook,

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<sup>27</sup> Tim Elmore, *On Leading the Next Generation--Chess and Checker*, HUFFINGTON POST, Oct. 12, 2012, <https://growingleaders.com/blog/chess-and-checkers/>, last visited March 14, 2017.

<sup>28</sup> Faith Jackson and Edieth Wu created the “Gender-sensitive Tracking and Monitoring System” to describe a process to track and monitor offensive covert and overt behavior that may be used as direct and circumstantial evidence to buttress future allegations of gender discrimination.

<sup>29</sup> David F. D’Alessandro, *CAREER WARFARE*, at 149 (2004).

just like knowing and understanding course material. This knowledge ensures that administrators follow a school's processes and procedures. Nevertheless, a record will thwart the superiors' ongoing arbitrary and capricious gender-biased decisions. Thus, while one may know how chess is played, one cannot become the victor<sup>30</sup> without employing the GTMS.<sup>31</sup> The users must address the deliberate detours. "[H]er stance (must be) one of determination, forwardness, and being willing to challenge and take on the status quo."<sup>32</sup> Excuses cannot be accepted from superiors, and users cannot make excuses for disparate treatment in the workplace. If female faculty allow or tolerate excuses, the result is a domino effect, resulting

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<sup>30</sup> Chin-Ning Chu, *THE ART OF WAR FOR WOMEN*, at 70 (2007) (discussing how women need to employ their strengths by "determining the most efficient way of gaining victory with the least amount of conflict").

<sup>31</sup> "Gender-sensitive Tracking and Monitoring System"-- the 'GTMS.'

<sup>32</sup> Jen Hayden, "Onlookers gasp as a 'wall street bro' humps the acclaimed 'Defiant Girl' statue on Wall Street," <http://www.dailykos.com/story/2017/3/13/1642890/-Onlookers-gasp-as-a-wall=street-bro-humps-the-acclaimed-Defiant-Girl-statue-on-Wall-Street>, last visited March 27, 2017.

in lost salary, pension, social security, and future employment opportunities.<sup>33</sup>

## B. Departmental and University Faculty Manuals

Lawyers increasingly question whether a faculty handbook that includes the university's policies, procedures, and rules establishes a contractual relationship between the institution and its faculty, and whether the handbook is part of the employment agreement.<sup>34</sup> Faculty handbooks are a common source of implied contractual terms,<sup>35</sup> and

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<sup>33</sup> Ledbetter v. The Goodyear Tire & Rubber Co., Inc., 550 U.S. \_\_\_\_ (2017). Remarks of President Barack Obama on the Lilly Ledbetter Fair Pay Restoration Act Bill Signing, The White House Office of the Press Secretary, January 29, 2009, <https://obamawhitehouse.archives.gov/the-press-office/remarks-president-barack-obama-lilly-ledbetter-fair-pay-restoration-act-bill-signin>, last visited May 4, 2016.

<sup>34</sup> Faculty Handbooks as Enforceable Contracts: A State Guide, An AAUP Guidebook, AAUP American Association of University Professors, 2009, at v, <https://www.aaup.org/sites/default/files/files/Faculty%20Handbooks%20as%20Contracts%20Complete.pdf>.

<sup>35</sup> Michael A. Chagares, Comment, *Limiting the Employment-at-Will Rule: Enforcing Policy Manual Promises Through Unilateral Contract Analysis*, 16 SETON HALL L. REV. 465, 469, 477, 480 (1989).

include many raised issues.<sup>36</sup> An instrumental piece in the GTMS<sup>37</sup> is the faculty manual, which encompasses state<sup>38</sup> and federal anti-discrimination laws.<sup>39</sup> These documents provide initial and basic guidelines to the user (i.e., female faculty), who may face a gender-based attack.

The users must familiarize themselves with general and specific provisions of the documents. For example, what is “scholarship,” a typical provision in most departmental faculty manuals. Most manuals define “scholarship” as: books, articles, and chapters in books, but may exclude an op-ed piece or a blog.<sup>40</sup> An example of an atypical

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<sup>36</sup> Faculty Handbooks as Enforceable Contracts: A State Guide, An AAUP Guidebook, *supra* note 22, at v.

<sup>37</sup> “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’

<sup>38</sup> Texas Constitution; 21 Texas Labor Code, Protection of Labors, Employment Discrimination, Sec. 21.01 (1933), 73<sup>rd</sup> Leg., Ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74<sup>th</sup> Leg., Ch. 76, Sec. 9.01 (a), eff. Sept. 1995 (provides for the execution of the policies of Title VII of the Civil Rights Act of 1964 and its subsequent amendments (42 U.S.C. Section 2000e et seq.).

<sup>39</sup> U.S. Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1964); *Curtis v. University of Houston*, 840 F. Supp. 1070 (S.D. Tex. 1996).

<sup>40</sup> Blog Definition-Google Search,

[https://www.google.com/search?q=blog+definition&rlz=1C1Cafb\\_enUS665US666&oq=Blog+definition&aqs=chrome.0.016.5575j0j7&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=blog+definition&rlz=1C1Cafb_enUS665US666&oq=Blog+definition&aqs=chrome.0.016.5575j0j7&sourceid=chrome&ie=UTF-8) (series of entries posted to a single

provision would be a provision in a university manual that allows a dean at the negotiating table to award credit for prior scholarship or advance rank. Knowledge of this type of an atypical provision would be extremely important to faculty if the school is affiliated with a university. If users' school is under the umbrella of a university, its manual and other policies and procedures warrant familiarity.<sup>41</sup> This includes periodic electronic and manual access, and review for updates, amendments, and changes.<sup>42</sup> Significant changes, such as changes to the curriculum and chair committee appointments, may occur at the departmental level during committee and faculty meetings. These changes may be included in the minutes, and may be provided at the next scheduled

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page... generally represent the personality of the Author), last visited 9/15/17.

