

# LATINIDAD, WHITE SUPREMACY, AND REFORMING FIRST-YEAR MOOT COURT COMPETITIONS TO CONFRONT RACIAL AND ETHNIC BIAS

Marcus Lind-Martinez\*

I. FRAMING THE MOOT COURT EXPERIENCE WITH NARRATIVE	125	
II. CRITICAL ANALYSIS OF FIRST-YEAR MOOT COURT COMPETITIONS	128	R
A. <i>The Brief</i>	129	R
B. <i>“May it Please the Court”</i>	131	R
C. <i>“Your Honor”</i>	133	R
D. <i>“Ridiculous”</i>	135	R
III. REFLECTIONS ON THE FIRST-YEAR CURRICULUM	138	R
A. <i>Building Cultural Competency and Empathy</i>	138	R
B. <i>Developing Anti-Racist Methods of Instruction</i>	140	R
C. <i>Remembering the Importance of Narrative</i>	142	R
IV. CHALLENGES TO CURRICULUM CHANGE	144	R
V. CONCLUSION	147	R

## I. FRAMING THE MOOT COURT EXPERIENCE WITH NARRATIVE

Competing in the spring Moot Court competition is a first-year law student’s rite of passage, framing each student’s perception of what it means to be a practicing lawyer.<sup>1</sup> My experience was no different. Every year, legal writing professors in most law schools develop a narrative ripe for legal analysis, and first-year students, in turn, write an appellate brief, argue a side to a panel of judges, and hope to advance to the next round of competition.<sup>2</sup> This annual ritual, however, often requires people of all backgrounds to submit to a monolithic understanding of the legal profession—that of white practitioners who make up the vast majority of those who practice.<sup>3</sup> On this matter, again, my experience was no different.

\* The University of Texas School of Law J.D., 2019; Editor-in-Chief, 2018-2019, Texas Hispanic Journal of Law and Policy. I would like to thank Professor Wayne Schiess for his support writing this paper, Emma Lind-Martinez for her unshakeable commitment to racial justice, and Mary Alice Martinez for her never-ending faith in me.

<sup>1</sup> See generally Mairi N. Morrison, *May It Please Whose Court?: How Moot Court Perpetuates Gender Bias in the “Real World” of Practice*, 6 UCLA WOMEN’S L.J. 49 (1995).

<sup>2</sup> *Id.*

<sup>3</sup> See *id.*; see also Latonia Haney Keith, *Cultural Competency in A Post-Model Rule 8.4(g) World*, 25 DUKE J. GENDER L. & POL’Y 1, 19 (2017).

The year I competed in the first-year Moot Court competition, the problem presented appeared benign enough. The fact pattern was as follows: A mother signed a release of liability for her minor daughter so that she could participate in a summer cheerleading camp, and of course, she suffered an injury in the care of the camp.<sup>4</sup> An unanswered question of law—whether a parent has authority to sign releases of future negligence claims on behalf of his or her child—demanded analysis, and I provided it by submitting my appellate brief and arguing for the summer camp as I was assigned. To my delight, I advanced to the school-wide competition; but to my dismay, the competition offered a window into the legal community’s implicit biases and marginalization of outsider voices.

I entered the third round of the school-wide competition as the summer camp’s attorney. My opponent, a white male student, was assigned to defend the minor child. We both appeared nervous, waiting in our suits for our round to begin. As had been the case each round, I began the round a little shaky—announcing myself after the customary, “May it please the Court”—but gained confidence throughout the opening argument. I had practiced by playing pre-recorded questions to simulate the judges’ frequent interruptions, so I felt prepared to provide answers. I confidently and cordially referred to my judges as “Your Honor” and shared what I learned from my research, though I did catch myself giving more details than necessary at times. My opponent, like the white male student I eliminated in the first round but unlike the white female student I faced in the second, did not offer any deferential language to the judges, not once referring to any of them as “Your Honor.”

With my growing confidence, I decided to try a couple of new strategies I learned in the previous two rounds. I connected one judge’s question to another’s previous question—“As Judge X stated. . .”—to demonstrate my ability to synthesize different issues. I also attempted an argument I had heard praised in previous rounds: that Texas has a proud tradition of training Olympic-level athletes whose training could be disrupted by a ruling for the petitioner. As the respondent, I had the first opportunity to reply to my opponent and did so by referring to him as “opposing counsel” as I had been trained. This position also gave my opponent the last word. My opponent had been operating throughout the round as a trial lawyer, emphasizing the harm suffered by the minor child and downplaying the relevant law; he used his closing argument to characterize my argument about Texas’s tradition of training Olympic-level athletes as “ridiculous.” My eyebrow raised at this remark. I felt as though he had stepped outside the boundaries of respectful competition and then realized that he had not been reciprocating the courtesy of calling me “opposing counsel.” My experience as a debate coach filled me with confidence that no judge would vote for him to advance.

As they did in each round, the three judges offered feedback on our performances. All of them were white, one of whom was a woman, but this

---

<sup>4</sup> Texas Law Spring 2017 Brief Problem, on file with the author.

did not surprise me. They critiqued my oversharing of information from the case law and my opponent's trial-lawyer style of argument—again, no surprise. No judge mentioned my opponent's lack of deferential language; yet, no judge had critiqued the white male student who likewise did not offer deferential language earlier in the competition. At the end of their evaluation, one judge noted to me: "When you refer to one of us, you should refer to us as 'Justice' and not 'Judge' because that is the correct title in the Supreme Court of Texas." With that last critique, they concluded their comments; naïve as it may have been, I stood surprised that I may have lost that round. And I did.

I offer this narrative not to seek remedy for any perceived wrongs; it may well be the case that my opponent simply performed better than I did. I, instead, voice my experience to contribute to outsider scholarship. Traditional legal scholarship mistakenly asserts that objective truths and neutral principles exist.<sup>5</sup> Outsider scholarship, on the other hand, advances the interests of people of color, like me, by rejecting the myth of objectivity and highlighting forms of discourse that include narrative.<sup>6</sup> Narrative must be embraced; outsider stories, after all, have been mostly absent in the law.<sup>7</sup> Richard Delgado, a pioneer of outsider scholarship, proposes that stories and counter-stories have the ability to shatter complacency and challenge the status quo.<sup>8</sup> I have provided my own story in the hope that you, the reader, will suspend judgment, listen for my message, and evaluate the truth it contains.<sup>9</sup>

My message is this: Racial and ethnic bias in first-year Moot Court competitions are representative of the larger biases of law school curricula—particularly the first-year curriculum—that demand reform.<sup>10</sup> To evaluate this truth, this paper analyzes the aspects of my Moot Court experience that all students of color share. This paper then urges the legal profession to improve its ability to understand and communicate with people across cultures by addressing issues of race and ethnicity in the law school curriculum and by requiring Moot Court judges and instructors to be made aware of their own biases. This paper also encourages law professors to introduce anti-racist methods of instruction and to remember the importance of narrative in the law. I then address challenges to curricular change.

---

<sup>5</sup> See Charles R. Lawrence III, *The Word and the River: Pedagogy As Scholarship As Struggle*, 65 S. CAL. L. REV. 2231, 2253 (1992).

<sup>6</sup> Mary I. Coombs, *Outsider Scholarship: The Law Review Stories*, 63 U. COLO. L. REV. 683, 685 (1992).

<sup>7</sup> Lawrence, *supra* note 5, at 2279.

<sup>8</sup> Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2414 (1988).

<sup>9</sup> *Id.* at 2415.

<sup>10</sup> I can offer little to address the gender bias perpetuated by Moot Court competitions, but much has been written on the issue, including the academic inspiration of this note. See, e.g., Morrison, *supra* note 1, at 49.

