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Reflective Journal: Curricular Deficits, Pedagogical Challenges and Constructing Community in a Non-Traditional Law School Class

Rita A. Sethi*

In adherence to honest praxis, this essay is a reflective journal¹ about the experience of teaching a law school class consisting of predominantly students of color, as a woman of color and second-generation immigrant, about subjects that interact with identity. Looking back at the class's powerful alchemy through this reflection, I will highlight the fertile and susceptible openings in the curriculum where adaptation, including more targeted exploration and expansion, would have enriched our discussions of client-centeredness and cultural humility; assess my pedagogical tools for

* Special Professor of Law, Maurice A. Deane School of Law at Hofstra University. Thanks to the fierce Nicole Dyszlewski and Genevieve Tung for their indispensable midwifery in coaxing and coaching me towards completion and for their honest praxis in amplifying unheard voices (and for only laughing a little at me for including a bibliography in my first draft); my generous friends and colleagues Eduardo Capulong, Jon Romberg, Jon Rosenberg, Gretchen Engel, and Tony Matthews; and my kids for inspiring me.

1. As with most clinicians and experiential faculty, I employ reflective journals as part of the learning process. See Jodi S. Balsam et al., *Assessing Law Students as Reflective Practitioners*, 62 N.Y.L. SCH. L. REV. 49, 50 (2018); Kimberly E. O'Leary, *Evaluating Clinical Law Teaching - Suggestions for Law Professors Who Have Never Used the Clinical Teaching Method*, 29 N. KY. L. REV. 491, 495 (2002). See generally DONALD A. SCHÖN, *THE REFLECTIVE PRACTITIONER* (Routledge 2016) (1991) (the best practitioners are continually reflecting upon challenges they encounter in their practice).

facilitating painful conversations and incorporating anti-racist teaching; and consider the liberatory potential inherent in these spaces.

At the Maurice A. Deane School of Law at Hofstra University, I teach a lawyering practice course in developing the skills to nurture, sustain, and repair the attorney-client relationship using the vehicle of a simulated, semester-long case in employment law. The key milestones include: interviewing and interacting with clients and witnesses, counseling clients throughout the course of investigation and discovery, and managing the client relationship when engaged in settlement negotiation and mediation. Students practice and refine these skills by using role-play, recorded exercises, reflective journaling, and peer feedback.

The demographics of my Spring 2020 semester seminar were vastly different than my typical class composition over the last ten years. On the first day, the energy was electric as the classroom began to populate; after class, students of color proactively pointed out to me how the class composition was “multicultural,” “diverse,” and “not representative of most classes” at the law school.² In fact, nine out of the twelve students enrolled in the seminar were people of color. While the anticipation was certainly palpable, I wasn’t sure exactly what students were expecting. Some could not get past their astonishment and giddy relief³ at encountering this mix in a

2. Though I have not tracked numbers, this was also probably my first class at Hofstra where there were not several students with lawyers in the family. Those students often come with the advantage of having seen their parents perform, having heard about the law in action, and possessing the ready connections of a family practice or a deep network to seek employment. A 2017 AALS survey found a disproportionate number of students who considered going to law school had parents with advanced degrees; historically underrepresented groups, who have been systematically excluded from the bar, are not as likely to have the benefit of a lawyer in the family. Jeff Allum & Katie Kempner, *Inside the Minds of Future Law School Grads: Some Findings from Before the JD*, BAR EXAMINER, Winter 2018–2019, at 9, 11; Meera E. Deo, *Trajectory of a Law Professor*, 20 MICH. J. RACE & L. 441, 465 (2015).

3. Temporary relief from the epistemic violence caused by silencing throughout law school, the privileging of culturally dominant views in the classroom and law, and throughout life generally as people of color in America. See Kristie Dotson, *Tracking Epistemic Violence, Tracking Practices of Silencing*, 26 HYPATIA 236, 238 (2011). Perhaps these students also felt relief because they knew, consciously or not, that stereotype threat is reduced, and performance improves, when faculty is diverse.

law school classroom. Others assumed they would acquire concrete knowledge and skills about cultural difference from their peers. Still others anticipated that race and culture would be discussed as a regularized and explicit “determining factor in shaping the attorney-client relationship.”⁴ At the beginning of the semester, none of us knew what would emerge from this combination of ingredients and whether my role was that of catalyst, convener, or confidante. However, no one could have predicted how the cyclone of COVID-19 would blindside this group.

I. POINT OF VIEW: WOMAN OF COLOR

Standing before the class in a position of authority is a radical act for women of color when everything that you teach is subjected to second-guessing.⁵ The shadow cast by imposter syndrome⁶ has a face with features that is constantly questioning your legitimacy and entitlement.⁷ Since my first semester as a professor, there

4. Student submission regarding her expectations for the class (Jan. 23, 2020) (on file with author). I am honoring the privacy of my students by not using their names in this essay.

5. See Carmen G. Gonzalez, *Women of Color in Legal Education: Challenging the Presumption of Incompetence*, 61 FED. LAW. 48, 50 (2014) (describing the disparate treatment of women professors of color including “teaching and service obligations far beyond those of white colleagues, heightened scrutiny of workplace performance, lack of mentoring, pressure to assimilate, and race and gender bias in student evaluations”); Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369, 400 (2005) (noting challenges in supervising white male law students). See generally TSEDALE MELAKU, YOU DON’T LOOK LIKE A LAWYER: BLACK WOMEN AND SYSTEMIC GENDERED RACISM (2019) (describing the added cognitive energy required for women of color to adhere to the norms in white dominated environments, partially because their competence is constantly in question); YOLANDA FLORES NIEMANN ET AL., PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA, (Gabriella Gutierrez y Muhs, et al., eds., 2012).

6. I recognize that the concept of imposter syndrome pathologizes self-doubt as a personal infirmity rather than as an inevitable reaction to external factors like racism and sexism, in the case of women of color. See Ruchika Tulshyan & Jodi-Ann Burey, *Stop Telling Women They Have Imposter Syndrome*, HARV. BUS. REV. (Feb. 11, 2021), <https://hbr.org/2021/02/stop-telling-women-they-have-imposter-syndrome> [<https://perma.cc/UK67-3JHR>].

7. See Gonzalez, *supra* note 5, at 50–51 (“when a woman of color walks into the classroom, students presume that she is not as accomplished or credentialed as her white male colleagues. They question the professor’s

have always been one or two men in every class who I will call “the Skeptics.”⁸ The Skeptics are people who don’t think I know what the hell I’m talking about and manifest that doubt with aggressive detachment. The Skeptics refuse to suspend disbelief and get swept up in the simulation; instead, they get mired in the factual revelations and say, “but that’s not really realistic because . . .” as if they know more about what is likely to occur in legal practice.⁹ In a small seminar class, it’s hard not to let the Skeptics infect the class morale. In that environment, teaching is often accompanied by crippling self-doubt about how you are perceived in the law school and legal spaces.¹⁰ A February 2021 report by the Massachusetts Supreme Judicial Court on historically excluded populations concluded that attorneys from these backgrounds encounter “increased scrutiny, unfair assumptions, and insults to their professional identity and integrity and sometimes their personhood.”¹¹ Women of color channel half their energy into just surviving in the classroom, especially if the subjects they teach include topics that may rankle or unsettle students.¹²

competence, challenge everything she says, and become enraged if they receive a low grade in her course.”).

8. Cf. MEERA E. DEO, *UNEQUAL PRO.: RACE AND GENDER IN LEGAL ACADEMIA* 2, 60–61 (2019).

9. See *id.* at 63 (“Confrontational students are not only ‘challenging my knowledge, my ability,’ but also disrupting [my] teaching, ruining the learning environment for everyone.”).

10. See *id.*; Khiara M. Bridges, *The Nerve: Women of Color in the Legal Academy*, *WOMEN & L.* 65, 69 (2020) (joint publication of the top sixteen law reviews).

11. MASS. SUP. JUD. CT. STANDING COMM. ON LAW. WELL-BEING, REP. SUMMARIZING AFFINITY BAR TOWN HALL MEETINGS 4 (2021); see also PASCALINE DUPAS ET AL., SEMINAR DYNAMICS COLLECTIVE, GENDER AND THE DYNAMICS OF ECONOMICS SEMINARS 25 (2021); Ben Casselman, *For Women in Economics, the Hostility Is Out in the Open*, *N.Y. TIMES* (Feb. 23, 2021), <https://www.nytimes.com/2021/02/23/business/economy/economics-women-gender-bias.html> [<https://perma.cc/5C37-5VHV>] (reporting that women in the economics field were asked more questions at seminars and the questions were more “hostile” or “patronizing”).

12. Gonzales, *supra* note 5, at 55 (recommending that law schools implement social justice pedagogy across the curriculum to enhance its legitimacy and validate its importance).

