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Waiting for the Elevator: Talking About Race

Ellen Yaroshefsky

Maurice A. Deane School of Law at Hofstra University

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Waiting for the Elevator: Talking About Race

ELLEN YAROSHEFSKY*

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INTRODUCTION

Law schools, along with many universities, acknowledge the need to teach cultural competency. That said, educational institutions grapple with the often daunting task of how to do so: how to engage effectively with students so that they understand the ways in which race, class, gender, and other aspects of cultural background influence perceptions and experience. It is a difficult undertaking for students and faculty alike. Most law faculty are not practiced in how to approach the issues.

This essay recounts an experience of teaching cultural competency in a law school clinic. This fascinating endeavor, notably about talking openly about race, will hopefully encourage others to engage in this effort.

There is a particular importance in developing cross-cultural competency in the legal profession. Beginning in the law school setting, cultural responsive teaching increases the awareness of all students, and affirms and validates the experiences of minorities in settings of higher learning that are most often

* Clinical Professor of Law and Director of the Youth Justice Clinic and the Jacob Burns Center for Ethics in the Practice of Law, Benjamin N. Cardozo School of Law. I thank the Georgetown Journal of Legal Ethics for inviting my participation in this forum. I thank the Youth Justice Clinic students for their dedication in engaging in this discussion and its follow up, and thank two of its students, Lindsay Melworm and Nadia Jean Francois, for their able research assistance. I am grateful to Professors Eldred Tigran and Richard Zitrin for their insights and suggestions. © 2014, Ellen Yaroshefsky.

dominated by whites.¹ Such teaching allows students to explore the judgments that we all make through our own cultural lens.² Because culture “gives us the tools to interpret meaning from behavior and words, we are constantly attaching cultural based meaning to what we see and hear, often without being aware that we are doing so.”³

The benefit of teaching cultural competence expands beyond the classroom to enhance the development of a positive lawyer-client relationship—the cornerstone of effective lawyering. Clients may interpret situations differently from their lawyer. Thus, it is important for lawyers to acknowledge cultural differences in order to ensure that they understand their clients’ desires.⁴ Not only can culturally competent lawyers adequately identify and respond to the needs of their diverse clients, but their ability to engage effectively with clients from different background provides clients with an assurance that the lawyer remains dedicated to fulfilling the obligation to promote justice in his or her profession.⁵ Cultural competency also fosters the lawyer’s ability to work with colleagues in a multicultural environment, and more broadly, to be engaged as members of a global world.

“Culture is defined as ‘the deposit of knowledge, beliefs, attitudes, values, [and] meanings . . . acquired by a group of people over generations through

1. See generally Teal Rothschild, “Talking Race” in the College Classroom: The Role of Social Structures and Social Factors in Race Pedagogy, 31 J. MULTICULTURAL COUNSELING AND DEV. 31 (2003).

2. Everyone possesses such cultural biases. These are “pervasive and robust.” Cheryl Staats, *State of the Science: Implicit Bias Review 2014*, Kirwan Institute for the Study of Race and Ethnicity, Ohio State University, 17 (2014) (citing works by Greenwald, McGhee and Schwartz; Kang; Nosek and Smith), available at <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/03/2014-implicit-bias.pdf>. See generally DERALD WING SUE & DAVID SUE, COUNSELING THE CULTURALLY DIVERSE THEORY AND PRACTICE 6 (6th Ed. 2013).

3. Sue Bryant & Jean Koh Peters, *Five Habits for Cross-Cultural Lawyering*, in RACE, CULTURE, PSYCHOLOGY AND LAW 48 (Kimberly Barrett and William George eds., 2005).

4. For a detailed discussion on the habits lawyers must develop in order to engage in effective cross-cultural communication to build trust and understanding between themselves and their clients, see *id.* at 60; Susan Bryant, *The Five Habits: Building Cross Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33 (2001). There is an extensive literature about teaching cultural awareness in law school. See *id.*; RICHARD ZITRIN, CAROL M. LANGFORD & LIZ RYAN COLE, LEGAL ETHICS IN THE PRACTICE OF LAW, 477-80 (4th ed. 2013); Isabelle Gunning, *Diversity Issues in Mediation: Controlling Negative Cultural Myths*, 1995 J. DISP. RESOL. 55; Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997); Antoinette Sedillo Lopez, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH. U. J.L. & POL’Y 37 (2008); Kimberly O’Leary, *Using Difference Analysis to Teach Problem-Solving*, 4 CLINICAL L. REV. 65 (1997); Marci Seville, *Chinese Soup, Good Horses, and Other Narratives: Practicing Cross-Cultural Competence before We Preach, in Vulnerable Populations and Transformative Law Teaching: A Critical Reader*, 277-97 (Society of American Law Teachers, Golden Gate University School of Law, eds., 2011); Marjorie A. Silver, *Emotional Competence, Multicultural Lawyering, and Race*, FLA. COASTAL L.J. 219 (2002); Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373 (2002); Carina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369 (2005); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G*, 38 BUFF. L. REV. 1 (1990).

5. See *supra* note 4.

individual and group striving.”⁶ Culturally competent lawyers are those who recognize these nuanced and varied backgrounds, and develop attitudes and policies within their profession, allowing them to work effectively in cross-cultural settings.⁷

Cultural competence includes the need to understand both objective and subjective culture. Objective culture includes easily identifiable observations: food, clothing, names, or artifacts. Subjective culture is the often invisible, less tangible parts of behavior that remain unexpressed: a person’s attitudes, values, and beliefs.⁸

Professors Susan Bryant and Jean Koh Peters identified five key habits that lawyers must develop in order to understand their own cultural perspectives as well as those of their clients.⁹ This understanding furthers the lawyer-client relationship by providing a client-specific approach to solving legal issues, and establishing open, honest, and trustworthy communication processes.