<sup>41</sup> New York University Faculty Handbook, <http://www.nyu.edu/faculty/governance/policy/and/procedures/faculty-handbook.html>, last visited March 17, 2017; University of California Academic Personnel and Programs Faculty Handbook Oct. 1995, <http://www.ucop.edu/academic/personnel/programs/programs-and-initiatives/faculty-resources-advancement-faculty-handbook.html>, last visited March 17, 2017.

<sup>42</sup> Texas Tech University 2016-17, Faculty Handbook, <https://www.depts.ttu.edu/officialpublications/facultyhb/index.php>, last visited March 17, 2017.

faculty meeting or available by request from the Dean's Office.<sup>43</sup> Faculty minutes are also important repositories of the real practices and common law at the users' institutions, private or public. University committees and the governing boards also have the authority to introduce changes and updates that affect faculty promotions.<sup>44</sup> Comprehensive knowledge of all recourses is necessary for the faculty user because the resources generally work in tandem as the process unfolds. If a user applies for promotion/tenure under a specific rule, that rule is generally applied throughout the process.<sup>45</sup> If the user is challenged with a rule change, GTMS may be deployed.<sup>46</sup> The collected data, which includes rules, rule changes, memoranda, and other documents, will be instrumental in responding to any challenges. A good GTMS will afford the user a wealth of information with efficiency and

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> Thurgood Marshall School of Law Faculty and Staff Information Manual & Directory, 2016-17, at 29 (outlining procedures and rules for the tenure and promotion process).

<sup>46</sup> "Gender-sensitive Tracking and Monitoring System"-- the 'GTMS.'

efficacy.<sup>47</sup> Even though the rule change would not and should not be applicable to the user because the change is not retroactive, if faced with a “rule-change challenge,” the GTMS would buttress the user’s argument moving forward.<sup>48</sup> The user would have already perfected the request for promotion or tenure. Armed with a strong level of familiarity with the applicable rule, the user should proceed with confidence with information gathered via the GTMS systematic protocol.<sup>49</sup>

### C. Do You Have the Stomach for Creating the “Record”?

“The power to prevent our enemy from conquering us lies in our hands. The opportunity for us to defeat the enemy is provided by the enemy.”<sup>50</sup> The employer provides the user with a copy of his or her contract; the faculty manual; oral promises

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Chin-Ning Chu, *The Art of War for Women*, at 70 (Currency Doubleday 2007) (discussing how women need to employ their strengths by “determining the most efficient way of gaining victory with the least amount of conflict.” *Id.*)

made and relied on during negotiation, which must be memorialized with a confirmatory written communication; and common law practices in users' institution, as well as best practices in the legal academy. However, users cannot rely solely on the faculty manual. The Authors strongly caution users not to allow employers to use the manual as a sword by failing to read and familiarize themselves with the manual. Gullibly taking the dean's interpretation of the manual's provisions can weaken users' ability to challenge unfavorable promotion decisions at a later date. Therefore, consulting with multiple sources, including mentors, senior faculty members, and faculty senate, to verify the institution's past interpretations of the rules is an intrinsic part of the overall success of the system. The GTMS<sup>51</sup> permits a user to start creating a viable record of substantial evidence that will support a claim of a gender-biased and hostile

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<sup>51</sup> "Gender-sensitive Tracking and Monitoring System"-- the 'GTMS.'



work environment. “He who has the record rules.”<sup>52</sup> Creating this record is a user’s duty to herself and other women. It is the “absence of evidence”<sup>53</sup> that will make meeting her burden of proof impossible if the need arises.

Perception is reality. “[In]equality is felt [by female faculty] most acutely when” seniors, provosts, and administrators “believe that the rules apply differently to different people.”<sup>54</sup> Women must “resent double standards and those who manage to manipulate the game to their...advantage.”<sup>55</sup> Women must not only resent those, who discriminate based on gender, but also those who “dismiss” and “demean every working woman’s actual experience.”<sup>56</sup> An in-depth, viable record is created by the female faculty, who has been discriminated against, by “conducting a nuanced

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<sup>52</sup> Professor Anthony Palasota, former Director Center for Legal Pedagogy, TMSL, 1988-2012.

<sup>53</sup> Robert C. Farrell, *Equal Protection Rational Basis Cases in the Supreme Court Since Romer v. Evans*, 14 GEO. J. L. & PUBLIC POL’Y, 441, 462 (2016).

<sup>54</sup> Pierre Rosanvallon, *How to Create a Society of Equals*, For. Aff. at 21, Jan/Feb. 2016.

<sup>55</sup> *Id.*

<sup>56</sup> The Week, NEWS – Controversy of the Week - The ‘Pay Gap’; Why do Men Make More Than Women? At 4, April 25, 2014.

analysis of real-world activity and incentives.”<sup>57</sup> Documenting the real world activity in the academy allows one to use the record to effectuate changes in the decades-long gender bias pattern and practice claims.