Routine microaggressions¹³ cumulatively erode confidence and momentum.¹⁴ Once, a middle-aged white man in front of me at the entrance to the staff parking lot got out of his car and asked me to swipe him in the gate because he had forgotten his ID card. Before I had time to wonder who he was, I had reflexively opened the gate for him.¹⁵ The gates are not reflexively opened for me; instead, people often assume not only that I am not a professor, but that I do not belong.¹⁶ Even when students know that I am their professor, some still breach boundaries.¹⁷ Plus, I am an adjunct professor, the most disposable of academic workers.¹⁸ Legal skills, legal writing

13. “Microaggression” is a term that has come to describe subtle interpersonal offenses that cause harm. Reena Tam & Margia Diaz-Ochu, *Commit to Confronting the Microaggressions That Are Affecting Your Learners*, UNIV. UTAH HEALTH (Aug. 13, 2021), <https://accelerate.uofuhealth.utah.edu/equity/commit-to-confronting-the-microaggressions-that-are-affecting-your-learners> [<https://perma.cc/4C5C-LAWW>]. The evolution of the term, coined in the 1970s, originates with Derald Wing Sue, a professor of counseling psychology at Columbia University. Derald Wing Sue et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 AM. PSYCH. 271, 272–73 (2007).

14. MASS. SUP. JUD. CT. STANDING COMM. ON LAW. WELL-BEING, *supra* note 11, at 11 (noting that lawyers from historically excluded groups “experience mistreatment, insults, instances of exclusion, and even express instances of overt discrimination on a near-daily basis.”).

15. Cf. Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 FORDHAM L. REV. 2081, 2087 (2005) (Pearce describes the perspective of the white man I encountered in the staff parking lot.).

16. I have been shooed out of spaces reserved for faculty, asked where the professor is, and mistaken for an interpreter, stenographer, or student.

17. Gonzales, *supra* note 5, at 56 (“... students often feel entitled to be disrespectful to female faculty of color.”); Deo, *supra* note 8, at 68 (cataloging how some students regard women of color as sex objects). One student suggested that we should “get drinks sometime;” in my course evaluation one said I was “easy on the eye” and another encouraged me to “post more selfies on Instagram.” Male students have submitted PowerPoints and posts on The West Education Network (TWEN) with sexualized content to be presented to the class.

18. Before going fully remote, as an adjunct, the prohibitive financial and opportunity costs of attending conferences, working groups, and lectures made it harder to be steeped in scholarship and intellectual trends. Cf. Avi Wolfman-Arent, *Incredibly Disposable: Adjuncts, The ‘Gig Workers’ of Higher-Ed, Fear Losing Livelihoods*, WESA (May 27, 2020, 6:03 PM), <https://www.wesa.fm/post/incredibly-disposable-adjuncts-gig-workers-higher-ed-fear-losing-livelihoods#stream/0> [<https://perma.cc/3Q6F-GKXP>]. Thank you to the Stephen Ellmann Clinical Theory Workshop for always welcoming me.

and other non-doctrinal courses are considered by some as prosaic dirty work that should be outsourced (mostly to women),¹⁹ though these are perhaps the most crucial and least obtuse subjects to law students.²⁰ Once a student remarked that only *my* course would be buried in a windowless, basement classroom.

In some ways the experience of being a professor of color didn't change in the Spring 2020 semester despite the class composition. Internalized bias may be the reason that some students of color brought the same prejudices to class that white students do.²¹ I still had my Skeptics to contend with and I maintained my professional distance for most of the semester. On the other hand, conversations that touched on race, culture, or national origin were unlike others in the past and often contained potent unspoken assumptions²² and knowing nods to "a class like this." Also, the expectations of me might have been higher that semester since I knew from my anecdotal conversations that many students of color hope professors of color will be vocal and vulnerable.²³ They would

19. Deborah N. Archer et al., *The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty*, 26 CLINICAL L. REV. 127, 128–29 (2019); Gonzales, *supra* note 5, at 54; Meera E. Deo, *Trajectory of a Law Professor*, 20 MICH. J. RACE & L. 441, 453 n.61 (2015).

20. ROBERT MACCRATE, YESTERDAY TODAY AND TOMORROW: BUILDING THE EDUCATIONAL CONTINUUM OF LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT 27 (2003).

21. Anastasia M. Boles, *The Culturally Proficient Law Professor: Beginning the Journey*, 48 N.M. L. REV. 145, 157–58 (2018) (describing the Implicit Association Test's results, showing that across racial lines, people tend to prefer whites).

22. See generally Taleed El-Sabawi & Madison Fields, *The Discounted Labor of BIPOC Students & Faculty* 12 CAL. L. REV. ONLINE 17, 25 (2021) (describing how students of color "rightfully believe that their BIPOC faculty will offer guidance that is more in-tune with their lived realities. In the presence of their BIPOC faculty, these students do not have to undertake the emotionally exhausting exercise of explaining what it is like to be discriminated against or excluded, because odds are that their BIPOC faculty had similar experiences as law students themselves and may currently be reliving reincarnations of those experiences, as BIPOC faculty."); Meera E. Deo et al., *Paint by Number? How the Race & Gender of Law School Faculty Affect the First Year Curriculum*, 29 CHICANA/O LATINA/O L. REV. 1, 16 (2010) (noting that all students seek out non-traditional faculty for "mentorship and support").

23. See Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780, 799–800 (2018) (describing how "self-disclosure" aids in building the authenticity needed for racialized conversations).

like us to speak up about our experiences and point out failures, disparities and the false objectivity of the law and in the legal system.²⁴

II. ADAPTATIONS TO CURRICULUM AND PEDAGOGY

In hindsight, my curriculum could have been better tailored to the class composition. Our discussions about client-centeredness and how to make the law accessible to clients could have been improved by more probing about the reactions of students of color. My exercises and lessons about self-awareness of one's own culture need to be modified because students of color have already engaged in some level of cultural introspection due to their social location.²⁵ However, when learning about other cultures, this class was no different than predominantly white classes in the need to discard assumptions in favor of careful and provisional assessments. The pedagogical tools I will describe might be useful to a future class if augmented by an even more intentional integration of the racial and cultural features of the class.

A. *Client-Centered Explanations of the Law*

In the first class, I introduce the concept of engaged client-centered lawyering as explained in *Lawyers and Clients*.²⁶ Stephen Ellmann and colleagues offer a more mutually-participatory form of lawyering than the purist Binder and Price model, which posits that the client's superior knowledge about her values, goals, and

24. Notes from the Association of American Law Schools, Clinical Legal Education Association Section Virtual Clinical Conference (July 21–23, 2020) (on file with author).

25. Becki Elkins & Eran Hanke, *Code-Switching to Navigate Social Class in Higher Education and Student Affairs*, 162 *NEW DIRECTIONS FOR STUDENT SERVS.* 35, 35 (2018); see also Courtney McCluney, *White People Prefer for Black People to Code Switch at Work*, *FORBES* (Aug. 23, 2021, 7:00 AM), <https://www.forbes.com/sites/courtneymccluney/2021/08/23/white-people-prefer-for-black-people-to-codeswitch-at-work/?sh=60ab06466ff4> [https://perma.cc/8VV6-C3NP] (arguing that since “[w]hite people’s norms and values may define ‘professionalism’ in workplaces,” people of color are routinely forced to make these adaptations). See generally WENDY LEO MOORE, *REPRODUCING RACISM: WHITE SPACE, ELITE LAW SCHOOLS, AND RACIAL INEQUALITY* (2008).

26. STEPHEN ELLMANN ET AL., *LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING* (2009). This is the text I assign for the class.

situation will enable her to best choose a satisfactory resolution.²⁷ Ellmann et al. reject the traditional concept of client-centeredness in favor of one which respects the ability of clients to engage in a true partnership, normalizes lawyer participation in decision-making, and relies upon the client's capacity to critically consider professional guidance.²⁸

One key aspect of engaged client-centered lawyering is the duty to translate the law to our clients.²⁹ In class, we discuss how to demystify the law and use information-sharing to collaborate in the legal process and facilitate joint decision-making. Students practice by video-recording the explanation of a statute to a client, while aiming to hit the sweet spot between oversimplifying and using too much technical language and jargon. In the process, they are also expected to share their accumulated knowledge of legal structures and frameworks, explain the purposes of the law, and empathize with inadequacies in the law.³⁰ By so doing, we equip a client to engage in an informed way with the legal process, participate fully in tactics, and themselves ascertain the legitimacy of the law in question.³¹

Over the years, I have witnessed from students' various reactions to client-centered lawyering. In particular, I have seen different responses to granting clients access to our learned knowledge of the legal system, teaching them terms and concepts relevant to their cases and partnering with them in strategy.³² Some students welcome the collaboration while others reject what they see as the blurring of boundaries. Those that come to this exercise with a mission to equalize the power imbalance between lawyers and clients are poised to redistribute their newly acquired professional authority. Others feel more protective of their vocation, inconvenienced

27. DAVID A. BINDER ET AL., *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 4 (2d ed. 2004).

28. ELLMANN ET AL., *supra* note 26, at 328.

29. *Id.* at 319; *see also* Julie D. Lawton, *Who Is My Client? Client-Centered Lawyering with Multiple Clients*, 22 *CLINICAL L. REV.* 145, 151 (2015) (recognizing that “[o]ne of the greatest challenges a client-centered attorney faces is determining how to communicate information to one’s client in a manner that enables them to make quality decisions.”).