The first three habits focus on ways to think like a lawyer, using cross-cultural knowledge to analyze the effectiveness of a particular approach to a particular problem. These habits include: (1) determining and assessing the impact of any similarities and differences between a lawyer and her client; (2) identifying and analyzing how these similarities and differences influence interactions between all parties to a case; and (3) “parallel universe thinking”—exploring multiple alternative interpretations of client behavior. In developing these skills, “the lawyer may be better able to explain the client to the legal system and the legal system to the client.”¹⁰

Habit four focuses on mindful communication so as to avoid the problems that often result from cross-cultural misunderstandings. Before meeting with her client, a lawyer should identify what she will look for to spot good communication as well as “red flags,” which indicate the absence of any honest, effective communication.¹¹ By paying close attention to all channels of communication (legal scripts, introductory rituals, providing client feedback, gathering culturally sensitive information), a lawyer will be more alert to red flags, and can then explore a different approach from the one that led to the red flag. Such training helps a lawyer better understand her client, and allows for an individualized

6. Jan L. Jacobowitz, *A Rose By Any Other Name? Enhancing Professionalism Through Cultural Competency*, FAWL J. 7, 7 (2009) (citing LARRY A. SAMOVAR & RICHARD E. PORTER, *COMMUNICATION BETWEEN CULTURES* 37-38 (5th ed. 2003)).

7. TERRY L. CROSS ET AL., *Towards A Culturally Competent System of Care* 18, at Georgetown University Child Development Center, CASSP Technical Assistance Center (1989).

8. See RAYMONDE A. CARROLL, *CULTURAL MISUNDERSTANDINGS: THE FRENCH-AMERICAN EXPERIENCE* 2 (1988).

9. Bryant & Peters, *supra* note 3, at 51-59.

10. Bryant & Peters, *supra* note 3, at 56.

11. *Id.* at 57.

approach that can minimize future miscommunication.¹²

Finally, habit five, “the camel’s back,” recognizes that factors other than bias and stereotypes may negatively impact an attorney-client relationship. Straws that may break a lawyer’s back include stress, lack of control, poor self-care, and a nonresponsive legal system.¹³ The key focus of habit five is for a lawyer to engage in introspection, and use this reflection to respond to her clients in a more respectful manner.¹⁴

Professors must help students begin to cultivate these habits. Students need to be knowledgeable about cultural differences and develop awareness about their attitudes towards different cultures. This in turn will allow professors to more effectively teach students effective communication skills.

Educators can readily agree about the significance and benefit of teaching cultural competency. The difficult issue is how to teach it. Some law school classes are devoted to multicultural lawyering, most often with clinical education, and there is a growing body of literature about the theory and practice of teaching cultural diversity.¹⁵ But any discussion about exploring cultural competency in the classroom is fraught with explicit and implicit attitudes and biases. Teachers, as well as students, experience discomfort at the idea of disclosing attitudes that may engender fear, shame, guilt, anger, and despair.

Cultural competency encompasses an awareness of differences based upon race, ethnicity, gender, age, disability, geography, language, and education, but the most acute difficulty and discomfort is in confronting explicit and implicit biases about race. Race is a charged issue; notwithstanding this decade’s false suggestions that we live in a “post-racial world,” racial attitudes are deep seated and reinforced throughout all institutions in American culture including its legal system.¹⁶ White, Black, Latino, and Asian students experience discomfort for a range of different reasons in such a discussion. Students, no matter their race, certainly do not want to be accused of being “racist,” notably when many have been raised in what is perceived as an era of “political correctness.” Many have

12. *Id.* at 59.

13. *Id.*

14. There is increased attention to the need for lawyer training in mindfulness. *See, e.g.*, THE BERKELEY INITIATIVE FOR MINDFULNESS IN LAW, <http://www.law.berkeley.edu/14864.htm> (last visited Aug. 21, 2014) (workshop on integrating mediation into law schools); Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients*, 7 HARV. NEGOT. L. REV. 1 (2002); Jack Kornfield, *The Gifts of Mindfulness and the Law*, JACK KORNFIELD (Mar. 15, 2012), available at <http://www.jackkornfield.com/2012/03/the-gifts-of-mindfulness-and-the-law-march-2012/>.

15. For a discussion of teaching cultural awareness in law school clinics, *see, e.g.*, Lopez, *supra* note 4; Cynthia Pay, *Teaching Cultural Competency in Legal Clinics*, 23 J. L. & SOC. POL’Y 187; Seville, *supra* note 4; Tremblay, *supra* note 4; Weng, *supra* note 4.

16. *See* Anthony V. Alfieri, *Introduction to the North Carolina Law Review Symposium, Race Trials: “He is the Darkey with the Glasses On”*: *Race Trials Revisited*, 91 N.C. L. REV. 1497, 1498 (2013) (discussing race talk and racialized narratives); MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN AN AGE OF COLOR BLINDNESS* (2010).

explored the “tensions between the rhetoric of seeking a color-blind society and the reality of living in the race-conscious nation.”¹⁷ Implicit biases based upon race are especially difficult to confront because they “represent[] a subtle, often unintentional, form of bias that characterizes many white Americans who possess strong egalitarian values and who believe that they are nonprejudiced.”¹⁸

An intensive discussion about race that necessarily causes discomfort is hard to do in a typical law school classroom setting. It is more likely to be successful in an atmosphere where students have interacted extensively, both professionally and personally, over a period of time. Hence, the law school Youth Justice Clinic is an environment where I sought to experiment with teaching race and cultural competency. I describe one experience and attempt to draw some lessons from it.