## II. CRITICAL ANALYSIS OF FIRST-YEAR MOOT COURT COMPETITIONS

By writing this paper, I enter into a decades-long discourse of racial and ethnic analyses of the law, best characterized as Critical Race Theory.<sup>11</sup> As Mari Matsuda best summarizes, the work of critical race theorists has been the work of unmasking: “unmasking a grab for power disguised as science, unmasking a justification for tyranny disguised as history, unmasking an assault on the poor disguised as law.”<sup>12</sup> Critical theorists reject the old belief that the law is neutral and objective and explore how gender, race, and class bias permeate the law and how these biases dehumanize historically marginalized peoples.<sup>13</sup> Critical race scholarship has allowed the legal community to better understand race as “an ongoing, contradictory, self-reinforcing process subject to the macro forces of social and political struggle and the micro effects of daily decisions.”<sup>14</sup>

This paper addresses issues of *latinidad*—a concept that assumes a common collective consciousness among the Latinx<sup>15</sup> community—but expands its applications to racial and ethnic bias in the law more generally.<sup>16</sup> Characterizing Latinx persons as having a common collective consciousness is tricky given that the largest Latinx subgroups have little interaction with one another,<sup>17</sup> and differences in citizenship status among us provide unique challenges to engaging in the legal community and American society at large.<sup>18</sup> The Latinx community does share a language (with some exceptions of indigenous languages and non-Spanish speakers) and some geography. But citizenship status, class, skin color, degrees of European physical fea-

---

<sup>11</sup> See generally Richard Delgado, *Centennial Reflections on the California Law Review's Scholarship on Race: The Structure of Civil Rights Thought*, 100 CAL. L. REV. 431 (2012).

<sup>12</sup> Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329, 1394 (1991).

<sup>13</sup> Lorraine Bannai & Anne Enquist, *(Un)examined Assumptions and (Un)intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language*, 27 SEATTLE U.L. REV. 1, 5 (2003).

<sup>14</sup> Ian F. Haney Lopez, *The Social Construction of Race*, 29 HARV. C.R.-C.L. L. REV. 1, 7 (1994).

<sup>15</sup> The characterization of “Latinx” for persons with roots in Central and South America has grown in popularity for its ability to make language more inclusive of women and gender-non-conforming persons. I refer to myself as Latino throughout this paper because it would be a disingenuous to ignore the male part of my identity; I use Latinx to describe the community at large. See *Latinx: The Ungendering of the Spanish Language*, LATINO USA (Jan. 29, 2016), <https://www.npr.org/2016/01/29/464886588/latinx-the-ungendering-of-the-spanish-language>, archived at <https://perma.cc/2AM4-AGK2>.

<sup>16</sup> See Scott B. Astrada & Marvin L. Astrada, *Being Latino in the 21st Century: Reexamining Politicized Identity & the Problem of Representation*, 20 U. PA. J.L. & SOC. CHANGE 245, 257 (2017).

<sup>17</sup> Brent G. McCune et. al., *The Disappearing Mexican-American Law Student*, 19 TEX. HISPANIC J.L. & POL'Y 1, 3 (2013); see Francisco Valdes, *Foreword: Poised at the Cusp: LatCrit Theory Outsider Jurisprudence and Latina/o Self-Empowerment*, 2 HARV. LATINO L. REV. 1, 13 (1997) (“Historically, Latinas/os share roots in homelands ‘too close to the United States’ for their—or our—good.”) (quoting Max Castro, *Making “Pan Latino,”* 2 HARV. LATINO L. REV. 179 (1997)).

<sup>18</sup> Interview with Enrique Ramirez-Martinez, in Austin, Tex. (Mar. 11, 2019) (sharing Enrique’s experience with meeting an immigration officer the day of his final oral argument).

tures, religious affiliations, sexual orientations, or gender identities prevent us from having a truly common experience.<sup>19</sup> In reality, the Latinx community comprises a “community of different communities.”<sup>20</sup>

Whether we can reduce a group to its essential characteristics without abstracting beyond recognition or meaning remains subject to debate.<sup>21</sup> Critical theorists question whether an “essential” racial experience exists independently of gender, class, sexual orientation, and other lived experiences.<sup>22</sup> Conservative critics extend this disagreement further to attack affirmative-action programs on the basis that they “essentialize race.”<sup>23</sup> Perhaps, *latinidad* may further complicate this discussion because of our history of racial mixture, or *mestizaje*.<sup>24</sup> Nevertheless, by providing my narrative, I hope to honor what makes my story unique while exploring the common struggles faced by those of similar backgrounds.<sup>25</sup>

To best connect my experience with the experiences of those who are constructing their own *latinidad*, I will reexamine four critical junctures in my Moot Court experience: the brief-writing process, the introductions used at the beginning of each round, the use of deferential language and lack thereof throughout the round, and the words our opponents use to characterize us. In these moments, a Latino confronts the marginalization of his lived experiences, the paradox of being both invisible and hyper-visible, the white privilege of his opponents, and the white supremacy that often bonds his white opponents and judges into a single, dehumanizing force.

### A. *The Brief*

Legal analysis demands that we assess relative facts, but the facts at the margins are often understood only by those who are most marginalized. Writing a brief, like participating in any first-year course, requires law students to sift through the facts and to discuss only those facts with legal significance.<sup>26</sup> This practice presupposes that there is “only one relevant

---

<sup>19</sup> Geiza Vargas-Vargas, *Latin's, Disrupting Racial Normativity in Derrick Bell's the Space Traders*, 36 W. NEW ENG. L. REV. 131, 139 (2014).

<sup>20</sup> Kevin R. Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. 101, 129 (1997).

<sup>21</sup> See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 585 (1990); see also Astrada & Astrada, *supra* note 16, at 251; cf. Valdes, *supra* note 17, at 21 (explaining the complexity in LatCrit endeavors as an inherent consequence of the complexity in Latina/o identities generally).

<sup>22</sup> Harris, *supra* note 21, at 585.

<sup>23</sup> Elizabeth M. Iglesias & Francisco Valdes, *Expanding Directions, Exploding Parameters: Culture and Nation in Latcrit Coalitional Imagination*, 5 MICH. J. RACE & L. 787, 812 (2000).

<sup>24</sup> Max Castro, *Making “Pan Latino”*, 2 HARV. LATINO L. REV. 179, 180 (1997).

<sup>25</sup> See Delgado, *supra* note 8, at 2416; see Margaret E. Montoya, *Mascaras, Trenzas, y Grenas: UnMasking the Self While UnBraiding Latina Stories with Legal Discourse*, 17 HARV. WOMEN'S L.J. 185, 210–11 (1994).

<sup>26</sup> See Montoya, *supra* note 25, at 201 (recounting her experience in first-year Criminal Law class when they discussed *The People of the State of California v. Josephine Chavez* whose criminal defendant—a Latina—was accused of murdering her newborn child).

reality,” obscures ethnic and socio-economic context with which outsider groups may be more familiar than their white peers, and leaves these outsider groups with the question: “What about the other facts?”<sup>27</sup> When I read about the minor girl’s accident in my first-year Moot Court brief problem, I became fixated on the detail that one hundred percent of the proceeds from the camp go towards providing scholarships for prospective students with demonstrated financial need.<sup>28</sup> This fact consumed my research and writing as I emphasized the summer camp’s commitment to fostering an inclusive and diverse community and advocated for continuing and increasing the delivery of services that charitable organizations like the summer camp provide.

This problem assumed that all students shared common life experiences, but I had never been enrolled in a summer camp, likely because a middle child of three in a middle-income family would face the same problems that this summer camp tried to anticipate. Too often in law school, a Latino is expected to have access to knowledge that requires living in a more affluent household.<sup>29</sup> Margaret Montoya shared that she once had to admit to her Tax class that she had never seen a bond.<sup>30</sup> I, too, had to stare blankly at my Securities professor after he made the remark that everybody in class likely has a bond; I do not have any in my name, nor have I ever seen one. Perhaps it is because of these mistaken assumptions that outsiders like myself are tuned in to the facts the majority might believe are ancillary. For the final brief, I took a gamble on the fact I identified on the margins: after addressing the obligatory parent-minor contract issue, I dedicated half of my argument to advancing the public policy of continuing and increasing the delivery of services that charitable organizations provide. Straining connections to Texas laws,<sup>31</sup> my gamble paid off and I was awarded best brief in my section.

