



GW Law Faculty Publications & Other Works

Faculty Scholarship

2023

The Talk: Centering Black Law Students in Discussions About Race in Clinical Teaching

Carmia Caesar

Follow this and additional works at: https://scholarship.law.gwu.edu/faculty_publications



Part of the Law Commons

The Talk: Centering Black Law Students in Discussions About Race in Clinical Teaching

AUTHOR'S NOTE

~~As teachers, when we speak and write as if there is a centralized lesson, a single conversation, we ignore the countless conversations that marginalized students have with their parents, teachers, mentors, and one another just to survive in a space that was not created for them as its principals, but rather imposed upon them as its collateral.~~

This essay is a love letter for black law students who, if they are like I was during my time in law school, experience law school at its margins. I have been resistant to explaining why this essay is so important for white clinicians to read because proffering such an explanation is antithetical to why I am writing. This essay provides access to an intimate conversation. Even addressing its value for a white audience centers whiteness in a conversation to which the white audience is not a party. An eavesdropper does not have permission to ask the speakers to speak up.

This piece is the publication of a private conversation. It is not secret, but it is sacred. It should be read and used by any clinical professor who wants to learn more about one of the conversations that happen when they are not around. Anyone who finds any of these words enlightening has been teaching in the dark, blindly throwing punches at a Goliath that blankets and permeates every aspect of our profession. It should be read by any white clinician who understands that black students have a unique experience in

experiential settings, particularly when they work in offices that serve indigent, black clients. Because their experience closely mirrors my own clinical and externship experiences as a black student in a white institution more than thirty years ago, I have written to them.

Any reader will benefit from reading this piece, particularly faculty who exacerbate injury by teaching race and bias solely through the lens of the attorney client relationship where the actors are white and the acted upon are black. The introduction and centering of race only in the paradigm of the Great White Hope is damaging to all students because it confines their study of race to an artificial binary that reinforces a double helix of race and privilege.

PREFACE

In 2015 I co-edited *Bias in the Legal Profession*, a chapter in the 3rd edition of Learning From Practice, a widely used text for law school externs. At the time, I was in my 10th year of externship teaching and my 5th year as the Director of Externships at Georgetown University Law Center. The chapter was important and necessary, and narrowly escaped being cut from the newest edition. Two years earlier, at a focus group hosted by the editors at Externships7, the national conference for externship teachers, the editors reported that the third edition would not have a chapter on bias. They had deleted the chapter on bias because they were adding a chapter on cultural competence. Keeping both, they explained, would be duplicative.¹

¹ Their logic disclosed their presupposition that the necessary competence for law students entering practice settings was exposure to a module on cultural competence. Years later, with the 2022 modifications to ABA Standard 303, such a class would be the second look, the first taking place at orientation

It must have seemed to the editors that bias and cross-cultural competence were not only interchangeable, but also supplemental, capable of being omitted, perhaps to be picked up again in a subsequent term. But they were mistaken. Bias is not an elective component of a syllabus that a teacher can choose to leave omit from the syllabus in a given semester. It is wholly distinguishable from the skillset that falls under “cultural competence.” If we are being honest, it is a defining part of who we are as individuals, certainly who we are as lawyers and law teachers. To me, the editors’ plan to omit the chapter on bias was akin to teaching marine biology and electing to leave out any mention of water. Bias is not something that disappears like the foam of a white cap in the ocean, except inasmuch as it is the ocean itself. As someone who is routinely the target of bias, I do not have the liberty of experiencing bias during only the third week of each 14-week term. Bias cannot be flattened out, three-hole punched, and bound as part of a supplemental reading packet. Bias exists in legal practice the way that ethics exists in professional responsibility - ever present, inseparable, incapable of being excised from the context in which it occurs. It is simultaneously invisible and palpable; unspoken yet dominant.²

The editors were removing the chapter on bias, and I was outraged. I explained to them that as a black person they were cutting me out of the book. If I were a law student, I explained, I would look through the table of contents, read the introduction and the two chapters about race issues, daring the authors to get anything wrong. I would look at a book with 15 chapters in total and only two chapters dedicated to race and conclude that the rest of the book was not for me because I would have presumed that if they

²See, Keep the Patels, Danisha Brar 2017.

took the time to spotlight and highlight and label what was about me/about race/about culture then the rest of the book must be for everyone else.³ In spite of my frustration, or perhaps because of it, I accepted their invitation to work on the book.

Learning from Practice, 3rd Edition

Throughout the editing process, my co-author was unfailingly committed to expanding our chapter's audience. Surely, I thought, with me in the process, we could channel the work and effort of this critical chapter so that it not only included, but centered, the students who experience law school and legal education at its margins. To alter the perspective from which the earlier edition of LFP had been written, we widened the reach and broadened the scope of the material.

Our goal was to create a Bias chapter that was more inclusive than the one in the previous edition of the book. We presented more varied student and attorney experiences. We moved beyond the binaries of black and white, male and female that displayed our heterosexual, Judeo-Christian privilege. We added perspectives and voices that in hindsight had been strikingly overlooked. We found essays written by attorneys with whom neither of us visibly had anything in common. With the help of talented research assistants, we added video and audio content that underscored the relevance of the topic through both its recency and accessibility. When the chapter was completed, we had seemingly included everyone.

³ If you don't eat meat or dairy, and I tell you as you approach the buffet table with more than a dozen types of food that 3 specific dishes are vegan, you have learned in your lifetime of not being considered at the center of the planning, that the rest of the food is not for you.

We believed ourselves to have been successful. We felt triumphant. I felt like the person who holds the doors of a subway car open so that one last rider can squeeze through the closing doors. I felt like a guardian, a protector of the students like me who would use the book in their externship seminars. I would capture the students who drift away and disengage without even being missed. I would be the catch-all, the sweeper, the safety net. I would be the trap over the drain.

And yet, together, the two of us got it wrong.

Coming Up Short

The chapter worked well enough at a large predominantly white institution (PWI). I heard from peers around the country that the chapter resonated with their students as well. More particularly, the essays authored by writers from historically excluded groups resonated with the students from those same groups. My colleagues forwarded the moving reflection papers penned by their students⁴ in response to particular essays. These students had existed at the margins of their institutions, and for the first time, someone was writing their stories, giving words to experiences that mirrored their own, or foreshadowed for them what lay in store. The chapter appeared to be a resounding success.

But a year later, when I tried to teach the chapter at Howard University School of Law to a room full of students of color, it fell flat.

⁴ With student permission.

It could be that as editors we fell into the trap of trying to make sure that everyone, particularly our majority white students, felt comfortable⁵ with our topic. In so doing, our failing was not solely the pre-supposition that the everyone to whom we were writing was white. Rather the failing was that by not acknowledging or identifying that the target audience was a white reader, we further perpetrated the very othering and marginalizing that we sought to combat. We intuitively and subconsciously had reinforced the default identity of whiteness. We were guilty of centering whiteness in our failure to identify whiteness as present and central to our writing.⁶ I had handed my students a guidebook that was written for someone else's journey. Without acknowledging it, or explicitly stating it as the objective, we had put together a chapter for white students. More specifically, we had put together a chapter for heterosexual, Christian, able-bodied, at least middle class, white students.