The Youth Justice Clinic at Benjamin N. Cardozo School of Law was created to address the needs of youth in the justice system—notably the “school to prison pipeline.”¹⁹ It was a one-semester clinic with eight students, and I am the sole professor.²⁰ Early on in the Clinic, we visited juvenile defendants at Rikers Island, where pretrial detainees are housed when they cannot make bail.²¹ Our Clinic’s work is for and with these juvenile defendants.²²

Our students toured the Robert N. Davoren Complex (RNDC), the jail facility housing 500 juvenile inmates aged between sixteen and eighteen. An overwhelm-

17. Leon Higginbotham, Jr., Aderson Bellegarde Francois & Linda Y. Yueh, *The O.J. Simpson Trial: Who Was Improperly “Playing the Race Card”?*, in BIRTH OF A NATION, HOOD, GAZE, SCRIPT AND SPECIALIST IN THE O.J. SIMPSON CASE, 51 (Lacour ed. 1997) (discussing how the Simpson verdict “stirred up the pot of the shallow grave where is stored the vestiges of centuries of slavery, segregation, racial oppression, biases, and prejudices.”); Pay, *supra* note 15, at 197-98 (discussing myth of colorblindness and denial of problem of racism).

18. John F. Dovidio & Samuel L. Gaertner, *On the Nature of Contemporary Prejudice: The Causes, Consequences, and Challenges of Aversive Racism*, in CONFRONTING RACISM: THE PROBLEM AND THE RESPONSE 3, 5 (Jennifer L. Eberhardt & Susan T. Fiske eds., 1998).

19. The school to prison pipeline refers to the national trend for “zero tolerance” in schools that results in suspensions, and often, court involvement of youth. This trend disproportionately impacts students of color from low-income backgrounds. See NAACP, *School To Prison Pipeline*, LEGAL DEFENSE & EDUCATION FUND, <http://www.naacpldf.org/case/school-prison-pipeline> (“This funneling of students out of school and into the streets and the juvenile correction system perpetuates a cycle depriving children and youth of meaningful opportunities for education, future employment, and participation in our democracy.”); NAACP, *School-to-Prison Pipeline*, ACLU, <https://www.aclu.org/school-prison-pipeline> (last visited Aug. 18, 2014).

20. 2013-2014 was the inaugural year of the Clinic. Beginning in fall, 2014, it will be a yearlong clinic.

21. Beginning the course with a real world experience allowed students to actively engage in a meaningful, educational experience that presented race related issues more specifically. See Lisa M. Jakubowski, *Teaching Uncomfortable Topics: An Action-Oriented Strategy For Addressing Racism And Related Forms Of Difference*, TEACHING SOC., 74-75 (2001) (providing an example of teaching through homework assignments requiring students to mentor students in the community).

22. The Clinic handles school suspension cases related to misdemeanors and felonies as well as undertakes impact projects. Our work on Rikers Island was to research jail conditions around the country to recommend necessary changes to the youth population at Rikers. Ellen Yaroshefsky, *Rethinking Rikers: Moving From a Correctional to a Therapeutic Model*, Cardozo Law Youth Justice Clinic (Jan. 2014), https://cardozo.yu.edu/sites/default/files/YJCFeb2_2.pdf. For more information about the clinic, see <http://www.cardozo.yu.edu/youthjusticeclinic>.

ing 95% of the juveniles were black. At least twenty-five of the kids were in solitary confinement upwards of 100 days. In discussion with guards and other administrators, we learned that minor infractions could send the kids to solitary confinement for significant periods of time.²³ It was a stunningly depressing and shocking experience for all students that necessitated significant discussion.

Within an hour of our visit, we had a debriefing session that began with a discussion of the students' initial reactions. There was a range of expressed and unexpressed emotions: outrage, depression, sadness, anger, and fear. Youth in solitary confinement upwards of 100 days necessarily implicated cultural attitudes about young, black, teenage men as dangerous people.²⁴ The students needed to grapple with this issue to be able to provide effective individual representation and to work on policy changes. One student, in commenting on the small classroom setting in the jail said, "I was surprised that in the classroom there were five kids and two teachers, and the teachers did not have security."

I encouraged the student and others to explore that reaction and asked whether she would feel the same way if the youth were white and if they were not in orange jumpsuits. What did we know about these youth? What were the charges against them?

It was obvious that some students were uneasy confronting the topic directly. We talked a bit and I then attempted to provide an opportunity to delve further by laying the groundwork for the discussion. I acknowledged the difficulty in discussing race, and explained that we have attitudes based on race; we all have implicit biases. I continued to probe their discomfort and asked:²⁵

Do you think the fact that they were teenagers affects your perspective? That they were Black?

23. See, e.g., Trey Bundy & Daffodil Altan, *Sixteen, Along, 23 hours a Day in a Six by Eight Foot Box*, CENTER FOR INVESTIGATIVE REPORTING, March 5, 2013, available at <https://medium.com/solitary-lives/inside-rikers-island-5db5c0b562a4>; Jim Dwyer, *Mentally Ill, and Jailed in Isolation at Rikers Island*, N.Y. TIMES, November 19, 2013, available at <http://www.nytimes.com/2013/11/20/nyregion/mentally-ill-and-jailed-in-isolation-at-rikers-island.html>; *Questioning Solitary Confinement for Adolescents at Rikers Island*, PBS, February 21, 2014, <http://www.pbs.org/newshour/bb/questioning-solitary-confinement-adolescents-rikers-island/>.