Yet the committee—the editorial board of a student-run journal in charge of selecting winning briefs—did not know I was Latino, an outsider in the legal community. The exclusion of our names on our briefs strips us of important markers of our identity and perpetuates a color-blind approach to the law and law school. Names and surnames always have been cultural markers among the Latinx community.<sup>32</sup> The unfortunate truth is that your average law student sees Spanish surnames only in their Criminal Law casebook.<sup>33</sup> Without my name on my brief, the committee pursued a color-

---

<sup>27</sup> *Id.* at 202, 206 (“What about [Josephine’s] youth, her poverty, her fear over the pregnancy, her delivery in silence?”).

<sup>28</sup> Texas Law Spring 2017 Brief Problem, on file with the author.

<sup>29</sup> See Montoya, *supra* note 25, at 206-07.

<sup>30</sup> *Id.* at 207.

<sup>31</sup> Tex. Civ. Prac. & Rem. Code § 84.003.

<sup>32</sup> Cf. Montoya, *supra* note 25, at 220 (encouraging the “disruption of hegemonic tranquility” by bringing words and concepts into academic discourse from what were previously considered prohibited languages and taboo knowledge).

<sup>33</sup> See, e.g., GEORGE DIX, CRIMINAL LAW CASES AND MATERIALS (7th ed. 2015); see also Montoya, *supra* note 25.

blind approach to its evaluation of my work and ultimately benefited me. This approach rewards the occasional student of color but ignores the fact that we live in a society with a history of treating groups differently based on identifiers such as skin color and the sound of our names.<sup>34</sup> Adopting a color-conscious approach could address this reality. After all, how can we expect a color-blind society built upon the subordination of persons of color to correct that subordination when it cannot even recognize it?<sup>35</sup>

B. “*May it Please the Court*”

With those words, I introduced myself to my judges and my opponents, but my introduction extended beyond my words to include my ethnicity, accent (or lack thereof) and name. I could not hide my brown skin, made darker by the return of the Texas sun in Spring. Skin color has historically been used to deny equal opportunity to persons of color in the United States.<sup>36</sup> Some Latinos may appear phenotypically “white” but may still be perceived as “tainted, colored, or modified by non-white or disfavored attributes.”<sup>37</sup> False notions of white superiority have been harnessed by the dominant group to justify racial insults and physical violence against persons of color.<sup>38</sup> Although the legacy of lynching is most associated with the Black experience, Latinx persons, too, fell victim to the noose.<sup>39</sup> South Texas, where I grew up, has a particularly heinous history of Mexican-American lynching.<sup>40</sup> Perhaps most grievous about this part of our history is the active participation of law enforcement, most notably the Texas Rangers.<sup>41</sup> Acting or looking “too Mexican” was cause for authorities to murder under the color of law.<sup>42</sup> Such violent acts leave not only psychic trauma to Latinx communities but social constructions that seek to eliminate what remains: our culture.<sup>43</sup>

In microseconds, I would assess the room to determine how to pronounce Martínez—whether to soften the “r” and stress the accent in the “i”

---

<sup>34</sup> See Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1345 (1988).

<sup>35</sup> *Id.* at 1346–47 (quoting Alfred Blumrosen, *Twenty Years of Title VII Law: An Overview* 26 (Apr. 18, 1985) (unpublished manuscript on file at the Harvard Law Library)).

<sup>36</sup> Richard Delgado, *Words That Wound: A Tort Action for Racial Insults, Epithets, and Name-Calling*, 17 HARV. C.R.-C.L. L. REV. 133, 135 (1982).

<sup>37</sup> Valdes, *supra* note 17, at 29 (quoting Stephanie Wildman, *Reflections on Whiteness and LatCrit Theory*, 2 HARV. LATINO L. REV. 307 (1997)).

<sup>38</sup> *Cf.* Richard Delgado, *The Law of the Noose: A History of Latino Lynching*, 44 HARV. C.R.-C.L. L. REV. 297, 298 (2009) (discussing the history of Latino lynching in the Southwest).

<sup>39</sup> Delgado, *supra* note 38, at 298.

<sup>40</sup> Aaron Miguel Cantu, *The Chaparral Insurgents of South Texas*, THE NEW INQUIRY (Apr. 7, 2016), <https://thenewinquiry.com/the-chaparral-insurgents-of-south-texas/>, archived at <https://perma.cc/2DSM-8QRS>.

<sup>41</sup> Delgado, *supra* note 38, at 300.

<sup>42</sup> *Id.* at 299.

<sup>43</sup> See *id.* at 308–9 (connecting the history of Latino lynching to English-only movements in the United States).

or to Anglicize all parts and allay any fears that I am a foreign intruder. I am both blessed and cursed to have such a common Spanish surname, one that white peers feel comfortable saying but causes me dread to say in mixed company. The same paradoxical curse and blessing extends to my lack of an accent in my everyday speech as I did not grow up speaking Spanish or watching Spanish programming. Instead, I grew up on American television programs like *The Simpsons* and *Friends*, shows that saturated my Mexican-American community with the dominant world view.<sup>44</sup> The persistent fear of being too Mexican or not Mexican enough is pervasive in Mexican-American communities.<sup>45</sup> And I feel it every time I speak to a group of people.

For students of color, and more specifically for Latinos like me, academic success requires linguistic and cognitive assimilation with the dominant group.<sup>46</sup> I did not grow up speaking Spanish. I once as a child told my mother to “talk right” when she attempted to speak to me in Spanish. I did not understand then the historical significance of what I resurfaced—her childhood of being forced to speak only English in school as many Mexican-Americans experienced in her generation.<sup>47</sup> My mother did not insist, and I did not learn. Because of this, I did not develop an accent, but I also lost a valuable part of my culture. Perhaps also because of this, I excelled academically—ranking in the top ten of my high school class and moving on to earn multiple degrees. Nevertheless, my close adherence to the culture of the dominant group left little energy for me to explore my own culture; I even internalized some of the negative messages of the dominant group about my community.<sup>48</sup> Like many college-educated Latinx persons, I present as an assimilated white American, effectively adopting a mask of the dominant culture.<sup>49</sup>

The concept of covering seeks to explain how marginalized groups adopt masks to mute the differences between themselves and the dominant group.<sup>50</sup> By covering, I seek neither to pass as a member of the dominant group by hiding my identity nor to convert defining traits of my *latinidad* to completely assimilate.<sup>51</sup> Instead, important traits that signal my differences—my skin color and last name—remain visible.<sup>52</sup> The task then be-

---

<sup>44</sup> BEVERLY DANIEL TATUM, *WHY ARE ALL THE BLACK KIDS SITTING TOGETHER IN THE CAFETERIA?: AND OTHER CONVERSATIONS ABOUT RACE* 107 (2017).

<sup>45</sup> In spite of the dread, I name this feeling the Quintanilla Complex after the humorous and cathartic rant by Abraham Quintanilla in the movie *Selena*. *SELENA* (Warner Bros 1997) (“We have to be more Mexican than the Mexicans and more American than the Americans, both at the same time! It’s exhausting!”).

<sup>46</sup> Montoya, *supra* note 25, at 192.

<sup>47</sup> Delgado, *supra* note 38, at 309 (imagining a Latina child who is punished for speaking Spanish).

<sup>48</sup> TATUM, *supra* note 44, at 107.

<sup>49</sup> See Montoya, *supra* note 25, at 193.

<sup>50</sup> Kenji Yoshino, *Assimilationist Bias in Equal Protection: The Visibility Presumption and the Case of “Don’t Ask, Don’t Tell”*, 108 *YALE L.J.* 485, 500 (1998).

