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White Doors, Black Footsteps: Leveraging "White Privilege" to Benefit Law Students of Color

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Law students of color typically avoid seeking the mentorship of white law professors, largely white males, finding female faculty and faculty of color more approachable and willing to serve as mentors. Yet, according to recent ABA statistics, white people make up eighty-eight percent of the legal profession, with sixty-four percent being male. In addition, relevant scholarship comments that one of the primary privileges of whiteness is having greater access to power and resources than people of color do. It follows then, as recent legal scholarship suggests, that law students of color who fail to develop a cultural competence may be at a professional disadvantage if they are ill-prepared to work with diverse clients and colleagues. In other words, the success of law students of color, as well as their access to resources in the legal profession, strongly correlates with an acclimation toward positive interracial relationships. This Article draws upon interdisciplinary research, which suggests a white person's heightened White Privilege Awareness (WPA), paired with the belief that their influence can enact positive change, reduces racial inequality against people of color. Specifically, this Article maintains that WPA among white law professors, who mentor students of color and then leverage their white privilege to open professional doors for these students, will reduce implicit bias and may ultimately increase the retention of diverse attorneys. While the best methods to diversify the legal profession have appeared elusive, it is actually equal opportunity and empowerment of attorneys of color that eludes us. Diversity then feels like a

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[*] Professor of Legal Writing and Director of A.I.M. for Law at California Western School of Law. I thank God for my life journey thus far, that, while difficult at times, continues to make me stronger. Second, my husband Carl, for his unending support. Third, my humble thank you to Critical Race Theory scholar, Professor Stephanie Wildman (Santa Clara University), for being so generous with her time and providing insightful comments, and Professor David A. Harris (University of Pittsburgh), my former professor, whose generous acts of using his white privilege to open a door for me years ago formed the foundation for this Article. Next, I am grateful for the generous feedback from my colleagues at California Western School of Law: Vice Dean Barbara Cox, Professors William Aceves, Catherine Hardee, Joanna Sax, Roberta K. Thyfault, and Director of Diversity Services Marion Cloete. Also for their thoughtful comments on earlier drafts, I am grateful to my friends Professor Shewanee Baptiste (University of Tennessee-Chattanooga) and Professor Terrence Fitzgerald (University of Southern California). And last but certainly not least, my sincere gratitude to my research assistant and friend, Marisol Ornelas, for her faithful dedication and authentic conversation of this Article when it was only an idea. Thank you.

"buzzword," not a tangible priority. Thus, this call to action for white professors is not rhetoric, but a unique opportunity for the white professor to diversify the legal profession.

I. INTRODUCTION

I graduated law school with a 3.8 in my final semester. I was on the Executive Board of my school's law journal, published, served as a Research Fellow, a Teacher's Assistant, received the highest grade in my Legal Writing class, ranked second in my Trial Advocacy class, clerked for the then-Chief of the Missouri Supreme Court, and followed that with a clerkship with the second most senior judge in the same court. I had even applied for and accepted an FBI interview but ultimately delayed that opportunity because I began working for one of the top five litigation firms in the city.

Impressive, right? I thought so. After all, I was on the sixth floor of the law firm office in my swanky swivel chair, with generous portions of an annual six-figure salary hitting my bank account every two weeks.

Now, I would love to tell you that my day burst with phone calls and the constant

chime of incoming emails inviting me to join the legal teams on important cases. In fact, I had visions of being engaged in impressive dialogue on whether punitive damages were appropriate in this case, or pacing the room in a "Law & Order"-type fashion musing on how to argue that our client, a doctor, acted in a reasonably prudent way when he examined the victim days before her unfortunate death. My calendar should have been filled with coffees and lunches with partners to discuss my supportive role in their upcoming cases.

Sadly, this was not the case. The above law firm pictured is white. I am black. And during my time at the law firm, I was one of two, maybe three, black female attorneys. My visibility, let alone impact, was dismal at best.

My scenario went more like this: I arrived to work at some ungodly hour of the morning to show my team spirit. I smiled at every white face I passed between the parking garage and the ride up to the sixth floor wondering if they knew my name. I did stop to talk to the Latino worker at the deli stand, who shared cooking secrets with me weekly, and to one of my dear friends, a black sorority sister, who was a paralegal at the law firm. Upon checking my email, I usually had some work from Catherine[1] (white female partner) and Gary (white male partner), or a pro bono case from Ruth (white female partner and former judge). And that was about it. I would work dutifully on my assignments, trying to stretch out a half-day project to an entire day because I needed to hit my billable hours. Catherine did great at assigning me new cases, and I was one of Gary's go-to junior associates, but after a while, their efforts and my own were simply not enough to sustain me or provide any sense of career growth. White colleagues, and more so white males, that began the same year as me were getting most of the work. My reviews went as follows: "Leslie, we love your team spirit (I smile), but we would like to see you get more work under your belt (I smile and nod, but sad emoji on the inside)." My response (completely in my head of course): "Firm, I would love to have some new work; I have emailed every person I can think to ask. I have personally knocked on doors to make myself known, and since I cannot play fantasy football or go on golf outings with the male partners, and seem unable to get many of the white female partners to give me much of the time of day, I'm open to suggestions."

That was my review from year one to year four.

Then one day I was sitting in that same swanky swivel chair on the sixth floor. I could not even tell you if the phone was ringing or if emails were still coming with new work. All I remember is looking out of the window staring at the construction workers across the street and wishing I was them.

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[1] Names have been changed to protect privacy.

Glass ceiling hit. It was only year four. I quit.[2]

Critical race theorists have extensively supported the birth of whiteness as social construct and its preferential counterpart, white privilege.[3] Of relevance

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[2] Throughout this Article, I have taken the liberty to share several relevant personal short narratives. In sharing my own experiences, I am choosing to be what Professor Jerome Culp calls "consciously autobiographical." Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539, 543 (1991). He contends that:

> Because black professors of law often enter law in order to create and sustain societal change, it should not surprise us that black professors of law use their autobiographies in a number of ways to illuminate their teaching and scholarship. Black law professors, of course, are not just their autobiographies; we must communicate material, teach students how to read cases, and perform all the other tasks required of other professors. But many black law professors believe, and most convey the impression, that who we are influences our examination of the law. White colleagues use our racial autobiographies to confirm or, occasionally, to test their views of the world; we use our autobiographies in various ways to define the contours of our teaching and scholarship. Almost all black law professors are forced to write, teach, or speak their concerns about race. Neither our colleagues, nor our own interest in racial justice, will permit us to forget that we are black professors of law.

Id. at 543–44. Professor Culp praises another scholar in the field, Professor Patricia Williams, for writing her racial experiences into her legal scholarship, "requir[ing] us to see the world through her eyes; her words will not permit us the freedom to ignore her reality. This is good lawyering and good scholarship." *Id.* at 545. Works by Williams include Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987); Patricia Williams, *The Obliging Shell: An Informal Essay on Formal Equal Opportunity*, 87 MICH. L. REV. 2128 (1989); Patricia J. Williams, *On Being the Object of Property*, 14 SIGNS 5 (1988); and Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law's Response to Racism*, 42 U. MIAMI L. REV. 127 (1987).

With respect to this particular narrative, I recognize that there could be three distinct experiences at play here: those of new associates regardless of race or gender, those of female associates, and those of associates of color. However, I did not observe the white male associates who were part of my entering class struggle to obtain work from senior associates and partners; in fact, quite the opposite. So, I would suggest the likelihood of race or gender *or both* as the triggers, a problem known as "intersectionality." *See infra* notes 134–37 and accompanying text.

[3] *E.g.*, Peggy McIntosh, *White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women's Studies* (Wellesley Ctrs. for Women, Working Paper No. 189, 1988), https://www.nationalseedproject.org/images/documents/White_Privilege_and_Male_Privilege_Personal_Account-Peggy_McIntosh.pdf; Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993); Martha R. Mahoney, *Segregation, Whiteness, and Transformation*, 143 U. PA. L. REV. 1659, 1661 (1995) (exploring whiteness and residential segregation, noting that "[f]or whites, residential segregation is one of the forces giving race a 'natural' appearance: 'good' neighborhoods are equated with whiteness, and 'black' neighborhoods are equated with joblessness"); STEPHANIE M. WILDMAN, PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA (1996); CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR (Richard Delgado & Jean Stefancic eds., 1997); BARBARA J. FLAGG, WAS BLIND, BUT NOW I SEE: WHITE RACE CONSCIOUSNESS AND THE LAW (1998); Jerome McCristal Culp, Jr., *To the Bone: Race and White Privilege*, 83 MINN. L. REV. 1637, 1638–39 (1999) (discussing the deeply embedded message of critical race theory that "[r]ace is only skin deep because it is always a social construction (but a very important social construction) and the work of critical race theory is to go beyond the socially constructed boundaries and is exactly about understanding race's importance but scientific insignificance"); Martha R. Mahoney, *Class and Status in American Law: Race, Interest, and the Anti-Transformation Cases*, 76 S. CAL. L. REV. 799, 824 (2003) ("Even if individual whites do not seek the

here, Frances Kendall writes, "One of the primary privileges is having greater access to power and resources than people of color do; in other words, purely on the basis of our skin color doors are open to us that are not open to other people."[4] In addition, Stephanie Wildman asserts that because the characteristics of the privileged group become societal norms, other "members of society are judged, and succeed or fail, measured against the characteristics that are held by those privileged . . . [and t]hose who stand outside are the aberrant or 'alternative.'"[5]

Most people would agree people of color often stand outside the norm. This separation from the norm is evidenced in the legal profession, particularly in its decades-long discourse about the diversity crisis, namely the retention and promotion of attorneys of color.[6] Using an interdisciplinary approach based on

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advantage of race privilege, because race is a social construction, they are more likely than people of color to be perceived by other whites as good prospective employees and neighbors, or to be perceived by banks and insurers as good credit risks."); IAN HANEY LÓPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 19–20 (2006) (maintaining that the category "white" was judicially constructed in a two-step process, where first courts constructed the boundaries of whiteness by determining who was not white and then denigrated those so described as not white, assigning them inferior and negative characteristics).

For a discussion of unequal standing even among whites, see Camille Gear Rich, *Marginal Whiteness*, 98 CAL. L. REV. 1497, 1524 (2010). Rich defined her phrase "technologies of whiteness" as:

> [T]he regional, cultural, and context-specific practices whites use to actively construct the category of whiteness in a workplace (or other institutional locations). These practices include differentiating among whites and subordinating lower-status whites' interests to conserve scarce resources for a smaller, select group of whites when necessary. These social practices typically make use of understandings of whiteness circulated in national political debates or local politics but can be idiosyncratic in some ways based on understandings generated by the workers in a given employment context.

Id.

[4] FRANCES E. KENDALL, UNDERSTANDING WHITE PRIVILEGE: CREATING PATHWAYS TO AUTHENTIC RELATIONSHIPS ACROSS RACE 62 (2d ed. 2013).

[5] Stephanie M. Wildman & Adrienne D. Davis, *Language and Silence: Making Systems of Privilege Visible*, 35 SANTA CLARA L. REV. 881, 890 (1995).

[6] *See, e.g.*, ABA COMM'N ON WOMEN IN THE PROFESSION, VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS (2006), https://www.americanbar.org/content/dam/aba/marketing/women/visible invisibility.authcheckdam.pdf [hereinafter VISIBLE INVISIBILITY] (discussing a national study on the intersection of race and gender and its impact on women of color in law firms); ABA COMM'N ON WOMEN IN THE PROFESSION, FROM VISIBLE INVISIBILITY TO VISIBLY SUCCESSFUL: SUCCESS STRATEGIES FOR LAW FIRMS AND WOMEN OF COLOR IN LAW FIRMS (2008), https:// www.americanbar.org/content/dam/aba/marketing/women/visibleinvisibility_vs.authcheckdam.pdf [hereinafter SUCCESS STRATEGIES] (follow-up report to VISIBLE INVISIBILITY); NAT'L ASS'N FOR LAW PLACEMENT, 2016 REPORT ON DIVERSITY IN U.S. LAW FIRMS 3 (2017), http:// www.nalp.org/uploads/Membership/2016NALPReportonDiversityinUSLawFirms.pdf (noting that "[w]omen and Black/African-Americans made small gains in representation at major U.S. law firms

the law, feminist communication theory, and social science disciplines, this Article examines the relationship between the white law professor and the law student of color, and encourages genuine and interethnic mentoring relationships that will positively impact the legal careers of students of color.

The theoretical framework is grounded primarily in English anthropologist Edwin Ardener's muted group theory,[7] which was later acknowledged in the United States by feminist theorist Cheris Kramarae[8] and again by Professor Mark P. Orbe, a communication scholar whose groundbreaking adaptation of the muted group theory birthed the "co-cultural theory."[9] While an in-depth explanation of these theories is beyond the scope of this Article,[10] understanding foundational tenets is beneficial, as they play a role in appreciating both the value of and, in some ways, need for genuine interethnic relationships between white law professors and students of color. Briefly, "[a] muted-group framework exists within any society that includes asymmetrical power relationships."[11] In other words, one group (the dominant group) has more power than another group (the non-dominant group), and as research confirms what our society already knows,

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in 2016 compared with 2015 . . . [but that] the overall percentage of women associates has decreased more often than not since 2009, and the percentage of Black/African-American associates has declined every year since 2009, except for the small increase in 2016").

[7] Ellen Lewin, *Introduction to Part I, in* FEMINIST ANTHROPOLOGY: A READER 41, 41 (Ellen Lewin ed., 2006). Ardener introduced muted group theory in the early 1970s:

> [He] sought to explain the minimal attention women received in anthropological research by looking to the ways that they express and represent themselves, proposing that social groups can be distinguished as "articulate" or "muted," a characteristic linked to forms of dominance or subordination. While not asserting that women were unique as a muted group, Ardener likened their situation to other groups that have little ability to make themselves heard, such as children. . . . [H]e argued that women fall outside the definitions of social systems made by men and thus tend to be invisible and thus unreadable by anthropologists.

Id.

[8] *See* CHERIS KRAMARAE, WOMEN AND MEN SPEAKING: FRAMEWORKS FOR ANALYSIS xiii–xvi, 1–32 (1981) (expanding Ardener's muted group theory by noting that devaluation of women's speech has generally been ignored by historians and by ultimately exploring reasons for the differing evaluation of women and men speaking, both in private and public situations).

[9] MARK P. ORBE, CONSTRUCTING CO-CULTURAL THEORY: AN EXPLICATION OF CULTURE, POWER, AND COMMUNICATION 8–9 (1998) [hereinafter ORBE, CONSTRUCTING CO-CULTURAL THEORY] (stating that co-cultural theory stems from muted group theory and standpoint theory). Standpoint theory "acknowledg[es] a specific societal capacity that serves as a subjective vantage point from which persons interact with themselves and the world." *Id.* at 10. Professor Orbe argues that "[c]ulture and communication are inextricably linked" and identifies "a number of domestic co-cultures [that] exist based on age, class, ethnicity, religion, abilities, affection/sexual orientation, and other unifying elements." Mark P. Orbe, *Laying the Foundation for Co-Cultural Communication Theory: An Inductive Approach to Studying "Non-Dominant" Communication Strategies and the Factors that Influence Them*, 47 COMM. STUD. 157, 158 (1996).

[10] Orbe's co-cultural theory is foundational to much of this author's work, which is the first to extend this theory into the legal field. For a deeper understanding of its origins and tenets, see Leslie P. Culver, *Conscious Identity Performance*, 55 SAN DIEGO L. REV. (forthcoming 2018).

[11] ORBE, CONSTRUCTING CO-CULTURAL THEORY, *supra* note 9, at 9.

"over time one co-culture (that of European-American heterosexual middle- or upper-class males) has acquired dominant group status in the major societal institutions."[12] Thus, the muted group and co-cultural theories essentially rely on the lived experiences of non-dominant or marginalized groups (e.g., women, people of color, LGBTQ individuals, people with disabilities), for whom self-expression is usually constrained, to determine how its members communicate and negotiate their identity in a dominant society. Further, social science research projects that a white person's heightened White Privilege Awareness (WPA), when paired with their high-perceived influence to enact change, reduces racial inequality.[13] Ultimately, this Article argues that WPA among white law professors, who intentionally cultivate relationships with law students of color and then leverage their white privilege to open doors to meaningful and merited work opportunities, will reduce implicit bias against those students and may ultimately increase the retention of diverse attorneys.

Law students of color typically avoid seeking the mentorship of white law professors, especially white males, finding female faculty and faculty of color to be simply more approachable outside of class and more willing to serve as encouraging mentors for these students than white male faculty.[14] Female faculty and faculty of color are also more likely to discuss sensitive issues of race and gender, and these conversations "both in and out of the classroom develop the cultural competence of law students and prepare them to work with clients and colleagues with diverse life experiences, worldviews, cultures, and abilities."[15] According to the American Bar Association, white people make up eighty-eight percent of the legal profession, and sixty-four percent of lawyers are male versus thirty-six percent female.[16] Thus, as this Article contends, because the legal profession is predominantly white, it is vital that white professors, particularly white male professors, create similar mentorship roles with students of color,

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[12] *Id.* at 2.