30. ELLMANN ET AL., *supra* note 26, at 319.

31. *Id.*

32. *Id.* at 329–30.

by the additional burden of actively engaging with their clients or even threatened by handing over their professional expertise and autonomy.³³ Despite how such explanations to clients advance effective representation, some instead cling to the pride, status and belonging borne of newfound membership in the professional class and prefer to perpetuate the “knowledge monopoly.”³⁴

During this exercise in my Spring 2020 class, I might have probed further about whether being part of a historically marginalized group affected student reactions to this technique and philosophy. On the one hand, I can imagine that existing in a perpetual state of power differential might inspire empathy for a layperson in this power disparity. People of color might also be motivated by group membership solidarity or social justice objectives.³⁵ Some might be driven by a commitment to serve their communities or movements, and so may be more receptive to a mutual co-education

33. Andy Boon et al., *Postmodern Professions? The Fragmentation of Legal Education and the Legal Profession*, 32 J.L & SOC'Y 473, 474 (2005) (explaining how withholding information perpetuates professions because “[t]he power and legitimacy of professions is acquired in part from their status as organizations defined by their control over knowledge.”); see also Robert A. Baruch Bush & Joseph P. Folger, *Reclaiming Mediation's Future: Re-Focusing on Party Self-Determination*, 16 CARDOZO J. CONFLICT RESOL. 741, 744 (2015) (describing the lure of professional expertise as motivated by “*how it feels*—to be the experts who can do what common folks cannot, protecting people from their own inevitable bad choices and decisions” versus the “self-effacing, minimalist task of supporting” parties).

34. Cf. Mirko Noordegraaf, *Protective or Connective Professionalism? How Connected Professionals Can (Still) Act as Autonomous and Authoritative Experts*, 7 J. PROS. & ORGS. 205, 214 (2020) (discussing movement away from unlimited authority and towards distributed and relational expertise in professional services).

35. See, e.g., Lawton, *supra* note 29, at 176 (in acknowledging the tensions between our many duties as practicing lawyers, Lawton characterizes as potentially competing “clients” her role as an affordable homeownership advocate and her commitment to the Black community). Another example of such commitment is the moral imperative articulated by Movement Lawyering. See generally GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); Gerald P. López, *Living and Lawyering Rebelliously*, 73 FORDHAM L. REV. 2041 (2005); Jeena Shah, *UDHR: Our North Star for Global Social Justice or an Imperial and Settler-Colonial Tool to Limit Our Conception of Freedom?*, 31 PACE INT'L L. REV. 569 (2019); Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405 (2018).

with clients.³⁶ Further, some aspects of a client-centered approach draw organically from the lived experience of people of color, including Ellman et al.'s recommendation that lawyers identify with clients about unfairness in the law.³⁷ This technique separates the lawyer from the law and instead aligns the lawyer with the client.³⁸ Recognizing shortcomings in the law is effortless for those who routinely experience the disparate impact of the law or witness its failures to capture and redress wrongs against people of color.³⁹ When we commiserate authentically about the deficiencies of the law and legal system, we are one with the client who may also be disappointed by the law's inadequacy as applied to their case.⁴⁰

On the other hand, I sympathize with the reluctance to forego earned status, since, as people of color, we are typically granted less presumptive authority in most professional settings.⁴¹ Some days it feels like we cannot afford to cede an inch of ground. One Black student in my class wore a suit to every class. Maybe it was just a personal preference, but it could also be for the same reason that I said no when a student asked to address me by my first name

36. Akbar, *supra* note 35, at 413 (Professor Akbar explains how Movement Lawyering reorients the lawyer toward her commitment to people: "Imagining with social movements seeking to transform the state would invest law scholarship in a project of reconstruction and transformation. For radical racial justice movements, the primary commitment is not to law, its legitimacy, rationality, or stability: It is to people.").

37. ELLMANN ET AL., *supra* note 26, at 340–43.

38. *Id.* at 343.

39. *Id.* at 339. Our laws and our legal system's inability to remedy some individual and structural injustices does not come as a surprise to people of color who have observed these shortcomings over a lifetime in countless examples, from the criminal justice system's failures to punish excessive police violence against people of color or in slanted standards created by civil rights decisional law.

40. *Id.* at 340–43.

41. See, e.g., Kelly Serafini et al., *Racism as Experienced by Physicians of Color in the Health Care Setting*, 52 FAM. MED. 282, 284–85 (describing examples of threats to professional stature including "discounted abilities," "not listened to" and "distrust."); see also JOAN C. WILLIAMS, ET AL., AM. BAR ASS'N COMM'N ON WOMEN IN THE PRO., YOU CAN'T CHANGE WHAT YOU CAN'T SEE: INTERRUPTING RACIAL & GENDER BIAS IN THE LEGAL PROFESSION 3, 7 (2018) (confirming widespread bias in the legal professional including lawyers of color "having to go above and beyond" and "experiencing prove-it-again bias").

instead of as “Professor.”⁴² It is also possible that students of color might feel added pressure to socialize seamlessly into the traditional role of the directive lawyer, as has been the status quo for hazing new lawyers,⁴³ by foregoing any values and identity that might align them with clients. I regret that we didn’t dig further into those questions while we were engaged in the class exercise, when we could have explored the impact of identity on the fundamental skill of how we communicate about the law as well as the broader philosophy of client-centered lawyering.

B. *Cultural Humility Through Self-Awareness*

An essential component of client interviewing skills is navigating cultural differences with clients.⁴⁴ In my experience, law students are already generally sold on the business case for cultural humility, thanks in no small part to the decades of advocacy to mandate this competency for lawyers.⁴⁵ But I wasn’t sure how to teach cultural humility to a group of people who belong to cultures and races that have been historically marginalized in American society. Older models⁴⁶ of cultural competence, cross-cultural, or multi-cultural theory dissected culture as if to create a handbook of “racial etiquette.”⁴⁷ Rather than interrogating our lawyering to expose

42. *But cf.* Pearce, *supra* note 15, at 2087 (Pearce acknowledges how it is easy for him as a white man not to feel his authority threatened when students call him by his first name).

43. *Id.*

44. Here I define cultural difference as broadly as possible, but also recognize that the differences most consequential in American society are generally deemed protected categories under the law. *See* Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 41 (2001); Weng, *supra* note 5, at 382.

45. *See* Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FLA. COASTAL L.J. 219, 237 (2002); *see also* Bryant, *supra* note 44, at 56 n.81. Since July 2018, New York has required lawyers to reserve one hour of continuing legal education for diversity, inclusion, and elimination of bias. N.Y. Ct. R. § 1500.22(a) (McKinney 2022).

46. There are significant criticisms of prevailing theories of “cultural competency.” Notes from discussions at: The Ass’n of Am. L. Schools Conf., Clinical Legal Edu. Ass’n Section Virtual Clinical Conf., July 21–23, 2020, sessions entitled “Beyond ‘Cultural Competency’” (on file with author).

47. Weng, *supra* note 5, at 402.

specious suppositions and to eradicate discrimination, the primary goal was to provide better customer service.⁴⁸

Prevailing theorists studying counseling across cultures insist that in order to develop cultural humility, we need to understand who we are by dis/uncovering our own culture, assumptions, and biases.⁴⁹ Yet people of the dominant culture are often unaware that their culture even exists because it is the default culture.⁵⁰ By first learning “how people absorb information from the cultures we inhabit and encounter,”⁵¹ we can investigate our own learned behaviors, assumptions, presuppositions, distortions, and preconceptions.⁵² Exposing the filter that we see the world through may reveal how we assess and evaluate our clients and retell their stories. Knowing what we might inflict upon our clients is the first step in striving to manage and appreciate cultural variability.

Searching inward isn’t as easy as just looking in a mirror. Legal clinicians have experimented with various pedagogical devices⁵³ to foster self-revelation through purposeful excavation of one’s position. During one of the first classes of any semester, I use interviewing frameworks, role mapping exercises, and/or

48. Notes from discussions at: The Ass’n of Am. L. Schools Conf., *supra* note 46.

49. See Weng, *supra* note 5, at 402; STEFAN H. KRIEGER, RICHARD K. NEUMANN JR. & RENÉE M. HUTCHINS, INTERVIEWING, COUNSELING, NEGOTIATION, AND PERSUASIVE FACT ANALYSIS 90 (6th ed. 2020); Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373, 384 (2002). To accomplish this, many lawyering professors and clinicians rely upon the “Habits” methodology developed by Susan Bryant and Jean Koh Peters. See generally Bryant, *supra* note 44, at 35.