My HUSL students were none of those things, and they silently let me know. Some of their faces were blank. Others were accusatory, seemingly asking how I, of all people, could get this wrong. Still others were painfully knowing and dismissive. I had, after all, just come from a white institution. Even worse, my insecurity over not being an HBCU grad made me feel as though the words “clueless” and “sellout” were tattooed on my forehead. Ironically my 3 years at Harvard Law School was the blackest experience that I ever had, and suddenly it was obvious.

⁵ To paraphrase a comment made by Professor Susan Brooks, “Its not about being comfortable, it’s about being comfortable with being uncomfortable.”

⁶ The simultaneous dominance and ubiquity of whiteness, renders it at once invisible and omnipresent. The *tromp l’oeil*, is that it is a prism that alters, distorts, and colors reality.

As black people in law, it is more likely than not that we know or have learned how to interact with white people. We read about white people in nursery rhymes and history books. White people are our senators, and overwhelmingly our representatives, our judges, and the people who play them on TV. White attorneys populate the upper management of the offices that we aspire to join. In the United States, there are endless representations of white people with law degrees anywhere you look. For white students, the same is true. They have the same never-ending representations of white people in the legal profession in positions of authority.⁷

By contrast, for many majority students, knowing how to deal with people who are not white is a competency that they will need to acquire in law school if they have not done so through life experience. Segregated residential, education, recreation, employment, and worship⁸ in the United States has provided a largely isolated experience for whites. So necessary is this exposure and so evident is the deficiency, that the American Bar Association passed Standard 303(c), mandating that law schools introduce issues of bias, cultural competency, or racism upon entry into any ABA accredited institution. What this Standard suggests is that for the majority of people entering law school, exposure to these issues will be new. What that means for black students is that for the majority of their classmates, exposure to them will be new as well.

⁷ This is not the experience of black immigrants who in their home countries see themselves in every corner of society. As a colleague from the Caribbean reminded me, "Back home, everyone looks like me, from the bottom to the top."

⁸ "I think that it is one of the tragedies of our nation, one of the shameful tragedies that 11 'o clock on Sunday morning is one of the most segregated hours, if not the most segregated hours in Christian America." Reverend Dr. Martin Luther King, Jr., April 17, 1960 Meet the Press.

Yet how bad is the problem that the ABA is mandating a component at orientation? How foul is the water that we have to boil it first? How virulent is the ignorance that we are taking the precaution of intellectually masking up before we even get to *Penoyer vs. Neff*, or perhaps more accurately, *Terry vs. Ohio*, or *People vs. Getz*?

This essay is intended to alert black students to the possibility that there will be more hurdles to clear in law school and law practice than just the course material. Just as black parents caution our sons to be careful when they leave the house, afraid of all of the normal things as well as the things that have been and will be imposed upon them as black people - our normal. This piece will similarly serve as a caution to black law students. Moreover, my hope is that this piece shifts and expands how bias and race are discussed in clinical legal classrooms.

PREFACE TO BLACK LAW STUDENTS

I want to be clear that I experience you as glory. I experience you as hope, not because I seek deliverance, but because you are emblematic of our collective dreams, the answers to our questions, including the ones that we have yet to form. You are the books that none of us thought to write; the patent of a playground idea that grew into an empire. You are splendid in all of your nuance and possibility manifested in your defiance of the monolith of blackness.

I come from a long line of tough women, smart women, educated black folks. To me you are not an enigma. You are my expectation. And anybody's suggestion of anything other than that fills me with rage. If you were not great, you would not be here. The great ones before you were stopped at the door. You are not historically

underrepresented. You are historically excluded. You are Pauli Murray is a world that has only heard of Ruth Bader Ginsburg.

I have written this talk for you because not everyone sees what I see. In this life and this world, your professional space, where the stakes are stakes of privilege, I hope that you will insist upon your rights - your right to be in the space, your right to be in a classroom, a clinic, a law review, a law office, assigned to a particular legal matter. The Talk that you heard before you got here had higher stakes. Someone who loved you wanted to be certain that you would make it home alive. They may have instructed you to hold your tongue. Their counsel served you well, kept you safe in other spaces. I have written this Talk to shepherd you through law school.

WHY THE TALK IS NECESSARY

As the mother of three African-American boys, I have spent the last sixteen years giving ever-evolving versions of The Talk to my sons, each time withholding a little less of the soul-crushing reality of what it means to be part of a group that the majority of Americans are taught to fear and loathe.⁹ When he was about ten years old, my oldest son asked me from the back seat of our car when people would stop thinking that he was cute and start being afraid of him. He was too little to sit in the front seat, but not too little to begin to have the fear that keeps black men alive. We had not covered the extra-judicial killings of black men in our talks, but he understood clearly that he was

⁹ It is part of what it means to be an American. In my personal experience, it is one of the early lessons that immigrants learn as part of their survival, that is if they have not learned it prior to their arrival here. My father, an immigrant and a black man, would never identify as a black American, and cautioned my brother to follow suit. "You are not like them," were his exact words.

living in a world that may not be the same for all people, and that the absence of sameness, though not arbitrary, is certainly unfair, and predictable in its unpredictability. What I realized when I returned to teach at an HBCU¹⁰, was that I had to have The Talk with my students too.

On my first full day of class¹¹ at Howard, one of my students shared her surprise that all of the attorneys in her federal agency office were white. She was surprised that all of the support staff were people of color, mostly black women like herself. She was shaken by the optics. She felt obliged to spend time with the support staff who were clearly excited to see themselves reflected in the attorney staff, even if that staff person was a legal extern. “They came into my office,” she reported, “shut the door, and kept saying how glad they were that I was there. I could tell that it was important to them that I was in the office. At the same time, I was also conscious of my supervisors and the other attorneys, and wondered what they were thinking, probably that I should be working.” Another student described the reaction of his co-clerks from other law schools when he introduced himself as a student from Howard University School of Law (HUSL). “We were all introducing ourselves. Everyone was friendly, eager, and interested, but when I said Howard, they all got quiet.”¹² “Another student spoke about recognizing herself and the people in her life in the staff of the courthouse cafeteria.

¹⁰ Ironically, when I was teaching at a large PWI, I was so focused on not alienating my white students during discussions of bias, that I did nothing to address the. Students who were most likely to be the target of bias.

¹¹ When I reference class, I am referring to the externship seminar, a required one-credit course for students in field placement settings.