24. See William J. Bowers, Benjamin D. Steiner & Marla Sandys, *Symposium Race, Crime and the Constitution: Article Death Sentencing in Black and White: An Empirical Analysis of the Role of Jurors' Race and Jury Racial Composition*, 3 U. PA. J. CONST. L. 171, 179 (2001); see also JOHN M. SLOOP, *THE CULTURAL PRISON: DISCOURSE, PRISONERS, AND PUNISHMENT*, 116, (1996) (compared to white prisoners, black prisoners are more often depicted as "irrational, incorrigible, predatory, and dangerous criminals with warped personalities"). See generally JACK KATZ, *SEDUCTIONS OF CRIME: MORAL AND SENSUAL ATTRACTIONS IN DOING EVIL* (1988) (describing the image of the dangerous black male as reproduced in street-level interactions); Philip Cohen, *Who's Afraid of Young Black Men*, THE ATLANTIC, July 15, 2013; Brent Staples, *Young, Black, Male and Stalked by Bias*, N.Y. TIMES, April 14, 2012.

25. Racial conversations may take students out of comfort zones. However, conversations that are nice and polite do not get to the heart of the controversial issues. See JANE BOLGATZ, *TALKING RACE AND RACISM IN THE CLASSROOM* 2-4 (2005).

Do you think your attitudes toward race affects the way that you viewed the situation?

Some students simply were not ready to delve deeply into the issue. One student said, “I don’t want to talk about race. I am uncomfortable talking about it.”²⁶

When a black student affirmed that we all have attitudes based on race, another student said, “I am not a racist. I do not have any particular attitudes based on race.”

The black student’s comment was validated and supported by two other students of color, but it was obvious that this was not the best opportunity to delve into the issues. This was one of the first times that students formed impressions of each other. Clearly, there was work to be done. The question was how to do it.

A source of resistance in talking about race stems from the idea that race is a taboo topic.²⁷ Thus, it was important to create a safe space for discussion in order to overcome students’ fears about breaking the taboo and to reduce later anxieties about exposing one’s own internalized racial attitudes.²⁸ It was important to acknowledge that implicit biases can be overcome and attitudes changed. Such biases are malleable.²⁹ I decided to wait until the end of the semester to have a more formal discussion that would delve deeply into cultural bias and cultural competency.³⁰

At the end of the semester, five of the seven students in the clinic participated in a classroom discussion about race.³¹ All clinic students had social justice backgrounds. Participants included a Haitian-American student from a family of physicians, a student of Sri Lankan background, and three white students—one

26. It is important for students to understand how silencing the discussion of racial identity contributes to racial oppression. See Margalynne J. Armstrong & Stephanie Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635, 642 (2008).

27. See SUE & SUE, *supra* note 2, at 5-6.

28. Beverly Daniel Tatum, *Talking about Race, Learning about Racism: The Application of Racial Identity Development Theory in the Classroom*, 62 HARV. EDUC. REV. 1, 18 (1992).

29. Cheryl Staats, *State of the Science: Implicit Bias Review 2014*, Kirwan Institute for the Study of Race and Ethnicity, Ohio State University (2014) at 17, <http://kirwaninstitute.osu.edu/wp-content/uploads/2014/03/2014-implicit-bias.pdf> (“Implicit biases are malleable; therefore, the implicit associations that we have formed can be gradually unlearned and replaced with new mental associations.”) (citations omitted).

30. The perceived need was for all students to acknowledge their own biases and implicit assumptions in interactions. The literature explores attitudinal changes. See SUSAN T. FISKE & SHELLEY E. TAYLOR, *SOCIAL COGNITION* (2d ed. 2013) (seminal and authoritative work on psychological literature that includes bias and stereotypes). See generally MAHZARIN R. BANAJI & ANTHONY G. GREENWALD DELACORTE, *BLINDSPOT: HIDDEN BIASES OF GOOD PEOPLE* (2013) (exploring hidden biases and scientific results of Implicit Association Test). Some authors reference how whites can develop a positive white racial identity—a “non racist white identity.”

31. By that point in the semester, the students said that they had developed a sense of community where each benefitted from the honest, nonjudgmental, and positive attitudes of his or her peers. These characteristics were critical to creating a safe space. See Lynn C. Holley & Sue Steiner, *Safe Space: Student Perspectives on Classroom Environment*, 41 J. SOC. WORK EDUC. 1, 50 (2005), <http://website.cswe.org/publications/members-only/journal/JSWEWinter05final.pdf>.

who attended a predominantly white public school and the other two receiving private school education in observant Jewish communities. Missing from the discussion was a Hispanic student from a low-income Dominican community and a white student of Dutch ancestry.

The discussion began with my introductory comments setting the stage for an open, honest discussion about race and cultural bias. We acknowledged the difficulty of engaging in a discussion of race and that it triggered a range of deep emotions and of conscious and unconscious biases. We defined the term racism and discussed its meaning. We acknowledged that everyone is affected by it.

The reading assignment for the class included taking various online tests prepared by the Harvard Study on Implicit Bias.³² Students took tests associated with gender, age, religion, body type, and, of course, racial biases. They learned that they were all biased against people of color, the degree of bias varied (mild, medium, strong). There was some sense of surprise that even the students of color in the class were conditioned to have racial biases.³³ Though the students criticized the test itself for creating a range of conditioning that caused them to identify “good” with white and “bad” with black, the assignment nevertheless created common ground, forming the basis for the beginning of an open conversation about race.³⁴ As one student said, “It forces you to think about it.”