50. Weng, *supra* note 5, at 371–72.

51. *Id.* at 373.

52. Since this is an ongoing, continual process, it is more accurate to describe it as an “intercultural spiral” circling back and forth between self-examination and learning about others. See Daniel A. Segal & Richard Handler, *U.S. Multiculturalism and the Concept of Culture*, 1 IDENTITIES, 391, 395 (1995).

53. Weng, *supra* note 5, at 372 (recommending that students learn about cognitive and social psychology with a focus on understanding themselves as “cultural beings” and “unlearning racism”); see also Serena Patel, *Cultural Competency Training: Preparing Law Students for Practice in Our Multicultural World*, 62 UCLA L. REV. DISCOURSE 140, 149 (2014). But see Boles, *supra* note 21, at 156 (worrying that the focus on implicit bias “normalizes” racism and lets people off the hook for the consequences of their behaviors).

positionality audits.⁵⁴ These devices are meant to promote self-exploration for the new lawyer seeking to unpack what might be a sedentary worldview and to foster recognition of how the law and our legal system are shaped and stained by racism.⁵⁵

With the goal of promoting self-knowledge, recovering personhood after the anonymizing⁵⁶ years of law school and restoring the agency to make deliberate choices about identity and history, I ask students to interview each other about a formative experience in their evolving identity as members of the legal profession. These interviews are a preview of interactions with clients, and inspired by the student “biographical interview” utilized by Professor Bill Ong Hing in his Lawyering Process class in the early 1990s at Stanford.⁵⁷ Ong Hing’s extensive student interview process mirrors his mandate for lawyers to be “cultural anthropologists” in the communities in which they work, particularly when among historically subordinated groups, by scouring empirical studies, ethnographic studies, first person accounts, and popular culture.⁵⁸ He reminds law students to be cognizant of the “personal identification”⁵⁹ features of their clients and the legal environment, and of their own in relation to the client, and we discuss these features as part of the student interviews.

Another tool for moving toward self-awareness is the mapping exercise created by John Bliss of Harvard’s Center on the Legal Profession, which depicts cultural sociologist Erving Goffman’s concept

54. Students may selectively share aspects of the results of these exercises on a voluntary basis.

55. See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010); RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* (2017); RICHARD KLUGER, *SIMPLE JUSTICE: THE HISTORY OF BROWN V. BOARD OF EDUCATION AND BLACK AMERICA’S STRUGGLE FOR EQUALITY* (2004).

56. Pearce, *supra* note 15, at 2081, 2087 (describing the end product of law school as a “bleaching out” of racial and other identities in order to make cookie-cutter, “fungible” lawyers).

57. Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses*, 45 *STAN. L. REV.* 1807, 1812 (1993).

58. *Id.* at 1808.

59. *Id.* (these personal identification features include class, race, ethnicity, gender, sexual orientation, physical disability, and age).

of role distancing.⁶⁰ This exercise allows students to grasp the multiple roles and identities that they bring to lawyering, as well as their attachment to and distance from those roles.⁶¹ Bliss used student maps to explore professional identity formation and the impact that law school has on shifting one's core identity, but I use his maps to gather baseline self-knowledge.

The maps start as a blank slate upon which students define and scale their roles.⁶² However, the freedom this exercise would appear to offer is not equally experienced, as some of our roles are socially imposed.⁶³ When these racial, ethnic, or cultural identity roles are represented on the map, the students of color stand out in class. Discussions like these can unevenly afflict students of color, who may be fatigued by the labor of translation, the unreciprocated vulnerability, and the uncomfortable spotlighting.⁶⁴ When race, culture, and ethnicity are not prompted, as in this exercise, then the disparity in answers calls for a discussion of structural racism, in that some groups have the luxury to escape imposition of those roles. The ensuing conversation places an uninvited onus on the students of color and implicitly critiques the dominant students for their privilege and myopia.

60. John Bliss, *The Professional Identity of Lawyers*, PRACTICE, <https://thepractice.law.harvard.edu/article/the-professional-identity-formation-of-lawyers> [<https://perma.cc/7DHC-397P>] (last visited Oct. 11, 2021).

61. John Bliss, *Divided Selves: Professional Role Distancing Among Law Students and New Lawyers in a Period of Market Crisis*, 42 L. & SOC. INQUIRY 855, 859–860 (2017).

62. *Id.* at 865. In order to complete the exercise, students first list any roles they enact in their daily life, so long as they include their identity as a lawyer. Next they map, using proportional circles, the roles in relation to a dot in the center of a circle that fills the entire page. Roles that are closer to the dot in the center are deemed particularly important to their core sense of identity or self, and further from the center if they are less important. The size of the circle indicates how much space that role consumes in their daily life.

63. *Id.* at 859–60.

64. Kali Holloway, *Black People Are Not Here to Teach You; What So Many White Americans Just Can't Grasp*, SALON (Apr. 14, 2015, 4:35 PM), https://www.salon.com/2015/04/14/black_people_are_not_here_to_teach_you_what_so_many_white_americans_just_cant_grasp_partner/ [<https://perma.cc/F5A2-S4A4>]; Alana Massey, *Transforming White People Is Not the Job of Minority Students*, PAC. STANDARD (Apr. 10, 2015), <https://psmag.com/social-justice/in-short-white-people-need-to-be-less-stupid> [<https://perma.cc/V9DL-F3R3>].

Finally, students may fill out a positionality audit,⁶⁵ a process drawn from social science that directs the student to itemize key personal attributes (including race, gender identity, education, class, geography, national origin, and religion) to better understand how our position within the social world shapes the way we see that world. In the social sciences, reflexivity is a continuing process of reflecting on how the researcher could be influencing the research, whether in its framing or outcomes.⁶⁶ Reflexive methodological reporting demands that the background of the researcher be explicitly detailed with the same care as the data collection methods and analytical techniques.⁶⁷ In class we can also use the positionality audit in a similar fashion as the lawyer's "conflicts check," but for later juxtaposition against the characteristics belonging to the simulated client.⁶⁸ This audit process might expose how the background of the lawyer may be impacting and influencing the interpretation of the client, the conflict, and the relationship.⁶⁹

For the students of color in my Spring 2020 class, the inward self-appraisal process was like a summer reading assignment when you've already read the book. In order to survive and succeed, these students of color had already undertaken a certain level of self-examination to grasp the divergences between their personal experience and the majority norms, and many were already adeptly code

65. See Séverine Marguin et al., *Positionality Reloaded: Debating the Dimensions of Reflexivity in the Relationship Between Science and Society: An Editorial*, 46 HIST. SOC. RSCH. 7, 10 (2021).

66. See REFLEXIVITY: A PRACTICAL GUIDE FOR RESEARCHERS IN HEALTH AND SOCIAL SCIENCES, at ix (Linda Finlay & Brendan Gough eds., 2003).

67. See *id.* at 5.

68. A conflicts check is a system for assuring that the interests of potential clients are not directly adverse to those of another current or former client. Eileen Libby, *Conflicts Check, Please*, ABA J. (Jan. 2, 2010, 2:30 AM), https://www.abajournal.com/magazine/article/conflicts_check_please/ [<https://perma.cc/A3ZS-9UUK>]. The Model Rules of Professional Conduct require lawyers to assess these interests to avoid any such conflicts in future commitments. MODEL RULES OF PRO. CONDUCT rr. 1.7–1.8 (AM. BAR ASS'N 2020).

69. See Bryant, *supra* note 44, at 64–65, 65 n.116, 82. Bryant offers a version of this process of self-assessment in relation to the client, called Habit One, where she asks students to diagram similarities and differences, and their significance, between themselves and their clients and how those might impact lawyering. *Id.* at 64–65. She describes how sometimes this process results in students offering personality traits, but she then tries to explore whether there is a link between the trait and culture. *Id.* at 82.

switching between cultures.⁷⁰ The process of acculturation consists of a conscious study of one's own culture in relation to the dominant.⁷¹ As illustrated in sociologist Wendy Leo Moore's work, in order for students of color to excel in white spaces, they are often required to put their own experiences aside to "fit in to the existing culture."⁷² Many have already taken concerted steps to remake themselves, to capitulate to white acceptability and safety.⁷³ As outsiders in this country, even when we're born here, we are saddled and blessed with our otherness all the time.⁷⁴ It is a life-long process to locate and pluck out the thorns of the dominant culture that have been embedded while traversing our lives in America. No person of color is ever on the other side of that perpetual self-examination and introspection, sifting genuine views from those that have been warped by the white gaze.⁷⁵

In contrast, it is often a challenge for students in the dominant culture to unearth unconscious layers of assumptions or invisible scripts that they may not realize constitute their culture.⁷⁶ Fordham University School of Law Professor Russell G. Pearce argues,

70. See generally Elkins & Hanke, *supra* note 25, at 35.

71. Pearce, *supra* note 15, at 2088; see also Elizabeth R. Cole & Kimberly R. Jacob Arriola, *Black Students on White Campuses: Toward a Two-Dimensional Model of Black Acculturation*, 33 J. BLACK PSYCHOL. 379, 379–80 (2007).