<sup>51</sup> See *id.*

<sup>52</sup> See *id.* at 501.



comes ensuring that such traits remain unobtrusive.<sup>53</sup> Put another way, my *latinidad* is “neither altered nor hidden, but is downplayed.”<sup>54</sup> Thus, I struggled to say my Spanish last name to my judges and opponents. By rejecting the Anglicized version of my name, the accent could have signaled that I am bilingual or even that I am incompetent.<sup>55</sup>

That leaves me, like other members of outsider groups, paradoxically and simultaneously invisible and hyper-visible.<sup>56</sup> Despite the rapid rate of growth in the Mexican-American population, the number of Mexican-American law school first-year enrollments has not matched the same upward trend.<sup>57</sup> Our presence is nearly invisible at the law school. But when we are called upon—whether during lecture or in competition—all the things that make us different are put under a microscope.<sup>58</sup> Under the gaze of the dominant group, “stereotype threat”—the fear that my actions will confirm negative stereotypes about the Latinx community—begins to set in.<sup>59</sup> I take a deep breath, swallow my fears, and introduce myself: “May it please the Court. Marcus Martinez for the Respondent.”

### C. “Your Honor”

Words of deference demonstrate humility—a value universally praised but, in my experience, enforced only against those in subordinate groups. “A touch of humility” elevates a good judge to a great one, says the mostly white judicial community.<sup>60</sup> Humility requires that I, as a Latino, never forget where I come from and what struggles my forefathers faced to get where I am today.<sup>61</sup> It is likely difficult for many of our white peers to exercise this kind of humility when their immediate forefathers were not denied access to the legal profession.<sup>62</sup> Humility cannot be assessed solely by a backward glance at our roots; it should be assessed in the context of privilege and power that permeates our society today. In the present, when our white peers look across the room in a Moot Court competition, they often still see a white judge looking back, mutually assured in the natural order that judges

---

<sup>53</sup> *Id.*

<sup>54</sup> Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 772 (2002).

<sup>55</sup> See Kristymarie Shipley, *Should I Be “Shipley” or “Flores Collazo” Today? The Racialization of the Law Student and Legal Workplace Candidate*, 31 BERKELEY J. GENDER L. & JUST. 183, 199 (2016).

<sup>56</sup> *Id.* at 202.

<sup>57</sup> McCune et al., *supra* note 17, at 3.

<sup>58</sup> Shipley, *supra* note 55, at 192, 199, 201.

<sup>59</sup> *Id.* at 191.

<sup>60</sup> See, e.g., Michael Nava, *The Servant of All: Humility, Humanity, and Judicial Diversity*, 38 GOLDEN GATE L. REV. 175, 176 (2008) (“A justice of the Pennsylvania Supreme Court, added that appellate judges require ‘a touch of humility’ to make them not only good, but great appellate judges.”) (quoting Ruggero J. Aldisert, et al., *What Makes a Good Appellate Judge? Four Views*, 22 JUDGES’ J. 17, 50 (183)).

<sup>61</sup> *Ninth Annual Harvard Latino Law and Public Policy Conference: Nuevas Fronteras April 21, 2006*, 10 HARV. LATINO L. REV. 175, 193 (2007).

<sup>62</sup> Nava, *supra* note 60, at 188.

and lawyers look the way they do. The color of my skin does not fall within that natural order.

Privilege links the white judge and my opponent, whether or not they acknowledge its existence.<sup>63</sup> Privilege can be seen as a favored state conferred by birth or luck.<sup>64</sup> White privilege has been described as an invisible weightless knapsack of unearned assets that can be carried around and counted on to navigate society without fear of persecution or mistreatment.<sup>65</sup> In American society, whiteness confers privilege and privilege confers dominance.<sup>66</sup> Those who are not white are “marked”—standing out as visible social signs of difference—whereas whiteness remains unmarked, part of the visual field that society takes for granted and interprets as a presumptive hegemony.<sup>67</sup> Society, in turn, perceives the dominant group as the norm for humanity.<sup>68</sup> If asked about his identity, my opponent would likely not include “white” as a descriptor.<sup>69</sup> This element of his identity goes without comment because it is taken for granted by the dominant culture.<sup>70</sup> In short: “to be white is not to think about it.”<sup>71</sup>

Perhaps this explains why some white law students and practitioners are oblivious to their privilege.<sup>72</sup> After all, society has, arguably, taught them to think of their lives as “morally neutral, normative, and average, and also ideal.”<sup>73</sup> As the dominant group, it makes sense that they would prefer not to be reminded of the inequalities that privilege necessitates.<sup>74</sup> Rationalizing their status through non-racial justifications makes it easier to believe that “everything is as it should be.”<sup>75</sup> My opponent may have looked across the room at me and believed we share the same interests, even a common experience.<sup>76</sup> Certainly, we are both cisgender, straight males who had access to the same media and many of the same resources growing up. But the color of our skin precludes such a neat alignment of interests and experiences. My opponent has the option not to think of himself as defined in any part by his race, whereas, I, by virtue of my physical features, do not enjoy this same luxury.<sup>77</sup>

As an outsider in the legal community, I fear the rejection by the dominant group. Law schools have insisted that students of color are welcome as

---

<sup>63</sup> See generally Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, PEACE AND FREEDOM (July/August 1989).

<sup>64</sup> See generally *id.*

<sup>65</sup> See generally *id.*

<sup>66</sup> See generally *id.*

<sup>67</sup> Judith Butler, “Appearances Aside”, 88 CAL. L. REV. 55, 59 (2000).

<sup>68</sup> TATUM, *supra* note 44, at 105.

<sup>69</sup> *Id.* at 102.

<sup>70</sup> *Id.*

<sup>71</sup> Barbara J. Flagg, “Was Blind, But Now I See”: *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953, 969 (1993).

<sup>72</sup> See McIntosh, *supra* note 63.

<sup>73</sup> See *id.*

<sup>74</sup> TATUM, *supra* note 44, at 105.

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

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

<sup>77</sup> Flagg, *supra* note 71, at 969.

long as we can prove ourselves worthy of admission.<sup>78</sup> Within the law school's doors, we are safe from physical violence, but the fear of emotional violence remains.<sup>79</sup> Being judged as inadequate may, for many, constitute a greater fear than fear of physical injury because fear of inadequacy is often "internalized and, in part, self-inflicted."<sup>80</sup> When no judge at the end of my Moot Court experience critiqued my opponent for his lack of deferential language, it felt as though they signaled to him: You belong here and are to be conferred with equal status as those who judge you. When the judge critiqued my use of the title "Judge" instead of "Justice," it felt as though she said to me that my admission to law school and Moot Court was an aberration, that my presence demanded greater scrutiny, that I did not belong. Humility may ultimately require all participants in Moot Court to not only use deferential language but to understand the historical context in which each participant enters the competition by acknowledging white privilege, those it protects, and those it endangers.

#### D. "Ridiculous"

Or was it "stupid"—does it even matter what he said? I can't seem to remember the word, but I recall the feeling when I heard my opponent mock the argument I made. I relished the fact that I had gotten under his skin, thinking that his disrespectful remark would certainly cost him. Mixed with this self-assurance was also anger—a wanting to make him answer for his flippancy throughout the round. Upon reflection, I realized that my opponent may have never experienced a similar insult in a round directed toward him. It is possible that my opponent would have called the argument ridiculous no matter who said it for the simple reason that courts should not take into account a relatively benign negative externality that affects only a small subset of Texan society (in this case, Olympic athletes in-training). However, I cannot be certain that my opponent would feel emboldened to use demeaning language against an opponent who looks like him.

You may ask: "So what?" Does it matter whether my opponent characterized my argument as "ridiculous," "stupid," or any other petty utterance? It is not like he called me a "spic," a "beaner," or a "wetback." Therein lies the insidious nature of racism.

Racism exists and all white people benefit from it, whether intentionally or not.<sup>81</sup> In my reflections in the previous section, I used the less abrasive phrase "white privilege," but it does not capture the structures in our legal system that make some visible, others invisible, and still others dispos-

---

<sup>78</sup> McCune et al., *supra* note 17, at 27 (discussing the various state and national initiatives that seek to expose non-white, low-income college students to legal research, writing, and advocacy; LSAT preparation; and internships with state and federal judges).