[13] Tracie L. Stewart et al., *White Privilege Awareness and Efficacy to Reduce Racial Inequality Improve White Americans' Attitudes Toward African Americans*, 68 J. SOC. ISSUES 11 (2012).

[14] Carmen G. González, *Women of Color in Legal Education: Challenging the Presumption of Incompetence*, FED. LAW., July 2014, at 49, 50; Meera E. Deo, *The Ugly Truth About Legal Academia*, 80 BROOK. L. REV. 943, 990 (2015) ("Past empirical research using law student research subjects has shown that students from all race and gender backgrounds are especially drawn to female faculty and faculty of color. 'Students of color and white students alike report that faculty of color are often more accessible than whites and that female faculty tend to engage students more than male faculty.'" (quoting Meera E. Deo et al., *Struggles & Support: Diversity in U.S. Law Schools*, 23 NAT'L BLACK L.J. 71, 87 (2010))).

[15] González, *supra* note 14, at 50.

[16] AM. BAR ASS'N, LAWYER DEMOGRAPHICS: YEAR 2016 (2016), https://properpr.files.wordpress.com/2016/11/lawyer-demographics-tables-2016-authcheckdam.pdf.

especially if the students are not reaching out to them. This call to action for white professors is not rhetoric. The law student of color's success in the legal profession strongly correlates with acclimation through positive interracial relationships.[17]

As a short interjection, I cannot discount the few influential professors and attorneys of color who were instrumental in my legal journey. Sadly, though, their institutional numbers were few, and I wonder if they lacked the influence of their white counterparts to assist in advancing my career. So, primarily white people, then and now, have largely contributed to the open doors through which I walked. Yet, there is the possibility that the discussion of a white door minimizes, as one of my mentors stated, my "personal qualities" and "extraordinary abilities." I share his concern for myself and for those coming after me. And it is this concern that magnifies both the challenges people of color face daily[18] and the urgency of this Article's call to action toward white law professors.

So, how will this interracial relationship advance diversity in the legal profession? The first section of this Article briefly discusses the white origins of the legal profession, and the emergence of white privilege that naturally flowed from those origins, to demonstrate the creation of what I term the "white door." In the second section, while not suggesting that students of color cannot achieve success without white privilege, I discuss how implicit bias, when coupled with white privilege, presents a difficult barrier for students of color to advance through this door. Finally, the third section asks that white professors confront their own whiteness and implicit biases by intentionally altering their environment to cultivate mentoring relationships with law students of color and leveraging their white privilege to open doors toward meaningful and merited work opportunities for students of color. This Article is not asking white professors to favor students of color. This introspective journey of white professors and the development of interracial mentorships, however, will not only reduce implicit bias against students of color, but provide them with acculturation tools to help them flourish in the dominant culture, thus increasing the retention of diverse attorneys.

Despite efforts to respond to the fact that members of minority groups have historically been underrepresented in the legal profession, as well as in the

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[17] Kevin Woodson, *Race and Rapport: Homophily and Racial Disadvantage in Large Law Firms*, 83 FORDHAM L. REV. 2557, 2573–75 (2015) ("Developing this type of acclimation will not be easy going for law firm associates, as the acculturation that helps some workers develop and sustain positive interracial relationships often reflects the embodied learning of many years of prior life experiences. Many of those associates who reach these law firms without such background exposure will find that it is too late for them to make up for lost time.").

[18] *See* González, *supra* note 14, at 52 (discussing the challenges faced by female faculty of color, noting that "[i]n addition to mentors, women of color also need sponsors—highly respected senior faculty who will advocate for them in faculty meetings and behind closed doors when they are being reviewed for tenure and promotion").

nation's law schools,[19] "diversity has been elusive."[20] The best method to diversify the legal profession may indeed be elusive. But let me be frank—when you have been one of the few black law students in a lecture hall full of white faces,[21] then worked at a law firm filled with over one hundred white faces, where you were reviewed by white supervisors and worked with very few people of color, you learn that equal opportunity and empowerment of attorneys of color is what actually eludes us. So, diversity feels like a "buzzword," not a tangible priority. Nevertheless, starting in law school, where students of color experience the exhilaration of achieving their dreams and changing the world, the white law professor is ultimately in a unique position to diversify the legal profession.

II. *CREATING THE WHITE DOOR*: BUILDING THE LEGAL PROFESSION ON A WHITE FOUNDATION

It may be an overstatement to say that [the lack of black attorneys in big law firms] is a culture shock, but it is a particularly stressful entry experience. New black lawyers who have gone to these predominantly white firms understand the unwritten law that says you must be an expert, an expert in making white people feel comfortable, and, from the first, you are expected to act delighted and pleased that you are in such a "great firm." If you fail to follow that rule, fail to adhere to that law, there will be severe repercussions for your professional career. You feel very lonely about this and although you know people are trying to reach out to you and make you feel welcome, can anybody else empathize with you—it is tricky for white folks to measure up on that score. This "initial cultural shock" is

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[19] *See* Erin Lain, *Experiences of Academically Dismissed Black and Latino Law Students: Stereotype Threat, Fight or Flight Coping Mechanisms, Isolation and Feelings of Systemic Betrayal*, 45 J.L. & EDUC. 279, 280 (2016) ("Over a decade of statistics demonstrate that numbers of minority student applicants have increased to nearly proportional rates to the national demographics. Despite more proportional numbers of minority students applying to law school, acceptance rates are not proportional."); *Data: Admitted Applicants by Race/Ethnicity & Sex*, LAW SCH. ADMISSION COUNCIL, http://www.lsac.org/lsacresources/data/ethnic-sex-admits (last visited Apr. 6, 2018) (showing that in 2017, thirty-seven percent of 42,300 admitted law school applicants belonged to a non-white racial or ethnic group).

[20] Nicole E. Negowetti, *Implicit Bias and the Legal Profession's "Diversity Crisis": A Call for Self-Reflection*, 15 NEV. L.J. 930, 931 (2015); *see* Elie Mystal, *Open Letter to Black Law Students: It Doesn't Get Better*, ABOVE THE LAW (Mar. 1, 2016, 4:00 PM), https://abovethelaw.com/2016/03/open-letter-to-black-emory-law-students-it-doesnt-get-better/2/?rf=1 (describing incidents indicative of "how diversity often falls short of inclusion" in law school).

[21] *See Data: Admitted Applicants by Race/Ethnicity & Sex*, *supra* note 19 (noting that out of 42,300 admitted law school applicants in 2017, 4,320 students were Black/African American, while 29,120 students were Caucasian/White, meaning Black/African American students made up approximately 10.2 percent of the total admitted applicants). Hypothetically, then, based on these data, in a class of one hundred law students, there were no more than eleven Black/African American students.

difficult to describe and difficult to understand if you haven't experienced it.

—Derek Bok & Thomas S. Williamson, Jr.[22]

A. White Papers: Founding Documents that Formed the "White Man's" Legal Profession

A brief review of history bears relevance in painting a vivid picture of the white backdrop of the United States legal system. The opening scene features white men creating the founding doctrines that govern our country, while simultaneously enslaving people of color, who were not recipients of these *liberating* documents. Beginning in the middle colonies in the eighteenth century, it was white American males who determined "that no society, no free society at least, can exist without a legal profession."[23] This belief forced a new country to fight for independence during the American Revolution and culminated in the drafting of the Declaration of Independence, adopted on July 4, 1776[24]—a document written primarily by Thomas Jefferson, a white slave-owning lawyer.[25] It states in part, "We hold these truths to be self-evident, that all men are created equal . . . ."[26] While the thirteen colonies of the United States generally celebrated this newfound equality, breaking away from Great Britain's grasp, many of the country's non-white male inhabitants, or women of any race, were not so fortunate as to be included in "all men." For example, during this time, twenty percent of the country's overall population was of African descent, with only eight percent of that population being free and the majority being legally enslaved.[27]

In 1787, eleven years after the Declaration of Independence, the Founding Fathers penned the United States Constitution.[28] These men, like the signers of the Declaration of Independence, were mostly white lawyers and judges,[29] many of whom received training via apprenticeships or were self-taught.[30] The Preamble

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[22] Derek Bok & Thomas S. Williamson, Jr., *Transcript of the Boston Bar Association Diversity Committee Conference: Recruiting, Hiring and Retaining Lawyers of Color*, 44 BOS. B.J., May/June 2000, at 8, 20.

[23] Robert F. Boden, *The Colonial Bar and the American Revolution*, 60 MARQ. L. REV. 1, 2 (1976).

[24] *Jefferson and the Declaration*, MONTICELLO, https://www.monticello.org/site/jefferson/jefferson-and-declaration (last visited Apr. 6, 2018).

[25] *Thomas Jefferson and Slavery*, MONTICELLO, https://www.monticello.org/site/plantation-and-slavery/thomas-jefferson-and-slavery (last visited Apr. 6, 2018).

[26] THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

[27] *Introduction to Colonial African American Life*, COLONIAL WILLIAMSBURG, http://www.history.org/almanack/people/african/aaintro.cfm (last visited Apr. 6, 2018).

[28] *Constitution FAQs*, NAT'L CONST. CTR., https://constitutioncenter.org/learn/educational-resources/constitution-faqs (last visited Apr. 6, 2018).

[29] Boden, *supra* note 23, at 3–5.

[30] *Id.* at 4–5; *The Founding Fathers: Connecticut*, NAT'L ARCHIVES, https://www.archives.gov/founding-docs/founding-fathers-connecticut (last visited Apr. 6, 2018) (noting that William Samuel Johnson resisted becoming a minister, "embrac[ing] law instead—largely by educating himself and without benefit of formal training").

of the Constitution reads:

> We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.[31]

Notably, in its original form, the Constitution, like the Declaration of Independence, did little to affirm that "We the People" included non-white men or women of any race.[32] For example, in Article I, Section 2, Clause 3, the Framers penned the infamous and often misunderstood "three-fifths compromise" clause of the Constitution.[33] While many suggest that this three-fifths compromise never meant that the Framers considered slaves to be only three-fifths of a *person*, the fact that this particular method for apportioning taxes was affirmed by seemingly intelligent white men, many of whom were lawyers, still calls into question the Framers' perception of people of color.

In light of our nation's history, the founding doctrines are almost insidious in their proclamation to be the voice of the new United States. For example, in the Declaration of Independence and the Constitution, the truths that are "self-evident," the premise "that all men are created equal," and the lofty goals of "form[ing] a more perfect Union," "establish[ing] Justice," and "secur[ing] the Blessings of Liberty," [34] had nothing to do with, nor even considered, people of color. And what about our children's history books? With chapter titles such as *The Great Republic*, *The American Pageant*, *Land of Promise*, and *Triumph of the American Nation*, unsuspecting young minds do not realize that they can and should analyze the controversies and ideologies of United States history, particularly since certain issues, such as socialism, colonialism, and racism, are repugnant to most United States citizens.[35] For example, one poll noted that young

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[31] U.S. CONST. pmbl.

[32] *See* Neil S. Siegel, *"Equal Citizenship Stature": Justice Ginsburg's Constitutional Vision*, 43 NEW ENG. L. REV. 799, 819 (2009) (discussing Supreme Court Justice Ruth Bader Ginsburg's judgment that "the Union becomes more perfect as our Constitution's comprehension of 'We the People' broadens to include women").

[33] U.S. CONST. art. I, § 2, cl. 3; Robin L. Einhorn, *Slavery and the Politics of Taxation in the Early United States*, 14 STUD. AM. POL. DEV. 156, 167 (2000). For background information on the three-fifths compromise, see *What Was the Three-Fifths Compromise?*, LAWS, http://constitution.laws.com/three-fifths-compromise (last visited Apr. 6, 2018).

[34] THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776); U.S. CONST. pmbl.

[35] JAMES W. LOEWEN, LIES MY TEACHER TOLD ME: EVERYTHING YOUR AMERICAN HISTORY

white adults are less tolerant of black Americans than white people over the age of thirty.[36] "One reason is that 'the under-30 generation is pathetically ignorant of recent American history.' Too young to have experienced or watched the civil rights movement as it happened, these young people have no understanding of the past and present workings of racism in American society."[37]

It is clear from United States history that the white man's standard and voice framed this country's foundation and sadly continues to shape ideologies, or the lack thereof, for our young people. Enter white (and male) privilege. Thus, it is imperative to both identify and challenge white privilege and whiteness in order to "mov[e] the nation forward toward a more complete realization of racial equality."[38]

B. White Privilege: One of the Most (in)Visible Influences on Race and Diversity

"My poor, un-white thing! Weep not nor rage. I know, too well, that the curse of God lies heavy on you. Why? That is not for me to say, but be brave! Do your work in your lowly sphere, praying the good Lord that into heaven above, where all is love, you may, one day, be born—white!"

I do not laugh. I am quite straight-faced as I ask soberly:

"But what on earth is whiteness that one should so desire it?" Then always, somehow, some way, silently but clearly, I am given to understand that whiteness is the ownership of the earth forever and ever, Amen!

—W.E.B. Du Bois[39]

To begin, DuBois's question was insightful before its time: "But what on earth is whiteness that one should so desire it?"[40] What are the legal or social lines that divide white from non-white? These are not easy questions, as noted by many critical race scholars, who posit that whiteness for non-Europeans, which originated as a condition for acquiring United States citizenship, was a social construct that exposed judicial imprecision and contradiction among courts.[41]

TEXTBOOK GOT WRONG 6, 8, 26 (2007).

[36] *Id.* at 171.

[37] *Id.* (quoting Richard Cohen, *Generation of Bigots*, WASH. POST (July 23, 1993), https://www.washingtonpost.com/archive/opinions/1993/07/23/generation-of-bigots/1b4df4bb-47fb-4342-a2b2-285794435b4a/?utm_term=.b25d610400d0).

[38] Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635, 639 (2008); *see* Harris, *supra* note 3, at 1734.

[39] W.E.B. DU BOIS, DARKWATER: VOICES FROM WITHIN THE VEIL 18 (Cosimo 2007) (1920).

[40] *Id.*

[41] LÓPEZ, *supra* note 3, at 1–2; *see* Barbara J. Flagg, *"And Grace Will Lead Me Home": The Case for Judicial Race Activism*, 4 ALA. C.R. & C.L. L. REV. 103, 119 (2013) (maintaining that "[t]he story of race in America must begin with the premise that there is no such thing as biological race [but rather that t]he phenomenon we call 'race' is entirely socially constructed, lacking any meaningful grounding

Broadly, whiteness historically determined whether a person's legal status was free or slave, functioning as self-identity, reputation, and as property.[42] In other words, "[w]hite identity conferred tangible and economically valuable benefits and was jealously guarded as a valued possession, allowed only to those who met a strict standard of proof."[43] For example, in racial prerequisite cases,[44] the courts found that people from Mexico and Armenia were white, while would-be citizens from Hawaii and China, among others, failed to achieve the legal status of whiteness; the courts wavered on the whiteness of people from Syria, India, and Arabia.[45] The courts used numerous rationales to justify the myriad of racial divisions, but two primary judicial propositions resulted: "common knowledge and scientific evidence," both of which were used in the 1878 racial prerequisite case, *In re Ah Yup*.[46]

In *Ah Yup*, a California federal district court rejected a Chinese native's application for naturalization as a United States citizen.[47] First, the court justified its racial division by basing it simply upon common knowledge about the white race,[48] remarking that although no person is "literally white . . . [, a]s ordinarily used everywhere in the United States, one would scarcely fail to understand that the party employing the words 'white person' would intend a person of the Caucasian race."[49] Second, the court typified scientific evidence by using Webster's dictionary's classifications of race to "justif[y] racial divisions by reference to the naturalistic studies of humankind."[50] The focus for the *Ah Yup*

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in biological fact"); *e.g.*, *In re* Ah Yup, 1 F. Cas. 223, 223 (C.C.D. Cal. 1878) (relying on Webster's dictionary's common racial classifications, noting the first classification to be "[t]he Caucasian, or white race, to which belong the greater part of the European nations and those of Western Asia").

[42] Harris, *supra* note 3, at 1725–26.

[43] *Id.* at 1726. For information on the proof required, see *id.* at 1738–41.

[44] The racial prerequisite cases were post-Civil War trials where the courts adopted social conceptions of race to determine whether certain racial and ethnic groups were or could be "white." LÓPEZ, *supra* note 3, at 2–7 (discussing courts' analyses and rationales in racial prerequisite cases); Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 902 (2002) (citing LÓPEZ, *supra* note 3, at 43–44) ("The racial prerequisite cases were another set of racial determination trials that occurred to ascertain whether aliens could become citizens of the United States. From 1790 until 1870, only whites were permitted to naturalize. For much of the period from 1870 to 1952 (the year when racial bars on naturalization were abolished), only whites and blacks were eligible for citizenship.").

[45] LÓPEZ, *supra* note 3, at 1.

[46] *Id.* at 3–4.

[47] *In re* Ah Yup, 1 F. Cas. 223 (C.C.D. Cal. 1878).

[48] LÓPEZ, *supra* note 3, at 4.

[49] *In re Ah Yup*, 1 F. Cas. at 223.