The next part of the discussion was very engaging: a conversation about racial microaggressions, which are brief and commonplace daily verbal, behavioral, or environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial slights and insults toward people of color.³⁵ Perpetrators are often unaware that they engage in microaggressions in

32. HARVARD STUDY OF IMPLICIT BIAS, <https://implicit.harvard.edu/implicit/> (last visited Aug. 10, 2014). This test derived from the Implicit Association Test (IAT) was introduced in 1998 by Anthony Greenwald and colleagues. Its utility has been explored extensively. *See, e.g.*, Brian Nosek, Mahzarin Banaji & Tony Greenwald, PROJECT IMPLICIT, <https://www.projectimplicit.net/about.html> (expanded into web-based infrastructure for supporting behavioral research and education on implicit bias); Immaculate Perception, Jerry Kang at TEDxSanDiego 2013, <https://www.youtube.com/watch?v=9VGbwNI6Ssk&feature=youtu.be> (discussing, *inter alia*, Brian Nosek, Mahzarin Banaji, & Tony Greenwald, Project Implicit) (last visited Aug. 10, 2014). Various projects explore implicit bias. *See, e.g.*, American Bar Association, Spotlight on Implicit Bias, ABA IMPLICIT BIAS INITIATIVE, *available at* <http://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias.html> (ABA Section of Litigation website project to educate about implicit bias).

33. Black racial identity development begins with the “Preencounter” stage, the stage where blacks absorb many of the beliefs and values of the dominant white culture, including the idea that “white is right” and “black is wrong.” *See* W. Cross, T. Parham, & J. Helms, *Stages of Black Identity Development: Nigrescence Models*, in BLACK PSYCHOLOGY 319 (R.L. Jones ed., 3rd ed. 1991).

34. Literature discusses the IAT, notably, as the sole method to teach and overcome implicit bias. A recent study discusses its limitations and more effective methodologies to overcome implicit bias. *See* Calvin K. Lai et al., *Reducing Implicit Racial Preferences: I. A Comparative Investigation of 17 Interventions*, 143 (4) J. EXPERIMENTAL PSYCHOL.: GEN. 1765-85 (Mar. 24, 2014) (advance online publication), <http://dx.doi.org/10.1037/a0036260> (examining comparative interventions to reduce implicit bias).

35. Derald Wing Sue et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 AM. PSYCHOLOGIST 271, 271 (2007) (Some might describe this concept as being “dissed,” meaning being treated with contempt. *See* “diss,” THE FREEDICTIONARY.COM, <http://www.thefreedictionary.com/diss>).

such communications when they interact with racial or ethnic minorities. In preparation for class, the students read several articles about microaggression including one with many examples of such comments. The students of color in the Clinic provided further context by drawing on their own experiences.³⁶ For example, the Haitian student who lived in an upscale community with her physician parents, described a situation in which she was “at a bar not far from some projects, a guy tries to pick me up and says ‘Hi, are you from the projects?’”

One of the white students, earnestly trying to relate to this experience, talked about examples of gender bias and wondered whether it was appropriate to use gender bias as a proxy for understanding racial bias. The Haitian student commented that it was not an appropriate proxy: “I am a Black woman. I do not feel microaggressed as a woman but I can understand that you might. I feel microaggressed as a Black woman.”³⁷

The conversation seemed to be getting to deeper layers without much intervention on my behalf, except for occasional probing questions: How did it make you feel? Why do you think that you felt that way? Why do you think you reacted to her comments in that way?³⁸ Then, a comment from the South Asian student changed the dynamic: “Look at us in the class—the students of color all sit together on one side of the room and the white students sit together across the table.”

This fact was an obvious one, but there was an immediate reaction and then mounting tension from the white students across the table. None of them believed that the seating decision had anything to do with race and were offended by the implication. To each of them, the decision to sit on that side of the room was due to random factors and made perfect sense:

I sat here in the class before so I do not change my seat.

I knew someone else from another class so she sat next to me.

It happened spontaneously.

I need to sit near a plug for my computer.

The discussion became tense. Each of the students of color then explained that it made sense that they would be drawn to one another and choose to sit together.

36. Exercises and discussions that highlight students’ personal experiences create the most meaningful discussions. Not only can students gain from learning from different racial perspectives, but these discussions also “meet the students at their own level of experience and expertise. This includes validating the experience of a student of color who has experienced power struggles and institutionalized inequality but who does not have an academic language to express it.” Rothschild, *supra* note 1, at 32.

37. As Judy Scales-Trent explains, “these two statuses have often combined in ways which are not only additive, but synergistic—that is, they create a condition for black women which is more terrible than the sum of their two constituent parts.” *Black Women and the Constitution: Finding Our Place; Asserting Our Rights*, 24 HARV. CIVIL RIGHTS-CIVIL LIBERTIES. L. REV. 9, 9 (1989).

38. Asking questions that encourage self-reflection about race and racism opens the door to critical conversations. See BOLGATZ, *supra* note 25, at 2.

These students talked about the culture in law school and why they might choose each other rather than flock toward white people they did not know. This was interspersed with a joking comment “some of my best friends are white.” The group, after all, had been a congenial one. They spent an intense semester engaging with clients and each other. They bonded on many levels.

The conversation went in and out of my comfort level. As a teacher, it was difficult not to intervene, but I believed it important to let it evolve and I trusted this group of students to be honest and fair with each other. It seemed to be moving toward mutual understanding until a student of color said, “We [the students of color] talked about it. We noticed it. It was not a big deal to talk about it but it was obvious to all of us.”

This comment led to a nearly universal sense of shock and betrayal by the white students:

I cannot believe that you talked about it and did not tell us.