72. Tsedale M. Melaku & Angie Beeman, *Academia Isn't a Safe Haven for Conversations about Race and Racism*, HARV. BUS. REV. (June 25, 2020), <https://hbr.org/2020/06/academia-isnt-a-safe-haven-for-conversations-about-race-and-racism> [<https://perma.cc/B25J-ZANT>]; see Pearce, *supra* note 15, at 2088.

73. See McCluney, *supra* note 25.

74. See Weng, *supra* note 5, at 371–72.

75. Ibram X. Kendi (@DrIbram), TWITTER (Feb. 18, 2020 4:03 PM), <https://twitter.com/DrIbram/status/1229874139835449344> [<https://perma.cc/P2GR-WJ3Z>]; Ibram X. Kendi (@DrIbram), TWITTER (Feb. 18, 2020 4:04 PM), <https://twitter.com/DrIbram/status/1229874306865221632>

[<https://perma.cc/FB2R-PVCG>] (describing his ambition: "as a Black writer, to free myself from the White gaze, free myself from writing from the White perspective, from writing for the White reader or critic . . . from writing with worry about White people weaponizing my words, from writing to make White people feel comfortable or uncomfortable, from writing burdened by a responsibility to persuade away White racism . . .").

76. See Weng, *supra* note 5, at 372–73; Bryant, *supra* note 44, at 83 n.165 (describing this phenomenon as "white privilege" or the "transparency of whiteness"); Pearce, *supra* note 15, at 2089 (asserting that "[w]hite racial identity exists and whites tend to avoid acknowledging their identity.").

in a similar vein, that “white lawyers understandably have a tendency to treat whiteness as a neutral norm or baseline.”⁷⁷ One semester I had two students from the American South; their vernacular, pacing, and demeanor provided a less fraught, de-exoticized study for both the Southerners and Northerners in how a combination of behaviors can congeal to constitute a culture which is subject to normative evaluation. Once students of the dominant culture begin to recognize the existence of their culture, the attendant “privileges and benefits” become more evident.⁷⁸

C. *Outward-Facing Cultural Humility*

Only after sufficient self-exploration can we turn to areas where we might encounter cultural differences with our clients.⁷⁹ The consequences of assembling random fragments of cultural expression and setting expectations based upon that partial edifice include the following: culture-specific knowledge may deepen the divide and reinforce the otherness;⁸⁰ anxiety about cultural incompetence could intensify;⁸¹ a false sense of confidence may develop based upon partial knowledge;⁸² and clients’ unique life narratives may be essentialized.⁸³ For my Spring 2020 class, unlike the exercises in self-awareness, our discussions about detecting and respecting cultural difference were surprising. Relying upon the scholarship of Boston College Law School Professor Paul R. Tremblay and CUNY School of Law Dean Eduardo Capulong,⁸⁴ I introduced the students to tools and techniques to enroot responsive and acute perception of our clients’ lives.

77. Pearce, *supra* note 15, at 2083.

78. Boles, *supra* note 21, at 152.

79. See Tremblay, *supra* note 49, at 407–09; see also Bryant, *supra* note 44, at 40 (“To become good cross-cultural lawyers, students must first become aware of the significance of culture on themselves.”).

80. See Weng, *supra* note 5, at 385 n.86.

81. See *id.* at 384–85.

82. *Id.* at 385.

83. See Tremblay, *supra* note 49, at 378; Segal & Handler, *supra* note 52, at 396 (warning against weaving full cultures out of strands of difference: “...recognizing a dimension of difference does not require its objectification as a set of elemental units of humanity (“cultures”).”).

84. See generally Eduardo R.C. Capulong, *Client as Subject: Humanizing the Legal Curriculum*, 23 CLINICAL L. REV. 37 (2016).

Lawyers are best equipped for representing clients if we adopt Tremblay's nimble posture of "informed not-knowing" while we acquire tentative knowledge about other cultures.⁸⁵ By repurposing behavioral psychology's heuristics, or mental shortcuts, from their original meaning,⁸⁶ Tremblay offers a form of outward-facing cultural humility that is neither omniscient nor absolutist. He operates from the assumption that there might be cultural differences between us and our clients, provides a description of common zones of divergence, and warns us to quickly adapt if these differences don't present.⁸⁷

Ultimately, we have to understand our client's culture to translate the client's story into our professional language to secure the outcome for which we have been retained.⁸⁸ Lawyers need this skill to "correctly attribute meaning to their clients' behavior."⁸⁹ The end result of our failure to "see" clients in their full cultural, political, and economic context (aside from the personal harm) could be that clients don't trust us enough to go beyond gossamer or perfunctory disclosures, or they resist our entreaties to participate in the litigation.⁹⁰ Or we might advance a flawed approach that doesn't reflect how the client chooses to define the legal problem or themselves.⁹¹ How we understand our clients impacts every step of the relationship and litigation: whether we choose to enter the relationship, how we gather information, shape claims, assess credibility, generate solutions, devise strategies, and honor and achieve their objectives.⁹² More broadly, this invaluable knowledge can infuse our legal practice and inform how we adapt and reform the legal system.⁹³

85. Tremblay, *supra* note 49, at 382.

86. *See id.* at 385.

87. *See id.* at 387 (the zones of cultural difference are: proxemics; kinesics; time and priority considerations; narrative preferences; relational perspectives; and scientific orientation). *See generally id.* at 389–406.

88. *See id.* at 379.

89. Bryant calls these "isomorphic attributions" or meanings that align with the client's intended words or behavior. Bryant, *supra* note 44, at 42–43.

90. *See id.* at 41–42; Tremblay, *supra* note 49, at 378, 413; Capulong, *supra* note 84, at 37, 43.

91. *See* Bryant, *supra* note 44, at 42.

92. *See id.* at 41–44.

93. *See id.* at 36.

To supplement Tremblay's provisional generalizations, my students are encouraged to adopt the framework from Capulong's body of theory called client studies.⁹⁴ He encourages lawyers to enhance holistically our knowledge of client identity through six dimensions: (1) biological, psychological and neurological; (2) legal; (3) historical, including as a subordinated class member; (4) social including political, religious, cultural, and subcultural networks; (5) self-conception; and (6) political agency.⁹⁵ This expansive process affords the potential for receiving our clients in the fullness of their competing priorities and complex selves, so unlike the conveniently truncated clients of doctrinal law case summaries. I encourage students to learn about their clients using Capulong's thoughtful six dimensions, in combination, so they may defy resort to the simplistic, indistinguishable universalized client.⁹⁶ Further, unlike some teachings on cultural humility, he makes essential an understanding of structural racism, racial injustice, and imperialism as it relates to the client.⁹⁷

Though most of my non-white Spring 2020 students had already begun an internal conversation about their own culture long before law school, that did not mean that they instantly understood how to perceive and reckon with cultural differences. CUNY School of Law Professor Susan Bryant, who has devoted decades to the study of culturally-attuned communication, explains that, "[a]lthough students of color and white students who have lived a bi-cultural life certainly have a much deeper understanding of the

94. Capulong, *supra* note 84, at 38 (explaining that the goal of client studies is a "systematic, interdisciplinary" effort to learn about the histories and motivations of our clients in order to reinstate their subjectivity, the importance of which is often lost in the appellate decisions in which we are introduced to the academic version of them).

95. *Id.* at 47.

96. *See id.* at 39.