[50] LÓPEZ, *supra* note 3, at 4.

court was on using these classifications to demonstrate that the term "white person" was neither used nor ever intended "to include an individual of the Mongolian race."[51]

While these early naturalization cases demonstrate that defining "whiteness" can be arbitrary and *ad hoc* at best, it is well established that whiteness still carries a positive and coveted social preference.[52] Social *preference* is actually an understatement because, as anthropology and communication theorists assert, "groups that function at the top of the social hierarchy determine to a great extent the communication system of the entire society."[53] In this fashion, starting with the premise that whiteness is a valued possession, it becomes apparent why the existence of an asymmetrical power relationship between the two groups can leave the non-dominant culture muted, feeling isolated and even inferior,[54] particularly when "their lived experiences are not represented in these dominant structures."[55]

Before moving to white privilege, the ugly stepsister to whiteness, it cannot be understated how the muted group theory[56] operates without awareness in the lives of out-group members who live on the inferior end of an asymmetrical power relationship. For example, even knowing that white privilege exists, I have assumed most of my life that white people are instinctively better at whatever they are doing respective to me; thus, I must work harder (even if in my own mind) to show them that I am not inferior. Moreover, I have assumed that their voice is

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[51] *In re Ah Yup*, 1 F. Cas. at 224. In answering the question of whether "a person of the Mongolian race [was] a 'white person' within the meaning of the [naturalization] statute," the court turned to Webster's dictionary, which read:

> The common classification is that of Blumenbach, who makes five. 1. The Caucasian, or white race, to which belong the greater part of the European nations and those of Western Asia; 2. The Mongolian, or yellow race, occupying Tartary, China, Japan, etc.; 3. The Ethiopian or Negro (black) race, occupying all Africa, except the north; 4. The American, or red race, containing the Indians of North and South America; and, 5. The Malay, or Brown race, occupying the islands of the Indian Archipelago.

Id. at 223–24.

[52] Flagg, *supra* note 41, at 107–09 (stating that the dignitary privilege of whiteness is a benefit possessed by every white person, which is to say "that socially speaking it's simply better to be white than to be a person of color[, as] . . . whiteness carries a positive [social] valence that color does not"); *see* sources cited *supra* note 3.

[53] ORBE, CONSTRUCTING CO-CULTURAL THEORY, *supra* note 9, at 8.

[54] *Id.* at 8–9; *see* Marsha Houston Stanback & W. Barnett Pearce, *Talking to "The Man": Some Communication Strategies Used by Members of "Subordinate" Social Groups*, 67 Q.J. SPEECH 21, 22 (1981); David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms? An Institutional Analysis*, 84 CAL. L. REV. 493, 507 (1996) ("[T]he persistent *myth* of black intellectual inferiority continues to play an important role in shaping both the opportunities available to and the choices made by black lawyers.").

[55] Mark P. Orbe, *From the Standpoint(s) of Traditionally Muted Groups: Explicating a Co-Cultural Communication Theoretical Model*, 8 COMM. THEORY 1, 4 (1998).

[56] For a discussion of Ardener's muted group theory, see *supra* note 7 and accompanying text.

superior to my own, no matter the topic. For instance, I was relatively quiet in law school, letting my white peers ask the questions in class, even if they were dumb (the questions, not my classmates). I could *not* afford to be the black student asking the perceived dumb or irrelevant question because that would reflect on my intelligence, my value, my personhood, and ultimately my entire race.

Needless to say, I have been compelled to examine the strength of my own voice and question why it is often nonexistent. The majority of my life I have looked inward, assuming I had buried insecurities that needed resurrecting and examination; perhaps that is true in part for all of us. Being surrounded by white people at every level from my childhood to my educational and professional ascent, I have literally been watching an elite and privileged community from the margins looking in, blaming myself for not being visible. For those muted and invisible moments, I am compelled to inform the dominant culture of the unconscious habit of white privilege, as well as caution the non-dominant culture of the existence, and sometimes poignant effect, of that privilege, to prepare the next generation of students of color to find their voice early.

Similar to the depth of research on the social construction of whiteness, the scholarship on its counterpart, white privilege, is copious; relevant background is provided with the singular purpose of exposing the unconscious, habitual nature of this privilege. To be "[w]hite in America has always signified who is entitled to privilege. In this sense, the phrase '[w]hite privilege' is a redundancy [because w]hiteness has always signified worthiness, inclusion and acceptance."[57] As previously noted, this privilege has no bearing on a person's goodness, nor is it bestowed upon those who deserve it—the privilege exists solely based on the color of one's skin.[58] Therefore, all white people have white privilege,[59] although the extent to which they have it (and recognize it) may vary.[60] While the scope of

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[57] Flagg, *supra* note 41, at 110–11 (quoting John A. Powell, *The "Racing" of American Society: Race Functioning as a Verb Before Signifying as a Noun*, 15 LAW & INEQ. 99, 107 (1997)).

[58] KENDALL, *supra* note 4, at 63.

[59] For an interesting statistical view of the proof of white privilege, see Josh Tucker, *The Ultimate White Privilege Statistics & Data Post*, NEW PROGRESSIVE, https://www.thenewprogressive.net/ultimate-white-privilege-statistics/?r=true (last visited Apr. 6, 2018) (presenting "the largest and most complete collection of facts, statistics, and data that demonstrate and exemplify the reality of white privilege anywhere on the internet"). *See also* Armstrong & Wildman, *supra* note 38, at 640 (discussing "federal laws that imposed disparate sentences for the possession of rock cocaine (crack) and powder cocaine, drugs that are pharmacologically identical," when prosecutions for possession of rock cocaine versus powder cocaine were frequently split along racial lines).

[60] KENDALL, *supra* note 4, at 63, 66–67. Even despite the varying degrees of privilege white people experience—e.g., white men being more privileged than white women and rich whites being more privileged than poor whites—"the fact remains that when all other factors are equal, whiteness matters and carries with it great advantage." Flagg, *supra* note 41, at 113 (quoting TIM WISE, WHITE LIKE ME:

this Article is limited to white privilege, there are many types of privilege, of which most people benefit from at least one.[61] But principal to this discussion of white privilege are the *perceived* innocence of white ignorance, with the more fitting description being an unconscious habit, and the stark revelation that this habit can likely only be changed indirectly; I discuss each in turn.

First, white privilege does not arise simply from "lack of knowledge about the cultures and lives of people of color," which would make the privilege almost accidental or unintentional.[62] The imperfect resolution to this view of white privilege would be to simply point out the ignorance of white people and provide them with accurate information to "fill in the gaps in their knowledge and eliminate their racism."[63] In my experience, it is easy for the non-dominant culture to fall prey to this naive view and its resolution to white-privileged ignorance.[64] Even W.E.B. Du Bois, a brilliant philosopher and civil rights activist, initially tried to cure "innocent" white ignorance by distributing accurate data about people of color, but after World War I, he abandoned his former belief that white people were fundamentally good-hearted and instead viewed racial prejudice as an unconscious habit.[65] Perhaps it is true then that "[t]o be white is not to think about it."[66]

Second, the categorical shift from innocent ignorance to unconscious habit is arguably more settling in an already unpleasant space. If this privilege is actually invisible to white people, there is both sympathy and exasperation toward its holder. On the one hand, "[s]eparating whiteness and white privilege is a bit like trying to unscramble an egg—pulling apart the yolk and the albumen. Although different from one another, they are mixed together, inseparable."[67] Because of this integration between whiteness and white privilege, the "privilege operates as

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REFLECTIONS ON RACE FROM A PRIVILEGED SON ix–x (2005)).

[61] *See* McIntosh, *supra* note 3, at 4 (describing privileges such as "class, religion, ethnic status, or geographical location").

[62] SHANNON SULLIVAN, REVEALING WHITENESS: THE UNCONSCIOUS HABITS OF RACIAL PRIVILEGE 17–18 (2006).

[63] *Id.* at 18.

[64] A reel has often played in my head, occasionally screaming, "Just step into my world, white people! Take time to understand my life, and maybe we can find some common ground!"

[65] SULLIVAN, *supra* note 62, at 19–23. Sullivan references Du Bois's 1920 work, *Darkwater*, containing the infamous essay, *The Souls of White Folk*, where "Du Bois came to realize that the ignorance manifested by white people was much more complex and sinister than he earlier had thought." *Id.* at 20. Relying in part on the work of Sigmund Freud, Du Bois "began to realize that in the fight against race prejudice, we were not facing simply the rational, conscious determination of white folk to oppress us; we were facing age-long complexes sunk now largely to unconscious habit and irrational urge." *Id.* at 21 (quoting W.E.B. DU BOIS, DUSK OF DAWN: AN ESSAY TOWARD AN AUTOBIOGRAPHY OF A RACE CONCEPT 296 (1940)).

[66] Stephanie M. Wildman, *The Persistence of White Privilege*, 18 WASH. U. J.L. & POL'Y 245, 245 (2005) (quoting Barbara J. Flagg, *"Was Blind, But Now I See": White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 969 (1993)).

[67] KENDALL, *supra* note 4, at 41.

unseen, invisible, even seemingly nonexistent."[68] Enter sympathy. On the other hand, if this privilege is invisible, then white people "have little sense of what that means for [their] lives, and [they] are not particularly interested in finding out. It doesn't seem relevant."[69] Enter exasperation.

Stepping back contextually, Du Bois broadened Sigmund Freud's concept of the unconscious beyond the nuclear family, suggesting that habits are formed "through transaction with the socio-cultural world . . . [and] that transforming them will take a great deal of patience and time, in large part because of habit's ability to actively undermine its own transformation."[70] Drawing upon Freud and Du Bois in her revolutionary work, feminist Shannon Sullivan describes white privilege as an unconscious habit because it "operates as nonexistent and actively works to disrupt attempts to reveal its existence."[71] In short, if white people cannot see their own racism, then they cannot change it; this hinders the success of non-white people's efforts to fight racism.[72]

Therefore, the unconscious habit of white privilege is more likely to be changed indirectly than directly.[73] In hindsight, it seems logical that a conscious argument aimed directly at an unconscious opponent is wasted. To this point, Sullivan asserts that because unconscious habits are not always fixed and rigid, they maintain some malleable features.[74] In other words, because habits are a person's subconscious interacting with the world in a particular way, change cannot occur through intellect alone.[75] Consequently, we cannot fight an invisible battle "with straightforward hard work and persuasive rational argumentation."[76] Rather, "[t]he key to transformation is to find a way of disrupting a habit through environmental change and then hope that the changed environment will help produced [sic] an improved habit in its place."[77] By altering environmental feeders, a white person will be more successful at changing race-related habits

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[68] SULLIVAN, *supra* note 62, at 1.

[69] KENDALL, *supra* note 4, at 41.

[70] SULLIVAN, *supra* note 62, at 22.

[71] *Id.* at 1–2.

[72] *Id.* at 22.

[73] *Id.* at 2.

[74] *Id.* at 23.

[75] *Id.* at 9, 22–23.

[76] SULLIVAN, *supra* note 62, at 19 (suggesting that "[m]ore than one contemporary critical race theorist has fallen victim to" the naive idea that white privilege could be fought merely by eliminating ignorance of it).

[77] *Id.* at 9.

than by trying to use willpower to directly change how he or she thinks about people who are non-white.[78]

III. *BARRIERS TO ACCESSING OPPORTUNITIES BEHIND THE WHITE DOOR*: IMPLICIT BIAS AND ITS EFFECT ON STUDENTS OF COLOR

I almost don't want to recruit students of color here [into the firm] anymore. I bring these talented young people here, and I know that, behind the scenes, people are setting the stage for them to fail. No matter how qualified, no matter how much star quality these recruits have, they are going to be seen as people who will most likely not cut it. So, they are under the microscope from the first moment they walk in. And, every flaw is exaggerated. Every mistake is announced. And, it's like, aha. As soon as a minority makes a mistake, they immediately say that that's what they were expecting all along.

—Anonymous Minority Law Firm Partner[79]

In the wake of the racial tensions in our country, it is imperative to understand how perception and racial stereotypes evolve into implicit biases that negatively impact people of color. For white people, the daily media feeds reporting another racial incident is simply news (even if distressing), but for people of color, these reports are not just news: They are a constant reminder that our skin color is different, and that this difference is paramount to how the world perceives us. People of color cannot ignore the color of their skin, nor should colorblindness be a solution, as it simply perpetuates white privilege.[80] However, as has been said of numerous black men killed by police officers, it is quite apparent that perception "is inherently linked to their survival . . . [and] can mean the difference between life and death."[81] To expose the effect of damaging perceptions, this Part begins with a brief overview of research on implicit bias and its effects on people of color generally before specifically discussing implicit bias in the law school classroom.

A. Implicit Bias Review: ~~The Good~~, the Bad, the Ugly

As you're seeing something unfold, you have to understand where your instincts are taking you and why they're taking you there. And you have to make a

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[78] *Id.*

[79] Negowetti, *supra* note 20, at 949 (alteration in original) (quoting ARIN N. REEVES, COLORED BY RACE: BIAS IN THE EVALUATION OF CANDIDATES OF COLOR BY LAW FIRM HIRING COMMITTEES 11 (2015), http://nextions.com/wp-content/uploads/2017/05/colored-by-race-yellow-paper-series.pdf) (statement of an anonymous "minority law firm partner explain[ing] the impact of implicit biases on the evaluation of diverse associates").

[80] Armstrong & Wildman, *supra* note 38, at 644.

[81] RACHEL D. GODSIL ET AL., THE SCIENCE OF EQUALITY, VOLUME 1: ADDRESSING IMPLICIT BIAS, RACIAL ANXIETY, AND STEREOTYPE THREAT IN EDUCATION AND HEALTH CARE 3 (2014), http://perception.org/wp-content/uploads/2014/11/Science-of-Equality.pdf ("Mostly, we have mourned the eerily familiar similarity in each of their tragic deaths: how black people, particularly men and boys, are perceived is inherently linked to their survival.").

correction for that.

—Mike DeWine[82]

Similar to the ample research on white privilege, the field of implicit bias is also extensive, broadly recognized across disciplines, and continually growing.[83] Generally, implicit bias "refers to the automatic association of stereotypes and attitudes with different identity characteristics."[84] The term bias "denotes a displacement of people's responses along a continuum of possible judgments."[85] It is *implicit* because of its unconscious nature; in other words, "the perpetrator is unaware of her own bias."[86] Significant in the area of discrimination law, "[t]he very existence of implicit bias poses a challenge to legal theory and practice, because" it diverges from the traditional "discrimination doctrine . . . premised on the assumption that, barring insanity or mental incompetence, human actors are guided by their avowed (explicit) beliefs, attitudes, and intentions."[87] Yet, despite our most well-meaning beliefs and desires that our rational minds liberate us from prejudices and biases, the fact is that "a complex system of unconscious judgments of people, places, and situations, of which we are unaware underlie our thinking."[88] This phenomenon of implicit bias insidiously "affect[s] our judgment, influence[s] decision making, and ha[s] a real effect upon whom we befriend,

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[82] CHERYL STAATS ET AL., STATE OF THE SCIENCE: IMPLICIT BIAS REVIEW 12 (2016), http://kirwaninstitute.osu.edu/wp-content/uploads/2016/07/implicit-bias-2016.pdf (quoting Ohio Attorney General Mike DeWine).

[83] *See* Rachel D. Godsil, *Why Race Matters in Physics Class*, 64 UCLA L. REV. DISCOURSE 40, 51 (2016) (noting the Supreme Court's recognition of implicit bias); Rachel D. Godsil & James S. Freeman, *Race, Ethnicity, and Place Identity: Implicit Bias and Competing Belief Systems*, 37 U. HAW. L. REV. 313, 316 (2015) ("The presence of implicit bias has been established using a wide variety of instruments, including measuring cardiovascular responses, brain scans using functional magnetic resonance imaging, and most widely known, the Implicit Association Test ('IAT')."); STAATS ET AL., *supra* note 82, at 11 ("It is hardly exaggeration to say that at times 2015 felt like the year that the term 'implicit bias' truly permeated society in ways that had previously been beyond compare. Regardless of your preferences in or attention paid to media, news outlets, and/or current events, varying degrees of reference to the concept abounded.").

[84] Godsil, *supra* note 83, at 51–52.

[85] Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CALIF. L. REV. 945, 950 (2006).

[86] Michael Selmi, *Statistical Inequality and Intentional (Not Implicit) Discrimination*, 79 LAW & CONTEMP. PROBS. 199, 215 (2016) (discussing racial equality in the areas of school suspensions/expulsions and automobile stops, where despite clear data, causal links between inequality and discrimination are often contested).

[87] Greenwald & Krieger, *supra* note 85, at 951 (discussing implicit bias, an aspect of the new science of unconscious mental processes, and its substantial bearing on discrimination law).