I never noticed that we divided across the room by race.

Why would you talk about it? Why wouldn't you tell us?

I think of you (the black student) as the person I am closest to in this group and this makes me feel distant.

I wish we did not have this conversation. I thought we were friends and now this changes everything.

Everyone chimed in. The white students, not conscious about the seating, were upset that their colleagues—their friends—were even thinking about it. There were expressions of guilt, anger, and betrayal. The conversation was more than uncomfortable. I was concerned. My instinct was to intercede, to ask questions, to explain. I held back and let the conversation unfold.³⁹

One student repeated, “This is why I am uncomfortable having conversations about race. They make things worse, this is awful. I don't even know what language to use: Do I call people African American, Black? It is never clear.”

The Haitian student replied, “I am Black, not African American and I resent when everyone assumes that I am African American.”⁴⁰

It seemed a moment of some engaged clarity. Eye opening for some. But the conversation again shifted, “I don't see color. I see people.”⁴¹

39. As the facilitator, it was important for me to “allow conflict to be expressed, let misunderstandings evolve and have students lead conversation, only interjecting when ideas expressed might be negative and students expect to be supported.” Rothschild, *supra* note 1, at 31.

40. “If the teaching of race needs to be both academically rigorous and inclusive of students' experiences, then attention to how the individual views herself or himself and how the group views that individual is necessary. Often, individuals do not racially identify themselves in the same way that the group identifies them. This conflict is important to students' personal and academic understanding of race.” *Id.* at 32.

41. Attitudes of “colorblindness” maintain the status quo of white privilege, cutting off the possibility of a dialogue about race before it can begin. Armstrong & Wildman, *supra* note 26, at 648; Higginbotham, Francois & Yueh, *supra* note 16, at 1966-67 (debunking notion of colorblindness).

As might be imagined, all seized upon this comment, “What do you mean? I am a person of color. You deny my identity if you do not see color.”

The student stuck to her views, “I hate stereotypes. I do not like stereotypes in any form—jokes or otherwise.”

We talked about stereotypes for some time. She did not relent. Most students became frustrated with her and thought her comments to be the height of failure to appreciate difference and the wealth of experience that difference provides. She then described growing up in her religious observant household with a black foster child—her sister. She talked about her anger about how her sister had been treated and her experiences defended her sister—to her detriment. She was told to leave her school for insisting that her sister be allowed to attend. She was ostracized in her religious community. Students developed a surprising tolerance for her comments and a nuanced view of her. It was now apparent that her aspirational goals defined her views. She did not believe that anyone should be judged by the color of his or her skin therefore she adopted a perspective that she “did not see color.”

Once again, I thought we could survive the discord, the disconnect that was apparent, and get beyond the sense of betrayal. The students of color kept repeating that they were not talking constantly about “the white girls across the table.” It was just something they noted: “These are our internal issues about us and our experiences.”⁴²

One of them now said that she was sorry that she mentioned it. She said that she would not do it again. A white student later expressed that it “felt like a metaphoric slap out of the room.”

After nearly two hours of the discussion, there was no resolution. There was clear discomfort. Some students seemed so disillusioned. I wondered what might happen. I thought we had created a space where it was possible to deeply probe attitudes without having negative consequences for any of the individuals. I was not so sure of the result.⁴³

The good news was that we planned to have pizza after the class and would gather together on another floor. This discussion had to continue. I was unsure of precisely what I would say or do, but I had an idea of the course of the discussion that might start over pizza. Letting the conversation unfold without intervention was now too uncomfortable for me. There are all too familiar instances of the “group fabric of a once promising class unravels” over the volatile emotional

42. In Cross’s model of Black racial identity development, the second stage, the Encounter stage, involves events that forces minorities to recognize the impact of racism in their life. As a result, the individual defines their identity as a member of a group targeting by racism. Tatum, *supra* note 28, at 10.

43. Professor Richard Elmore at the Harvard Graduate School of Education in discussing his strategies in difficult race conversations where there is a “flare-up” says that “[i]f you, as a professor, intervene and make it better, you are letting the group off the hook. My responsibility is to create a holding environment in which it is possible for that conversation to occur in some form and not have destructive consequences for individuals.” Michael Blanding, “*Can We Talk?*,” HARV. GRAD. SCH. ED. (Fall 2007).

responses to discussions of race.⁴⁴

As I got to the pizza room, the group was there chatting happily, laughing, and joking with each other. What had happened?

I. BEYOND THE CLASSROOM: ELEVATOR TALK—"I AM A RACIST."

The students recounted the following—while waiting for the elevator (an often lengthy time frame at our law school), the student who repeatedly expressed discomfort talking about race (and who was often the first to lead) said to others, "I don't know what to do. I am a racist, OK? I cannot stand this anymore. You are my friends."⁴⁵

She made some of her typically direct, humorous comments. The other white women chimed in too, "I am sorry. I feel bad. We are friends. I thought we were friends."

The students of color said that they were just glad that the white students were willing to engage—to share in the discussion—to try and understand what it feels like.

The conversation then became light and fun. They joked about the discussion. They joked about the different views and, the misunderstandings. There was a palpable acceptance that cleared the air. I was not quite sure about the resolution. What was learned? What was the take-away? Would any of it have a long-term impact?