<sup>79</sup> Lawrence, *supra* note 5, at 2234.

<sup>80</sup> *Id.* (quoting Charles R. Lawrence, III, *A Dream: On Discovering the Significance of Fear*, 10 NOVA L.J. 627 (1986)).

<sup>81</sup> See TATUM, *supra* note 44, at 88.

able.<sup>82</sup> Only the phrase “white supremacy” can accurately capture this structure.<sup>83</sup> Many white people still believe that to be racist requires a person to don the hood of a Ku Klux Klan member or to shout racial epithets.<sup>84</sup> Worse, some believe that in the absence of such “blatant, intentional acts of racial bigotry and discrimination,” racism no longer exists.<sup>85</sup> They have been taught that racism consists only in individual acts of prejudice by those who look like them, not the invisible systems that grant dominance over those who do not look like them.<sup>86</sup>

Thus, racism can best be defined as a “system of advantage based on race.”<sup>87</sup> This system goes beyond individual acts and beliefs to incorporate cultural messages, as well as institutional policies and practices.<sup>88</sup> This system, in the United States, clearly advantages white people and disadvantages people of color.<sup>89</sup> And yes, this system still exists: “Every social indicator, from salary to life expectancy, reveals the advantages of being white.”<sup>90</sup> Consider the Federal Housing Authority’s redlining of Black neighborhoods that deprived prospective Black homeowners of necessary mortgage assistance,<sup>91</sup> or the system of public school financing in Texas that continues to disproportionately underfund schools in Mexican-American communities<sup>92</sup>: legal structures that subordinate non-white communities perpetuate white supremacy.

The use of racial epithets such as “spic,” “beaner,” or “wetback,” may not be heard in the court or moot courtroom, but “like their predecessors, [white law students and practitioners] will construct—by force of implicit or explicit bias—long-dominant racialized narratives of cultural inferiority and social stigma.”<sup>93</sup> Prejudice, preconceived opinions based on limited information, endures today as “the inescapable consequences of living in a racist society.”<sup>94</sup> Cultural images and messages that affirm the assumed superiority of the white majority and the assumed inferiority of people of color

---

<sup>82</sup> See Vargas-Vargas, *supra* note 19, at 134–5 (“The experience of other racial minorities must necessarily fade out in order to highlight or emphasize a sobering truth for Americans: that Blacks will forever be disposable people.”).

<sup>83</sup> See *id.* at 141.

<sup>84</sup> TATUM, *supra* note 44, at 91.

<sup>85</sup> *Id.*

<sup>86</sup> McIntosh, *supra* note 63.

<sup>87</sup> TATUM, *supra* note 44, at 87.

<sup>88</sup> *Id.*

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

<sup>90</sup> *Id.* at 88.

<sup>91</sup> See Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/> (detailing the plunder of Black communities at the hands of white-supremacist policies, the enduring legacy of those policies, and the case for reparations), archived at <https://perma.cc/D6H7-XMB2>.

<sup>92</sup> See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 93 S. Ct. 1278 (1973) (upholding the use of local property taxes to fund education).

<sup>93</sup> 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).

<sup>94</sup> TATUM, *supra* note 44, at 85–6.

permeate our society and perpetuate racism.<sup>95</sup> Our movies and television transmit these images,<sup>96</sup> our history and literature classrooms teach these images as canon,<sup>97</sup> and our biases are shaped by these images. Bias influences a person to have a more favorable attitude toward one race group than toward another; to have such preferences without conscious decision making renders the bias implicit.<sup>98</sup> Likely, my judges and opponent would claim and believe that they “do not have a prejudiced bone in their body.”<sup>99</sup> Yet as long as our society continues to affirm their experiences at the exclusion of people of color, they cannot claim to be without prejudice or bias.

Implicit biases can manifest themselves in the form of a microaggression: “brief and commonplace daily verbal, behavioral, and environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial, gender, sexual-orientation, and religious slights and insults to the target person or group.”<sup>100</sup> I struggle to characterize my opponent’s remark as a microaggression. At the time, it felt like a macroaggression—the use of an explicit insult—but the underlying hostility appeared to be implicitly motivated by my ethnicity. The judges lack of criticism about the use of the word “ridiculous” or “stupid” while admonishing me for using the word “Judge” instead of “Justice” may be an example of a microaggression. Requiring me, a person of color, to remain in a subordinate position, while allowing my white opponent to exert his dominance without criticism may have been an oversight implicitly motivated by the difference in our race or ethnicity.

Intentional or unintentional, explicit or implicit—when do these distinctions matter and how can they be assessed? This is where our discrimination jurisprudence continues to struggle: connecting implicit bias to discriminatory action. Our highest court even refuses to connect explicit bias to discriminatory action.<sup>101</sup> The tacit acceptance of white supremacy by the Supreme Court makes the call for reform all the more urgent. While this

---

<sup>95</sup> *Id.* at 86.

<sup>96</sup> Wesley Morris, *In Movies and on TV, Racism Made Plain*, N.Y. TIMES (Aug. 23, 2017), <https://www.nytimes.com/2017/08/23/arts/television/white-hot-supremacist-summer.html>, archived at <https://perma.cc/SJ33-SFE7> (dissecting a year of television that included race-baited conflicts between Bachelorette contestants and within boxing matches, as well as movies that obscured their Black characters in the background while white characters in the foreground were developed more fully).

<sup>97</sup> CHRISTINE E. SLEETER, THE ACADEMIC AND SOCIAL VALUE OF ETHNIC STUDIES: A RESEARCH REVIEW 2, Nat’l Ed. Assoc. (2011) (“Whites continue to receive the most attention and appear in the widest variety of roles, dominating story lines and lists of accomplishments [. . . while] racial and ethnic minorities are added consistently in a ‘contributions’ fashion to the predominantly Euro-American narrative of textbooks. Scholarship by and about African Americans, Latino/as, Native Americans, and Asian Americans continues not to be used to frame academic content.”).

<sup>98</sup> Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945, 948 (2006).

<sup>99</sup> TATUM, *supra* note 44, at 85–6.

<sup>100</sup> Shipley, *supra* note 55, at 198.

<sup>101</sup> *Trump v. Hawaii*, 138 S. Ct. 2392 (2018) (upholding President Trump’s Muslim Ban by relying only on a highly abridged account of his motivations while ignoring his campaign promises and Twitter feed).

paper does not seek to address the problems in our discrimination jurisprudence, reforms to the law school experience may allow students to confront issues of race and difference in a way that will prevent future errors in interpreting hostility and animus towards people of color.

### III. REFLECTIONS ON THE FIRST-YEAR CURRICULUM

The marginalization of persons of color, our accompanying erasure and scrutiny, white privilege, and white supremacy—how can the law school curriculum counteract what is so embedded in our society? Suffering defeat at the hands of this confluence of factors was certainly demoralizing. Reflecting, however, has helped me remember that I am not defined by this loss. One year before I competed in the Moot Court competition, I said goodbye to the last group of high school students I would teach. As a teacher of mostly first-generation African-American and Caribbean-American students, I confronted issues of racism in the classroom before attending law school. Certainly, Latinos like me have played a role in marginalizing Black voices; I made a conscientious effort, however, to elevate the voices of my Black students. To combat biases that exist in law school and in Moot Court competitions, so, too, must architects of legal education combat racism. The best way to eliminate the biases that exist in Moot Court competition is to reform the curriculum in a way that builds cultural competency and empathy, introduces anti-racist methods of instruction, and remembers the importance of narrative in the law.