[88] Negowetti, *supra* note 20, at 932.

employ, value, and promote."[89]

Gauging implicit bias has proven challenging, as proponents and critics have debated whether it can really be measured.[90] Nonetheless, the study of implicit bias has become an important topic, as numerous disciplines desire to help in "reduc[ing] unwanted disparities in every realm of human life."[91] As a whole, this research attempts to predict and analyze unconscious behaviors and motivators that "affect our perceptions, interactions, and behaviors, often without our awareness."[92] Yet, because self-reports cannot measure implicit bias—in that most people consciously reject the idea that they have biases—these tests have sought to measure people's reactions to stimuli in order to assess levels of implicit bias.[93]

Many "social science studies show that implicit bias is pervasive in our society."[94] The best known, and most influential, test that seeks to measure implicit bias is the Implicit Association Test (IAT),[95] which was developed by Professors Anthony Greenwald, Debbie McGee, and Jordan Schwartz, and then expanded by Professors Greenwald, Mahzarin Banaji, and Brian Nosek.[96] Housed at Harvard's Project Implicit website, the IAT proclaims to "measure[] the strength of associations between concepts (e.g., black people, gay people) and evaluations (e.g., good, bad) or stereotypes (e.g., athletic, clumsy)" by scoring the

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[89] *Id.*

[90] *See generally* STAATS ET AL., *supra* note 82 (highlighting recent literature in criminal justice, health and health care, education, employment, and housing, and discussing how to mitigate implicit bias).

[91] *Id.* at 6.

[92] Andrea A. Curcio, *Addressing Barriers to Cultural Sensibility Learning: Lessons from Social Cognition Theory*, 15 NEV. L.J. 537, 550 (2015); *see* Greenwald & Krieger, *supra* note 85, at 951 (commenting that "[i]mplicit biases are especially intriguing, and also especially problematic, because they can produce behavior that diverges from a person's avowed or endorsed beliefs or principles").

[93] Rachel D. Godsil, *Answering the Diversity Mandate: Overcoming Implicit Bias and Racial Anxiety*, 286 N.J. LAW. MAG., Feb. 2014, at 25, 26.

[94] Mark W. Bennett, *Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of* Batson*, and Proposed Solutions*, 4 HARV. L. & POL'Y REV. 149, 154 (2010); *see, e.g.*, Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 NOTRE DAME L. REV. 1195, 1195 (2009); Joshua Correll et al., *Across the Thin Blue Line: Police Officers and Racial Bias in the Decision to Shoot*, 92 J. PERSONALITY & SOC. PSYCHOL. 1006, 1015 (2007) (analyzing response times in recognition of white and black men holding either guns or innocuous items); Chris Guthrie et al., *Blinking on the Bench: How Judges Decide Cases*, 93 CORNELL L. REV. 1, 31 (2007); Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L.J. 345, 355–56 (2007); Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. PERSONALITY & SOC. PSYCHOL. 5 (1989) (noting that previous studies focused on explicit bias but left unexplored the study of subconscious and "automatic" biases).

[95] To take the test, see *Preliminary Information*, PROJECT IMPLICIT, https://implicit.harvard.edu/implicit/takeatest.html (last visited Apr. 6, 2018).

[96] Debra Lyn Bassett, *Deconstruct and Superstruct: Examining Bias Across the Legal System*, 46 U.C. DAVIS L. REV. 1563, 1568 (2013); *see* Greenwald & Krieger, *supra* note 85, at 952–55 (discussing the scientific foundations of the IAT in detail); STAATS ET AL., *supra* note 82, at 19 (noting alternative theories for assessing implicit biases).

average time it takes a person to sort combined categories of concept and evaluation words (e.g., Fat People/Good, Thin People/Bad) versus the opposite category combinations (e.g., Fat People/Bad, Thin People/Good).[97] The science behind the IAT is beyond the scope of this Article, but generally speaking, the test maintains "that making a response is easier when closely related items share the same response key. . . . [O]ne has an implicit preference for thin people relative to fat people if they are faster to categorize words when Thin People and Good share a response key and Fat People and Bad share a response key, relative to the reverse."[98] Of relevance, the IAT "reveal[s] that most white adults are more likely to associate African Americans than white Americans with violence, and most Americans are more likely to associate women with family life than with professional careers."[99]

Recently, however, the IAT has received sharp criticism for failing to deliver on the supposed promise of demonstrating how to decrease racial bias against marginalized groups.[100] Critics of the IAT have long debated the connection between the unconscious bias measured by the test and biased behavior.[101] Specifically, some argue that the correlation between implicit bias and discriminatory behavior is weak and that there is little evidence that a person's behavior will change with awareness of one's implicit bias.[102] One critic, Professor Hart Blanton, offers an analogy—unlike how a high IQ score strongly correlates with achievement, the IAT "doesn't reveal whether a person will tend to act in a biased manner, nor are the scores on the test consistent over time. It's possible to be labeled 'moderately biased' on your first test and 'slightly biased' on the next."[103] New analysis, which includes research by one of IAT's founders,

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[97] *About the IAT*, PROJECT IMPLICIT, https://implicit.harvard.edu/implicit/iatdetails.html (last visited Apr. 6, 2018).

[98] *Id.*

[99] Negowetti, *supra* note 20, at 932.

[100] Jesse Singal, *Psychology's Favorite Tool for Measuring Racism Isn't Up to the Job*, CUT (Jan. 11, 2017, 12:18 PM), http://nymag.com/scienceofus/2017/01/psychologys-racism-measuring-tool-isnt-up-to-the-job.html.

[101] Tom Bartlett, *Can We Really Measure Implicit Bias? Maybe Not*, CHRON. HIGHER EDUC. (Jan. 5, 2017), http://www.chronicle.com/article/Can-We-Really-Measure-Implicit/238807.

[102] *Id.* (citing Patrick S. Forscher et al., *A Meta-Analysis of Change in Implicit Bias*, RESEARCHGATE (2016), https://www.researchgate.net/publication/308926636_A_Meta-Analysis_of_Change_in_Implicit_Bias) (discussing meta-analysis research which synthesized data from almost 500 studies over twenty years involving more than 80,000 participants).

[103] *Id.* ("[T]he IAT provides little insight into who will discriminate against whom, and provides no more insight than explicit measures of bias." (quoting Frederick L. Oswald et al., *Predicting Ethnic and Racial Discrimination: A Meta-Analysis of IAT Criterion Studies*, 105 J. PERSONALITY & SOC.

Brian Nosek, finds still less of a correlation between implicit bias and behavior.[104] Aware that his recent work will seemingly affirm the resolve of IAT critics, Nosek defends the IAT for engaging millions in the conversation about the science of implicit bias but still harbors concerns as to the connection between implicit bias and discriminatory behavior.[105] He notes, "You would think that if you change the associations, and the associations predict behavior, then the behavior would change too, . . . [b]ut the evidence is really limited on it."[106] In the face of these critiques, IAT proponents maintain the trustworthiness of their work. While some note the errors in Blanton's research,[107] the IAT creators themselves acknowledge that there is a difference between having unconscious biases and acting on them,[108] though they ultimately remind the broader audience that many papers have relied on the implicit bias measure, with very few questioning its accuracy.[109]

In retrospect, it is unnecessary to fall into one camp or the other—for or against the IAT—because proponent and critic alike agree that unconscious bias exists, as does racial discrimination, and the paramount goal is to understand the causes of discrimination and move forward.[110] Ultimately, the discussion divides at whether there is solid science that can measure unconscious bias with confidence.[111] Some of the same critics of the IAT who settle on the existence of implicit bias report that to change behavior, it may "be more effective to rid the social environment of the features that cause biases on both behavioral and cognitive tasks or equip people with strategies to resist the environment's biasing influence."[112] But when it comes to race, regardless of whether people act on their biases, the research supports that "[a] significant majority of whites show implicit bias against members of minority groups—with the bias toward blacks generally the highest."[113] Still more discouraging, because of the nonverbal cues that accompany implicit bias, out-group members who are the target of bias are often

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PSYCHOL. 171, 188 (2013))).

[104] *Id.*

[105] *Id.*

[106] *Id.*

[107] Bartlett, *supra* note 101.

[108] Bassett, *supra* note 96, at 1571; *see* Christine Jolls & Cass R. Sunstein, *The Law of Implicit Bias*, 94 CALIF. L. REV. 969, 971–72 (2006) (noting that "the relationship between IAT scores and behavior remains an active area of research").

[109] Bartlett, *supra* note 101 (discussing comments by IAT creator Mahzarin R. Banaji).

[110] *Id.*

[111] *Id.*

[112] Forscher et al., *supra* note 102, at 35–36 (citations omitted).

[113] Godsil, *supra* note 93, at 27; *see* Jolls & Sunstein, *supra* note 108, at 969. For example, a black doctor was rejected in her attempt to provide in-flight medical help because she did not look like an "actual physician." Christine Hauser, *Black Doctor Says Delta Flight Attendant Rejected Her; Sought 'Actual Physician'*, N.Y. TIMES (Oct. 14, 2016), http://www.nytimes.com/2016/10/15/us/black-doctor-says-delta-flight-attendant-brushed-her-aside-in-search-of-an-actual-physician.html?_r=0.

quite aware of a white person's bias, even if the white person is not.[114] As such, "those unconscious biases can affect the group dynamic and impede the group's overall performance."[115]

At the time of this writing, my three-year-old is in preschool and finds immense joy in playing on the playground with her best friend, Lyla. Lyla is a little white girl. My daughter is biracial. I would be lying if I said that I have not wondered when, *not if*, the day will come that she realizes that Lyla's skin color is different than hers, and what label or association she will attach to that fact.[116] For all the self-confidence I had growing up, I can still remember Nikki (a white girl) throwing rocks at me in elementary school because she believed I looked like poop and belonged in a toilet. A lifetime of ignorant incidents can take a toll on even the most confident of souls.

B. Implicit Bias and Compounding Insult of Attributional and Intersectionality Theories

Maybe we now realize the way racial bias can infect us even when we don't realize it, so that we're guarding against not just racial slurs, but we're also guarding against the subtle impulse to call Johnny back for a job interview but not Jamal.

—President Barack Obama[117]

Many notable scholars have written on the larger discourse surrounding the role of implicit bias and racial anxiety in law firms.[118] Particularly enlightening is

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[114] Curcio, *supra* note 92, at 551.

[115] *Id.*; *see* Godsil, *supra* note 83, at 53 ("Racialized stereotypes about traits like competence, work ethic, and violence can be detrimental to people of color. For instance, field studies demonstrate that black and Latino job applicants are significantly less likely to receive callbacks than are equally qualified white applicants.").

[116] *See* Topher Sanders, *'Only White People,' Said the Little Girl*, N.Y. TIMES (Oct. 13, 2016), http://www.nytimes.com/2016/10/16/opinion/sunday/only-white-people-said-the-little-girl.html?_r=0 (commenting on a playground incident where a little girl told his five-year-old son that he could not play on a playground ride because he was not white).

[117] STAATS ET AL., *supra* note 82, at 12 (discussing remarks given by President Obama during his eulogy for Honorable Reverend Clementa Pinckney in June 2015 following the shooting deaths of Pinckney and eight others at Emanuel African Methodist Episcopal Church in Charleston, South Carolina).

[118] *E.g.*, George C. Chen, *Beneath the Surface: Why Diversity and Inclusion Matter for Lawyers of Color, and What Lawyers Can Do to Address Implicit Bias in the Legal Profession*, FED. LAW., June 2015, at 28; Negowetti, *supra* note 20; Russell G. Pearce et al., *Difference Blindness vs. Bias Awareness: Why Law Firms with the Best of Intentions Have Failed to Create Diverse Partnerships*, 83 FORDHAM L. REV. 2407 (2015); Godsil, *supra* note 93; Vernã Myers, *From Counting Heads to Cultivating Minds: Why Effective Retention Requires Attention to Our Implicit Biases*, 38 LAW PRAC.,

a hypothetical scenario posed by law professor and Director of Research and Co-Founder of the Perception Institute, Rachel Godsil, who studies implicit bias and racial anxiety.[119] Godsil describes three potential scenarios following a young black female associate who submits excellent work to a partner and then awaits feedback.[120] In the first, and ideal, scenario, after reviewing the associate's work, the partner discusses with her both its strengths and areas for improvement, and "[a]s a result, a successful mentoring relationship has begun."[121] In the second scenario, the partner notes a typo on one page, and despite the obvious fact that one or two typos are commonly found in memoranda prepared by all associates, this error affects his evaluation of the work:

> [T]he partner views this associate's error through a lens clouded by negative racial stereotypes about work ethic and attention to detail that he doesn't realize he possesses. He concludes that this associate is unlikely to be a "star" and so rather than working through the rest of the memorandum he sends it to a senior associate. This scenario describes "implicit bias" on the part of the partner, a phenomena that has received significant attention in legal academic literature.[122]

As an anecdotal example of scenario two, I vividly remember my first year in law practice when I submitted a simple research memo to a white male partner. The memo request was of an urgent nature, so I only had a few hours to research, write, and submit it. Despite the rush order, I was very proud of my work. The same day I submitted it, I was called into the partner's office, and he told me that although my research was accurate and on point and he came to the same conclusion I did, he had redone the research himself based on finding the word "form" where it should have read "from." He never assigned me work again. I have carried that story like a scarlet letter for years—wearing it as a badge of shame and using it to "scare" my own law students into always proofreading their work, reminding them that both their credibility and professional reputation rides on their attention to detail. I suppose in some ways, albeit unintentionally, I have also given them a skewed view of the law firm life. That was circa 2003. Sadly, it was not until I began this scholarly path, nearly thirteen years later, that I reevaluated this story. I had never thought for one second that the outcome of my own law firm experience *could* be because of my race, gender, or both. Was this an example of implicit bias? Was this an issue of intersectionality?

Finally, in the third scenario, the partner mentions the strengths to the

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Sept./Oct. 2012, at 40; Luis J. Diaz & Patrick C. Dunican Jr., *Ending the Revolving Door Syndrome in Law*, 41 SETON HALL L. REV. 947 (2011); Wilkins & Gulati, *supra* note 54.

[119] *Team*, PERCEPTION INST., https://perception.org/about-us/team/ (last visited Apr. 6, 2018).

[120] Godsil, *supra* note 93, at 25.

[121] *Id.*

[122] *Id.*

associate but does not mention the areas for improvement.[123] By failing to mention her weaknesses, "[a]gain without realizing it, the partner's response to the memorandum is clouded by a stereotype[, b]ut this time the stereotype at work is that whites are racist—and his actions reflect his anxiety that he will confirm the stereotype."[124] As a result, "[t]he associate does not improve the memorandum as much as she otherwise would—and the partner will likely prefer to work with other associates in the future."[125]

The above scenarios (two and three) illustrate how the effect of implicit bias on communities of color is compounded under both the ultimate attribution error and intersectionality theories. First, Thomas F. Pettigrew termed "ultimate attribution error" in 1979 to describe the theory that "negative out-group behavior is explained as innate and genetic."[126] In other words, if a racial minority succeeds, against an undesirable stereotype, the rationalization is that the minority "is an exceptional case, 'lucky,' the recipient of special life advantages, highly motivated, or the result of a manipulated situation—leaving stereotypical beliefs and determinist understandings intact."[127] Conversely, also under this theory, "if the [success] is by a dominant group member, the result is seen as proof of their aptitude."[128]

Pettigrew's theory explains the various potential outcomes of finding a typo in the work of a black associate, as posed by Godsil's scenarios, compared to finding the same error in a white associate's work. In the former, a partner may carelessly assume that working with the black associate is not worth the effort or, even more damaging, assume or attribute alleged faulty work to all black people.[129] In the latter, a white partner may not even be conscious that he has had a different response to the error in the white associate's work.[130] As Godsil describes, experiences of implicit bias naturally lead minority associates to "be

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[123] *Id.*

[124] *Id.*

[125] *Id.* (suggesting that "[t]he phenomenon of failing to provide constructive criticism because of concern about the reaction that such feedback will trigger is referred to as the 'racial anxiety' or 'white stereotype threat'").

[126] W. Carson Byrd & Victor E. Ray, *Ultimate Attribution in the Genetic Era: White Support for Genetic Explanations of Racial Difference and Policies*, 661 ANNALS AM. ACAD. POL. & SOC. SCI. 212, 216 (2015).

[127] *Id.*

[128] Godsil, *supra* note 93, at 27.

[129] *Id.*; Byrd & Ray, *supra* note 126, at 216.

[130] Godsil, *supra* note 93, at 27.

sensitive to the possibility that they may be criticized or judged negatively for work differently than a white associate."[131] When given critical feedback without context, persons of color "are likely to disengage and think the [evaluator] is biased."[132] Godsil terms this experience as "'attributional ambiguity,' in which it is not clear whether the criticisms are based on his or her race or are honest reactions to his or her work."[133]

Second, if Pettigrew's ultimate attribution error theory is not already damaging to the psyche of people of color, Kimberle Crenshaw's intersectionality theory delivers separate blows to people of color who can also be defined based on gender, socioeconomic status, and sexual orientation as separate from the privileged, rich, white, heterosexual male.[134] For example, in looking at race and gender, this theory posits that the two social categories cannot be mutually exclusive as to experience and analysis.[135] Instead, intersectionality theorizes that a black woman, for instance, "encounter[s] combined race and sex discrimination [in] that the boundaries of sex and race discrimination doctrine are defined respectively by white women's and [b]lack men's experiences."[136] Consequently, "because the *privileging* of whiteness or maleness is implicit," one's race (non-white) and sex (non-male) "become significant only when they operate to explicitly *disadvantage* the victims."[137]

While Pettigrew's theory explains why the typographical error in the

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[131] *Id.*

[132] *Id.*

[133] *Id.*

[134] *See* Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139.