¹² Weeks later, another student added that one clerk only spoke to her about hip-hop. “I mean don’t get me wrong, I have nothing against hip hop. I mean I like hip hop. And he actually is a nice guy. It’s just that when I see him coming, I know that he is going to bring up something that he thinks is urban, as if we are

This was not my class on bias. I had not thrown out a prompt about race or difference. This was my first impressions class. This was the, “Who would like to share about their first day?” class.¹³ And their answers, though different in detail, were really all the same. Their presence in government agencies, courtrooms, legislative offices, non-profits, in the role of an attorney, even in a municipality that until 20 years ago was known as Chocolate City, was exceptional. They were not ready. They were not prepared. They had not been warned to steel themselves. They could not envision the degree to which the protective, majority black space in which they were being educated differed radically from what awaited them on the outside. They did not know that one of the most useful tools that they would bring to work was a poker face.

THE TALK: TO MY FORMER STUDENTS

I have written these words because for the better part of the last fifteen years, I have watched law students enter legal practice settings with varying degrees of readiness. You are ready to do the work. Your journal positions, moot court, and trial advocacy commendations underscore your ability to perform outside of a controlled classroom environment. Everything that you have done to get to this stage of your education underscores that point. What you may not be prepared for, however, are the tripwires in other people’s minds that can slow you down, cause you to stumble, or knock you out

not all law students who chose the exact same placement. Clearly, we have other things in common. It’s just kind of exhausting.”

¹³ This is the class where students typically describe arriving at a federal agency on a day that all of the attorneys in their assigned division are teleworking, or not working because they work 80 hours in a 9 day pay period instead of ten; having to wait outside of Superior Court in the chill of a January morning, or the stickiness of a DC August because they haven’t gotten their ID and the security line is snaked back and forth inside of the glass vestibule such that not one more person with their belt and tennis shoes in their hands can fit.

altogether. I do not think that there is anything that I can say to make you completely ready, but I hope that you can maybe be a little less surprised, a little less vulnerable, a little less wounded when things happen that defy logic, make you wonder if you missed something or misunderstood a situation. I want you to have a strategy to extricate yourself from the situation that sends you walking briskly to a colleague's office (if you are lucky enough to have such a colleague), closing the door behind you, and exhaling so deeply that they knowingly ask, "What happened?"

And there you will safely recount the thing that just happened: being called the paralegal, the interpreter, the name of the black attorney who left the office three years before you arrived. They will listen and nod knowingly as you describe your interaction with your trial chief/managing partner/client. The slights can happen by anyone, the lawyers - associates, Assistant US Attorneys, public defenders, partners, senior counsel, staff attorneys - secretaries, paralegals, law clerks, security guards. I am writing to you as a class of predominantly black and brown students about what I have experienced in practice and through the experiences of countless students, in supervision.

I am warning you about bias. Bias affects the way that people think and act in familiar situations and provides touch points and guidance in unfamiliar situations. It tells us how to treat certain people, when to approach a stranger as a friend or a foe¹⁴. As a black person, and in practice a black attorney, it dictated how I was treated - at work, traveling

¹⁴ See generally, *Biased: Uncovering the Hidden Prejudice That Shapes What We See, Think, and Do*, Jennifer L. Eberhardt, Penguin Books, 2019.

to work, entering the building, riding the elevator, doing my job. Bias, wrestled from me the control of my own narrative.¹⁵

Discussions about bias, are likely to feel upside down or inside out

Even if a conversation is intended to be about racialized bias, it will feel like it was not conceived with you in mind. Often, conversations about bias wrongly center white people, but not in a way that encourages self-reflection or self-awareness. The conversations allow white people to entertain race as voyeurs. We present guest speakers and read essays by black authors, inviting white readers and observers to understand the black experience as if black people are a monolith whose can be excised and distilled into 2000 words double spaced 12pt Arial font. And because this lecture or class or seminar is labeled something like race or bias in law schools or the legal profession, you may feel compelled to attend and engage with both the material and the participants, because if it is labeled, perhaps it is your only chance at relevance.

The reason that I say that it is upside down is that as a person who is likely to be the target of racial bias in the profession, the conversation replicates that same structure. You are relegated to a fact pattern. Whatever examples are given will be projected onto the canvas of what your classmates know (or don't know) about black people.

Stand the line. Do not get caught up in the life-sucking cycle of trying to educate the white people around you. Bias cannot be minimized by your professor picking the proper narrative about the experience of a black lawyer at a top tier AmLaw 100 law

¹⁵ Kujichagulia – self-determination, the second of the Ngozo Saba, the seven principles of Kwanzaa.

firm. Bias will not be minimized when white lawyers understand you. Bias will be minimized only when white lawyers understand themselves. Good people do bad things. And there is a lot of real estate between not inviting someone to lunch, not putting them on a case (or putting them on a case and now giving them substantial work), and joining the Chevy Chase Club.

You cannot afford to exhaust yourself by teaching you classmates, your faculty, your supervisors about your experience as the target of bias. It is the perpetrators of bias who must engage in the work, the serious study, the self-reflection. Not once as a domestic violence attorney did I expect a survivor to engage batterers about the impact of abuse.¹⁶ In no way was the expectation that is foisted upon black students, that they respond to inquiries on behalf of all black people, acceptable in other dynamics where one group has and continues to exact harm upon another.

If the conversation is not going in a direction that communicates clearly that the onus is not on black people to correct bias, it is going in the wrong direction. If you so much as smell the suggestion that we are all capable of bias, assume a defensive posture because it is unlikely to be a conversation about neuroscience, it is much more likely to be a conversation that explains why nobody is guilty because everybody is guilty. If you want to maintain the energy to engage with the material, do not take on the burden of describing the black experience in the fifty-five minutes in your law school seminar, or in your 3 minutes of the 15-minute break-out section of the 1-hour orientation on bias.

¹⁶ This is not to suggest that such a conversation did not occur in structured, controlled settings.

It is exhausting.¹⁷ Your energy is limited. Protect yourself. The invisible labor in which we engage, the invisible burden that you shoulder has the capacity to eclipse the labor of law school. Do not let that happen. There is time to be thoughtful. There is time to engage. There is time to be down for the cause. The struggle will be here after finals.

Be Prepared: bias can hurt you because sometimes you have no reason to see it coming.¹⁸ It does not carry a tiki torch or wear a hood. You will not hear it rumbling from across the horizon.

Nothing is more important in our profession than preparation.¹⁹

The reason preparation is critical is that surprises typically are not good in an adversarial setting. Through preparation, we minimize the likelihood that something that we could have known - which by definition, is something that we should have known - will manifest itself at an inopportune time. If we are prepared, we can plan. And if we prepare well enough, we may even be able to anticipate the unexpected. It is with this backdrop that I write to you about bias in our profession. This too is preparation.

Bias has the capacity to be a debilitating surprise. It can stop you in your tracks. It is so pernicious precisely because you do not see its approach, and because it is unleashed

¹⁷ I was working with a group of upper division law student fellows who were going to be discussing Jennifer Eberhardt's *Biased* with incoming 1Ls. A student of color wanted to know (rightfully) how she was supposed to ask a student of color to open up to a group of white people that she had never met, about bias. How and why should this hypothetical student feel safe? My answer was that I didn't know that a student of color should be made to feel safe in unsafe places for the benefit of her white peers, to enrich the discourse.