97. This essay does not propose how to best create an anti-racist syllabus or learning community, but urgently underscores the need for routine and regularized lessons integrated across the entire law school curriculum. *See* Eduardo R. C. Capulong et al., *Antiracism, Reflection, and Professional Identity*, 18 HASTINGS RACE & POVERTY L.J. 3, 7 (2021) (proposing an antiracist reflective practical model as an integral part of professional identity formation). There were also helpful discussions and ideas at the New England Clinical Conference "Racial Injustice in the Law and Institutions: Building Toward an Anti-Racist Future in Experiential Programs." *See generally* Agenda, New England Clinical Conf. (Mar. 26, 2021).

role that culture plays in their lives, even these students often need to learn how to translate the insights gained from living a bi-cultural existence into lawyering skills for a multi-cultural world.”⁹⁸ Our class, through their unpredictable opinions, interpretations, and responses, exploded identity categories and was a microcosm of the knowledge that “[c]ulture is performed . . . fluid/emergent . . . [and] improvisational.”⁹⁹ The variability within this group was an admonitory lesson about the hazards of lazily succumbing to acquired cultural knowledge, the “cookbook approach” to cultural difference, that communicates fixed rules and expectations for any and every member of a culture.¹⁰⁰ The students’ entirely distinctive cultural identities made real Tremblay’s reminder that culture is not static and Bryant’s warning that “[c]ulture is enough of an abstraction that people can be part of the same culture, yet make different decisions in the particular.”¹⁰¹ Indeed, each student, even those of the same race and nationality,¹⁰² did not share the same social location¹⁰³ in their multiple, simultaneous identities.¹⁰⁴ The presence of so many differences within the class ruptured any notion of uniformity among people of color or people of the same national origin.¹⁰⁵ Rather, the interaction generated by this class composition offered living proof of Touro Law Center Professor Marjorie Silver’s assertion that “all lawyering is cross-cultural” because “culture exists at various levels of experience.”¹⁰⁶ In fact, the

98. Bryant, *supra* note 44, at 57.

99. Tremblay, *supra* note 49, at 379 & n.16.

100. Weng, *supra* note 5, at 385 n.86.

101. Bryant, *supra* note 44, at 41.

102. Of the nine students of color, five were Black, three Latino, and one South Asian.

103. Kelli Zaytoun, *Theorizing at the Borders: Considering Social Location in Rethinking Self and Psychological Development*, 18 NAT’L WOMEN’S STUDS. ASS’N J. 52, 57 (2006).

104. Although half of the students were bilingual (in English and Spanish, French, Haitian Creole, Portuguese, Jamaican Patois, or Punjabi), language proficiency and dialect varied considerably among speakers of the same language.

105. Segal & Handler, *supra* note 52, at 396 (“There are differences within every identity-grouping, no matter how much effort is made to destroy them; and there are potentially salient connections and commonalities across every social boundary, no matter how much effort is made to obscure them.”).

106. Silver, *supra* note 45, at 230–31 (“The culture of an Orthodox Jew differs from the culture of a Reform Jew. The culture of a Muslim male differs

perceived similarities belied the fact that “all interpersonal relationships occur across difference.”¹⁰⁷

The class composition made tokenization impossible and stymied the “seductive” lure built into assumptions about sameness that can also occur with clients.¹⁰⁸ Our sameness became a surface feature, which sloughed off to reveal considerable difference¹⁰⁹ in characteristics like generation, gender, class, and religion. Bliss’s roles emerged with definition throughout the semester, including that four of the students were over age thirty, three were students with international law degrees, several were in the U.S. on temporary visas, and four students had children. Several students emphasized the importance of their working-class identity to their worldview, and another was shaped by her involvement with her church.¹¹⁰ Social location and interiority took center stage, while race and national origin moved backstage. Even among this group, being in conversation with students of the same race and country who were nevertheless different from one another, was a valuable reminder not to yield to generalization without caution. After the class ended, one Black student commented:

I was surprised . . . when I walked into the most visibly diverse class I have ever taken in law school Initially, I observed the class diversity solely focusing on the ethnic composition of the class. This class reminded me that diversity is not just physical differences but also

from that of a Muslim female. The culture of a Catholic gay man is not the same as that of a Catholic heterosexual male. That of a sixty-year-old gay man is not the same as that of a twenty-year-old gay man. And so on.”).

107. Alexis Anderson et al., *Challenges of “Sameness”: Pitfalls and Benefits to Assumed Connections in Lawyering*, 18 CLINICAL L. REV. 339, 343 (2012).

108. *See id.* at 343–44.

109. *Id.* at 372–73 (“Understanding multiple identities, intra-group differences, and the fact that each of us within any one of our group affiliations is uniquely situated, is critical to understanding the complexities of connection and divide.”).

110. These differences arose in conversations about both legal skills and life. For example, many students of color were scared from witnessing other people of color fall victim to COVID-19, but the student of color who defined herself by her faith felt unafraid in her knowledge that there was a divine plan.

encompasses various ideologies, perspectives, and backgrounds.¹¹¹

Interestingly, the one white male in the class remarked afterwards that, “I don’t remember race or ethnicity coming up in class that often at all.”¹¹²

III. CHALLENGES

Integral to the teaching of cultural competency should be a basic ability to facilitate difficult conversations; indeed, arguably the platform of educator should entail fluency and “professor readiness for navigating [racialized] issues on a moment’s notice.”¹¹³ When unleashing a powerful and sometimes painful subject, a professor must be equipped with strategies that don’t deepen wounds or intensify polarization. Without such proficiency, I have sometimes avoided this dialogue and for fear of drawing unwanted attention (and possible professional repercussions) to the few students of color in the class¹¹⁴ or to myself.¹¹⁵ Highlighting the risks of these conversations, University of Toronto Professor Aisha Ahmad wrote an open letter to women faculty of color in *The Chronicle of Higher Education*.¹¹⁶ In the role of a protective “Auntie,” she

111. Email from student to author (May 1, 2020) (on file with author).

112. Email from student to author (May 2, 2020) (on file with author).

113. Lain, *supra* note 23, at 784.

114. There may be social, psychological, and material repercussions for students if their peers and/or the institution react in an unsupportive way. See El-Sabawi & Fields, *supra* note 22, at 19–20 (describing the impact of 2020 upon Black students who carried the added weight of dealing with racialized violence, the response to Black Lives Matter protests, and the corresponding labor to provide individual and institutional support).

115. See Gonzalez, *supra* note 5, at 51; (“Women of color may feel compelled to conceal or mute aspects of their identities to make their students and colleagues feel comfortable They may sidestep controversial topics in the classroom and in faculty gatherings”); Bryant, *supra* note 44, at 61 n.100; (describing her Latina colleague’s unsettling experience raising these issues); Boles, *supra* note 21, at 145–46 (charging that law professors are guilty of either “discussing race incompetently or insensitively, or omitting and avoiding discussions of race altogether.”).

116. Aisha S. Ahmad, *A Survival Guide for Black, Indigenous, and Other Women of Color in Academe*, CHRON. OF HIGHER EDUC. (July 6, 2020), <https://www.chronicle.com/article/a-survival-guide-for-black-indigenous-and-other-women-of-color-in-academe> [<https://perma.cc/8XJ9-BG49>].

forewarned us about contending with racism in institutions of higher learning:

You will be the only BIPOC woman in the room. Someone will behave in a hostile or inappropriate way, spitting his racism right in your face. And yet, despite some awkward or confused expressions, you will realize that no one in the room is going to help. At this critical moment, you can either stay silent or speak up. Both choices have consequences. If you are silent, you will carry the hurt in your soul. If you call it out, you will face a tsunami of hysterical defensiveness. No one can tell you which choice is best for you, and each situation will be different.¹¹⁷

By evading these topics in class, perhaps subconsciously, I am indulging an implicit expectation of assuring white comfort, the notion that some should be immunized from the emotional and psychological unsettling that often accompanies discussions of our country's tragic imperialism, settler colonialism, and racial failures.¹¹⁸

Professors of color may not be better equipped than our white colleagues to handle the tough conversations that emerge out of dialogue about difference. It is our very insights and experiences as people of color that complicates the ability to separate the yolk of the personal from the white of the problem.¹¹⁹ Standpoint epistemology, though it decenters the majority, also over-assumes

117. *Id.*

118. White comfort is a term meant to describe American whites seeking reassurance and non-threatening engagement, or no recognition at all, about racial issues. Kelly Maxwell & Mark Chesler, *White Student Comfort and Conflict in Experiential Racial Dialogues*, 42 *J. EXPERIENTIAL EDUC.* 249, 250–51 (2019); see Sam McKenzie, Jr., *The 9 Things I Stopped Doing for White Comfort*, MEDIUM (Dec. 10, 2017), <https://medium.com/@SamMcKenzieJr/the-nine-things-i-stopped-doing-for-white-comfort-28063f7d7141> [<https://perma.cc/X49Y-WL39>]. Some faculty argue that real learning is inherently uncomfortable, so there should never be an expectation of comfort. Indeed, people of color have long been uncomfortable in these conversations. Notes, New England Clinical Conf., *Racial Injustice in the Law and Institutions: Building Toward an Anti-Racist Future in Experiential Programs* (Mar. 26, 2021) (on file with author).

119. DEO, *supra* note 8, at 65 (reporting that one woman of color commented that “the toughest part of the job is to pretend to be neutral about stuff you don’t feel very neutral about”).

aptitudes that marginalized groups may bring to the undertaking and dodges the joint partnership that any anti-racism project requires.¹²⁰ We too need training in how to suspend our hurt and instead fertilize conversations that promote mutual understanding and kindness.