Developing the record cannot be overemphasized because it is often “difficult or impossible for a non-contracting party, including the court, to verify whether a relevant event in the agreement has taken place.”<sup>58</sup> These relevant events may include whether a user has met the standard for scholarship, teaching, and service,<sup>59</sup> which are the three areas of evaluation for promotion in the legal academy. Without a record, internal processes and, ultimately, external processes, users will be unable

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<sup>57</sup> Albert Choi, *Bridging Theory and Practice in Complex Contracting*, VA, J. REV. at 37.

<https://www.law.virginia.edu/pdf/vajournal/choi.pdf>.

<sup>58</sup> *Id.* at 38.

<sup>59</sup> Ann C. McGinley, *Reproducing Gender on Law Schools Faculties*, BYU L. REV., at 120 (2009) (discussing the price to secure tenure in the academic workplace; “ordinarily, the first five or six years’ teaching, scholarly publications, and service determine whether the candidate receives tenure.”).

to prove that “justice, fairness, and opportunity”<sup>60</sup> were denied based on gender.

Users are required to produce evidence to support claims of gender discrimination and hostile work environment. In the absence of such evidence, the desire to pursue the claim will be highly impracticable. This area of law remains static, and will remain static in the absence of an individual and group effort to build records that meet the academies’ and courts’ standards. A solid record is necessary to assist judges and scholars, who are willing to “step into the breach”<sup>61</sup> to make advances in this static area of law.

#### D. The “Record” – Using GTMS<sup>62</sup> to Uncover Tangibles and “Beyonds”<sup>63</sup>

In the absence of a “smoking gun,” the compiled record documents and aggregates

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<sup>60</sup> Danielle Allen, *Equality and American Democracy*, at 26, For. Aff., Jan/Feb. 2016.

<sup>61</sup> Robert C. Farrell, *Equal Protection Rational Basis Cases in the Supreme Court Since Romer v. Evans*, 14 GEO. J. LAW & PUBLIC POL’Y, 441, 463 (2016).

<sup>62</sup> “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’

<sup>63</sup> *Id.*

information to provide evidence of gender-based discrimination that will add credibility and substance to the argument, and meet the burden of proof to survive summary judgment and prove a case of discrimination and hostile work environment. Therefore, the GTMS<sup>64</sup> must be programmed to identify the tangibles and “beyonds.”<sup>65</sup> The detectable tangibles include, but are not limited to: the biased evaluation criteria; committee and class assignments; scholarship and scholarly presentations; and community service. “Beyonds”<sup>66</sup> are the non-tangibles that are shrouded in ambiguous concepts like “not being a good fit,” the presumption of [non]competence, unconstructive feedback, likeability and collegiality concerns.<sup>67</sup> Like the competent female mathematicians in the film, *Hidden Figures*,<sup>68</sup>

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<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> LaWanda Ward, *Female Faculty in Male-Dominated Field: Law, Medicine, and Engineering*, at 65. *New Directions For Higher Educ.* No. 143 (2008), [www.interscience.wiley.com](http://www.interscience.wiley.com), last visited March 17, 2017 (discussing negative gender-based feedback about female faculty in law, medical, and engineering).

<sup>68</sup> Margot Lee Shetterly, *HIDDEN FIGURES* (2016).

female law professors are either invisible or relegated to lower-ranking, lower paying, and lower-prestige administrative positions,<sup>69</sup> and committee assignments.<sup>70</sup>

The users must track everything they do when the administration asks for minimal documentation. With precision, the user must assemble a “GTMS<sup>71</sup> Notebook” that includes all tangible information and “beyonds.”<sup>72</sup> The information will be used for a user’s promotion dossier as well. Users should maintain information in at least five “GTMS<sup>73</sup> Notebooks:” (1) “Scholarship GTMS<sup>74</sup> Notebook;” (2) “Teaching GTMS<sup>75</sup> Notebook;” (3) “Community Service GTMS<sup>76</sup> Notebook;” (4)

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<sup>69</sup> LaWanda Ward, *Female Faculty in Male-Dominated Field: Law, Medicine, and Engineering*, at 64. (discussing negative gender-based feedback about female faculty in law, medical, and engineering).

<sup>70</sup> Ann C. McGinley, *Reproducing Gender on Law Schools Faculties*, *BYU L. REV.*, at 128 (2009).

<sup>71</sup> “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’

<sup>72</sup> *Id.*

<sup>73</sup> “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

“‘Beyonds’ GTMS<sup>77</sup> Notebook;” and (5) “Faculty Manual/University Policy and Procedures GTMS<sup>78</sup> Notebook.” For example, if a user submitted a first draft to a law review, then she would place the draft in the “Scholarship GTMS<sup>79</sup> Notebook.” Next, users receive student evaluations; place them in the “Teaching GTMS<sup>80</sup> Notebook,” which also should include a copy of the syllabus and all handouts. Next, a user was invited to judge student competitions and she coached a moot court team. Place this information in the “Community Service Notebook GTMS<sup>81</sup> Notebook.” The “‘Beyonds’ GTMS<sup>82</sup> Notebook” should be filled with ‘dated memos to the file’ that summarize ambiguous remarks that users do not quite know how to process as well as positive remarks that users are “team players” and acts (i.e., assisted Professor X in

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<sup>77</sup> *Id.*

<sup>78</sup> “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’

<sup>79</sup> “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’

<sup>80</sup> *Id.*

<sup>81</sup> “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’

<sup>82</sup> *Id.*

proofreading an exam). Finally, keep a current copy and updates of the Faculty Manual/University Policies and Procedures in “GTMS<sup>83</sup> Notebook” #5.