II. FOLLOW-UP: "YOU REALLY CANNOT DRAW CONCLUSIONS BECAUSE YOU CANNOT REDUCE THE EXPERIENCE."

We gathered several times afterward to discuss what had transpired. Everyone was eager to engage in follow-up discussion. The students who had missed the class spent hours talking with all of the others to gauge what had happened. They were as engaged as those who had attended the session. Many students repeatedly talked with me about it, individually and as a group. They reported that the "event" had a profound and ongoing impact. The students of color were shocked that there was such a sense of "betrayal" and that it was such a bombshell to point out the seating arrangements. They regretted the conversation saying that it could have ruined the semester where they had built strong relationships.

The white girls took it totally differently from what we experienced. They internalized it in far more negative ways than I ever expected.

44. *Id.*

45. In defining racism through white supremacy, Stephanie M. Wildman explains, "All whites are racist in this use of the term, because we benefit from systemic white privilege. Generally whites think of racism as voluntary, intentional conduct, done by horrible others. Whites spend a lot of time trying to convince each other and ourselves that we are not racist. A big step would be for whites to admit that we are racist and then to consider what to do about it." Armstrong & Wildman, *supra* note 26.

Even though the South Asian student expressed deep reluctance about ever making such a comment again, other students of color explained how good it was to have done so, how important it was, and how it moved their relationships forward.

The student who repeatedly articulated that she felt uncomfortable talking about race learned that her comments were heard as an unwillingness to engage with students of color on difficult issues. She realized:

It sounds like I don't want to know. In fact, though, I could never possibly understand the experience of a minority. I even feel uncomfortable using the word minority. I am from a white community and I was brought up not to talk about color but I see that it is important to talk about it. I cannot contribute to this discussion in a meaningful way. I cannot elevate the conversation. I just do not know how to navigate the conversation. This taught me that a lot. I have learned to be more careful in how I speak.⁴⁶

Another said to the students of color:

I see that you do not blame us, but I am still upset. The fact that the students of color noticed the seating divide but did not take it to heart—that gets me upset because I do not “get it”. I cannot possibly relate to what you experience in life. I could not do it. The fact that you have to do it and I do not have to makes me feel bad. I can be blissfully blonde and maybe I feel bad because I am.

The black student summed up the experience that led them all to continue to be open and honest with each other and remain friends, “I see how willing you all were to have the conversation and how much people cared. It made me look at them differently. There is so much more to it than what I thought.”

They acknowledged that they all misunderstood each other. This was a catalyzing event. It was relatively balanced with both sides needing to learn and hear, “I will think twice in how I say things and I think it will help me understand other perspectives better.”

In the end, I asked each student to state the most valuable lesson they took from the experience:

It is really liberating to be in a conversation where I can say, “I am a racist.”

Just to be willing to talk about it was important. It made it so much easier when I realized they really cared.

I have been to so many workshops on race at conferences. You don't really delve deeply. This was a privilege to hear what others were really thinking. We could only do it because it was a safe space.

You really cannot draw conclusions because you cannot reduce the experience.

46. I made some comments during these discussions. At this juncture, I pointed out that her explanation was a meaningful contribution to the discussion because she moved the conversation forward.

We could only do this because it was a safe space. When you find a safe space, engage.

Months later, I had an individual meetings with each student to reflect upon it. I was surprised by its ongoing impact. First, many in the group grew closer. They believed that bonds had deepened.⁴⁷

The student who said, “I do not see color” had spent a great deal of time thinking and talking about the conversation. “I don’t feel great about everything that happened. I talk about it a lot. I talked about in a seminar where there were so many instances of microaggressions. The issue came up a lot and I think I had good insight and now saw that I needed to explain myself more clearly.” She became animated again. “I said ‘I am not a racist’ but maybe I did not explain it well. I feel like I have to say I am racist just because I am white. That means I must be racist. It is not true. My life story is about race. I spent my entire life struggling about women, blacks, homosexuals. My black foster sister was not permitted to go to the same school as me because she was black. I was kicked out of school for protesting. I was kicked out of my Hebrew team saying I was a ‘blasphemous individual.’ I spent an entire year researching how the Torah is racist. I have kicked people out of my house because they told racist jokes. I was told that I was too intense but I think—no, you cannot joke about it because it enters your unconscious and becomes a bias.”⁴⁸

Her passion never quite translated to a deep understanding of her perspective among other students, but they learned a great deal about their biases from engaging with her. They overcame their initial distrust.⁴⁹

III. LESSONS

There is no one method to “teach” a class on bias. Many methods may be successful. The particular curriculum and class structure will vary depending on class size, composition, faculty, and a host of other factors. No matter what the class structure, some basic ideas emerge. The lessons from our powerful experience mirror and amplify the literature about teaching race.⁵⁰

First, it is essential to create a safe space within which to delve into any discussion of racial biases and attitudes. It is more difficult to achieve an in depth

47. Students in clinical settings typically develop deep bonds and friendships, thus one cannot isolate the “race discussion” (as they called it) as the sole cause of the deepened bonds.

48. Cf. Marvin Minsky, *Jokes and the Logic of the Cognitive Unconscious*, in COGNITIVE CONSTRAINTS ON COMMUNICATION, 178-81 (Lucia Vaina & Jaakko Hintikka eds., 1981) (explaining that people should censor their minds from humor that embodies biases); Gil Greengross, *Does Racist Humor Promote Racism?*, PSYCHOLOGY TODAY (July 19, 2011), <http://www.psychologytoday.com/blog/humor-sapiens/201107/does-racist-humor-promote-racism> (noting that people that hold disparaging views of a group are more accepting of jokes about that group).