¹⁸ It is like Radon, an odorless gas that is nevertheless toxic and potentially fatal.

¹⁹ Know the facts if you do not know the law. Anyone who has successfully taken a bar exam or appeared before a judge and gotten an unexpectedly favorable result understands this basic principle of practice. Know the file better than anyone else in the room. Certainly, know the file better than your supervisor. Create an identity for yourself that makes you indispensable as you begin the years-long process of building your reputation and identity as an attorney and becoming someone who is indispensable based upon your skill, wisdom, and experience.

innocently, sometimes even warmly.²⁰ Bias in legal practice lets you know that you are not experienced the way you experience yourself. Bias tells people who you are, even if it is inconsistent with who you believe yourself to be.²¹ And as a younger colleague who had recently transitioned from practice pointed out to me, if you are not prepared for the ocean of bias that awaits you, it can begin to taint how you see yourself.

My desire to interrupt bias as a black girl law student and then black attorney are why I kept lacrosse goalie and law school rowing on my resume long after my college and law school activities were relevant. I was practicing a lesson that I imagine you have learned already, which is that you will need to expend your precious energy: work energy, networking energy, life energy, ensuring that someone else's bias, someone's professional equivalent of reasonable fear does not make them afraid of you, uncomfortable with the idea of you, intimidated by you, or just wrong about who you are.

In legal work settings, cases of mistaken identity can occur right before we take a deposition, negotiate a deal, make a pitch, or appear before a judge. Your ability to keep moving when this happens to you is critical to your success. In recent years, the term microaggression became the moniker for having someone slosh their bias onto

²⁰ A colleague in New Haven, CT once commented that it must have been difficult for my mother to navigate medical school as a black woman in the 1970s. She was truly trying to build relatedness, but there was nothing about being black that was a challenge for my mother in Washington, DC at Howard University in the 1970s. The challenge was having 3 children under 10, being newly divorced, being 32, looking 22, and having to deal with the sexism in the medical profession. Coincidentally when this same colleague shared the name of her ophthalmologist, she described him as being "short and Jewish, like all ophthalmologists." As the daughter of two Howard University medical school graduates, that was not my experience.

²¹ In her 2014 TED Talk, "Color Blind or Color Brave", Ariel Investment Executive, Melody Hobson, describes arriving at a venue to deliver a speech with then US Senate hopeful Congressman Harold Ford, Jr. The event was an editorial board lunch for Ford, being hosted to raise the Congressman's profile in a tight election for the vacant Tennessee Senate seat. When they arrived at the reception desk, they were quickly shuttled through a series of back corridors to a stark room – *where they were asked to produce their service uniforms.*

you like a messy partygoer zigzagging his way back from the keg, a solo cup in each hand. Microaggressions are perhaps micro to the perpetrator because they intend(ed) no harm. As the target or recipient of these innocent missteps or misstatements, the person who was slogged upon, you must maintain your composure. Not because your frustration, anger, or even outrage is not legitimate. Any feeling that you have is reasonable. But your reaction must be tempered.

You must minimize your reaction because to use a sports metaphor, you have to keep your head in the game. In practice, the perpetrators are not nearly as obvious as a Sigma Chi with a red solo cup. They are more often the judge, the partner, a seasoned administrative assistant, someone's spouse, a co-clerk, or a receptionist. Even if they are opposing counsel, you must manage microaggressions as you would any other unexpected hiccup in your day, even if this type challenges or questions your belonging, your legitimacy, and your place at the table.

Bias will hurt your practice in ways that you cannot anticipate.

As you enter practice, you may get overlooked when someone is building a team or a case, and it could be because of the color of your skin. No one will say that is why, but when they are thinking about who they want to work with, or with whom they have successfully worked in the past, you may not come immediately to mind. The slight is not rooted in hostility, but familiarity, and in your case, a lack of familiarity (or rather familiarity with professional grouping that do not include you). Homogeneity does not

look strange when it is familiar, when it replicates familiar patterns.²² So when the team gets built, it does not look strange that you are not on it. When the impromptu gathering happens after work, or someone needs a fourth for a round of golf, or a meeting with a client or stakeholder that would be a formative learning experience, it may not occur to them to invite you to come along.

These informal gatherings and relationships are critical to your development. Each accepted invitation has the capacity to develop not only into your next social invitation, but also into your next project invitation, your next shadowing opportunity. These connections are how you meet your champions - both your mentors and your sponsors.

Without these relationships, you may not receive the feedback that you deserve. You may be more harshly critiqued by a superior who is not in touch with their own biases. You might also be less harshly critiqued by a supervisor who is struggling to overcompensate which will cause you to miss out on the feedback that you need. Your identity will simultaneously be ignored, unseen, and in the foreground of how you are experienced. If you recognize it and see it coming, you will need to take on the burden of engaging and creating the relationship that you need.

To be proactive is to engage in the invisible labor of making people with comfortable with you, which entails demonstrating to them that you belong where you are.²³ You will

²² I have never looked around a black church and wondered why there are no white people. It stands to reason that nobody misses black faces in spaces that have always been white.

²³ In the 90s when I was a summer associate, there was no such thing as business casual. I stopped to see a friend after work on my way home, and accidentally locked my keys in my car, a well-loved jeep, that was decidedly not fancy. As I stood anxiously in my conservative silk dress and sensible heels, he painstakingly wedged a coat hanger into the driver's window to reach the lock. "That better be your car!" accused a white man walking past.

need to shoulder the burden of ensuring that you are building relationships with the lawyers to whom you report. You may be one of few, you may be the only, you may be the first. You will have to say yes to every invitation to do work, to stay late, to come in on the weekend. You will have to say yes to every invitation to do anything social, no matter what it is, no matter when it occurs. Your resting face should be warm and inviting, dispelling the mythology that you are angry or intimidating.

Bias is baked into the practice.

Now more than ever, in the wake of 2020, the Summer of Floyd, the heightened attention to the extra-judicial killing of black men, the never-ending fear of and attack on black bodies, there is no denying that black people in America live a different experience than other people in America. The legal profession is no less unfair. It is biased against you, and people who look and sound like you.

Our most sacred and seminal text makes clear that this is not for you. Your value was that your body could be counted as three-fifths of a person to boost southern representation in the legislature. Today, the 64,000 BIPOC federal inmates²⁴ (the term historically underrepresented would be a bit of a misnomer in this instance) who are not protected by the 13th Amendment - most are equally disenfranchised, but their bodies are even more valuable to the states in which they reside.²⁵

²⁴ Need citation.

²⁵ See generally, *Captive Labor: Exploitation of Incarcerated Workers Report 2022*, The ACLU & The University of Chicago Law School Global Human Rights Clinic.