[135] *Id.* at 139.

[136] *Id.* at 143.

[137] *Id.* at 151. For additional information on intersectionality, see Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991) (critiquing the tendency in identity politics to ignore intragroup differences by examining the race and gender aspects of violence experienced by women of color). Intersectionality can be both problematic and beneficial. On the one hand:

> Constructs such as "race" and "gender" immediately become problematic when one asks how they interact with one another. For example, if an employer treats black women badly in the workplace, but does not treat white women or black men equally poorly, is that race discrimination or sex discrimination, or both? Then there is the problem of proliferation. Aren't there other categories of discrimination as well? What about sexual orientation, disability, class, nationality, color, religion, etc.? You can see the difficulty: the conceptual grid quickly becomes too complex to be useful.

Barbara J. Flagg, *On Selecting Black Women as Paradigms for Race Discrimination Analyses*, 10 BERKELEY WOMEN'S L.J. 40, 45 n.17 (1995). On the other hand, the value of intersectionality discourse is that it "can help reveal privilege, especially when we remember that the intersection is multidimensional, including intersections of both subordination and privilege." WILDMAN, *supra* note 3, at 22.

hypothetical leads to a false presumption of incompetence, Crenshaw's theory calls into question whether the very *basis* for that perceived incompetence stems from racism or sexism. An in-depth exploration of intersectionality is beyond the scope of this Article, but as the following discussion articulates, the central point is that people of color do not know which factor (e.g., race, gender, or both) triggers implicit bias, which can cause undue frustration. In 2006, the ABA Commission on Women in the Profession brought national attention to this intersectionality challenge within the legal profession, finding that there was a double minority status for women of color due to both race and gender.[138] Notably, because "[t]he careers of white women attorneys and men attorneys of color were neither as disadvantaged as those of women attorneys of color nor as privileged as those of white men," the combined disadvantages of race and gender among women of color explain, in part, why law firms are unsuccessful in retaining women of color.[139]

I certainly felt that frustration as I ultimately fled from my large law firm experience with tears of joy streaming down my face. Maybe I thought I would always be treated the same because I had grown up surrounded by white people my entire life, was submerged in their culture, and was often mistaken on the phone for a white person because of my dialect. Regardless, in my own law firm "typographical error" story, while I cannot assume what was going through that white male partner's mind on that significant day in 2003, the reality of implicit bias is that people of color simply do not know when race *is* at play in the evaluation of their work and when it is not.[140] Consequently, when the lens of intersectionality magnifies implicit bias, women of color, for example, do not know if the reason for receiving a poor evaluation or losing a work opportunity altogether is due to their race or gender.

C. Implicit Bias in the Law School Classroom: The Student Experience

It's a constant burden of pressure. I'm constantly policing myself, just being aware of what I say and how it can be interpreted because I essentially am the representation of the black community.

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[138] VISIBLE INVISIBILITY, *supra* note 6, at vii ("Women of color experience a double whammy of gender *and* race, unlike white women or even men of color who share at least one of these characteristics (gender or race) with those in the upper strata of management. Women of color may face exclusion from informal networks, inadequate institutional support, and challenges to their authority and credibility. They often feel isolated and alienated, sometimes even from other women.").

[139] *Id.* at xii. Attorneys surveyed were asked if they had ever been denied desirable work assignments, opportunities to build relationships with clients, promotions, or advancement opportunities. *Id.*

[140] Godsil, *supra* note 93, at 27.

—Black UCLA Law Student[141]

During one of my first classes in law school, one of my professors made a comment that I will never forget. "I think coming to office hours is important if you want to do well in law school," he said; I thought, well of course, I see the wisdom in that. He continued, "minority students are less likely to come to office hours or speak up in class," so please do not feel shy coming in.

—Faiza Hasan[142]

"Lawyers bring to their work their implicit biases that are embedded in the dominant power and prestige of identity groups in society."[143] Naturally, it follows then that white law professors, the flagship of the dominant group in legal academia, bring their implicit bias into the classroom, where students of color are the minority.[144] How do we respond? There is already a perception or stigma that law students of color, particularly from underrepresented minority groups, are less intelligent or qualified than their white counterparts—that they were admitted based on their race rather than on merit.[145] In this regard, scholars have described the law school environment as a "hostile education environment" where minority

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[141] Rhonesha Byng, *Video Shines Light on the 'Disturbing Emotional Toll' of Being Black at UCLA Law School*, HUFFPOST (Feb. 18, 2014), https://www.huffingtonpost.com/2014/02/14/ucla-law-school-diversity_n_4789763.html.

[142] Faiza Hasan, *Implicit Bias in Law School*, MS. JD (May 15, 2016), https://ms-jd.org/blog/article/implicit-bias-in-law-school.

[143] Pearce et al., *supra* note 118, at 2413; *see* Negowetti, *supra* note 20, at 932–33 (applying insights from social science "to understand and address the diversity 'crisis'" in the legal profession and contending that "diversity is not only a result of a less biased workplace, profession, and legal system, but it is also a means of deactivating and countering stereotypes and implicit biases"); Carole J. Buckner, *Realizing* Grutter v. Bollinger*'s "Compelling Educational Benefits of Diversity"—Transforming Aspirational Rhetoric into Experience*, 72 UMKC L. REV. 877, 886 (2004) ("Minority representation in the legal profession is significantly lower than in most other professions and minority attorneys continue to face significant obstacles to 'full and equal participation.'").

[144] For information regarding implicit bias in college classrooms, see Guy A. Boysen et al., *Incidents of Bias in College Classrooms: Instructor and Student Perceptions*, 2 J. DIVERSITY HIGHER EDUC. 219, 228–29 (2009) (researching incidents of bias specific to college classrooms and how they are handled by instructors). *See also* Joe Patrice, *Alumni of Top Law School Speak Out Against Professor*, ABOVE THE LAW (Sept. 22, 2017, 12:30 PM), https://abovethelaw.com/2017/09/alumni-of-top-law-school-speak-out-against-professor/?rf=1 (commenting on law student and alumni concern over op-ed piece, published by two white law school professors, described as "exploring 'bourgeois values' as a thinly veiled effort to denigrate women and minorities").

[145] Deirdre M. Bowen, *Brilliant Disguise: An Empirical Analysis of a Social Experiment Banning Affirmative Action*, 85 IND. L.J. 1197, 1198 (2010); Clyde L. Otis III, *Wringing the Clouds Dry: The Minority Attorney's Guide to Rainmaking*, 149 N.J. LAW. MAG., Nov./Dec. 1992, at 32, 33; *see* Boysen et al., *supra* note 144, at 220 (noting that "[e]xperiences of subtle bias are common among racial and ethnic minority students"); Sean Darling-Hammond & Kristen Holmquist, *Creating Wise Classrooms to Empower Diverse Law Students: Lessons in Pedagogy from Transformative Law Professors*, 25 BERKELEY LA RAZA L.J. 1, 4 (2015) (discussing the increasing portion of law students of color "who face the mutually exacerbating triple-threat of the solo status that accompanies being a member of an underrepresented group, the stereotype threat that accompanies being a member of a stereotyped group, and the challenges that attend lacking a background in the law before beginning law school" and thus "face unique challenges [with] law schools too often ignor[ing] their legitimate pedagogical needs").

students do not feel like legitimate members of the law school community but rather as outsiders, and both they and majority students may question their presence on campus.[146]

Minority students across the country, as noted by Crenshaw, not only feel disappointment and dissatisfaction with the "problems of diversity in the nation's law schools," but also recognize how their educational experience is negatively impacted by a dominant viewpoint that permeates their classroom experience, often discounting various perspectives.[147] To this point, Crenshaw comments:

> In many instances, minority students' values, beliefs, and experiences clash not only with those of their classmates but also with those of their professors. Yet because of the dominant view in academe that legal analysis can be taught without directly addressing conflicts of individual values, experiences, and world views, these conflicts seldom, if ever, reach the surface of the classroom discussion. Dominant beliefs in the objectivity of legal discourse serve to suppress the conflict by discounting the relevance of any particular perspective in legal analysis and by positing an analytical stance that has no specific cultural, political, or class characteristics.[148]

And more recently, particularly in the wake of the Supreme Court's landmark case of *Grutter v. Bollinger*,[149] which affirmed the educational benefits of diversity, minority law students have similarly weighed in on the issue, finding that diversity in the classroom leads to improved learning and "better prepare[s]

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[146] *See* Bowen, *supra* note 145, at 1198; Brief for National Black Law Students Association ("NBLSA") as Amicus Curiae, Fisher v. Univ. of Tex. at Austin, 570 U.S. 297 (2013) (No. 11-345), 2012 WL 3276511 (citing Bowen, *supra* note 145) (amicus appellate brief of NBLSA, submitted on behalf of the university in support of race-conscious admissions in a case where a white applicant who was denied admission to the state university brought suit alleging that the university's consideration of race in its admissions process violated her right to equal protection, describing "a study of the experiences of minority students currently enrolled in undergraduate and graduate programs in the 'hard sciences' [finding] that minority students in states that allow the use of race-conscious admissions programs experience far less stigma than students in states that have banned racial considerations"); Lain, *supra* note 19, at 285–86; González, *supra* note 14, at 50.

[147] Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN'S STUD. 33, 34–35 (1994).

[148] *Id.*

[149] Grutter v. Bollinger, 539 U.S. 306, 307–08 (2003) (upholding University of Michigan Law School's admissions policy, where race was one of several factors meaningfully considered, and ultimately deferring to the school's "educational judgment that diversity is essential to its educational mission").

students to deal with global clients and colleagues in the future."[150] For example, in her work analyzing the ramifications of *Grutter*, Professor Meera Deo interviewed law students to discuss the benefits of diversity in the classroom.[151] During one interview with a black female student, the student "suggest[ed] that because Black and White students may have different experiences with the police and different attitudes or approaches based on this background, they may see issues of Criminal Law differently."[152] Starkly, the student commented:

> We had an example in our Criminal Law class where [a White student] mentioned, "I don't understand why the Black man would be concerned about the police officer stopping him. I don't have a problem with a police officer stopping me." And I'm thinking, "Probably you don't get shot when the police officer stops you."[153]

The subtle or overt forms of bias, or complete absence of social and racial context, can mean that attending class for students of color requires them to "deal[] simultaneously with intellectual and discriminatory stressors."[154] Law students of color all across the country have emphasized the extent of these stressors through social media, as they raise awareness and voice concerns about their disappointing and dissatisfying experiences within the majority of their law school classrooms. For example, at UCLA Law School, black students expressed their feelings of isolation in a 2014 video titled *33*—aptly named for the thirty-three black law students amid a total student population of nearly 1,100.[155] One female student commented that when she vocalized a different viewpoint than her professor, she "felt she had been automatically characterized as an 'angry black woman.'"[156] She stated:

> The fact that I was a black woman played a lot into why people stopped listening to me. I felt like if there were maybe more black women in the class, maybe just five of us, people could have seen more of a variation in our responses to what was going on in class and what I felt like was sexism in the classroom.[157]

In another account, Jordan Carter—a Kansas law student—in her blog post

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[150] Meera E. Deo, *The Promise of* Grutter*: Diverse Interactions at the University of Michigan Law School*, 17 MICH. J. RACE & L. 63, 98 (2011) (discussing themes regarding the benefits of diversity through the lens of qualitative data gathered from focus groups with then-current law students).

[151] *Id.* at 86–87.

[152] *Id.* at 98.

[153] *Id.* (alteration in original).

[154] Boysen et al., *supra* note 144, at 221.

[155] Byng, *supra* note 141.

[156] *Id.*

[157] *Id.*

titled *Legally Brown*, eloquently expressed what law school is like when you are brown.[158] Specifically addressing experiences inside the classroom, she remarked:

> It's sitting in yet another class where you are the only non-white person in the room. . . . It's feeling like you have to work twice as hard to be taken seriously . . . . It's always being prepared for class because you refuse to prove racial stereotypes and instead want to be a positive representation, a brown person who is articulate and intelligent—but still always remembering not to be an angry militant black woman.[159]

The discouraging experiences of students of color inside their institution of elite learning magnify the intellectual inferiority stigma that they carry into their classes. For example, Carter further commented:

> Law school for us can be isolating. It can be exhausting. It can be demoralizing. It can be uncomfortable. . . . It is a privilege to not have people stare at you or wonder "what are you" or make judgments about your intelligence without even hearing you speak. . . . [W]hite people in law school get to walk around being the default, knowing people are never going to think you're a credit to your race, they're never going to hire or fire you just because of your skin color, you're likely never going to be the only person in the room who looks like you. We can debate what objective advantages this may give you, but I can promise you that, if nothing else, there is tangible value and comfort in just feeling like you are not alone.[160]

Likewise, I too had several experiences of not feeling like a legitimate member of the law school community. Largely, I enjoyed law school and made lasting friends and professional connections. However, my time was certainly not free of insecurities and reminders that I was the black girl in a white world. For example, after applying for a law firm position through on-campus interviews as a strong candidate, a particular law firm asked me to apply for the *same* position through the minority clerkship program. Regrettably, I did so. Part of the program requirements precluded my interviewer from asking about my GPA, thus confirming the perception that minorities were not as qualified as non-minorities. Looking back on that experience, I remember sitting across from the white, male attorney completely embarrassed that my resume interest in volleyball and part-

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[158] Jordan Carter, *Legally Brown*, MS. JD (Apr. 15, 2014), https://ms-jd.org/blog/article/legally-brown.

[159] *Id.*

[160] *Id.*

time job at Victoria's Secret Beauty were the highlights of the interview. It did not even occur to me to mention my grades, which were good, as I naively assumed that it would not matter—that I was just as competitive as any other applicant was. Unable to discuss the traditional markers of credibility, I was not competitive. Needless to say, I did not get the position.

I recall another vivid experience at the end of my first year. Donned in my business suit, I was walking toward the law school to attend an awards ceremony to receive my Excellence Award for having achieved the highest grade in my Legal Research and Writing class. While walking, a white, male attorney fell in step with me. After exchanging brief pleasantries and recognizing we were heading to the same event, the attorney looked at me and asked, "Are you the photographer?" (Mind you, I did not have a camera in my hand.) I was dumbfounded; replaying that brief conversation over in my head during the awards ceremony, I let it rob me of my joy.

Finally, let me share the backstory to my first research assistant (RA) position with the only black professor at my law school at the time. Apparently, my professor had asked to see all of the RA applications and received only a small subset, which she gleaned from their content lacked minority student representation.[161] To be sure, she asked two more times for "all the applications," receiving additional applications at each request, thus confirming her initial thought of an incomplete stack. Eventually, by the third request, she received what she hoped and perceived to be a complete stack, where she finally found my application and hired me. I worked for this professor for two years until I graduated, and to this day, she is my mentor, friend, and a prominent voice in the critical race theory discourse. During my time as her RA, I was also a member of the Executive Board of our school's law review, where I was responsible for coordinating the Childress Lecture and hosting a notable speaker, Harold Koh, for the symposium. I learned later that a white professor approached my research professor and said something to the effect of, "Leslie has really become quite a star under you," to which she replied, "She always was—you just never noticed."

These stories, both mine and those of law students of color now fifteen years after me, ring with a dearth of adequate resolutions to overcome or at least neutralize the damaging effects of implicit bias on students of color.[162] Through this scholarship journey, I have gained a deeper understanding of why, after what feels like only moments, law students of color, and even white law students,

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[161] White male preference over minorities or women for employment is common. In a study of professors at 259 universities, researchers found that professors were more responsive to emails concerning future mentorship from white males than from female or minority students, though the only differences between the emails had been the students' gender and race. STAATS ET AL., *supra* note 82, at 38–39 (citing Milkman et al., *What Happens Before? A Field Experiment Exploring How Pay and Representation Differentially Shape Bias on the Pathway into Organizations*, 100 J. APPLIED PSYCHOL. 1678 (2015)).

[162] *See* WILDMAN, *supra* note 3, at 164 (noting stories of students of color selected to be published who were told they were only chosen because Professor Wildman supported minorities, undermining both their hard work and publication success).

believe I am one of the few faculty members they can comfortably approach. While I am not revealing hidden secrets to a successful law school career, I wonder if they comfortably approach me because I am comfortable both inside and outside the white lines, a concept known as "double vision."[163] On the one hand, as a person of color, having grown up outside the white lines, I can share similar experiences of racial prejudice; yet, on the other hand, I am also part of an "out-group" that gained limited access into a white world. Though I will never be a holder of white privilege, to professionally survive I have had to become quite adept at making white people feel comfortable.[164] Even as I write that last sentence, I wince at the thought that any of my white colleagues, friends, or even my own husband might think that my relationships with them are anything less than genuine. That is far from the truth. Nevertheless, I cannot, nor should I, deny that the color of my skin impacts my interactions with the world around me. I do have to think about color every day. We all should.[165]

IV. *OPENING THE DOOR*: CONFRONTING WHITENESS, RECOGNIZING IMPLICIT BIASES, AND CREATING MENTORING RELATIONSHIPS TO LEVERAGE WHITE PRIVILEGE AND ADVANCE STUDENTS OF COLOR

[T]o talk about race is to educate. Too often, the norm extends beyond polite conversation and into places where race is relevant—the law school classroom, for example[,] . . . [where] the silence on race is deafening. It is deafening because race is never really off the table. Students discuss race with members of their own racial group, but they rarely have interracial conversations on race. As a result, students never learn about other people's lives or experiences—they never become culturally competent. And when race is off the table, even the best-intentioned faculty risk losing the ability to engage with their students.