Compiling the record is tedious and time-consuming. However, the GTMS<sup>84</sup> is driven by a disciplined commitment to gathering information, which is absolutely necessary to oppose the trickery that may present itself at the most inopportune time to the unsuspecting, unprepared user. Preparation is key.

1. The faculty: Knowing the other pieces (players) on the chess board

The main players are housed in the user’s department. It will be beneficial to a user’s claim if she gets to know the faculty and the faculty gets to know her.<sup>85</sup> More specifically, getting to know the seniors is critical to a user’s survival. However, the voice of the entire university faculty is usually

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<sup>83</sup> *Id.*

<sup>84</sup> “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’

<sup>85</sup> Richard Rogers and Oscar Hammerstein, II, Getting to Know You, 1951, [https://en.wikipedia.org/wiki/Getting\\_to\\_Know\\_You\\_\(song\)](https://en.wikipedia.org/wiki/Getting_to_Know_You_(song)), last visited March 17, 2017.

represented by a faculty senate<sup>86</sup> or council.<sup>87</sup> Although each department generally has a representative that serves on the senate/council, the first layer is the departmental faculty. Getting to know them cannot be overemphasized.

Promotions have been denied to female faculty for reasons such as “didn’t make enough friends of the male faculty,”<sup>88</sup> and “some professors were miffed that she didn’t seek them out to chat them up.”<sup>89</sup> Therefore, female faculty must be encouraged to be “brave, proud, and strong,”<sup>90</sup> and “stand [...] up to the beast of power.”<sup>91</sup> Like the

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<sup>86</sup> Southern University A&M, faculty senate, <http://www.subr.edu/index.cfm/page/25/n/60>; visited March 17, 2017; Howard University Faculty Senate Homepage, <http://www.howard.edu/faculty/senate/>, last visited March 17, 2017.

<sup>87</sup> The University of Texas at Austin, Bylaws of the Faculty Council, <https://policies.utexas.edu/policies/laws-faculty-council>, last visited March 17, 2017.

<sup>88</sup> LaWanda Ward, *Female Faculty in Male-Dominated Field: Law, Medicine, and Engineering*, at 65 (discussing negative gender-based feedback about female faculty in law, medical, and engineering).

<sup>89</sup> *Id.*

<sup>90</sup> Verena Dobnik, Will New York Invite The ‘Fearless Girl’ Statue to Say on Wall Street? <http://www.wbir.com/ext/news/nation-now/will-new-york-invite-the-fearless-girl-statue-to-stay-on-wall-stree/51/nationnow/4XBbPVzNeakQ42og88wli>, last visited March 27, 2017.

<sup>91</sup> *Id.*



“Fearless Girl”<sup>92</sup> sculpture facing the 11 foot-tall, three and one-half ton, bronze bull in Lower Manhattan,<sup>93</sup> women must demand that law schools hire, promote, grant tenure, assign, appoint, and fairly compensate female faculty and administration in compliance with Title VII<sup>94</sup> and state law. Embedded in this demand is knowing the user’s faculty and school’s policies and procedures. The success of this demand also requires the support of and actions from a user’s colleagues, especially senior female faculty.

## 2. Creating a “landmark case”

Creating the record is the precursor to trying to advance the law in gender-biased cases. Expanding on settled law is a feat that is not for the faint of heart; nevertheless, pioneers have made strides, which is encouraging for users who decide to

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.*; WALL STREET WALKS, What is The Story of the Wall Street Bull?, <https://wallstreetwalks.com/bull-story/>, last visited March 27, 2017.

<sup>94</sup> U.S. Constitution; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1964).

pursue judicial remedies. In 1998, an argument was presented to the court, which advanced an effort to extend Title VII<sup>95</sup> to a previously unrecognized area. In *Oncale v. Sundowner Offshore Services*,<sup>96</sup> many of the arguments had not squared directly with the written law because “that [provision hadn’t] been put in the statute as a separate thing.”<sup>97</sup> Same sex (male-to-male) harassment was a novel complaint because it was not statutorily supported.<sup>98</sup> Twenty years prior to *Oncale*, the Court reversed the course of discrimination in *Regents of Univ. of California v. Bakke*.<sup>99</sup> The Court addressed whether

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<sup>95</sup> Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. (1964).

<sup>96</sup> *Oncale v. Sundowner Offshore Services*, 523 U.S. 75 (1998) (male filed complaint against his employer alleging sexual harassment by male co-workers – same-sex harassment - in violation of Title VII of the Civil Rights Act of 1964).

<sup>97</sup> Matt Kelemen, *Gender Specifics (Ann McGinley Sees Discrimination Through the Lens of Masculinities Theory)*, at 19, UNLV Law (2016) (discussing Professor Ann McGinley’s masculinity theory and how gender affects behavior between men and women and “that men engage in these behaviors not only because of the sex of the victim but also because of their own sense of masculinity,” and how men engage in “group behaviors.”). *Id.* at 19.

<sup>98</sup> *Oncale*, 523 U.S. 75 (1998).