The American Legal System was constructed to exclude and oppress you. Go back and read about the Constitutional Convention.²⁶ Go back and read about who was included in the Declaration of Independence.²⁷ Go back and read about the three-fifths clause,²⁸ the fugitive slave clause,²⁹ the slave importation clause,³⁰ and the capitation tax clause.³¹ Understand the purpose of the Electoral College.³² But by no means should you let the modern iterations of that exclusionary mission³³ get in the way of yours, of the work that you are here to complete.

Just know that in the delicate filet that is your legal career, you will bite down on a bone. Do not try to ignore it or swallow it. It is real and sharp and can be deadly. Remove it, and proceed, and just know that it was not the only bone. There will be more. Some may be smaller, and some even more dangerous. Remove them. And keep moving. I am not advising you to live and work in anticipation of slight or insult, anymore that I would suggest that someone board a commercial flight and wait for the onset of turbulence. It is just that these slights are par for the course. It is why you cannot sue the Seafood Shanty on Route 6 in Buzzards Bay, MA if there is a bit of shell in your chowder. You are eating food that was dug out of the sand. There is always a chance of grit in the final product.

²⁶ See generally, Slavery and the Founders: Race and Liberty in the Age of Jefferson, pp 1-33, Paul Finkelman, M.E. Sharpe, Inc., 1996.

²⁷ Id at Chapter 5, "Thomas Jefferson and Slavery I" citing Thomas Jefferson, *Notes on State of Virginia*, asserting the distinction between enslaved Africans and Romans, and delineating the ways in which he believed Africans to be "inferior to whites in body and mind." See also, John Hope Franklin (cite needed).

²⁸ Id at pp.3, 7-18.

²⁹ Id.

³⁰ Id.

³¹ Id.

³² Id at p.4.

³³ Need reference to current limitations on voting.

If you are working for social justice, especially racial justice, you will see things that will hurt your heart.

Nothing will prepare you for seeing people who look like you in cages. Nothing will prepare you for seeing people who look like you in chains that connect their ankles and shackle their wrists to their waists. They might be children. Depending upon where you work, you might be the only black or brown person in the courtroom. As a young attorney, I was frequently asked why I did not pursue a career in criminal defense. My answer was that I could not handle it. I could not handle representing people who, like me, were young and black.

The clients represented by students in Harvard's Criminal Justice Clinic were not hardened criminals. They might have driven without a license; urinated in public; punched someone in a physical altercation outside of a bar, possessed marijuana. None of the crimes were any different than the type of weekend behavior that I had witnessed throughout my education – at the prestigious Cathedral Schools³⁴ in Washington, DC; at the Claremont Colleges in Claremont, California; and finally at Harvard Law School. I remember wondering how many of my Criminal Justice Clinic classmates – classmates who are equity partner, law professors, elected officials - were guilty of the charges that were being brought against our clients.

BIAS IN PRACTICE

There is no safe haven.

There is no practice setting that is immune from bias. It will manifest itself in large law firms, in small non-profit organizations, in courthouses, and government agencies. You

³⁴ Kids from our schools were told to pour out alcohol by the police, or warned not to forget their licenses when they drove, shooed away when they jumped fences and swam in other people's pools.

may feel more prepared for encounters with bias because you are working for a large corporate entity. But these slights are no easier to weather just because they are in the forecast. Young, black associates have been part of a great resignation for years³⁵.

Non-profits offer little respite. Because nonprofits are driven by mission, you may not expect to encounter bias. You can be lulled into believing that you are among friends. Slightings of bias will seem incongruous because surely people with whom you are aligned in mission when you have chosen an employer whose purpose aligns with your values are the good ones. It would be logical to expect that attorneys who have chosen to work at an organization dedicated to the struggle for social justice, economic justice, environmental justice, racial justice of all kinds would share a commitment to creating a safe space. After all these are people on the right side of justice issues.³⁶ What I have found to be most true is that whatever exists outside of those organizations, will be replicated within their walls.

You May Be Tokenized

You may find yourself assigned to a team for the purpose of adding color. You may become exhibit A in your employer's submission for Mansfield Certification³⁷ from the Diversity Lab. Because the private sector is driven by profit, there could be opportunities for you because it makes financial sense. Law firms have diversity fellowships, HBCU fellowships that come with summer associate positions and hefty tuition scholarships.

³⁵ NALP data on black attrition from law firms.

³⁶ What I discovered in practice is that some of those people were satisfying their need for employment rather than a commitment to serving the tired, hungry, huddled masses.

³⁷ See criteria for the Diversity Lab's Mansfield Certification

Watch out for the wolves in sheep's clothing.

The bias within our profession does not reside exclusively in the hearts of bigots. Bias manifests itself in the most progressive corners of the bar. A career in the public sector will not provide you with safe harbor. Much to the contrary, it will pull you out to sea like a rip current. Presenting itself as a gentle ripple in the sea, that conceals its deadly undercurrent of self-righteousness. *I can't be biased because - I do this work; I grew up poor; I have dedicated my life to black people, brown people, poor people; racial justice, social justice - a common set of refrains with an unsettling dose of "after all I've done for you (people)."*

Its affronts flow from the mouths of the radical and woke. The same people who commit to the struggle commit racialized affronts. It is not because they are hypocrites. I have experienced bias so entrenched in the minds of my supervisors that it veered into venomous and oppressive behavior. Attorneys who had battled for the rights of women and children of color were rendered incapable of self-examination. Never did they evidence even a modicum of self-reflection, precisely because they considered themselves good people, champions of the downtrodden. They were what white saviors. For them, it seemed, it was simply implausible that they could be guilty of harboring bias.

In each instance, the offender confided in white colleagues, horrible truths about their upbringing, the racism that oozed from the mouths of the people who raised them. In one instance, a seasoned civil rights litigator cautioned a friend of mine not to be overly critical of writing by black attorneys. My friend, who is also an attorney of color, but from

a “model minority” group was stunned, not only by the substance of her advice, but also by her utter lack of self-awareness as she projected onto him her need to distance herself from her Appalachian origins. In a similar confession a faculty member confessed to her class of white students as a little girl, she offered a snack to a black laborer only to have her mother throw away the plate in disgust.

Our profession is a microcosm of society. It is stratified and color coded in ways that replicate our communities. But political convictions are no match for the biases that pervade our profession. Your supervisors and colleagues will need to disentangle their perception of you from their experience of people who look like you - clients whom they have committed their lives to saving, whose causes they champion, whose freedom they labor to secure. But you, smart and black and talented, their equal in every way except for your years of education and experience, do not fit. You will bump up against those biases when you make demands, when you challenge them in a way that we as educators are training you to do. Because when you do those things that an educated person does, you cause turmoil in their minds, in their order of things. And when they react in a manner that will feel harsh and incongruous, and outsized in its sharpness, it is simply the sound of your intellect and possibility bumping up against the restrictive framework that exists in their minds for people who look like you.

BIAS IN LAW SCHOOL
Your teachers may run scared.