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[163] ORBE, CONSTRUCTING CO-CULTURAL THEORY, *supra* note 9, at 29 (citing Mary E. Swigonski, *The Logic of Feminist Standpoint Theory for Social Work Research*, 39 SOC. WORK 387, 390 (1994)) ("To survive and succeed in society, those persons marginalized by dominant structures must be attentive to the perspective of the dominant group and their own. In other words, a 'double vision' is established that advocates an awareness of and sensitivity to both the dominant worldview and their own perspective.").

[164] "[S]uccess in the United States often requires the adoption of a kind of normative or performed whiteness." Armstrong & Wildman, *supra* note 38, at 642 (citing John O. Calmore, *Whiteness as Audition and Blackness as Performance: Status Protest from the Margin*, 18 WASH. U. J.L. & POL'Y 99, 101–02 (2005)).

[165] "An aspiration to color insight would serve society as a better value than colorblindness. Color insight would encourage noticing race . . . [r]ather than suppressing an awareness of race . . . . [C]olor insight would encourage further exploration of the impact of race in society." *Id.* at 649.

—R. Kyle Alagood & Andrew Hairston[166]

This Article began with the goal of proposing a way to diversify the legal profession—by leveraging white privilege for the benefit of the law student of color. With that goal in mind, Parts I and II could have frustrated the very group empowered to rise to the occasion and positively impact the professional aspirations of law students of color.[167] While the intended audience of this Article is white law professors, and in particular white males (though the recommendations herein can equally apply to all professors), let me be clear—both sides must be willing to work. Future articles will explore how students of color can meaningfully engage with their white professors.

As mentioned at the outset of this paper, a sociological study projected that a white person's heightened White Privilege Awareness (WPA), paired with their high-perceived influence to enact change, reduces racial prejudice.[168] In another study, "the authors examined the role of interethnic friendship with African Americans or Latinos in predicting implicit and explicit biases against these groups."[169] The study found that participants who had close friends of color demonstrated less implicit bias than participants without close friends of color.[170] Ultimately, the authors concluded that the "[r]esults support the importance of contact, particularly interethnic friendship, in improving intergroup attitudes."[171] Building on this research, I argue that WPA among white law professors, when coupled with the knowledge that their association with students of color can reduce implicit racial bias, will encourage diversity in the legal profession. This proposal has two components: first, white professors must educate themselves as to their implicit biases and be willing to change that behavior; and second, white professors must proactively develop associations and meaningful relationships with students of color and, where merited, use their white privilege to further students' professional associations and career aspirations.

A. Confronting Whiteness and Implicit Bias

Instructors should be aware of their own biases and cultural preconceptions, have knowledge of other cultures and the experiences of people with diverse backgrounds, and possess the skill to work effectively with students of diverse backgrounds.

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[166] R. Kyle Alagood & Andrew Hairston, *Breaking the Code of Silence on Race in Law School*, HUFFPOST (Dec. 23, 2014), https://www.huffingtonpost.com/r-kyle-alagood/breaking-the-code-of-sile_1_b_6035224.html (commenting on the lack of, but need for, discussions about race at Louisiana State University Law Center).

[167] *See* KENDALL, *supra* note 4, at 69 (noting that the comments and behavior of white people toward individuals of color can alter the future of those individuals based on the white person's assessment).

[168] Stewart et al., *supra* note 13, at 12.

[169] Christopher L. Aberson et al., *Implicit Bias and Contact: The Role of Interethnic Friendships*, 144 J. SOC. PSYCHOL. 335, 335 (2004).

[170] *Id.*

[171] *Id.*

—Guy A. Boysen et al.[172]

To begin, the literature and research on whiteness and white privilege illuminate the struggle between the "egalitarian intentions" of white people and their habits injurious to people of color, thereby demonstrating a desperate need for white people to change practices without becoming defensive or avoiding the conversation altogether.[173] As civil rights activist bell hooks writes, "[Whites] cannot recognize the ways their actions support and affirm the very structure of racist domination and oppression that they profess to wish to see eradicated."[174] Thus, the first step is for white people to confront the issue and recognize their own racism, which "is not an admission of intentional wrongdoing."[175] In other words, as Ian Haney López notes in his acclaimed work, *White by Law: The Legal Construction of Race*, critical racial self-consciousness must develop among whites, "if only to overcome the tendency not to see themselves in racial terms."[176] Indeed, white people's proactive discussion of whiteness would send a salient message to the world "that issues of race and racial justice do not solely concern people of color and the law."[177] But to do nothing—to not even engage in the conversation, however uncomfortable—magnifies the burden on non-whites to wipe out whiteness as a normative or performative standard, without the very people responsible for its social construction.[178]

No longer can white professors afford to merely raise their hands to concur in the discomfort toward racial bias or simply profess a strong desire for diversity and inclusion upon their campuses, yet simultaneously be absent at the table of change. Specifically, within the predominantly white legal community:

> [T]he academy replicates itself as a predominately white institution serving predominately white interests. This replication impacts how students study law, and it further reproduces itself as they enter the legal profession. Legal educators *must name and talk about whiteness* to identify this

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[172] Boysen et al., *supra* note 144, at 228–29.

[173] Godsil, *supra* note 93, at 28.

[174] Armstrong & Wildman, *supra* note 38, at 641 (quoting BELL HOOKS, TALKING BACK: THINKING FEMINIST, THINKING BLACK 113 (1989)).

[175] *Id.* at 642.

[176] LÓPEZ, *supra* note 3, at 21.

[177] Armstrong & Wildman, *supra* note 38, at 641.

[178] *See id.* at 642 (commenting that despite non-white people achieving greater levels of success, making white dominance less obvious, success for non-whites still requires some adoption of whiteness).

cycle and move toward more inclusive practices.[179]

Speaking to the need for self-consciousness of whiteness, Professor Stephanie Wildman recounts a dream shared by one of her friends, a black colleague.[180] In the dream, Wildman and a white colleague were talking about her black friend and racial issues that affected him, but they "spoke as if [he] were not there."[181] Saddened by this dream, Wildman noted that the privilege of whiteness allowed the two white people to talk between themselves about racial issues affecting her black friend while excluding her black friend from the discussion.[182] She continued, stating:

> Our shared white privilege meant that our conversation mattered in terms of the decision as to whether [my black friend] would ultimately be part of the community. Our whiteness defined the community, although neither the [white colleague] nor I articulated that fact or were even necessarily aware of it. That we were both white gave us more than something in common; it gave us the definitive common ground that transcended our own differences and gave shape to us as a group with power to define who else would be included in the circle of the academy.[183]

Most illuminating in Professor Wildman's reflection is how subtle the influence of white privilege is upon the dominant group, as well as how devastating its impact is upon the non-dominant group. That even in a casual conversation among earnest white colleagues on a very important issue such as race, there is still a risk of racial bias and exclusion. This risk underscores the need for "whites' self-education [to be] a lifelong process—not just a quick fix or [accomplished by] read[ing] three books and you know you are privileged."[184]

Next, white professors must self-educate as to their implicit biases[185] and engage in a lifelong process of race consciousness. First, the Implicit Association

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[179] *Id.* at 658 (emphasis added).

[180] Armstrong & Wildman, *supra* note 38, at 657–58; Wildman & Davis, *supra* note 5, at 881–82.

[181] Armstrong & Wildman, *supra* note 38, at 657–58; Wildman & Davis, *supra* note 5, at 881–82.

[182] Armstrong & Wildman, *supra* note 38, at 658; Wildman & Davis, *supra* note 5, at 882.

[183] Armstrong & Wildman, *supra* note 38, at 658.

[184] Editorial Notes on Earlier Draft of this Article from Stephanie Wildman, Professor, Santa Clara Univ. Sch. of Law (Jan. 7, 2017) (on file with author). I am most humbled by her thoughtful comments.

[185] To be clear, everyone is susceptible to implicit bias, not just white people. As some social scientists note, it is an "equal opportunity virus" that every person carries despite their own in- or out-group membership. *E.g.*, Nilanjana Dasgupta, *Implicit Attitudes and Beliefs Adapt to Situations: A Decade of Research on the Malleability of Implicit Prejudice, Stereotypes, and the Self-Concept*, 47 ADVANCES EXPERIMENTAL SOC. PSYCHOL. 233, 239 (2013).

Test (IAT)[186] or an equivalent methodology[187] should be used to educate professors about their unconscious habits so that they can then study their own personal history to "look for the connections between the past and the current realities of inequality."[188] While the IAT is not without criticism, as previously discussed, when "people understand how race actually operates in the brain," then reform is likely to stick,[189] and this understanding, or willingness to understand, is a conscious start toward change. As a young law student, I was one among many that envisioned a colorblind world; I wanted justice for all. However, I quickly learned that justice is not colorblind. In reality, "[n]o one is actually color blind, and implicit bias research suggests that striving to be color blind is usually counterproductive."[190] Further, "colorblindness perpetuates white privilege."[191] And so, using Professor Godsil's words, I speak directly to white professors: "The failure to recognize that race affects everyone allows unconscious biases to dictate behavior," which is ultimately detrimental toward people of color.[192]

If the legal academy wants to play a substantive role in changing the diverse landscape of the profession for which we are preparing our students, white professors must both seek to change their *conscious* stereotypes against people of color and be willing to reconstruct their *unconscious* biases by changing their environment. On this point, I caution white professors that this vital change, namely how one "thinks about and reacts to non-white people," cannot be done through willpower.[193] "Whatever will power human beings have with regard to white privilege or any other habit is found in those habits themselves. A person cannot merely intellectualize a change of habit by telling herself that she will no longer think or behave in particular ways."[194] Rather, to change unconscious habits of white privilege, white people should "alter[] the political, social, physical, economic, psychological, aesthetic, and other environments that 'feed'

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[186] *Overview*, PROJECT IMPLICIT, https://implicit.harvard.edu/implicit/education.html (last visited Apr. 6, 2018).

[187] For examples of alternative theories for assessing implicit biases, see STAATS ET AL., *supra* note 82, at 53–55 (discussing the Affect Misattribution Procedure (AMP), Implicit Relational Assessment Procedure (IRAP), and Relational Responding Task (RRT)).

[188] *Id.* at 15.

[189] Godsil, *supra* note 93, at 28.

[190] *Id.*

[191] Armstrong & Wildman, *supra* note 38, at 644.

[192] Godsil, *supra* note 93, at 28.

[193] SULLIVAN, *supra* note 62, at 9.

[194] *Id.*

them."[195] In other words, "[t]he key to transformation is to find a way of disrupting a habit through environmental change and then hope that the changed environment will help produced [sic] an improved habit in its place."[196] Current psychological science research supports that an environmental change is an effective method for changing unconscious habits.[197] Significantly, researchers note that "efforts to change behavior by directly changing implicit bias would be misguided. It would be more effective to rid the social environment of the features that cause biases on both behavioral and cognitive tasks or equip people with strategies to resist the environment's biasing influence."[198] In creating this environmental change, the interdisciplinary collaboration of the law and social science disciplines continues to be impactful, as it advocates this Article's thesis that the role of interethnic friendship is pivotal in changing racial biases.

B. Altering Environmental Feeders to Create Mentoring Relationships with Law Students of Color

Minority and low-income students usually do not enter law school with an elaborate network of lawyers and legal professionals to mentor them. Often, our professors are the first lawyers we meet. As a result, minority and low-income law students must build relationships with our professors to expand our legal network.

—Taifha N. Baker[199]

Mentoring between a professor and student creates an interpersonal accountability and can transform a student's ability to navigate institutional formalities, thereby helping the student to increase their academic skills, earn higher grades, and secure employment after graduation, to name a few of the effects.[200] Notably, race's impact on mentoring relationships has become an important interdisciplinary question because the workforce makeup is changing, leading to more cross-cultural interactions.[201] Mentoring from a career standpoint has been "generally defined as a more senior individual . . . us[ing] his or her influence and experience to help with the advancement of a protégé," specifically toward higher salaries, promotions, organizational commitment, and less turnover.[202] To their detriment, minorities generally have a harder time gaining

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[195] *Id.*

[196] *Id.*

[197] *E.g.*, Forscher et al., *supra* note 102, at 35–36.

[198] *Id.* (citations omitted).

[199] Taifha N. Baker, Note, *How Top Law Schools Can Resuscitate an Inclusive Climate for Minority and Low-Income Law Students*, 9 GEO. J.L. & MOD. CRITICAL RACE PERSP. 123, 140 (2017).

[200] Tomiko Brown-Nagin, *The Mentoring Gap*, 129 HARV. L. REV. F. 303, 307–08 (2016).

[201] Stacy Blake-Beard et al., *Unfinished Business: The Impact of Race on Understanding Mentoring Relationships* 6 (Harvard Bus. Sch., Working Paper No. 06-060, 2006), http://www.hbs.edu/faculty/Publication%20Files/06-060.pdf.

[202] *Id.* at 10.

access to mentoring relationships,[203] which is arguably largely influenced by differences in communication styles between non-dominant and dominant cultures.[204] Thus, it is understandable that the lack of mentoring relationships is a leading reason why many minority associates are leaving law firms.[205]

In looking back at my own journey from law school to private practice and finally to teaching, my eyes are opening to how implicit bias reared its ugly head in my career path. I wish conversations regarding white privilege, implicit bias, the value of mentoring, and the like took place from the associate level up to partner level. If they did, I might not have walked away from my prestigious law firm position so early in my career. To that end, the growth in law firms, and perhaps law firm survival in some respects, of law students of color have roots in mentoring relationships with their white professors. These relationships will directly correlate not only with a positive overall law school experience for students, but with a positive professional career.[206]

White professors, by altering their environment to increase interracial interactions and be present among the different communication styles of other cultures, will be better poised to create this mentoring relationship. Inasmuch as social science has demonstrated it is habitual for a white person's *subconscious* to have adverse interactions with people of color,[207] such as white professors calling on white students more than students of color to answer questions in class,[208] studies have also demonstrated that increased interethnic associations

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[203] *Id.* at 10–11.

[204] *See* ORBE, CONSTRUCTING CO-CULTURAL THEORY, *supra* note 9, at 96 ("Other co-cultural group members might lack any reasonable opportunity to network with other co-cultural group members or have difficulty in identifying dominant group members that can be used as liaisons.").

[205] Negowetti, *supra* note 20, at 946 ("The influence of implicit bias is confirmed by the observations of associates at New York City firm Cleary Gottlieb Steen & Hamilton LLP, which 'actively recruited and hired more than thirty African-American associates from 1989 to 1996' but was unable to retain any of them. When surveyed about their experiences, the associates mentioned 'a subtle yet pervasive tendency by almost exclusively white partners to favor those who looked similar to themselves.' Associates of color who responded to a study recently conducted by Twin Cities Diversity in Practice also identified the lack of opportunity to work on important matters and a 'lack of relationships' as reasons for leaving their previous firms.").

[206] *See* Woodson, *supra* note 17, at 2574 ("As a practical matter though, the burden of interracial acclimation will in all likelihood continue to fall disproportionately upon black associates. As members of an underrepresented, marginalized group, black attorneys have far greater personal incentives to seek out opportunities to develop common ground with their white colleagues, and face far greater costs for failing to do so.").

[207] *See* SULLIVAN, *supra* note 62, at 9, 23.

[208] Wendy Conaway & Sonja Bethune, *Implicit Bias and First Name Stereotypes: What Are the Implications for Online Instruction?*, 19 ONLINE LEARNING 162, 164–65 (2015) ("[R]esearch . . .

(e.g., black and white) produce a higher comfort with the out-group,[209] thereby reducing unconscious or implicit biases toward people of color.[210] Thus, relying on social science methods, I propose an environmental change to disrupt that habit.[211] Specifically, white professors should seek to increase contact with students of color both inside and outside the classroom.[212] This may indirectly change race-related habits and foster a mentoring relationship between the professor and student.[213]

1. Fostering Interethnic Relationships Within the Classroom

The classroom brings the white professor and law student of color together in a controlled environment, but even within this setting, the professor can take purposeful steps to connect with students of color. Most students of color experience an internal stigma and an external stigma[214] when they are the sole or one of a few minority students in the classroom.[215] Thus, professors' expectations

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regarding bias in the traditional classroom revealed that instructors are indeed biased and tend to develop preconceived sets of expectations of particular students based on group membership such as race, ethnicity, and gender.").

[209] STAATS ET AL., *supra* note 82, at 63. Staats et al. discuss one such study:

> In this case, participants responded to images of friend groups who were either single-race (both White) or a mixed-race pair (Black and White) to assess explicit attitudes. A single-subject IAT also assessed implicit racial attitudes. In terms of outgroup comfort, Whites with a Black friend were perceived as having higher comfort with the outgroup compared to Whites with a White friend. Notably, implicit anti-Black bias predicted participants' ratings of outgroup comfort. . . . In sum, although the real world evidence was inconclusive, the research provided an innovative analysis of the relationship between implicit racial bias and its effects on how individuals perceive members of their own race who engage in interracial relationships. The research supported the concept of implicit homophily, as the implicit racial biases of the White participants were "related to their affiliative responses to White targets as a function of their friends' race over and above effects of explicit racial bias."