#### A. *Building Cultural Competency and Empathy*

An increasingly diverse society demands that the legal profession improve its cultural competence; that is, a lawyer's ability to relate to others who are different and to treat those who are different with respect and dignity.<sup>102</sup> Even if diversity in law schools has not increased at the same rate as diversity in the United States,<sup>103</sup> students must learn to interact with differences—in race, ethnicity, and other important markers of identity—in integrated environments to develop stronger cognitive and reasoning skills.<sup>104</sup> Developing intercultural competence is necessary for lawyers to function in a multicultural world, and the first step is recognizing that difference exists.<sup>105</sup> As such, law schools must reject a color-blind approach to the law and its students.

---

<sup>102</sup> Ritu Bhasin, *Cultural Competence: An Essential Skill for Success in an Increasingly Diverse World*, 9 LAWPRO MAG. 9 (Sept. 2014).

<sup>103</sup> See e.g. McCune et al., *supra* note 17, at 3 (lamenting the large negative disparity between Mexican-Americans' representation in the U.S. and the number of Mexican-Americans enrolled in law school).

<sup>104</sup> Mari J. Matsuda, *Who Is Excellent?*, 1 SEATTLE J. FOR SOC. JUST. 29, 37 (2002).

<sup>105</sup> *Id.* at 31.

With difference comes subordination, the distribution of power and privilege, and a struggle for equality.<sup>106</sup> To eliminate subordinating structures, students must recognize difference and practice techniques for effective interaction across those differences. Such techniques include open-mindedness, self-reflection, anticipation of conflict and misunderstanding, and encountering conflict and misunderstanding in a position of good faith and in light of historical context.<sup>107</sup> Only by practicing these techniques can students face changing circumstances with flexibility and fearlessness.<sup>108</sup> With newly acquired knowledge of the history of social change, law students can confront injustice and reject the status quo.<sup>109</sup>

To ensure cultural competence in graduating law students, issues of race and difference should take part in the Legal Research and Writing classroom;<sup>110</sup> moreover, these courses should help build students' empathy, an essential skill necessary to improving open-mindedness and self-awareness. Most law schools require students to take Legal Research and Writing courses. These courses often present real-life problems for students to analyze.<sup>111</sup> These problems can be designed "to stimulate a student's empathetic response by contextualizing legal analysis more realistically than can be achieved in the typical doctrinal-class setting."<sup>112</sup> For example, an assignment in a Legal Research and Writing course could require a critical analysis of whether a person has acted "reasonably" under the circumstances in light of the person's cultural experience and background.<sup>113</sup> Such an assignment could help law students to understand the cultural assumptions that exist in many of their doctrinal cases.<sup>114</sup> Legal Research and Writing courses can incorporate issues of racial and ethnic differences when teaching standard practices of a lawyer, including how to appropriately address opposing counsel and justices during oral argument.<sup>115</sup>

But curriculum change should go beyond the legal writing classroom and require doctrinal courses to present more examples of court opinions that employ "practical reasoning,"<sup>116</sup> counter-narratives, or other means of

---

<sup>106</sup> *Id.*

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

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

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

<sup>110</sup> Bannai & Enquist, *supra* note 13, at 28.

<sup>111</sup> Ian Gallaher, *Thinking Like Nonpayers: Why Empathy Is A Core Lawyering Skill and Why Legal Education Should Change to Reflect Its Importance*, 8 *LEGAL COMM. & RHETORIC: JALWD* 109, 146-47 (2011).

<sup>112</sup> *Id.*

<sup>113</sup> Bannai & Enquist, *supra* note 13, at 28.

<sup>114</sup> *Id.* at 4

<sup>115</sup> I am certain that my opponent in the Moot Court competition received instruction on how to appropriately address opposing counsel and judges in oral argument, but he would have been better served had this, at some point, been done in the context of working with those who are not the same race, ethnicity, or gender. *Id.* at 10.

<sup>116</sup> Katherine T. Bartlett, *Feminist Legal Methods*, 103 *HARV. L. REV.* 829, 850-1 ("Practical reasoning recognizes few, if any, givens. What must be done, and why and how it should be done, are all open questions, considered on the basis of the intricacies of each specific factual context. Not only the resolution of the problem, but even what counts as a problem

precedent-changing methodology.<sup>117</sup> That way, students could be presented with an alternative to the rule-bound, precedent-heavy reasoning that dominates the first-year law curriculum.<sup>118</sup> This pedagogy should not be limited to elective classes that address issues of bias and the law but ought to be integrated throughout the law school curriculum.<sup>119</sup> The Constitutional Law book co-written and used by my first-year professor does an admirable job of presenting commentary by legal scholars of diverse backgrounds and ideologies, providing alternative methods of reasoning to the ones provided in the caselaw.<sup>120</sup> The method used by this casebook should be adapted by other doctrinal, first-year courses to present a variety of perspectives beyond the traditional approach.

Charles Cox and Maury Landsman offer a course that could serve as a model for presenting alternative methods of legal analysis in the classroom.<sup>121</sup> The course presents a one-page summary of facts taken from lawsuits without providing any of the relevant law and then asks the students to discuss what the law should be and why.<sup>122</sup> This law-free approach to legal reasoning reminds students that the study of law is ultimately a human endeavor—that the law provides answers to human problems.<sup>123</sup> This is a fundamentally empathetic approach to the law.<sup>124</sup> Incorporating this method in a small section, first-year course, whether in Legal Research and Writing or a doctrinal course, can help build empathy in law students.<sup>125</sup> By rejecting a color-blind approach to our students, administrators can strategically construct the demographics of a small section classroom to better represent the diversity of our society; this way, students can listen to a variety of perspectives on what the law should be and why. Thus, law students would be given an opportunity to communicate about the most fundamental questions of law with students whose experiences differ from their own.

### B. *Developing Anti-Racist Methods of Instruction*

As stated earlier, white privilege and white supremacy still exist. Racism, as fundamental to the American experience, is self-perpetuating.<sup>126</sup> Without addressing racism, law schools will continue to host Moot Court

---

emerges from the specifics of the situation itself, rather than from some foreordained definition or prescription.”)

<sup>117</sup> Morrison, *supra* note 1, at 82.

<sup>118</sup> *See id.*

<sup>119</sup> Bannai & Enquist, *supra* note 13, at 33.

<sup>120</sup> BREST ET AL., PROCESSES OF CONSTITUTIONAL DECISION-MAKING: CASES AND MATERIALS (7th ed. 2018).

<sup>121</sup> Charles A. Cox, Sr. & Maury S. Landsman, *Learning the Law by Avoiding It in the Process: And Learning from the Students What They Don't Get in Law School*, 58 J. LEG. EDUC. 341 (2008).

<sup>122</sup> *Id.* at 342.

<sup>123</sup> *See id.* at 341.

<sup>124</sup> Gallaher, *supra* note 111, at 141.

<sup>125</sup> *See id.*

<sup>126</sup> TATUM, *supra* note 44, at 91.



competitions that adversely impact its students of color. To lessen the prevalence of racism in law school and Moot Court competitions, instruction must be actively anti-racist and out to resist hierarchical structures so commonplace in instruction.

Beverly Tatum likens the ongoing cycle of racism to a moving walkway at the airport.<sup>127</sup> Active racist behavior—the use of racial epithets, for example—would be akin to walking fast on the conveyor belt. Standing still on the conveyor belt illustrates passive racism—benefitting from whiteness by failing to say “Your Honor” in a round, for example.<sup>128</sup> Standing still, or doing nothing, will not end the perpetuation of racism.<sup>129</sup> Instead, a person must walk intentionally in the opposite direction at a speed faster than the conveyor belt to counteract the passive forces of racism, and only then, is a person anti-racist.<sup>130</sup> A white Moot Court competitor can be anti-racist by identifying the racial inequities in judges’ evaluations—critiquing a person of color’s choice of deferential language while not remarking upon his own lack of its use—and confront the judges with this observation of biased behavior. As a Latino Moot Court competitor, I could speak out against the stereotypical characterization of my Black opponents’ arguments as being too confrontational. Yes, anti-racist behavior may cost some of the unearned privileges that benefit us.