It is incumbent upon your faculty to initiate difficult conversations. They are teachers. Bias is a very difficult topic. But they talk about plenty of painful and difficult topics. On the radio and in 21st century classrooms, we have become accustomed to hearing

trigger warnings. But they cannot give warnings about conversations that are not having.³⁸ Some professors will avoid discussions of race, extracting it from the facts of a dispute, but stripping away race omits key aspects of the facts upon which the dispute was resolved. Nevertheless, you may be asked to leave out race for a moment. When you are asked to put race aside, or if race is omitted or ignored, what is the alternative? Inherent in that pedagogical maneuver is a presupposition that anything that is not white adds a dimension a distraction from the legal analysis and the discourse. What are you being asked to imagine or pretend. If race is taken out, what is put in its place? What you are really being asked is to pretend that everyone is white.

Sometimes it is difficult for faculty to call a spade a spade

It is really important that faculty call out bias and racism when they see it. Some of your faculty will be afraid of saying the wrong thing. Some of your faculty will try to gloss over difficult issues, perhaps thinking that if they just ignore it, it will go away. I want to assure you that you are not mishearing or misunderstanding bias whether in the classroom or the courtroom, the halls of your law school or the halls of Congress.

Your clinics and externships should be places where that does not happen. Clinicians are educators. Most have worked in fields that share missions of racial or social justice. Sadly, good work is not enough to exempt teachers from the capacity to do harm, to wound through acts of omission, to inflict damage through missteps and poorly chosen

³⁸ When I was a 1L, as the backdrop to a discussion of reasonableness, my class read *City of Houston, Texas, Appellant v. Raymond Wayne Hill*, 482 U.S. 451 that involved an appeal of a violation of a municipal ordinance that makes it unlawful to interrupt a police officer in the performance of his duty. Hill, the appellee was arrested for trying to distract the police who were detaining his friend. After his acquittal, Mr. Hill brought a suit challenging the constitutionality of the ordinance. Both Hill and his friend were Black. The arresting officer was wearing plain clothes.

words tumble which frequently tumble out of the mouths of well-intentioned white people. If someone can stand in front of you and profess to possess the professional competency to serve black people, they need to achieve the professional competency to teach black students. If you are thinking that seems like a low bar, you are right.

Your law degree will not shield you from anything.

You will need to reconcile the reality that your law degrees will do nothing to mitigate how you are experienced and treated when you are out in the world.³⁹ You will still have to go through the extra steps necessary to make white people comfortable. You will need to go through extra steps to minimize the possibility of your own discomfort. You will forever own the burden of minimizing the embarrassment and discomfort of white people. You will say things to appear less threatening. You will build relatedness. You will make small talk. You will engage in chit chat. You will be one of black men who hums “Let it Go” from *Frozen* in the elevator to put white women at ease. For your own survival, you will become like so many black men in these spaces who make a point of introducing themselves to everyone, wearing a lot of pastel, and whistling Vivaldi.

Even allies have to be redirected.

In the fall of 2007, shortly after I joined New Haven Legal Assistance Association, I attended training in Western Massachusetts with legal services attorneys from all over New England. Not surprisingly, I was one of only a handful of attorneys of color. We probably made up a good ten percent of the room. In addition to the attorneys who, like

³⁹ See, Skip Gates arrest at his home in Cambridge; see also, Paul D. Butler on being arrested outside of his own home.

me, staffed offices in urban communities where they served clients who were mostly black and brown, I met lawyers from Pine Tree Legal Services, Vermont Legal Aid, and New Hampshire Legal Assistance. These offices served majority white communities. But what struck me – and I use that phrase quite deliberately because I felt like I was being punched in the face – was that all of the clients in the training videos were black. My recollection is that all of the attorneys in the training videos were white.

Even with a blank slate, the attorneys in charge of developing the training materials were thinking and working with an image and reality in which lawyers were white and people who qualify for free legal services are black or brown. In a workshop that focused heavily on cross-cultural competency it was clear that neither I nor the half dozen black and brown lawyers in the room had been imagined. It made clear that the only cultural competency was how to deal with poor clients of color. Our existence as attorneys as lawyers who were not white had not even been contemplated. And it was terrifying to me as a lawyer in my first decade of practice because I had presumed that I was among friends. These were the people dedicated to fighting the good fight. These were the good white people. And my existence, even if not inconceivable, was certainly far from the center of normalcy, deviant from their standard.

The people responsible for the video had purposefully reconstructed a paradigm that put benevolent white liberals in the role of attorney/great white hope and the black and brown people as the wretched of the earth - kneeling arms reaching upwards for assistance.

So in this film that was intended to teach us to have empathy for our clients and their insecurity about coming to meet with an attorney, our trainers were reinforcing the notion, particularly to the newly minted lawyers, that attorneys are white, and clients, specifically clients poor enough to qualify for services through legal aid, are black.

I remember thinking, WTF?

Find some judges of color. Find some poor white people. Do not reinforce the notion that the 22% of African Americans who fall below the federal poverty guidelines represent all black people.⁴⁰

The world, according to the legal services video has you scripted as the client, the one in need, the one without resources, with a tangled web of needs that may include housing vouchers, addiction services, criminal defense, records expungement, state assistance, food stamps, custody, foster care, child support, and domestic violence. The story that includes you as the lawyer has not been told enough times for it to come immediately to the minds of many.

Even well-intentioned people will need to contort or actively un-think what they have learned about race. It means that unless someone attended an HBCU, which flips the demographics of our population on its head, or majored in some type of black studies program, which centralizes black scholars and black history, the world order in which

⁴⁰ Similarly, your professors are responsible for creating the practice narrative. They have the privilege and responsibility of introducing you and your classmates to legal practice. Who they chose as players, who they assign as intellectual authority, how they approach difficult conversations will influence scores of attorneys in every clinic.

they have been oriented is white at its core. It means that the face that they associate with leadership will probably be white and male. It means that they will need to learn that people who look like someone other than a white person could be the smartest person in the room.

To some people you are a unicorn, to others you may be a threat.

I know now, reflecting upon my childhood, at the intersection of my quiet neighborhood, home to mostly black professionals, and 9 years of episcopal, single sex education,⁴¹ that I am rarely experienced as I experience myself. Unless something changes, you will not be either. You are likely to be experienced as an anomaly, even within the circle where your pedigree is known. You are not a four-leaf clover because those are things that exist, that we search for in a field. You are something that in the experiences and minds of many in our profession, does not exist, or to some, does not belong. The boxes in which to put you, or characters that you are meant to play do not include accomplished lawyer. And if you are a second, third, or fourth generation black lawyer - white folks may need to leave the room, gain their composure, and come back because they simply do not know what to do with you because your humanity eclipses all that they know to be true about the order of the world.