During one of the early days of the Spring 2020 class, students shared broadly about themselves, including about their career aspirations. One Latino student described his personal ambition to remedy widespread discrimination against Latinos, propelled in part by the anti-immigrant rhetoric and policies of the Trump administration. He said he hoped to bring Latinos more into the mainstream of social and political culture, like previous waves of Italian and Irish immigrants. One of the three white students in the class immediately chimed in and emotionally recounted the story of her grandfather's challenging journey from Italy and how he had worked hard to bring over each member of his family one by one. She explained how Italians, too, are subjected to stereotypes and slurs, describing Italians as "the Blacks of Europe." In response, the Latino student felt compelled to clarify his career goals and assuage the other student's feelings. Meanwhile, I had a fight or flight reaction to the exchange and then clumsily attempted to validate them both. I did not unpack "the Blacks of Europe" comment and made no eye contact with the rest of the class.

After the course ended, and months later, I spoke with a student of color from the class who experienced that comment as hurtful. Though the white student was likely trying to identify parallels in her grandfather's mistreatment and express solidarity with other immigrants and Black people in America, her remarks landed as a reductive false equivalence. I should have carved out space in class when it happened to untangle this exchange.

In the moment I was paralyzed by the pressure, as an educator, to whip up this situation into a tidy teachable moment. My inaction may have been compounded by the intuitive and empirical

120. Olúfemi O. Táíwò, *Being-in-the-Room Privilege: Elite Capture and Epistemic Deference*, THE PHILOSOPHER <https://www.thephilosopher1923.org/essay-taiwo> [<https://perma.cc/ZZ7M-PBM6>] (last visited Oct. 13, 2021) (arguing that sometimes people of color are imperfect representatives of our communities because the fact that we are present in elite spaces indicates that we may share little in common with others who have been economically or socially marginalized).

knowledge that mishandling racial aggressions and microaggressions in the classroom can have fatal consequences for learning, in addition to their psychological impacts.¹²¹ Maybe it was my racial anxiety¹²² in the stew of already elevated emotions. Maybe it was trepidation about leaking my disapproval of the white student's comments and/or not articulating adequately the flaws in her comparison. Lastly, another complicating factor could have been the fear that such a conversation would upend the tenuous "control" I had over the class.¹²³

Though this is not the first time I have encountered such a situation, I have since learned that there are helpful tools for hosting productive conversations that foster growth and healing. Educators must first engage in the necessary internal work and external training to avoid larding onto the situation our own biases or insufficient proficiencies.¹²⁴ One pedagogical approach for fruitful conversations, crafted by University of Alabama Law Professor Anastasia Boles, is to display "attunement" to the experiences of people in the room, "authenticity" about one's own bias and privilege, and to distribute power evenly among the many voices in the class.¹²⁵ Gentle, open-ended prompts have also been adapted to arm facilitators in such discussions.¹²⁶ In general, creating a supportive space,¹²⁷ making genuine efforts towards dialogue, and listening

121. See Bryant, *supra* note 44, at 59. See generally Tasha Souza et al., *Transforming Conflict in the Classroom: Best Practices for Facilitating Difficult Dialogues and Creating an Inclusive Communication Climate*, in *TRANSFORMING CONFLICT THROUGH COMMUNICATION: PERSONAL TO WORKING RELATIONSHIPS* 373–95 (Peter M. Kellett & Thomas G. Matyok eds., 2016).

122. Boles, *supra* note 21, at 163–64 (compiling social science studies that reveal a decline in instruction and conversation when combined with racial anxiety or implicit bias).

123. Lain, *supra* note 23, at 790.

124. Boles, *supra* note 21, at 147.

125. Lain, *supra* note 23, at 792.

126. S. POVERTY L. CTR., *SPEAK UP: RESPONDING TO EVERYDAY BIGOTRY* (2015); see also LEWIS & CLARK COLL., *RUMINATIONS ON STIMULATING ROBUST DISCUSSIONS OF RACE IN THE LAW SCHOOL CLASSROOM* (2011); Hahna Yoon, *How to Respond to Microaggressions*, N.Y. TIMES (Mar. 3, 2020), <https://www.nytimes.com/2020/03/03/smarter-living/how-to-respond-to-microaggressions.html> [<https://perma.cc/M282-FRXJ>].

127. Bryant, *supra* note 44, at 60 & n.96; see also Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability Into Law School Teaching*, 32 WILLAMETTE L. REV. 541, 542 (1996).

generously may be sufficient end-goals that reorient our role as educators toward dialogue over instruction.¹²⁸

IV. CONSTRUCTING COMMUNITY

During the first week of March 2020, students were partnered in a culminating exercise to conduct the simulated negotiation of a settlement. By that time, we had begun to hear about the spread of COVID-19. On Sunday, March 8, Hofstra University cancelled all classes for that week, just before the students could perform their negotiations.¹²⁹ Nine days after that announcement, Hofstra mandated that all classes be conducted remotely for the final third of the semester.¹³⁰ We abruptly retreated to our separate homes and rooms, isolated and atomized, as we faced this novel global pandemic. I reached out to the class several times that week to say we would delay the negotiation exercise but would forge onwards with class on Zoom. I suspect that the shift to remote learning for the balance of the semester affected this cohort of students differently than predominantly white classes.

Creighton University Professor Noam Ebner has highlighted dynamics and inequalities inherent in remote learning,¹³¹ which many of my students faced. I observed differences in technological readiness, which includes a devoted and quality computer,¹³² high-speed internet access, unlimited data plans,¹³³ and quiet places to

128. See generally Shaireen Rasheed, *From Hostility to Hospitality: Teaching About Race and Privilege in a Post-election Climate*, 37 *STUD. PHIL. & EDUC.* 231 (Mar. 22, 2018), <https://eric.ed.gov/?id=EJ1174947> [<https://perma.cc/F2S9-EFS2>].

129. Email from Hofstra University (Mar. 8, 2020) (on file with author).

130. Email from Hofstra University School of Law (Mar. 17, 2020) (on file with author).

131. *Webinar: Pandemic Pedagogy: Improving Online-Transitioned Negotiation and Conflict Resolution Education*, COLUM. UNIV. SCH. OF PRO. STUDS. (Apr. 16, 2020), <https://sps.columbia.edu/events/webinar-master-science-negotiation-and-conflict-resolution-1> [<https://perma.cc/WP85-XQ9R>]; see also Veronica Lippencott, *Why Online Instruction is a "Race," Culture and Social Justice Issue*, HOFSTRA UNIV. BLOG (Apr. 7, 2020), <http://raceculturesocialjustice.blogspot.com/2020/04/why-online-instruction-is-race-culture.html> [<https://perma.cc/84E8-GUD2>].

132. One student's audio had an unbearable feedback sound every time she unmuted herself to try to participate.

133. Lippencott, *supra* note 129 (noting that, according to census research, 8% of households who have internet rely exclusively on mobile broadband).

study and attend class. The social, emotional, and material conditions brought about by sudden quarantine were also not experienced evenly. The pandemic caused some students to shoulder additional burdens such as sick relatives; competing duties to care for children and households and/or financial insecurity.¹³⁴

Most of my students of color were initially living in student or rental housing, away from family, whereas the white students were commuting from their family homes. In the beginning, without family support nearby, students had to figure out how to get food; how to safely quarantine with roommates who might have in-person jobs or an incompatible risk calculus; and how to gather their possessions and move out quickly.¹³⁵ Even after the first week, some hadn't left their rooms for days, had eaten down all their "quarantine snacks," or were trapped in their dorms waiting for a parent to move them out. Others were left wondering if they would be able to enjoy the rewards of their academic journey in the form of its final ceremonial ritual: graduation. One student of color, who had transferred between several law schools around the country, described in class how he desperately needed that moment to "walk" at graduation and had even practiced walking to receive his diploma.

It was not easy for students to find a secluded, appropriate space for virtual learning. One student in a shared apartment told me she had no privacy. On Zoom, I saw her sitting on the floor beneath the bathroom towel rack and she confessed, "[o]n Friday I had to have class in the bathroom for most of it. But of course I get interrupted."¹³⁶ During class, I could see when other people were moving around behind the students, even when they enabled their virtual backgrounds. One student sitting in her shared kitchen fanned her eyes from cooking spices, pointing to her roommate underfoot and explaining to the class: "[t]his one is cooking all day."

Some were eventually able to move back in with family, but then faced other demands in new living conditions. One student, once he made it back home, frequently commented about how he

134. Boles, *supra* note 21 at 146 n.11; see emails between the author and students, Mar. 8, 2020 through Sept. 31, 2020 (on file with author).