To ensure anti-racist instruction, law schools should first provide training to make volunteer judges, instructors, and competitors in Moot Court competitions aware of their implicit biases. Organizers of Moot Court competitions should carefully select their judges for diversity.<sup>131</sup> Practicing judges must undergo sensitivity training and, given the significance of Moot Court competitions to developing legal minds and resumés, judges of Moot Court competitions should similarly attend an orientation on racial and ethnic bias.<sup>132</sup> This training should not be limited to judges but should be extended to the student body and faculty, as well.<sup>133</sup> Such an orientation would allow students and faculty to be aware of their own unexamined biases and assumptions, as well as critically evaluate their own arguments for ethnic or racial biases.<sup>134</sup> This, in turn, would empower students and faculty to walk against the walkway and challenge bias.

During my first-year orientation, my future Contracts professor facilitated a session on identity and bias. Frankly, the session was doomed from the start: a white, male professor with no relevant professional training tasked with teaching students how to understand their identity and respect the identities of others. The session failed to equip students with the tools to

---

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

<sup>128</sup> *Id.*

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

<sup>130</sup> *Id.*

<sup>131</sup> Morrison, *supra* note 1, at 82.

<sup>132</sup> *Id.* at 83.

<sup>133</sup> See Bannai & Enquist, *supra* note 13, at 31.

<sup>134</sup> *See id.*

understand their own biases, let alone to avoid allowing such biases to influence their interactions with fellow students and taint their legal analysis. Through this sort of session, my opponent in the Moot Court competition may have been forced to acknowledge that he is a white male, but his session probably did not clarify that such an identity comes with intangible privileges that his non-white peers do not possess. Law schools should hire a professional in bias training to lead a session for faculty before the start of the school year; this practice should be extended to incoming first-year students and could counteract racism in the law school.

Drawing a person's attention to his or her own biases will not, alone, effectuate an anti-racist law school; rather, law school faculty must reconsider their hierarchical methods of instruction. Critical theorists agree that "education must involve both action and reflection."<sup>135</sup> The teacher must also be a learner. Professor Charles R. Lawrence embodied this ethos when he devised a unique project to help his students understand how to "become effective advocates for liberation while living and working within institutions and cultures that appeared hell-bent on perpetuating racist domination."<sup>136</sup> Professor Lawrence crafted assignments that required students to answer legal questions from the perspective of different minority groups working toward racial equality in America.<sup>137</sup> Throughout the project, he provided opportunities for self-reflection, allowing the students to assess their own ideas and role in the group and to process the feelings they experienced while participating in the assignment.<sup>138</sup>

This "student-centered, student-generated pedagogical method" allows for instructors and students to construct knowledge together and de-emphasizes the hierarchical nature of lecturer-student instruction.<sup>139</sup> It is important to note that Lawrence is a professor of color, and I would challenge white professors to take such a humble and thoughtful approach to legal instruction in their own courses. When white professors implement, and law students experience, alternative methods of teaching that treat students as collaborators, members of the legal community may be more willing to resist hierarchies that naturally occur in a racist society.

### C. *Remembering the Importance of Narrative*

Anti-racist instruction can best be achieved by remembering the importance of narrative in the legal writing classroom and throughout the first-year curriculum. My narrative, my experience in the Moot Court competition, is unique but not altogether uncommon. To understand the complexities of race and difference, more stories must be told. Simply put, "we must flood the

---

<sup>135</sup> Lawrence, *supra* note 5, at 2239.

<sup>136</sup> *Id.* at 2243.

<sup>137</sup> *Id.* at 2244.

<sup>138</sup> *Id.* at 2245.

<sup>139</sup> *See id.* at 2248.

market with our stories.”<sup>140</sup> The narrative derives its power from its ability to tear down walls and to cultivate understanding and empathy.<sup>141</sup> The proliferation of storytelling in the law school classroom will allow the legal community “to recognize the limitations and distortions of narrowly constructed traditional legal analysis.”<sup>142</sup>

Stories cultivate an ability to empathize with others, and law students must be exposed to more stories in order to empathize across lines of difference. When students read narrative literature, they recognize a character’s subjective experience; by doing so, students simultaneously uncover dimensions of their own character—even aspects of which they were previously unaware.<sup>143</sup> In this way, students discover themselves through the stories of others.<sup>144</sup> The professor of my small-section Civil Procedure course required our class to read *A Civil Action*, the story of Jan Schlichtmann’s pursuit of a mass-tort claim against a company that polluted the water supply of a small city in Massachusetts.<sup>145</sup> Our professor required us to write an open-ended reflection piece on the book, providing an excellent opportunity to reflect on the narratives of the lawyers and victims in the court case. This kind of assignment addresses the problem that traditional legal courses are “dominated by an abstract, mechanistic, professional, and rationalist voice” and provides a “concrete, empathetic, passionate, human voice of literary narrative” to complement the traditional legal discourse.<sup>146</sup> I would argue, however, that this was a missed opportunity to explore narratives of voices less prevalent in the law—those of marginalized groups.

The stories of marginalized groups must be privileged because traditional legal discourse has either excluded or devalued our voices.<sup>147</sup> Many law students have been trained to believe that “the story told by those in power is a universal story.”<sup>148</sup> For too long, people of color were veiled in a “shroud of silence, invisible not because they had no face, but rather because they had no voice.”<sup>149</sup> Voice presupposes a face, and in order to combat the invisibility that students of color often experience, they must be given a voice in the classroom.<sup>150</sup> Without a voice, students of color remain absent from history.<sup>151</sup> To give law students of color voice, law professors ought to provide space for the articulation of feelings and experiences and to

---

<sup>140</sup> *Id.* at 2281 (quoting Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 65 (1998)).

<sup>141</sup> *See id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 2285 (quoting Robin West, *Economic Man and Literary Woman: One Contrast*, 39 MERCER L. REV. 867, 870 (1986)).

<sup>144</sup> *See id.*

<sup>145</sup> JONATHAN HARR, *A CIVIL ACTION* (1995).

<sup>146</sup> Lawrence, *supra* note 5, at 2286.

<sup>147</sup> *See id.* at 2250.

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

<sup>149</sup> *Id.* at 2265 (quoting HENRY LOUIS GATES, JR., *Frederick Douglass and the Language of Self*, in *FIGURES IN BLACK: WORDS, SIGNS, AND THE “RADICAL” SELF* 98, 104 (Henry Louis Gates, Jr., ed., 1987)).

<sup>150</sup> *See id.*

<sup>151</sup> *Id.*

value the feelings and experiences of students of color.<sup>152</sup> By providing more narratives from persons of color, law students will understand that the stories told in legal doctrine are not universal but, rather, part of a much larger tapestry of human experience.

Presenting human voices in the law school curriculum is not merely a feel-good experiment in progressive pedagogy; developing skills in presenting the human voice ought to be a valued aspect of legal education. Human understanding frequently takes priority over intellectual rigor in successful lawyering.<sup>153</sup> A lawyer must utilize empathy as a tool to understand what the case means to her clients.<sup>154</sup> The capacity for empathy improves lawyer-client interactions in all kinds of task, such as during negotiations, in planning estates or devising wills, and in advocacy. In other words, eliciting understanding and empathy often takes priority over a law student's ability to cite the rule and zealously advocate for her position.<sup>155</sup>

Building cultural competency and empathy, deconstructing hierarchical teaching methods, and emphasizing narrative in the classroom can all help combat racism in Moot Court competitions. Law schools should move towards? a race-conscious approach in preparing law students for the legal profession, allowing them to recognize differences among themselves and providing them the tools to effectively work through those differences. Professors can diversify their teaching practices to include methods that allow both professor and law student to be collaborators in constructing legal knowledge. Finally, the voices of students of color must be heard in earnest; their narratives must be elevated in the classroom to counter the monolithic understanding of doctrinal law courses.