⁴¹ I had the delightful experience of growing up in Washington, DC when it was Chocolate City. My neighborhood was teeming with black doctors and dentists, lawyers and judges, teachers, and a tennis pro, one of the few black players who had trained with Nick Bolletieri. My mailman was a Howard University graduate. One of his daughter was my pediatrician. His three granddaughters, like their father, are all accomplished attorneys. My perspective was further colored by attending an all girls' school for nine years. The smartest students, the most accomplished athletes, the newspaper editor, the artists, were all girls. The president of our student government was presumed for many years to be next in line to serve as Secretary of State. This this socialization, it took me a while to understand that I was not being experienced as I experience myself.

The outcome is that you can safely be categorized as a unicorn. You can be the Michelle Obama - spoken about in superlatives and effusive deference. If you can exist as an exception, you can navigate spaces that might not otherwise be accessible to you. If you have made it this far, chances are that you have racked up some experience being the black friend. It is up to you to decide whether to accept or reject the “honor” of being exceptional.

They will not be wearing hoods.

Not everyone will greet your greatness with celebration. There will be people who will not like you, who will undermine you, who will be mean to you, and when you have racked your brain to figure out what you have done, when you have taken the high road so much and so regularly that you have run out of cheeks to turn, sometimes the only conclusion left, the only explanation, is that they don't know what to do with you.

Be vigilant, it is often the people who call themselves committed to our issues who are the most dangerous. They will look for reasons outside of themselves to dislike you. Their resentment does not square with who they experience themselves to be. How could they be advocates, social justice attorneys, and harbor racial bias? The only way to reconcile these opposing realities is for there to be something wrong with you. I worked with an accomplished black professor whose associate dean referred to her as demanding and difficult. This same dean expressed animus towards other people of color who had attended top tier institutions or came from upper middle-class families. She never had a harsh word to say about the black faculty from humble beginnings,

beginnings that were consistent with her experience of the racial hierarchy where she was the benevolent advocate, and they were grateful.

During my time in practice, I worked with many attorneys whose only intimate connection to black people was at worst, their clients, or at best their staff, but rarely their peers. You may defy all that your colleagues have experienced as the natural order.⁴² It is clear today, more than at any time in recent memory that to far more people than I ever would have imagined, you are a threat. They will not be wearing hoods.

It is not fair.

As black attorneys, the earth under our feet can shift at a moment's notice. In 2019 Harvard University bowed to student pressure not to renew the contract of its first black housemaster.⁴³ He was not the first law professor to represent a high-profile defendant who had been accused of heinous crime or reprehensible behavior. By contrast, the only penalty faced by Alan Dershowitz is that the residents gave him the silent treatment every summer when he vacationed on the Vineyard.⁴⁴ You will be held to a different standard.⁴⁵ You are right. It is not fair.

Strategies for navigating bias, surviving being the target of bias, will put the responsibility of managing the incident or condition squarely on your shoulders. It is akin

⁴² Even if they have modeled themselves after Atticus Finch, they exist at the top of the food chain.

⁴³ "Harvard's First Black Faculty Deans Let Go Amid Uproar Over Weinstein Defense", New York Times, May 11, 2019.

⁴⁴ "Alan Dershowitz's Martha's Vineyard Cancellation, The New Yorker, July 19, 2022. See also "Alan Dershowitz Simply Cannot Stop Talking About Being Blackballed on Martha's Vineyard, The Daily Beast, July 20, 2022.

⁴⁵ In September 2018, the world watched as Serena Williams was assessed a penalty for calling an official a thief and insisting that he owed her an apology.⁴⁵ The Internet blew up with footage of John McEnroe, André Agassi, and other white men cursing, spitting, smashing rackets, but receiving no such discipline. I recognized her rage.

to having to delicately tell someone that they keep running over your foot with their car.⁴⁶ As black people our ability to succeed in majority settings hinges in part on our ability to make people who do not look like us comfortable with our difference. The incongruity of being tasked with enduring harm with grace, the expectation of patience in the face of slight, oversight, and insult will become a familiar dance if it is not already. I cannot think of any other dynamic where the person who has caused the harm is so quickly excused by the person who has been harmed by their hand.⁴⁷ Your ability to help other people deal with their biases is a remarkable burden.⁴⁸

Intent is not a shield.

Because we associate bias with racism and racism with very bad people, it is inconsistent with how good people experience themselves to acknowledge that they harbor bias. That makes it very difficult to have a conversation with an individual who has learned that intent is a requisite element of any crime. There is no involuntary manslaughter equivalent in bias. Someone doing what they have always done can cause harm. Someone making staffing decisions based upon how they have always

⁴⁶ The dynamic is similar to dealing with a neighbor or a roommate who engages in harmful or offensive conduct. The distinction is that the behavior is more than annoying, it is damaging – to your psyche, your soul, and for the practical reader, your career.

⁴⁷ We are not the only group so burdened. And many of us experience racial bias at the intersection of multiple identities. Our gay colleagues have to decide if they are going to act less gay, something for which one of my students was praised (by a gay, more senior attorney) when he was a summer associate. Some of Muslim sisters have to decide if they are going to leave their heads uncovered. Do you want good service, do you want good assignments, do you want a good outcome for your clients, do you want a good outcome for your firm, who you want to survive to describe your encounter with the police?

⁴⁸ While describing this article to a former colleague he kept asking me questions about white people, how they fit in, how I would convey my ideas without alienating them, how I would teach students not to miss out on opportunities with white people – potential allies and mentors. In retrospect, I should have said that it does not matter for the purposes of this piece. This piece is about survival. Mentors are a luxury for lawyers who manage to enter and exist in the profession with their minds and souls intact. I will introduce white people later, like solids. Right now, for all of the parents who are reading this, I am just trying to get through rice cereal.

staffed cases can cause harm. For you, not being seen the way that you see yourself - smart, capable, industrious, will cause harm.

What this means is that your very valid feelings and experiences of bias can be negated by a perpetrator, or the person in whom you confide and share your experience of being the target of bias might negate your experience by explaining what a good guy the perpetrator is. You will be asked to revisit your memory of the offense. You will be given an explanation of why your experience of the offense is not accurate. You will receive detailed evidence of how kind the perpetrator is. You will be shown exhibits that negate any notion that you have been wronged. You will receive a thoughtful list of the reasons that your telling of the story is so hard to believe. Hold onto your story.⁴⁹

They might not be trying to gaslight you, but that is exactly what will have happened.

People will make reasonable mistakes. The reasonableness of bias excuses countless missteps and wrong doings in our profession. You will be asked if you are a defendant, or a co-defendant in a criminal matter. You will be asked if you are a party in almost any civil legal services matter. When you become an attorney, you will be asked if you are the interpreter/social worker/client/court clerk/mediator/paralegal/secretary/anything but

⁴⁹ We know as advocates that for so many of our clients the opportunity to have their story heard is also as important as the relief that they seek.

a lawyer in any legal setting.⁵⁰ Reasonable fear excuses the extrajudicial killing of black men. Bias is dangerous.⁵¹

We do it to ourselves.