<sup>99</sup> *Regents of Univ. of California v. Bakke*, 438 U.S. 265 (1978) (a white male medical school applicant sued the University when he was not admitted because the school’s use of racial quotas in admissions decision.)

the University of California violated the 14<sup>th</sup> Amendment's Equal Protection clause and the Civil Rights Act of 1964 in its affirmative action policy practice.<sup>100</sup> As a result, courts started to review reverse discrimination cases more rigorously.

Inspired by the attorney in *Sioux City Bridge Co. v. Dakota County*,<sup>101</sup> the GTMS<sup>102</sup> is an innovative approach. The GTMS allows the user to prepare necessary documentation to halt a premature victory by the institution.<sup>103</sup> Collecting information in the front-end will assist the user during the rank and tenure battle that often results from the perpetual and subjective application of rules against women. Lack of evidence in the past has resulted in promotion requests by women being “hopelessly unsuccessful.”<sup>104</sup> *Village of Willowbrook v. Olech* is another instructive example of pushing a novel, yet viable argument.<sup>105</sup>

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<sup>100</sup> *Id.* at 266.

<sup>101</sup> *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923).

<sup>102</sup> *Id.*

<sup>103</sup> “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’

<sup>104</sup> *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923).

<sup>105</sup> *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000).

The plaintiff, who had been “treated differently,”<sup>106</sup> used the “class of one,”<sup>107</sup> (i.e., sole plaintiff) argument because she could not possibly meet the numerosity requirement for a class action.<sup>108</sup> Her argument was advanced under Equal Protection, not gender discrimination. “The legal theory advanced...was anything but mundane”<sup>109</sup> because it was a watershed moment. Prior to pursuing Grace Olech’s claim and her novel argument, the attorney knew similar cases had been hopelessly unsuccessful.<sup>110</sup> Plaintiff Olech’s attorney, a trailblazer, successfully identified and argued *Sioux City Bridge Co. v. Dakota County*,<sup>111</sup> an obscure 1923 U.S. Supreme court case to advance the argument. The Court listened, analyzed the argument, and decided in Olech’s favor.<sup>112</sup> *Sioux* supported Olech’s allegations that she was

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<sup>106</sup> Steve France, ‘*Class of One*,’ ABA J. (April 2000), at 35.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923) (discussing an Equal Protection clause violation, 14<sup>th</sup> Amendment, and its purpose which protects against intentional and arbitrary discrimination).

<sup>112</sup> *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000).

“intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.”<sup>113</sup>

Likewise, female faculty in the academy should consider propounding unconventional arguments to “step into the breach”<sup>114</sup> by expanding the breadth of the argument with overwhelming facts. These facts, when viewed in the aggregate, will, similarly to *Oncale*,<sup>115</sup> *Bakke*,<sup>116</sup> and *Olech*,<sup>117</sup> lead to advances in the anti-discrimination laws in the U.S. The ongoing difficulty with gender-based cases should not “mean no [real] review at all,”<sup>118</sup> which, more often than not, results in dismissals due to lack of proof. This is the direct result of an outdated approach to nuanced circumstances, similar to *Oncale*,<sup>119</sup> and is too often applied. The court has a

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<sup>113</sup> Steve France, ‘*Class of One*,’ at 35, ABA J., April 2000; *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923).

<sup>114</sup> Robert C. Farrell, *Equal Protection Rational Basis Cases in the Supreme Court Since Romer v. Evans*, 14 GEO J. L. & PUBLIC POL’Y, 441, 463 (2016).

<sup>115</sup> *Oncale v. Sundowner Offshore Services*, 523 U.S. 75 (1998).

<sup>116</sup> *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

<sup>117</sup> *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000).

<sup>118</sup> Erwin Chemerinsky, *The Rational Basis Test is Constitutional (And Desirable)*, 14 GEO. J. L. & PUBLIC POL’Y, 401, 416 (2016).

<sup>119</sup> *Oncale v. Sundowner Offshore Services*, 523 U.S. 75 (1998).

duty to uphold precedent. However, the court has an important duty to ensure that plaintiff has the opportunity to be heard.<sup>120</sup> When the court blindly upholds precedent, this application leads to unfavorable results for parties, who have suffered discriminatory actions.<sup>121</sup> In gender-bias cases, the courts continue to lend too much deference<sup>122</sup> to previous decisions that ruled in favor of the alleged employer/discriminator. When discrimination is being perpetuated, and pattern and practice is alleged, the actor “should be required to have”<sup>123</sup> a palpable reason; and must be “required to meaningfully advance”<sup>124</sup> a palpable explanation for the action, which cannot be arbitrary and capricious.<sup>125</sup> In the aggregate, the seniors’

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<sup>120</sup> Constitution, 14<sup>th</sup> Amend.