49. This reflection points out the necessity for in-depth discussion of what is meant by “racist” and racism.

50. The literature on teaching race explains many of these ideas in some depth. See *supra* notes 2-5.

discussion in a setting with more than about fifteen to twenty students who have not worked together in some capacity. A clinical setting is ideal, although it is best to wait until students have had an extensive opportunity to engage with each other. For faculty who undertake to engage in a discussion of implicit bias and microaggressions in a larger less intimate classroom setting, the expectations are necessarily more limited.⁵¹

A safe space is more readily created in a more informal environment. Attention should be paid to the room layout to maximize a conversation among students. An interesting aspect of our discussion was the need for physical space. Even though we sat around a rectangular table, many students commented that the ten foot or more distance across the table helped them to be open and honest with their thoughts. Some believed that if they sat too close to each other, they would have been less frank. Availability of food during or after the discussion promotes conversation.

The second lesson is one discussed extensively in the literature—how to involve the students in an effective manner. Students should prepare in some engaging way for the discussion. Readings and exercises on implicit bias and microaggression are helpful to provide a baseline to begin the discussion and to develop awareness in advance of it. The readings served as “ice breakers.”⁵²

The discussion should begin with the acknowledgement of the difficulty of talking about race in our society and a baseline definition of racism. It needs to begin with the notion that we are all in a safe space to explore our attitudes; there are no stupid questions; say what you feel in a thoughtful way. In the discussion, it is essential for the professor to ask open-ended non-judgmental questions. This requires the teacher to constantly gauge whether the questions are in fact, non-judgmental, and how the students will perceive them. It is the professor’s role to challenge assumptions, but to do so in a manner that is not threatening. The professor needs to encourage analysis of ideas and attitudes and create a “spirit of inquiry” about the concepts of racial identity.⁵³ Additionally, it is important for the professor to be cognizant of the need to support many of the views of students of color—particularly where the class has few students of color or where the views of students of color are not acknowledged.⁵⁴

Perhaps one of the most difficult lessons for faculty is that one must be prepared to be uncomfortable and to allow oneself to engage in a difficult

51. For an exploration of teaching techniques for cultural competency, see generally BRYANT & PETERS, *supra* note 3; ZITRIN, LANGFORD & COLE, *supra* note 4; Balos, *supra* note 4; Bryant, *supra* note 4; Gunning, *supra* note 4; Jacobs, *supra* note 4; Lopez, *supra* note 4; O’Leary, *supra* note 4; Seville, *supra* note 4; Silver, *supra* note 4; Tremblay, *supra* note 4; Weng, *supra* note 4; White, *supra* note 4.

52. See Rothschild, *supra* note 1, at 32, for a discussion of ice breakers. Recent books and articles are a helpful addition to preparatory reading; see also *supra* note 6. See generally BANAJI & GREENWALD, *supra* note 30 (exploring hidden biases and scientific results of Implicit Association Test).

53. See MICA POLLACK, *EVERYDAY ANTIRACISM* (2008).

54. The literature about teaching cultural competency reflects this concern. See *supra* note 5.

discussion that is not controllable. Professors, and perhaps all lawyers, are trained to control the course of discussion. This conversation, however, requires the antithesis of that instinct. It is necessary to allow conflicts to be expressed, to let misunderstandings evolve and to let students engage in resolving them before the professor chooses to intercede. There may be “flare-ups.” The results may not be predictable. There may be points where faculty must interject. But, the professorial tendency to control the conversation, to explain, to guide the discussion past discomfort, needs to be checked.

It is best to create a safe environment and then let the students engage without a great deal of intervention unless necessary. Most law professors would recoil at such a concept. Controlling a conversation is an essential aspect of traditional law school teaching. Consequently, it might be advisable to consider an interdisciplinary approach to teaching cultural competency, that is, to have a psychologist, social worker or other person with extensive training in interpersonal skills co-teach the class. This not only benefits the law professor in approaching a difficult discussion but enhances the development of necessary communication skills for all professionals.

Part and parcel of gaining the knowledge and understanding of implicit bias and microaggression is to learn how an individual’s statements are heard and embraced by others. The statement “I am not a racist” cannot be initially absorbed as anything other than a denial of racism. The statement “I hate talking about race” implies an unwillingness to engage with people about a fundamental part of their lives. All students learned to be reflective and careful about language. Months later, all the students reported the care with which they talked about their ideas. These are communication skills—understanding of how words are perceived by others.⁵⁵ These skills are rarely taught in law school outside of clinical education—and many law school clinics do not spend a sufficient amount of time focused upon such training. Professors, as well as students, need to develop significant interpersonal skills.⁵⁶

Finally, the discussion cannot be effective without the presence of a significant number of students of color. The conversation, of course, will vary depending on the background, race and ethnicity of the students. The Youth Justice Clinic experience had an impact precisely because it was a small group with a significant proportion of students of color. It teaches that to promote cultural competency, law schools need to be more racially inclusive and then engage in

55. Psychologists and scholars have long observed that interpersonal skills are essential to professional development but that cognitive skills are often most valued. LESLIE A. BAXTER & DAWN O. BRAITHWAITE, *ENGAGING THEORIES OF INTERPERSONAL COMMUNICATION: MULTIPLE PERSPECTIVES* (2008); Daniel G. Solorzano, *Images and Words That Wound: Critical Race Theory, Racial Stereotyping and Teacher Education*, *TEACHER EDUC. Q.* (Summer 1997), at 5.

56. Janet Weinstein & Linda Morton, *Interdisciplinary Problem Solving Course as Context for Nurturing Intrinsic Values*, 13 *CLINICAL L. REV.* 839, 843 (2007).

effective methods to discuss how to make this an essential part of the curriculum. This endeavor was one of the most engaging and rewarding experiences in years of law school teaching. I hope to build upon it for future clinic students and to encourage colleagues to undertake the task.