We do it to ourselves.⁵² We see ourselves and think that we do not belong. We guard the house as if it were our own. Given the chance to act as gatekeepers, we employ the same standards that we have internalized to inform our assessment of who belongs, and who is an intruder. Some of you will need to decide if you should whiten your resumes - leaving off activities, adding new ones, or even altering your names.⁵³ Before you decide if such an act would be selling out, you should probably know that it works.

You are not the only one with the blues.

The legal profession is difficult for black people. It is difficult for other people too.⁵⁴ This is a difficult profession for members of the LGBTQ community. This is a foreign world for students who are first generation lawyers, which in some cases is compounded by being the first person in their families to grow up speaking English, go to college, to

⁵⁰ Like me, you might be stopped amongst a pack of attorneys who habitually walk around the metal detector in a small regional courthouse, even though it is the courthouse where you regularly appear. Caesar and Brustin "Bias in the Legal Profession" in *Learning From Practice*, 3rd Edition, pp 175-177.

⁵¹ See, e.g. black graduate student at Yale sleepin in her dormitory common area, black mom, forced to produce identification at her community pool, black men arrested for waiting for their friend in Starbucks; bird watching; child selling water

⁵² See, e.g. Biased , Jennifer L. Eberhardt, p. 5, recounting an Oakland police officer admitting to trailing a suspicious man whom he later realizes is himself. See also, Hidden Injustice: Bias on the Bench ABA Legal News Network, https://www.americanbar.org/new/abanews/aba-new-archives/2016/02/hidden_injusticebi1/

⁵³ See, e.g., Whiteness Resumes: Race and Self-Presentation in the Labor Market, Sonia K. Kang, Katherine A. DeCelles, Andras Tilcsik, Sora Jun, March 17, 2016.

⁵⁴ People of color should not let themselves off of the hook when it comes to xenophobia, heterosexism, nativism, nationalism, etc. Hate imposed by the hated is disturbing (stomach turning) and probably, arguably, pathological, but that isn't really the point.

finish high school, to not work with their hands.⁵⁵ You are not the only one with immutable characteristics. You understand this particularly well if you exist at the intersection of more than one group that was historically excluded from law school. Recognize that all exclusion is rooted in the same fear and discomfort and insecurity. It is very important that you do not measure success by your ability to exclude others and stand on the inside with people who have historically excluded you. The goal is not to be the last person to make it onto the caboose of the train as it leaves the station. It is to pause the train and ensure that everyone is able to board. It will make you a better boss, a more empathetic lawyer, and ultimately a better person.⁵⁶

We cannot wait it out.

As a young person, and even as a young attorney, I believed on some fundamental level, that the racial inequities that existed in society and in the legal profession would change with time. My law school graduating class was roughly 50% female. Black students comprised 13% of the student body. I believed that we need only wait for the racists to begin to die, and for a more egalitarian profession to begin to trickle up. But the trickling never happened. The trickling will not happen, at least not organically.

What I now understand is that the changes will not occur organically. We are the products of our experience. Our experiences result in hard wiring in our brains⁵⁷ that only can be overcome with concerted and consistent work.

⁵⁵ When I was working at a different law school, a student explained to me that she was the only person in her immediate family who was not a felon.

⁵⁶ While imprisoned, Nelson Mandela refused to wear the long pants that he was issued because the other black men on Robben Island were only given shorts.

⁵⁷ *Biased.*

The slights continue. Implicit and explicit bias continue. For the four years that I practiced in Connecticut I was told to leave the attorney lines at countless courthouses entrances. I was asked if I was a party or a social worker, or an interpreter, or a parent. It did not matter what I was wearing. If I was with a white man, opposing counsel would speak to him. If I brought someone to second chair, everyone involved in the process would speak to him. Even with a full set of wrinkles around my eyes and the early stages of grey, I was never thought to be in charge.

There is something on the horizon.

The good news is that for students entering law school in 2023, there is the beginnings of change. Your class is the first that is required to complete an introduction to and subsequent study of bias, cross-cultural competency, and race prior to graduation. The challenge is that I do not know what that means, and neither does anyone else. There are no benchmarks, no metrics, no minimums. Many of your deans, faculty, and staff are rising to this challenge, working collaboratively to identify best practices, effective tools, and strategies to combat a foe that does not play fair.

There is so much more.

The purpose of memorializing this talk in a published essay is not for you to feel defeated. Rather it is for you and those who come behind you, to understand that your greatness, your promise, your possibility may not be the first thing that everyone sees. They will see whomever and whatever black person they have seen before. So will I. Because of that, I see your greatness, your limitless possibility. I am in awe of your talent and your splendor. I am dizzied by the thought of the chapters that will unfold in

your careers. I recognize you. Bias is a filter that clouds vision, distorts perception.

There are many people who have recently self-diagnosed. Be patient with good people as they work to correct the distortion. Recognition may take a moment.

Recognize bias as a speedbump, a potentially recurring inconvenience that you can manage if you anticipate its capacity to present itself without warning. I give you this talk because there is so much more in store for you than the hurdles of other people's limitations.

Conclusion

I recognize that there are many stories, and that one Talk cannot possibly address all.

As a black American, there were different stories within my childhood home – my mother's story from rural, segregated Virginia; my father's story from a black British colony. As a child the only distinction that I saw between them was people asked about my father's accent (which like the child of any immigrant, I did not hear). I did notice that because of his different passport he could clear customs more easily. He could peel away from us and wait with the people from Europe – and their subjects. What I learned later, and what I would see over and over again as I studied with and worked with black children from other parts of the diaspora, was that my father, could also peel away from much of the burden inherent in my experience as the descendent of American slaves. He has never carried the weight of the black American experience. Even when he was lumped together with us, he peeled off the black American stain to go about his business as a subject of her majesty, the Queen. He was arrogant and insistent upon his greatness. Even as a black man, he saw black Americans as "those people."

Bias erases that distinction.

There is only one Talk because as black lawyers, you may be forced into the same monolith. The purpose of the Talk to prepare you for the blanketing of collective identity that will be cast onto you as a black lawyer. Your true narrative will be replaced by a collective story that you have neither lived nor written. The Talk is meant to prepare you for the objectification, the dulling of the lines, the erasure of the nuance that defines you as an individual. The Talk is about how they see you, the boxes that they will put you in, the labels and experiences that will be projected onto you, just by virtue of how you look. The Talk is the absence of nuance, the absence of individualism, the absence of identity or control.

Initially, I thought that I would need to tell you something uplifting to get you through the hard truth of the Talk, but that is not the point. The purpose of this talk, like the real Talk is to ensure that you arrive safely at your intended destination. You are at risk of harm if someone with power and authority perceives you as out of place, acting in a way that they do not recognize, and feels threatened. That is where many of the similarities end.

Remember that you are not, “those people” either. You are not whatever identity someone wants to foist upon you. You are whatever identity you have built for yourself.

The most important thing that you can do in a legal setting is stay the course. Keep doing what you came here to do. And as an older, black paralegal told me when I was a young associate, “Don’t let them steal your joy.”