<sup>121</sup> Faith Joseph Jackson, *Dred Scott v. Sandford: A Prelude to the Civil War*, 15 RICH. J. L. & PUB. INT. 377, 398 (2011) (discussing how the Court applied historical facts to the case, which resulted in an unfavorable result; arguments were made that the plaintiffs should have been considered citizens, and should have been awarded a hearing, but instead the Court followed precedent.).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> Martha S. Davis, *A Basic Guide to Standards of Judicial Review*, 33.3 S. DAKOTA L. REV. 469, 479 (1988) (providing basic guidance and discussing standards of judicial review).

propensity for requiring junior, female faculty to engage in unknown academic cultural norms often leads to adverse results, such as tenure and promotion denials.<sup>126</sup>

[A] factor that may affect promotion and advancement is the mix of faculty by rank in the department. A more senior faculty may enjoy more power and more stature on the campus, and may be able to obtain more favorable outcomes for personnel cases originating from the department as a consequence of this great influence and visibility on the campus.<sup>127</sup>

The existing social order,<sup>128</sup> particularly male dominated faculties, “has generated tremendous disparities”<sup>129</sup> in the legal academy. Oftentimes,

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<sup>126</sup> William L. Moore and Jeffrey Pfeffer, *The Relationship Between Departmental Power and Faculty Careers on Two Campus: The Case for Structural Effects on Faculty Salaries*, 13 RES. IN HIGHER EDUC. NO. 4 (1980), at 291.

<sup>127</sup> *Id.*

<sup>128</sup> BIC offers expanded perspective at CSW, Baha’i World News Service, <http://news.bahai.org/story/1156/>, last visited March 26, 2017 (discussions at the United Nations Commission on the Status of Women).

<sup>129</sup> *Id.*

“the political power of the department”<sup>130</sup> is “correlated with the proportion of departmental faculty moving through steps with faster than normal speed.”<sup>131</sup> “A more senior [male] faculty represents experience and knowledge about the folkways of personnel policies on the campus, and this knowledge can be an asset [or a detriment] in achieving [or not achieving] more rapid advancement for persons from the department.”<sup>132</sup> Women must penetrate the group of seniors that influence decisions, which concern female faculty’s ability to thrive in the academy.

### III. EXTERNAL REMEDIES

If GTMS<sup>133</sup> users ultimately decide to sue, the users must overcome the perception that women

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<sup>130</sup> William L. Moore and Jeffrey Pfeffer, *The Relationship Between Departmental Power and Faculty Careers on Two Campus: The Case for Structural Effects on Faculty Salaries*, 13 RES. IN HIGHER EDUC. NO. 4 (1980), at 291.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’



dominate the field of education.<sup>134</sup> Unfortunately, women do not dominate legal education. The seniors will assert that because the numbers for female faculty are high, gender-based discrimination does not exist. Therefore, the record will have to counter this high-number argument as the seniors proffer as proof that “[t]here is no [gender] case here!”<sup>135</sup> Preparing for battle is a time-consuming and tedious process, but nevertheless necessary.

When empirical data is available and presented by superiors to show that there is equality or no inequality, and the numbers appear to support no inequality, all deference will be given to the superiors’ assertion based purely on numbers. Anecdotal experience may not be well-received because it is subjective and addresses personal experience.<sup>136</sup> However, when users properly track

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<sup>134</sup> Judith M. Havemann, *Great Expectations*, 31 No. 3 WILSON Q., at 46 (2001).

<sup>135</sup> Robert W. Schmidt, *Termination Motivation*, at 154, 80. No. 3 TEXAS BAR (2017).

<sup>136</sup> Frankie Faries, *Anecdotal Experience & Empirical Evidence*, May 19, 2014, <http://areyouthemovement.com/anecdotal-experience-empirical-evidence/>, last visited March 16, 2017.

personal and professional experiences, it will help build the record to provide evidence of what occurs in the aggregate, which is essential to buttress the argument. The production of statistics to show a high number of female faculty, tenured female faculty, female full professors, and multiple females serving in lower administrative positions<sup>137</sup> is used to create a “smoke and mirror” illusion that high numbers of a represented class proves there cannot be discrimination based on gender.

#### IV. RECOMMENDATIONS

GTMS<sup>138</sup> must be utilized in the following ways. First, a junior should find a female mentor. Women often say, “no older woman helped me in

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<sup>137</sup> Carolyn Simon, There’s a Double Gender Gap in Higher Education – and Here’s Why, March 8, 2017, <http://college.usatoday.com/2017/03/08/higher-ed-gender-gap/>, last visited March 16, 2017.

<sup>138</sup> Faith Jackson and Edieth Wu created the “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’ acronym to describe a process to track and monitor offensive covert and overt behavior by the actor that may be used as direct/circumstantial evidence, if needed, to buttress future allegations of gender discrimination.

my career—my mentors have all been men.”<sup>139</sup> GTMS<sup>140</sup> does not function as effectively if juniors contend that no woman is willing to mentor. A gap may exist between the seasoned female faculty and the newly arriving female faculty members, but the new arrivals must guard against “driv[ing] a wedge”<sup>141</sup> because that decision is not a chess move. Female faculty must protect the power of the “queens,”<sup>142</sup> assistants, associates, and full professors, who are trying to make genuine contributions to the academy. Significant changes in the workforce must be understood to bridge the gap.<sup>143</sup> For example, queens may help newly arriving female faculty to become queens or move

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<sup>139</sup> Susan Faludi, EXCERPT, *Feminisms Lost Inheritance*, 35.1 THE WILSON Q., at 74 (2011).

<sup>140</sup> “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’

<sup>141</sup> Joan C. Williams and Rachel Dempsey, WHAT WORKS FOR WOMEN AT WORK, at 211 (2014) (discussing four patterns working women need to become familiar with to advance in the workplace).

<sup>142</sup> John Saunders, LEANING TO PLAY WINNING CHESS, at 49 (2007-09).