135. See emails from students to author (Mar. 8, 2020–Sept. 31, 2020) (on file with author).

136. Email from student to author (Apr. 13, 2020) (on file with author).

was homeschooling his younger siblings, including attending their student-teacher conferences. He emailed me, saying, “what is stressing me out about the bar is that they rescheduled the dates for the fall but all of the libraries in America are closed. And it will be really difficult for me to study in my house because I have two younger siblings . . . and my whole family is here. But everyone else is going through it so just got a carry-on.”¹³⁷

I had lost my currency for communication and relationship-building: in-person interaction. I was disabled without full body language, subtle non-verbal cues, and the ability to see the entire class in a single gaze and instantly read the room (a gallery view of small faces on the screen is just not the same). Soft utterances and efforts to be heard were lost in the static and ambient sounds of shared homes. A year later, Stanford University would publish a study on “Zoom fatigue”¹³⁸ theorizing that although the technology is convenient, it is not so seamless in replicating real conversation.¹³⁹

Some students were dealing with sickness and death in their family and social circle. One student wrote me, saying:

I am going to start off by apologizing for not doing my best on this memo and in my presentation tomorrow. My best friend’s father passed away a few days ago and the funeral was held today. I was there for most of the day and not in the best place mentally to be able to focus right now because this was someone I knew since my childhood. And the current situation made things so much worse because we

137. Email from student to author (Apr. 11, 2020) (on file with author).

138. Jena Lee, *A Neuropsychological Exploration of Zoom Fatigue*, PSYCHIATRIC TIMES (Nov. 17, 2020), <https://www.psychiatric-times.com/view/psychological-exploration-zoom-fatigue> [<https://perma.cc/G6N5-BEC7>]. “Zoom fatigue” became a common way to express the feelings that accompanied days spent on the platform for work, school, and socializing.

139. Jeremy N. Bailenson, *Nonverbal Overload: A Theoretical Argument for the Causes of Zoom Fatigue*, 2 TECH., MIND & BEHAV. 1, 1–4 (2021) (describing factors that lead to this condition, explaining that sustained eye-contact that is close-up is experienced as violating norms of interpersonal distance and thereby “smother[ing] everyone with eye gaze”). Zoom time is also exhausting because of the additional cognitive load from sending and receiving both more, and less, nonverbal communication, lack of physical mobility, and being forced to look at oneself. *Id.* at 1.

couldn't provide the proper respect he deserved in his goodbye.¹⁴⁰

Another student's aunt tested positive for COVID-19 and was hospitalized. She emailed: "One of my family members has been hospitalized due to the virus and with my mind so preoccupied, I forgot to turn in my assignment."¹⁴¹ During finals, in April, her aunt was put on a ventilator and soon after passed away. All of these students were compromised in their ability to function at their best.

Remote instruction involved a higher level of student caretaking. Professors of color who are women already assume a disproportionate share of student mentoring and counseling.¹⁴² Irina Popescu, a visiting assistant professor at Bowdoin College, wrote about the "invisible labor" that online teaching demands.¹⁴³ She described being "terrified" and "obsessed" about equity and accessibility, and also about keeping her job.¹⁴⁴ She wondered if professors are equipped to be a "portal for seeking therapy-like consultations."¹⁴⁵ Popescu believes we need to "cultivate care"¹⁴⁶ for our students; while that has always been the ethos of my teaching, I shared her sense of uncertainty, inadequacy, and exhaustion in those early COVID-19 weeks.

As we all lost life's casual encounters, we leaned more on each other.¹⁴⁷ I compensated for the lack of serendipitous physical

140. Email from student to author (Apr. 16, 2020) (on file with author).

141. Email from student to author (Mar. 31, 2020) (on file with author).

142. El-Sabawi & Fields, *supra* note 22, at 22–23; Boles, *supra* note 21, at 146; Meera Deo, *The Ugly Truth About Legal Academia*, 80 BROOK. L. REV. 943, 992 (2015); *cf. also* Miguel F. Jimenez et al., *Underrepresented Faculty Play a Disproportionate Role in Advancing Diversity and Inclusion*, 3 NATURE, ECOLOGY, & EVOLUTION 1030, 1030 (2019).

143. Irina Popescu, *Reflections on the Invisible Labor of Online Teaching*, INSIDE HIGHER ED (June 24, 2020), https://www.insidehighered.com/advice/2020/06/24/students-are-seeking-therapy-help-professors-online-result-pandemic-opinion?fbclid=IwAR0GD43K9xRp9olfVzZAehA-zx4MeEnOVnquwO8j5M2kn5iOL_-20AMZWYI [<https://perma.cc/NWZ6-U2V7>].

144. *Id.*

145. *Id.*

146. *Id.*

147. At the same time when my teaching went remote, so too did my learning. My apprenticeship group at the Queens Center for Mediation Service (CMS) was a perfect model for dedicating virtual class time to nurturing our fragile states.

proximity by compulsively emailing students individually to check-in, although it felt awkward and even intrusive at times. Sustaining our learning community had greater urgency yet additional obstacles. In place of unguarded chatter with students that linger after in-person class, I carved out time in virtual class to recognize how people were feeling, using icebreakers like: “[h]ow do you feel in one word?”¹⁴⁸ and enabled the chat feature as an unregulated outlet.

Though I tried to nourish a stable classroom community, I found my reserves dwindling and my professional appearance faltering. As the weeks passed, I hadn’t left my home except to go see my elderly parents through their back porch, sliding-glass door. I stopped dressing up for class, didn’t wear shoes (they didn’t know, but I did), and my hair’s grey roots were quite visible. I’m not sure I would have let down my guard in another class.

In April 2020, we did not yet know that COVID-19 was disproportionately affecting people of color.¹⁴⁹ On the last day of class, April 17, one student had been coughing since February and another was too sick to attend class. At the end of class, after we had said our goodbyes and were just about to log off for the last time, a student suddenly interrupted and disclosed that he had tested positive for COVID-19. He had gotten through a terrible fever but was still suffering from headaches. He said he didn’t want a “pity party” but felt the need to warn the rest of the class about possible symptoms. Two other students nervously noted that they lost had their sense of smell and taste.

Days later, after we went our separate ways, a student emailed me to say that, “[t]he individuals in this class were very supportive of each other and it became a zero-judgment zone . . . which allowed us to present openly and not feel judged for having a different

148. Another series of prompts were: “One thing I have changed is . . . One way social distancing is working for me is . . . It is hard because . . . One thing I plan to do but haven’t is . . . What I will say when I see risky behavior is . . . A conversation we have avoided is . . . What I hope can happen is . . . A sign of creative adaptation is . . . A question that is emerging for me . . . Someone I want to include in this is . . . All I want is . . .”

149. See *Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity*, CTR. FOR DISEASE CONTROL, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html> [<https://perma.cc/X42E-TAWY>] (last visited Sept. 9, 2021).

delivery or perspective During this semester, we have created our own . . . family and I am much grateful to have been a part of [a] great group of people.”¹⁵⁰

CONCLUSION

In retrospect, I can now see where the curriculum for my Spring 2020 class might have been more responsive and how my skills needed development. While I’m disappointed by the missed opportunities and outright failures, I take solace in the moments of possibility. This classroom community was defined by our shared lived experience as cultural outsiders, but paradoxically, shedding our outsider status was a prominent virtue. At its best, this aspirational community rejuvenated the agency, within a law school classroom, to toggle between nestling in the familiarity and pride of group identity, critiquing its reductionism and celebrating individual subjectivities. As one student wrote me, “[i]n class, I felt seen, valued, and appreciated as a participating student.”¹⁵¹ The bonds nurtured early in the semester proved vital to navigating the unexpected challenges we later encountered.

A few weeks after our class ended, Professor Dan Chiasson recounted in an essay how he commissioned an adorable song for his pandemic-aborted English seminar at Wellesley College.¹⁵² Seminar teachers love and live for that moment in the flow of the semester where the chemistry is just perfect: students know not just one another’s names, but enough of their personalities that they can endearingly anticipate how each other will respond to an issue that arises in class. I know I have arrived at this point when I get to the negotiation exercise in class, and I pair up the students against each other. If the class has succeeded, there will be a collective reaction to imagining one another in the role of adversaries. But just when you’ve accomplished that synergy, the semester is over and you are starting again from scratch with a new class like a first date, full of awkwardness and cautious appraisals. My daughter cried on the last day of class when some of her freshman seminars

150. Email from student to author (Apr. 18, 2020) (on file with author).

151. Email from student to author (May 1, 2020) (on file with author).

152. *Pandemic Journal*, N.Y. REV. (May 15, 2020), <https://www.nybooks.com/daily/2020/05/15/pandemic-journal-april-13-20/> [<https://perma.cc/4AR6-H5NU>].

ended in college; the bonding in a vulnerable moment of life makes the seminar a community that is painful to lose. Our instant affinity in the early days of Spring 2020 was sparked by the delight in encountering a hospitable community to learn the basics of this new vocation, whereas the necessary intimacy of our final days was borne of the fear and uncertainty of the pandemic. Ultimately, what bound us together well into the fall, and made it hardest to lose this community, were the exhilarating and vulnerable moments when we were seen as we chose to be.