Id. at 63–64 (quoting Drew S. Jacoby-Senghor et al., *When Bias Binds: Effect of Implicit Outgroup Bias on Ingroup Affiliation*, 109 J. PERSONALITY & SOC. PSYCHOL. 415, 427 (2015)).

[210] Aberson et al., *supra* note 169, at 344 (finding that even when white participants manifested implicit bias, white participants who had close friends of color scored lower on the implicit bias measure than white participants who did not); *see* Godsil, *supra* note 83, at 61 ("The presence of other students of different racial and ethnic groups has been shown to reduce stereotype threat experienced by students of color.").

[211] *See* SULLIVAN, *supra* note 62, at 9.

[212] STAATS ET AL., *supra* note 82, at 15.

[213] *See* SULLIVAN, *supra* note 62, at 9.

[214] *See* Adriane Kayoko Peralta, *A Market Analysis of Race-Conscious University Admissions for Students of Color*, 93 DENV. L. REV. 173, 184 (2015) (defining internal stigma as "the stigma that students of color place on themselves" and external stigma as "the stigma that others place on students of color").

[215] *See* Brief for National Black Law Students Association ("NBLSA") as Amicus Curiae, *supra* note 146 (citing Bowen, *supra* note 145) (describing "a study of the experiences of minority students currently enrolled in undergraduate and graduate programs in the 'hard sciences' [finding] that

and actions "can have a profound effect on student performance and achievement."[216] White professors can foster an inviting yet still vigorous classroom by learning the names of students of color (regardless of the ease of pronunciation), recognizing them as distinct from other members of their ethnic group, and developing a visibly equitable system for class discussion so that students of color are productive contributors.[217]

First, with respect to student names, confusing them with one of their peers from the same ethnic group or failing to properly pronounce their name can create distrust between the professor and student and be viewed as racial microaggression.[218] Whether called blatant racism or the "other-race effect," to think "they all look alike to me," referring to members of the same ethnic group, is a cognitive phenomenon wherein people have better recognition memory for faces of their own race than faces of another race.[219] For example, a black female student at Georgetown University Law Center commented, "I have almost always experienced alienation and lowered expectations for my performance as a black woman in the classroom. More often than not, I am confused with the one or two other black female students in the class, being called by their names instead of my own."[220] Another student stated:

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minority students in states that allow the use of race-conscious admissions programs experience far less stigma than students in states that have banned racial considerations").

[216] Conaway & Bethune, *supra* note 208, at 164; *see* Russell A. McClain, *Helping Our Students Reach Their Full Potential: The Insidious Consequences of Ignoring Stereotype Threat*, 17 RUTGERS RACE & L. REV. 1, 48–49 (2016).

[217] The comments in this section certainly apply to all professors as they interact with students of color, but for the purpose of this Article, the emphasis is on white professors.

[218] Carolina Moreno, *Teacher Breaks Down Why Pronouncing Students' Names Correctly Matters*, HUFFPOST (Aug. 7, 2017), http://www.huffingtonpost.com/entry/teacherbreaks-down-why-pronouncing-students-names-correctly-matters_us_5800fcbae4b0162c043b874e; Rita Kohli & Daniel G. Solórzano, *Teachers, Please Learn Our Names!: Racial Microagressions and the K–12 Classroom*, 15 RACE ETHNICITY & EDUC. 441, 443 (2012) (noting that "[t]o understand the impact of something as seemingly minor as the mispronunciation of a name, it is important to view these acts within a larger context of racism in schools"); *see* Jessica Dickerson, *Why Uzo Aduba Wouldn't Change Her Nigerian Name for Acting*, HUFFPOST (June 27, 2014), https://www.huffingtonpost.com/2014/06/26/uzo-aduba-name_n_5534112.html (discussing the actress's "conscious decision not to cave to pressure of changing her name to something more convenient for Hollywood").

[219] Rachel L. Swarns, *The Science Behind 'They All Look Alike to Me'*, N.Y. TIMES (Sept. 20, 2015), http://www.nytimes.com/2015/09/20/nyregion/the-science-behind-they-all-look-alike-to-me.html (discussing an incident where a retired biracial tennis player was tackled and arrested by a white police officer in a case of mistaken identity); Jiangang Liu et al., *Neural Trade-Offs Between Recognizing and Categorizing Own- and Other-Race Faces*, 25 CEREBRAL CORTEX 2191, 2191 (2015); Robert K. Bothwell et al., *Cross-Racial Identification*, 15 PERSONALITY & SOC. PSYCHOL. BULL. 19, 19 (1989).

[220] Baker, *supra* note 199, at 139 (quoting *Documenting Micro-Aggressions at GULC*, COALITION GEO. U. L. CTR. (Mar. 6, 2015), https://georgetownlawcoalition.wordpress.com/2015/03/06/

> My professor keeps confusing me with the only other black student in my class. Every time the professor confuses me and the other black student she makes a big deal about how she is an "equal opportunity racist" because she confuses the Asian students as well. It makes it increasingly awkward as the semester goes on and she keeps mixing up me with the other black student and calling so much attention.[221]

As part of my first class, I distribute students' exam numbers for the semester while simultaneously speaking out students' names to both learn their names and ensure correct pronunciation. I recall one student of color responding, "That's fine," to my first attempt at pronouncing his name, which was obviously wrong. In my opinion, this is a pivotal moment. If I respond in turn, "Okay, thanks," and move on, I have implicitly told that student that his name does not really matter, nor does the history and culture behind it.[222] But if, as I did, I pause during class and insist that he tell me how to correctly pronounce it, I believe that I demonstrate to him, as well as to every other student (both majority and non-majority), that his name matters because he, as an individual, matters.

Second, all professors, but particularly white professors, should develop interactive teaching methods beyond traditional modes in order to support students of color as productive classroom contributors. On the one hand, though beyond the scope of this Article, research supports that the traditional Socratic method creates great anxiety among women and students of color,[223] and "voluntary student participation [i]s an alternative or supplement to the Socratic method, leaving students free to choose whether to speak."[224] Yet, on the other hand, while voluntary participation is a less intimidating tool to engage the law school class, a student's race, ethnicity, and gender still affect their classroom

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documenting-micro-aggressions-at-gulc/).

[221] *Id.*

[222] Kohli & Solórzano, *supra* note 218, at 443 ("For many Students of Color, a mispronunciation of their name is one of the many ways in which their cultural heritage is devalued.").

[223] Celestial S.D. Cassman & Lisa R. Pruitt, *A Kinder, Gentler Law School? Race, Ethnicity, Gender, and Legal Education at King Hall*, 38 U.C. DAVIS L. REV. 1209, 1246–47 (2005) (reporting that women's feelings about the teaching method were more negative than men's, with women describing it as "geared toward the male population/male method of learning" and finding its happenstance and uncontrolled nature unnerving, causing some women to lose their dignity); *see* Darling-Hammond & Holmquist, *supra* note 145, at 53–54 ("To further facilitate the gains provided by the Socratic method, professors also suggested ensuring that a few student volunteers do not dominate the conversation. They recommended that professors make room for new hands and voices, especially when they come from members of less participatory demographic groups, like women and minorities."); Benjamin V. Madison, III, *The Elephant in Law School Classrooms: Overuse of the Socratic Method as an Obstacle to Teaching Modern Law Students*, 85 U. DET. MERCY L. REV. 293, 301 (2008) ("If women and minorities do not benefit from the pure-Socratic approach, we ought to ask ourselves whether professors are ironically perpetuating a subtle form of discrimination by their insistence upon a purely Socratic classroom.").

[224] Cassman & Pruitt, *supra* note 223, at 1247–48.

participation.[225] One study found specifically that white students volunteered or asked questions in class more frequently than students of any other race or ethnicity,[226] as well as reported higher levels of satisfaction with their participation in class than did students of color.[227] These results are not surprising. I understand the experience of being physically present in class but not feeling significantly visible to one's peers or professor. This is common for students of color, as studies have illustrated that cultural stereotypes influence student and instructor perceptions in the classroom.[228]

For example, a female law student of color at the University of Michigan suffered in silence when, while discussing *People v. Goetz*,[229] her white classmate defended the self-defense claim of a white male who had shot four young black males on the subway in New York City.[230] Later expressing her feelings about the situation, she stated:

> Riding the subway being my only mode of transportation when home in New York, I felt personally invested in this discussion. I was enraged by her comment; I was one of those people. But I felt so different from my classmates that I was afraid to speak in class. I felt self-conscious about my Bronx accent, my

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[225] *Id.* at 1248.

[226] *Id.* ("On a scale of 1 to 5, wherein 1 represented 'never' and 5 represented 'always,' Asian-Americans reported the lowest level of participation, with an average response of 1.76, followed by African-Americans at 2.07, and then Latino/as at 2.6.").

[227] *Id.* at 1249.

[228] Conaway & Bethune, *supra* note 208, at 164–65 (describing several studies' findings, including one study that found "that instructors are indeed biased and tend to develop preconceived sets of expectations of particular students based on group membership such as race, ethnicity, and gender" (citing Ronald F. Ferguson, *Teachers' Perceptions and Expectations and the Black-White Test Score Gap*, 38 URB. EDUC. 460 (2003))).

[229] People v. Goetz, 497 N.E.2d 41 (N.Y. 1986).

[230] Jane Jankie, *The Unexpected Challenges of Law School: Being a Minority in Law School*, MS. JD (July 19, 2012), https://ms-jd.org/blog/article/unexpected-challenges-law-school-being-minority-law-school ("'When you're on the subway in New York, for the whole time you're in the train car, you're just stuck with those people,' one of my fellow classmates said in Criminal Law class during our discussion of *People v. Goetz*."). For another example of a student of color's experience with *Goetz* and a white professor's mishandling of the race issue, see Meera E. Deo et al., *Paint by Number? How the Race and Gender of Law School Faculty Affect the First-Year Curriculum*, 29 CHICANA/O-LATINA/O L. REV. 1, 20 (2010) (recounting one student's description of a class discussion of *Goetz* as "one of the worst days of my law school experience ever, ever, hands down. I mean there were kids saying, 'Oh, it makes perfect sense if you want to kill people because you're scared of Black people.' I mean, kids actually [said] that, and the professor kind of just plays it up, 'Should this be a legal theory? Should this?' Not even talking about like socially should that be acceptable" (alteration in original)).

> vocabulary, and my ability to code-switch; so I regretfully said nothing. Instead I thought about how I felt stuck with her and the other students in my section when I was in class with them for hours a day. I thought about how she implied that the passengers on the train were Others, separate and different from her. I felt that I was the Other in law school, the person who did not belong.[231]

This student's discomfort with volunteering in class suggests mindfulness of her own race, which can lead students to simply remain silent. Professors, however, can be instrumental in encouraging or extending meaningful conversations. This same student, for instance, pushed through her fear and anxiety in her constitutional law class when she felt compelled to defend affirmative action and bring awareness to the marginalized standpoint.[232] Growing more uncomfortable with the direction of the class discussion on affirmative action, which she described as her "classmates explain[ing] the numerous reasons why they were staunch dissenters of benign racial classifications," she gained the courage to raise her hand and speak up for herself and her community.[233] Ultimately, despite her previous belief that her "experiences were too different from [her] classmates' to be appropriate to share," she articulated a response underscoring the sense of pride beneficiaries of affirmative action can hold onto when "beating the odds that are stacked against most from where they are from."[234] In no way diminishing this student's own courage to speak up, it is also noteworthy that the class discussion became influential and empowering for the student when her "professor and fellow classmates built on [her] argument."[235] In the end, "[t]hat discussion empowered [her] to engage with law school in a more meaningful way. It started with forcing [her]self out of [her] comfort zone to defend ideas that were important to [her] and that [she] believe[d] in."[236]

Finally, methods for inclusivity were identified by studying the transformative teaching practices of U.C. Berkeley law professors:

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[231] Jankie, *supra* note 230. For another example of the difficult situations faced by students of color in the classroom, see Baker, *supra* note 199, at 139–40 ("During criminal procedure, discussing stop and frisk laws, . . . a student voiced concerns that 'since most black people are criminals it makes sense that they would be frisked more.' Which was in response to a statistic read by the teacher that blacks are the perpetrators of more criminal acts. It is hard to have these types of conversations with an underrepresentation of minorities in the classroom because the few minorities in the class are obligated to act as a spokesperson for their entire demographic anytime these issues come up." (quoting *Documenting Micro-Aggressions at GULC*, *supra* note 220)).

[232] Jankie, *supra* note 230.

[233] *Id.*

[234] *Id.*

[235] *Id.*

[236] *Id.*

> One [way to help all students stay engaged] is to be aware of cultural critiques of the rule that exist. In our discussion of rape, for example, I had an article about male prison rape. It wasn't in the casebook, but it's a really important article that [disagrees with the prevailing legal paradigm]. *[The day we reviewed the article was the day] one man of color in the class raised his hand for the first time.*
>
> —Criminal Law Professor
>
> Law can seem very white and very male. Most of the judges, most of the people who've made the law that we study, were White men, and most of them with fairly traditional values and lives. *There's a big risk of alienation for minority and women students, and I want to play an active role in reducing that alienation and making them feel they're at home here.* One of the ways I do that is by raising civil rights issues often imbedded in the cases. If I ignore [these issues] to focus on the rule, I risk exacerbating the alienation—further [proving] that this is not a place where some students are welcome because this issue that is so important is being ignored. So I try to work hard at not ignoring those issues.
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> —Civil Procedure Professor[237]

For all professors who care about student learning, the student voice is so important.[238] When I read the responses recounted above of students of color who find some classroom discussions difficult, the relational undertone is prevalent. These students were more interested in being respected, having a relationship with their professor, and feeling included within the law school community. Given the relational implication, I argue that fostering interethnic relationships within the classroom turns on creating a comfortable environment, more than on the teaching method. Because students of color are, and likely will be for the foreseeable future, vastly underrepresented in the traditional classroom, white professors should create an environment that allows the professor to be attentive not only to the students' voices in class, but also to their silence.

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[237] Darling-Hammond & Holmquist, *supra* note 145, at 59 (alteration in original) (emphasis added) (offering numerous narratives of professors' inclusive teaching practices both inside and outside the classroom).

[238] *See* Stephanie M. Wildman, *Practicing Social Justice Feminism in the Classroom*, 2014 FREEDOM CTR. J. 57, 60 (demonstrating the value of student voices in her essay exploring how teaching social justice feminism allows "society's least empowered or most marginalized" to find their voice).

For example, when students of color do volunteer in class, a professor's small gesture of encouraging continued participation (before or after class, or even during office hours) will be impactful. This tells the student that he or she is visible. To be sure, this suggestion raises important considerations that are not intended to further the stigma of students of color, namely that minority students need a placid professorial pat on the back to every comment they make in class. That is not the case, and I presumptuously add that minority students are likely not seeking any special treatment, inside or outside of class. Notwithstanding this genuine concern, given the previously discussed research noting that students of color participate in the classroom at a far lower rate due to negative perceptions, and that this meager involvement can lead to an unsatisfactory law school and professional experience, the cost of the professor encouraging continued participation seems the lesser of two evils.

In addition, to manage the silence, professors could utilize small groups, panels, and individual student or group presentations, where suitable, to generate class discussion, thereby making students of color part of a smaller cohort in which they can again be visible to their peers and the professor. These smaller groups, while potentially uncomfortable for anyone, particularly prevent students of color from shrinking within a large class, which will ultimately benefit their professional advancement. In retrospect, I think back to my time in law school and wonder what effect my voice might have had on my white peers and professors in combating racial bias. Truthfully, I wish the conversation about challenging racial biases had even been taking place, though maybe it was and I was not invited to the table of change.

2. Fostering Interethnic Relationships Outside the Classroom

Drawing from the social science hypothesis that transforming an unconscious racial habit requires conscious environmental change,[239] white professors would do well to continue nurturing in-classroom interaction purposefully by engaging themselves in the culture of students of color outside the classroom. Because "implicit attitudes reflect environmental associations,"[240] it will never be enough to change negative racial stereotypes if the white professors' opportunity for transformation is limited to exposure within the classroom. Thus, professors must also have positive associations with students of color outside the classroom. The formal classroom setting, where students of color are often drowning among a sea of white faces, presents the least favorable space for cultural exposure to disrupt an unconscious racial habit. Professor Anthony Antonio noted that studies examining interracial interaction in college found that "frequent interracial interaction in college was associated with increases in cultural awareness [and] commitment to racial understanding . . . . Further, . . . higher levels of academic development (critical thinking skills, analytical skills, general and specific

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[239] SULLIVAN, *supra* note 62, at 9.

[240] Aberson et al., *supra* note 169, at 336 (citing Andrew Karpinski & James L. Hilton, *Attitudes and the Implicit Association Test*, 81 J. PERSONALITY & SOC. PSYCHOL. 774 (2001)).

knowledge, and writing skills) and satisfaction with college [were] associated with more frequent socialization across race."[241] So how can white professors begin to disrupt this unconscious racial habit? Or, stated more positively, how can professors begin this opportunity for growth? The next section offers specific examples relating to student organizations, research assistance, and informal mentoring.