<sup>143</sup> Joan C. Williams and Rachel Dempsey, WHAT WORKS FOR WOMEN AT WORK, at 211 (2014).

like kings, thereby changing the game, not just winning.<sup>144</sup>

Next, seasoned female faculty must accept that the newest members of the female faculty can reap the benefit of “the hard-won battles of their foremothers,”<sup>145</sup> academic trailblazers in their own right. The newest members of the female faculty must appreciate “just how difficult these battles were and are.”<sup>146</sup> Seasoned faculty must not rest on their laurels. Chess matches involve many games. The gender revolution is continually in progress and their careers may be challenged at any time. They must not underestimate the difficulty faced and overcome by new faculty. Recognition of this symbiotic relationship encompasses professional respect and deference from both sides. Balancing this relationship, undoubtedly, leads to “Checkmate.”<sup>147</sup> Female faculty must remember “the queen works best in co-ordination with the

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<sup>144</sup> *Id.* at 158.

<sup>145</sup> *Id.* at 212.

<sup>146</sup> *Id.*

<sup>147</sup> John Saunders, LEARNING TO PLAY WINNING CHESS, at 68 (2007-09). (winning/overcoming threats is the ultimate goal).

other pieces.”<sup>148</sup> Likewise, seasoned female faculty and newer female faculty must work in “co-ordination”<sup>149</sup> for the best games and matches.

Second, based on the increased numbers of female faculty, we must capitalize on the increase and “lean in,”<sup>150</sup> and not allow “an all-male group”<sup>151</sup> of faculty to negotiate on behalf of women. GTMS<sup>152</sup> users must inquire and become knowledgeable of the expectations of their departments, schools, and universities, which should be documented in the users’ GTMS<sup>153</sup> Notebooks.

Third, being the consummate professional—in every area is paramount. The number of female faculty may be increasing, but the power is not

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<sup>148</sup> *Id.* at 57.

<sup>149</sup> *Id.*

<sup>150</sup> Nell Scovell and Sheryl Sandberg, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* (2013).

<sup>151</sup> Hillary Clinton criticizes photo of male Republicans talking women’s health coverage, March 28, 2017, <http://www.foxnews.com/politics/2017/03/28/hillary-clinton-criticizes-photo-male-republicans-talking-women-health-coverage.html>, last visited March 29, 2017.

<sup>152</sup> *Id.*

<sup>153</sup> “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’

reflected by the numbers.<sup>154</sup> Slow evolvement must be met with preparation. Discouragement and disappointment reduce the power of the queen<sup>155</sup> when the users are planning and strategizing the next move. The users' goals are to earn the promotion, get a place at the table, and participate in the decision-making<sup>156</sup> processes that will undoubtedly assist the newer female faculty, who are in the pipeline.

Unfortunately, even a woman, who holds a prestigious role in the United States with international recognition, may still be ignored or not be heard.<sup>157</sup> In response to an impassionate speech to voters given by U.S. Representative Maxine Waters, a prominent male anchor made sexist

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<sup>154</sup> LaWanda Ward, *Female Faculty in Male-Dominated Field: Law, Medicine, and Engineering*, at 63.

<sup>155</sup> John Saunders, LEARNING TO PLAY WINNING CHESS, at 49 (2007-09).

<sup>156</sup> Hillary Clinton criticizes photo of male Republicans talking women's health coverage, March 28, 2017, <http://www.foxnews.com/politics/2017/03/28/hillary-clinton-criticizes-photo-male-republicans-talking-women-health-coverage.html>, last visited March 29, 2017.

<sup>157</sup> Marquita Harris, This Is Why #Black Women at Work Has Gone Viral, March 28, 2017, Yahoo.com/beauty, <https://www.yahoo.com/beauty/y-blackwomenatwork>, last visited March 29, 2017.

comments about her hair.<sup>158</sup> He failed to do his job.<sup>159</sup> It appeared that it was more important for him publicly to attack a seasoned, consummate professional by comparing her professional appearance to that of a male entertainer.<sup>160</sup> This type of condescension may or may not be as overt in the academy, but the result is often the same—dismissive, gender-based discrimination that goes unchecked. Generally, faculty in leadership positions will attack the intangibles, the “beyonds.”<sup>161</sup> Female faculty’s scholarship, the most subjective promotion criteria, will often be attacked by male superiors during the review<sup>162</sup> along with their inability to fit-in.<sup>163</sup> If a female faculty member disagrees with a high-ranking, male faculty member (i.e., a senior), a condescending and dismissive response may follow because his faculty

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<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> LaWanda Ward, *Female Faculty in Male-Dominated Field: Law, Medicine, and Engineering*, at 65.

<sup>163</sup> *Id.* at 65.

status allows him to get-away with such behavior.<sup>164</sup> Despite sexist attacks, females must maintain their professionalism, the “A-Game.”

Female faculty as individuals or as a group may decide to peel the onion,<sup>165</sup> and let others know about sexist, misogynistic, and unprofessional conduct that is directly intended to thwart professional progress. The user must send a clear signal to the seniors that the user will not be intimidated.<sup>166</sup> The users’ stance must be one of commitment and immovability, especially when made by seasoned female faculty because it sends a clear message to the newer female faculty that the struggle is real and ongoing.<sup>167</sup> When female faculty have done their jobs, and continue to do so with

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<sup>164</sup>Marquita Harris, This Is Why #Black Women at Work Has Gone Viral, March 28, 2017, Yahoo.com/beauty, <https://www.yahoo.com/beauty/y-blackwomenatwork>, last visited March 29, 2017.