#### IV. CHALLENGES TO CURRICULUM CHANGE

Demand for change will not come without challenges. The legal profession, after all, is inherently conservative, and the law school is tasked with preparing students for it.<sup>156</sup> Challenges to curriculum change include the dominant group's incentive to remain silent; the reliance on a handful of race and equal-protection-oriented courses to be the sole channel for learning about discrimination against non-dominant groups; the tenuous position of legal writing professors who seek to change their curricula; and the persistent lack of diversity in law school admissions. Nevertheless, each challenge must be confronted in turn.

---

<sup>152</sup> See *id.* at 2249.

<sup>153</sup> Julius G. Getman, *Voices*, 66 TEX. L. REV. 577, 582 (1988).

<sup>154</sup> *Id.* at 583.

<sup>155</sup> See *id.*

<sup>156</sup> See Kathryn M. Stanch, *Resistance Is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices*, 103 DICK. L. REV. 7, 28 (1998) ("Relatedly, because it is also part of legal writing courses to teach *stare decisis* and application of legal rules, the assigned framework will almost always be one that reflects existing laws.").

Perhaps the greatest threat to curricular change remains the majority's inclination to remain silent.<sup>157</sup> Silence and denial of privilege serve as key political tools to protect unearned privilege. By making discussions of race and ethnicity taboo subjects, the white majority will retain dominance in society.<sup>158</sup> Our society remains oblivious to the privileged position of the dominant group to protect the myth of meritocracy—a myth that is incongruent with the realities reform seeks to address.<sup>159</sup> Despite claims to the contrary by the dominant group, “individualized equality of opportunity and objective norms of meritocracy can hardly serve as viable opposition to group inequality and subjective bias.”<sup>160</sup> Continued adherence to the objective norms prescribed by doctrinal courses will only grow the existing disparities between the experiences of white students and students of color.

Critics of curriculum reform may also point to “Equal Protection” or “Race and the Law”-type courses as an out for incorporating the discussion of race into the first-year law school curriculum. By doing so, however, they lead students to a course “about equal opportunity to try to get into a position of dominance while denying that systems of dominance exist.”<sup>161</sup> Furthermore, the amount to teach in any equal protection-type course remains too much to teach in a single course. The substantive legal doctrine alone comprises an unwieldy and ever-changing body of law.<sup>162</sup> Each concept requires a primer in the social science literature that helps inform the doctrine.<sup>163</sup> Along with the substantive material, training in lawyering skills needed to address differences in race and ethnicity is extensive and time consuming, requiring opportunities to address the personal experience, feelings, and values of students.<sup>164</sup> Worse yet, too few students even have the opportunity to take Race and the Law classes due to course requirements for graduation and a lack of faculty to provide adequate instruction on the subject.<sup>165</sup> While doctrinal or Legal Research and Writing professors may lament the lack of time to include discussions of racial and ethnic biases in their courses,<sup>166</sup> requiring only a single elective course—a course that some students may not even have the opportunity to attend—would be a great disservice to the law school community.

Furthermore, the Legal Research and Writing course has the most potential to combat racism but is often taught by those with little power over the curriculum. As Morrison states, “those who teach Moot Court and who arguably are in the best position to inculcate intelligent reform, often possess

---

<sup>157</sup> See generally McIntosh, *supra* note 63.

<sup>158</sup> See *id.*

<sup>159</sup> See *id.*

<sup>160</sup> John O. Clamored, *Critical Race Theory, Archie Sheep, and Fire Music: Securing an Authentic Intellectual Life in A Multicultural World*, 65 S. CAL. L. REV. 2129, 2166 (1992).

<sup>161</sup> McIntosh, *supra* note 63.

<sup>162</sup> See Lawrence, *supra* note 5, at 2241.

<sup>163</sup> See *id.*

<sup>164</sup> See *id.*

<sup>165</sup> See Bannai & Enquist, *supra* note 13, at 5.

<sup>166</sup> See *id.* at 32.

the least amount of power within the law school.”<sup>167</sup> Jo Anne Durako has famously written about the second-class status of legal writing faculty that is predominately comprised of women.<sup>168</sup> Legal writing scholarship has since explored this concept further to challenge the notion that legal writing professors are somehow other or less than their tenured or tenure-track peers instructing doctrinal courses.<sup>169</sup> Suggestions for reforming Moot Court competitions must be actualized by law professors who do not have tenure and therefore have less leverage when advocating for change.<sup>170</sup> The recommendations made by this paper intentionally avoid putting all of the burden for curriculum change on legal writing faculty; however, law school administrations should consider measures to give legal writing faculty more equal bargaining power with doctrinal professors.<sup>171</sup>

Finally, Moot Court competitions are only as reflective of society as law schools. Lawyers and law students are uncomfortable discussing race, in large part, because “the legal profession is not very diverse, most law schools are not diverse, and society is still largely segregated.”<sup>172</sup> The Supreme Court has addressed this problem in the seminal affirmative action decision *Grutter v. Bollinger* when hearing The University of Michigan Law School’s arguments:

[Tracking racial and ethnic composition of the class] was done, [Director of Admissions Dennis] Shields testified, to ensure that a critical mass of underrepresented minority students would be reached so as to realize the educational benefits of a diverse student body . . . . [Dean of the Law School, Jeffrey Lehman] indicated that critical mass means numbers such that underrepresented minority students do not feel isolated or like spokespersons for their race.<sup>173</sup>

We have not yet acquired a critical mass of students of color in the law school; despite the increase in overall population, students of color have not enrolled at the same rate. Because of this, students of color often feel isolated in their studies even today, nearly seventy years after law schools were desegregated in Texas.<sup>174</sup>

---

<sup>167</sup> Morrison, *supra* note 1, at 78.

<sup>168</sup> See Jo Anne Durako, *Second Class Citizens in the Pink Ghetto: Gender Bias in Legal Writing*, 50 J. LEGAL EDUC. 562 (2000).

<sup>169</sup> See Mitchell Nathanson, *Dismantling the “Other”: Understanding the Nature and Malleability of Groups in the Legal Writing Professorate’s Quest for Equality*, 13 LEGAL WRITING: J. LEGAL WRITING INST. 79, 99 (2007).

<sup>170</sup> See *id.* at 80.

<sup>171</sup> See *id.* at 81 (advocating for the granting of voting rights to legal writing professors and the integration of legal writing offices among all faculty offices as symbolic measures to initiate the dismantling of the “other” status of legal writing faculty).

<sup>172</sup> Suzanne Rowe, *The Elephant in the Room*, 15 LEGAL COMM. & RHETORIC: JALWD 263, 263–64 (2018).

<sup>173</sup> 539 U.S. 306, 318–9 (2003) (internal quotations omitted).

<sup>174</sup> See *Sweatt v. Painter*, 70 S. Ct. 848 (1950).

## V. CONCLUSION

After my loss in the Moot Court competition, I visited my Persuasive Writing and Advocacy professor. I asked, “Is this the way it will always be?” Neither of us had a definitive answer but both suspected that the ethnic bias experienced in my final round was not unique—that I would face similar bias as a practicing lawyer and that other students of color experienced similar challenges. Although my experience in the first-year Moot Court competition felt tainted, I have not stopped encouraging fellow students of color to participate. Yes, they may experience similar biased attitudes in Moot Court. I do not write this paper believing that these attitudes will cease altogether. I do so because I want other students of color to know that they are not alone, that what they are experiencing is real. After witnessing bias or prejudice, people of color often retreat and wonder—did this happen because of my race or ethnicity?

The truth of the matter is this: the onus has always been on us. The burden of proof has always been on us to demonstrate that racial or ethnic bias influenced a decision made by a fellow student, a professor, or a judge. I provided my narrative, in part, to meet this burden of proof, but my recommendations for curriculum reform seek to share this burden with our white colleagues. They may accept or reject the truth of my narrative and accompanying plea for curriculum change. Nevertheless, we need to show up and compete in first-year Moot Court competitions regardless of the inevitable racial and ethnic backlash. If you are a law student of color reading this paper, please know that you are not alone and that only by sharing our stories can we begin to undo the harms of racism in the law school and legal profession.