First, diversity student organizations present an easy way to learn about ethnic students' culture. White professors should attend these organizations' educational and community events, as well as general meetings, and consider volunteering to assist these organizations with various programs. But professors must do more than just show up in the audience; they should sit at the table—learn the students' names, ask where they can help, ask how students' classes are going, and so forth. Show these students genuine interest in their lives.[242]

However, on a more serious note, some students of color may resist this suggestion, wanting to hold onto their sacred space where they can freely be themselves and engage with their same-race peers without any external presence that may carry negative stereotypes into the room. While students of color should have safe spaces for themselves, to encourage interactions outside of the classroom, students of color must remain willing to engage with white professors in various spaces. Even if students of color do not feel comfortable around white professors, knowing that white professors *must* engage with the non-dominant culture to change their unconscious behaviors, students may be more willing to allow them in the door. To this point, one of my colleagues and friends on the faculty, a white female, suggested that white professors could host a dinner for members of diverse student groups to practice interviewing skills, discuss course selection or study habits, or simply to bond. Regardless of the setting, when the white professor is present, students of color should maintain their cultural identity and stay genuine in their relations toward other members of their ethnic group. Similarly, the white professor must maintain an open and engaged mind and demeanor when in the presence of a cultural group with which they do not normally interact.

Second, white professors should consider students of color to serve as Research/Teaching Assistants or Tutors for their classes or suggest these students

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[241] ANTHONY LISING ANTONIO, STUDENT INTERACTION ACROSS RACE AND OUTCOMES IN COLLEGE 4 (1998), https://web.stanford.edu/~aantonio/aera2doc.pdf.

[242] I am chuckling now as I am imagining any of my white colleagues accompanying me to a Black Law Student Association meeting. I absolutely believe the professor would willingly come with me, but I also imagine an array of students exchanging a few inquiring looks and probably waiting for some small lecture on contracts or civil procedure.

to a colleague if the suggesting professor's position is filled. A genuine professor-student relationship presents a wonderful opportunity for both parties to learn more about each other in a safe space, if each side takes advantage of the opportunity to go beyond simply researching a legal issue, and extend the two-way learning to each other's lives and cultures. Suffice it to say, to improve this relationship, the work has to come from both sides.[243]

Finally, white professors should look for opportunities to provide informal mentoring to further get to know students of color. This may include conversations during office hours or serving as faculty advisors for the general population (and maybe intentionally requesting students of color as advisees). The hope is to learn more about the students and their legal aspirations, after which mentoring should include suggested courses to take or extracurricular activities to join. In doing so, it is imperative that the professor create an environment that invites a student of color to even want to be in the same space as the professor.

The guidance and mentorship of students of color by white professors is valuable and necessary in order to break through racial barriers and level the professional playing field. Sadly, a diligent inquiry to specifically locate narratives by law students of color regarding such guidance from white law professors was difficult. To be sure, this is not a proclamation of the nonexistence of such narratives, but rather an acknowledgement of distress in that most of the student narratives recount the difficulty students of color have in majority-white law school settings. For example, in a U.C. Berkeley Law study, black and Latino students were more tentative than white students to reach out to professors to ask questions for fear of confirming stereotypes of intellectual inferiority.[244]

Yet, while there is still work to be done, there are accounts of professors' desires to ensure access and meaningful interaction with students, which "break[s] down walls so people can talk about substance."[245] For example, some professors believe that "mandatory office hours can help mitigate the negative impact of this [fear of confirming stereotypes] by making office hours seem more accessible and by encouraging students from all backgrounds to engage."[246] In the U.C. Berkeley Law study, one professor noted:

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[243] How students of color can avail themselves of a valuable relationship with a white professor will be the subject of a future article.

[244] Darling-Hammond & Holmquist, *supra* note 145, at 7–8.

[245] *Id.* at 36 (alteration in original) (quoting anonymous constitutional law professor). In the U.C. Berkeley Law study, eleven transformative law professors were interviewed, "represent[ing] different racial groups, religions, genders, socio-economic backgrounds, and political beliefs. Like many of the professors in the legal academy, some are . . . White, male, and wealthy. Many of them are . . . non-White, female, and/or first generation esquires." *Id.* at 17.

[246] *Id.* at 39–40 ("Instead, I encourage people to come to office hours—in fact I force them to at least once. That breaks the mystique. It forces you to realize there's nothing magical about talking to professors. And if I do have a conversation where an interesting tidbit comes up, I tell the whole class the answer to the good question so there isn't a secret society of gunners who have all the good information." (quoting anonymous criminal law professor)).

> As far as office hours go, I like to start office hours by asking people how they're doing to get to know them a little bit to make people feel a little more comfortable, and I'm actually interested in knowing how people are doing. I try to keep my finger on the pulse on the morale of the students—[law school is] a slog. I also let them know that you don't have to have a question to come to office hours, you can come by just to say hello. And I encourage students to come to office hours in groups if there are students who feel less comfortable coming to office hours one-on-one.[247]

Even with the shortage of positive accounts from students of color regarding mentorship and professional guidance from white law professors, there is tremendous value in hearing the narratives of those professors dedicated to reaching their students in a meaningful way. These narratives suggest the beneficial role that the professor plays in creating a safe environment, which, as one professor stated, is paramount to maintaining "an intellectual playground . . . where [students] don't have to beat up on each other."[248] What's more, some professors will go an extra step to provide encouragement that may not be visible to the rest of the class, which opens the door to mentoring opportunities. As one professor described: "I might send a hesitant person who was on call an email to say 'great job and points today—I would love to hear more from you.' That can make a more reticent student participate more."[249]

In some ways, we all need to return to the basic rules of social exchange that my three-year-old is learning in preschool: make eye contact, remove distractions, ask the other person about himself or herself, tell the other person about yourself, and be present when the other person is speaking. Ultimately, in our attempts to genuinely connect with one another, we must simply pause and say, in the words of my three-year-old, "Tell me your day." What is funny is that she really wants to know the details of my day, and I cannot escape her question just by responding, "Good." We should all similarly take our cues.

C. Leveraging White Privilege to Open Doors for Students of Color

In a profession that is almost 90% white, with graduating students coming overwhelmingly from the upper socioeconomic tiers, it falls to law schools to

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[247] *Id.* at 39 (alteration in original) (quoting anonymous civil procedure professor).

[248] *Id.* at 25 (quoting anonymous constitutional law professor).

[249] Darling-Hammond & Holmquist, *supra* note 145, at 55 (quoting anonymous civil procedure professor).

pierce such privilege.

—Alexa Van Brunt[250]

I call attention to this notion of leveraging white privilege for the benefit of two audiences: the student of color and the white professor. To start, it is imperative that students of color recognize the value in forming relationships with their white professors and move beyond exclusively same-race relationships. "[W]hile black students can thrive academically and socially without engaging in in-depth interracial interactions, doing so causes them to miss out on opportunities for interracial acclimation and acculturation that might prove to be valuable later on, during their careers in predominantly white firms."[251] The value of forming relationships with white professors in law school becomes increasingly important. To this point, Kevin Woodson's research on cultural homophily, an unacknowledged source of racial disadvantage against black attorneys in large predominantly-white law firms,[252] is instructive. He theorizes that a "lack of relationship capital reduces [black attorneys'] access to premium work opportunities," particularly because there is an "'undeniable' affinity between associates and partners . . . with 'similar backgrounds,' . . . [and] this dynamic le[aves] many black associates on the outside looking in while some of their white counterparts bond[] with influential partners."[253]

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[250] Alexa Van Brunt, *It's Time for Lawyers in the US to Do Something About White Privilege*, QUARTZ (Apr. 3, 2015), https://qz.com/374527/its-time-for-lawyers-in-the-us-to-do-something-about-white-privilege/.

[251] Woodson, *supra* note 17, at 2565.

[252] *Id.* at 2559–61; Kevin Woodson, *Diversity Without Integration*, 120 PENN ST. L. REV. 807, 849–51 (2016).

[253] Woodson, *supra* note 17, at 2568–69. During an interview with an anonymous senior associate, the interviewee commented:

> I don't have the same experiences [as the white partners]. I didn't play golf growing up. I didn't have much to offer to a conversation that was talking about how [golfer Arnold] Palmer was doing. . . . It also goes to where people vacation, stuff like that. The chit chat varies according to whose experiences are being discussed. . . . If African Americans don't have those experiences, then often times we won't get as close to the partners. It's not racial but the appearance is that the white attorneys will get a lot of the more posh assignments that can lead to greater things.

Id. (alteration in original). Compare his experience with that of a different "interviewee who had held close interracial friendships throughout her life" and credited "her interactional ease in all white social settings and cultural interests in the fine and performing arts [with] enabl[ing] her to bond with a number of colleagues, including one of the most powerful partners at the firm, an older white man." *Id.* at 2574. She explained:

> I knew he liked art . . . [s]o I sat down with him at a big dinner . . . sort of a black tie event, and I said, "I really want to tell you about this exhibit that I saw recently when I was in New York." And all the other partners are looking around . . . [a]nd finally someone said, "I thought you were talking about a *trial* exhibit" and he says, "Oh no—she knows where my heart is really at; she's talking about an exhibit at the Metropolitan Museum of Art."

Id. at 2575 (alteration in original). For this interviewee, "[t]his partner eventually became a valuable

I wonder if the term "relationship capital" imparts a sense of discomfort for both the white professor and the student of color, making the interracial relationship seem more like a business transaction than anything altogether genuine. But even if a selfish need initially drives these two groups together, when perceived differences are no longer impediments to transparency, a natural friendship could grow in its place. That has been my experience. I knew successes in law school and at my law firm, but I also knew feelings of isolation, stigma, stereotyping, and inferiority, both as a black person and as a woman. But because terms such as "white privilege" and "implicit bias" were foreign to me, not knowing that any of those feelings existed outside of my own mind or were attributable in part to the unconscious behaviors of the white people around me unknowingly contributed to my inferior self-perception and soul's distress.

Thus, coming full circle, by leveraging their white privilege, white professors themselves become remarkable agents of change in precluding disadvantages from racial bias toward students of color. It is well established that, regardless of the industry, women and people of color struggle to find professional mentors and role models,[254] but white males, if willing, can serve as powerful mentors to both groups.[255] It naturally follows, then, that because white males continue to hold the power to open doors that are not so freely open to minorities,[256] "efforts to promote this acclimation [of students of color to the predominantly-white legal profession] should begin before attorneys start their legal careers."[257] To start, white professors must understand that conformity with whiteness can serve as a

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sponsor who greatly enhanced her experience at her firm. Although her success in strategically availing herself of her cultural resources was particularly striking, a number of other interviewees also spoke of leveraging their prior interracial exposure more subtly." *Id.*

[254] Pamela J. Smith, *Failing to Mentor Sapphire: The Actionability of Blocking Black Women from Initiating Mentoring Relationships*, 10 UCLA WOMEN'S L.J. 373, 379–80 (2000); Otis III, *supra* note 145, at 33; *see* VISIBLE INVISIBILITY, *supra* note 6, at 36 ("Given that the most powerful people in law firms tend to be white men and that promotion within law firms hinges in part on sponsorship by a person with power, not having a powerful white male mentor put women of color at a disadvantage relative to their white male counterparts.").

[255] *See* VISIBLE INVISIBILITY, *supra* note 6, at 13 (noting that "[w]omen of color . . . welcomed opportunities to work with white men who took an interest in their careers and helped groom them for success," as these powerful mentors were better able to help advance their careers); SUCCESS STRATEGIES, *supra* note 6, at 7 ("49% of women of color reported being informally mentored by white men . . . .").

[256] KENDALL, *supra* note 4, at 62 ("One of the primary privileges [of white privilege] is having greater access to power and resources than people of color do; in other words, purely on the basis of our skin color doors are open to us that are not open to other people."); VISIBLE INVISIBILITY, *supra* note 6, at 14–15 (indicating that female and African American mentors lack power in law firms, so they are not sufficiently able to stand up for or successfully advocate for their mentees).

[257] Woodson, *supra* note 17, at 2575.

screening function for employment of students of color, including job discrimination based on an ethnic-sounding name[258] or hairstyle choice.[259] Mindful that students of color will be subjected to these biased white expectations,[260] white professors can begin to understand how their own whiteness can elevate a student of color out of an unmerited subordinate position. While students are in law school, white professors can use their privilege to help open doors for them. For example, once a professor learns the student's area of legal interest, the professor should introduce them to relevant contacts who could assist them in developing their professional portfolio, or be willing to forward their resume on, with an accompanying note, to relevant contacts. Alternatively, students of color can accompany white professors to networking social events, where the student can be introduced to other attorneys. The white professor can also attend networking events that are directed at diverse students and professionals (e.g., diverse bar association events or panel discussions), and similarly introduce the student to other attorneys. These are just a few examples. In this way, *who you know* takes on a whole new level of significance for the student of color, determining whether a particular employment door is even accessible, let alone open.

As I reflect upon my journey, I see more clearly the generosity of the hands that mentored me in my career . . . and many of them were white. I pointedly pause, as I hear the lyrics of Kenny Rogers's *If I Knew Then (What I Know Now)*[261] ringing in my head (yes, a black girl knows about Kenny Rogers). I speak now to white professors, to my own white colleagues, to my friends—*if I knew then*, as a young law student, how important your role would be in my legal journey, I would have been more intentional in trying to be visible, speaking up in class, and

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[258] Armstrong & Wildman, *supra* note 38, at 643.

[259] Rogers v. Am. Airlines, Inc., 527 F. Supp. 229 (S.D.N.Y. 1981) (allowing an employer to prohibit an employee's black braided hairstyle); Devin D. Collier, *Don't Get It Twisted: Why Employer Hairstyle Prohibitions Are Racially Discriminatory*, 9 HASTINGS RACE & POVERTY L.J. 33, 33–34 (2012) ("[C]ertain employer hairstyle prohibitions constrain African-American cultural identity and are racially discriminatory in nature."); *see* D. Wendy Greene, *Title VII: What's Hair (and Other Race-Based Characteristics) Got to Do with It?*, 79 U. COLO. L. REV. 1355, 1392–93 (2008) (commenting on a law student of color's fear of "wear[ing] her hair in a short, natural style" during fall interview season out of concern that employers would consider her natural hairstyle choice "'unprofessional' or 'unconventional'").

I had a similar experience in the Fall of 2016, when one of my two black male students positively commented on my short, natural twist hairstyle. The student asked how receptive employers would be if he chose to grow dreadlocks—a hairstyle he was very interested in. I told him I was aware of a local and well-established practicing black male attorney who wore his hair similarly, but honestly did not know at what point that attorney grew that hairstyle—before, during, or after securing legal employment. The other black male student made a similar comment during the Spring of 2017 as we prepared for oral arguments, wondering if he would have to trim down his high-top fade before his competition. I resoundingly told him "no," and he breathed a sigh of relief. These are real considerations for people of color every day.

[260] Armstrong & Wildman, *supra* note 38, at 643.

[261] KENNY ROGERS, *If I Knew Then (What I Know Now)*, *on* SOMETHING INSIDE SO STRONG (Reprise Records 1989).

visiting your office hours. But since *I know now*, as a former law firm associate and current law professor, how important this interethnic relationship is, I am asking you to be uncomfortable resting upon white privilege and accept the laudable responsibility of mentoring students of color and advancing their professional aspirations.

V. CONCLUSION

[T]he biggest thing is that ultimately what you want is for one person with clout here to like you.

—Anonymous Attorney[262]

I began this Article with the work of Frances Kendall because her work first opened my eyes to white privilege and, in some respects, validated several insecurities I had carried since my youth. This revelation alone was refreshing. So it seems fitting that I use her voice again to conclude. She writes:

> Because [white people] are in the dominant power group racially,[263] we are able to define how we are seen by other white people. Generally we choose to be viewed as individuals, and we take offense at those who point out our group membership. *Our life task, as I see it, is to examine at increasingly deeper levels what it means for us to be white and then to alter our behavior so that we are better able to change our systems to be just and equitable and ourselves to enter into authentic cross-race relationships.*[264]

In the wake of the racial tensions in our country, racial perceptions and stereotypes continue to evolve into implicit biases that negatively impact people of color. The law school community, where students of color are being groomed to become change makers, is not immune to this impact. To be clear, this Articles does not suggest that the only way students of color can succeed is with the assistance of white professors. However, coming full circle, since white privilege founded and continues to govern the legal profession, holders of that privilege are best positioned to open doors to advance students of color in the legal profession. In doing so, I believe that white professors and students of color can find authentic

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[262] Woodson, *supra* note 17, at 2565 (alteration in original) (quoting anonymous attorney).

[263] Given the demographic changes occurring in our nation, where the minority is becoming the majority, it will be worthwhile to explore the continuing impact of whiteness and white privilege on people of color. Will the privilege follow the race despite its members no longer being the dominant force?

[264] KENDALL, *supra* note 4, at 41 (emphasis added).

interethnic friendships as they navigate that professional journey.