<sup>165</sup>John D. Casnig, *The Seven Veils of the Onion* (2002-2003) (“the onion is used metaphorically to describe sequentially removable lawyers that conceal important something . . . but only by peeling its many lawyers, can one reveal whether it has a sweet heart or a rotten core.”), last visited March 30, 2017.

<sup>166</sup>Marquita Harris, This Is Why #Black Women at Work Has Gone Viral, March 28, 2017, Yahoo.com/beauty, <https://www.yahoo.com/beauty/y-blackwomenatwork>, last visited March 29, 2017.

<sup>167</sup>*Id*; Judith M. Havemann, *Great Expectations*.



integrity, they should not be patronized and cut-off after meeting the standards for promotion to the next level.<sup>168</sup>

Nevertheless, female faculty must prepare for this unfortunate and foreseeable gender-biased pattern and practice that continues to permeate the academy. Any female faculty member or woman in another professional setting that does not think that she can be subjected to this kind of conduct “is living in a dream world.”<sup>169</sup> Seasoned female faculty have weathered gender-biased practices for years.<sup>170</sup> The symbiotic relationship discussed above is essential effectively to address and correct decades-long, gender-biased patterns and practices.

Finally, if GTMS<sup>171</sup> and the aforementioned recommendations are unsuccessful, the GTMS<sup>172</sup> user may have to resort to the ultimate external

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<sup>168</sup> Marquita Harris, This Is Why #Black Women at Work Has Gone Viral, March 28, 2017, Yahoo.com/beauty, <https://www.yahoo.com/beauty/y-blackwomenatwork>, last visited March 29, 2017.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’

<sup>172</sup> *Id.*

remedies. External remedies include, but are not limited to, the timely filing of a complaint with the U.S. Equal Employment Opportunity Commission (the “EEOC”),<sup>173</sup> which generally requires complainants to exhaust EEOC’s administrative procedural steps. The EEOC has several options available to resolve complaints, but ultimately a complainant may receive a right to sue letter from the EEOC<sup>174</sup> or the Justice Department<sup>175</sup> depending on the circumstances. The right to sue letter is necessary to file a federal law suit that may, *inter alia*, assert claims under Title VII.<sup>176</sup> Remedies may also be available in state court. If the user decides to pursue remedies, the user’s well-documented and

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<sup>173</sup> U.S. Equal Employment Opportunity Commission, [https://www.1eoc.gov/federal/fed\\_employees/lwsuit.cfm?enderforprint=1](https://www.1eoc.gov/federal/fed_employees/lwsuit.cfm?enderforprint=1), last visited March 3, 2017 (“Generally, the law requires that you first try to settle your discrimination complaint by going through the administrative complaint process before you file a lawsuit.” *Id.*)

<sup>174</sup> 29 C.F.R. 1601.28 (1974).

<sup>175</sup> Memorandum of Understanding Between The U.S. Equal Employment Opportunity Commission and The U.S. Department of Justice – Civil Rights Division Regarding Title VII Employment Discrimination Charges Against State and Local Governments, Discrimination Charges Against State & Local Governments, March 2, 2015, <http://www1.eoc.gov/laws/mous/eoc-doj.cfm?renderforprint=1>, last visited March 30, 2017.

<sup>176</sup> Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1964).

detailed record (i.e., GTMS<sup>177</sup> Notebooks) will be invaluable during the external process.

## V. CONCLUSION

“The class perspective argues that classes reproduce themselves and continue to occupy powerful positions.”<sup>178</sup> However, empowerment in the academy “cannot be equated with women simply occupying the same positions as men”<sup>179</sup> in the academy. Female faculty “need to have an integral and critical role in establishing new patterns of thought and behavior...that reflect the principle of the equality of women and men.”<sup>180</sup> In the academy, “classes reproduce themselves and

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<sup>177</sup> “Gender-sensitive Tracking and Monitoring System”-- the ‘GTMS.’

<sup>178</sup> Jeffery Pfeffer, A POLITICAL PERSPECTIVE ON CAREERS: INTERESTS, NETWORKS, AN ENVIRONMENT, Research Paper No. 994, Handbook of Career Theory (edited by Michael B. Arthur, Douglas T. Hall, and Barbara S. Lawrence (1988), at 5.

<sup>179</sup> BIC offers expanded perspective at CSW, Baha’i World News Service, <http://news.bahai.org/story/1156/>, last visited March 26, 2017 (discussions at the United Nations Commission on the Status of Women).

<sup>180</sup> *Id.*; UN Women (Globally, UN Women specifically works to create gender equality and women’s empowerment. G.A. Res. 64/289, ¶49m U.N. Doc. A/RES/64/289 (July 21, 2010) (reissued for technical reason on Sept. 13, 2010).

continue to occupy powerful positions.”<sup>181</sup> This class reproduction must be disrupted. Queens may help other females to play whichever professional role they are capable of achieving: pawn, knight, bishop, rook, queen, or king.

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<sup>181</sup>Jeffery Pfeffer, *A POLITICAL PERSPECTIVE ON CAREERS: INTERESTS, NETWORKS, AN ENVIRONMENT* (1988), at 5.