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Professionalism as a Racial Construct

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ABSTRACT

This Essay examines professionalism as a tool to subjugate people of color in the legal field. Professionalism is a standard with a set of beliefs about how one should operate in the workplace. While professionalism seemingly applies to everyone, it is used to widely police and regulate people of color in various ways including hair, tone, and food scents. Thus, it is not merely that there is a double standard in how professionalism applies: It is that the standard itself is based on a set of beliefs grounded in racial subordination and white supremacy. Through this analysis, professionalism is revealed to be a racial construct.

This Essay examines three main aspects of legal professionalism: (1) threshold to withstand bias and discrimination, (2) selective offense, and (3) the reasonable person standard. Each Subpart starts with a day in my life as an attorney to illustrate how these elements play out. The final Part details ways to disrupt professionalism as a racial construct.

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This Essay is dedicated to Professors Kimberlé Crenshaw, Devon Carbado and Cheryl Harris who mentored her while she was a law student at UCLA School of Law in the Critical Race Studies Program. She also wishes to thank the *UCLA Law Review* student editors who worked on this Essay.

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INTRODUCTION

On a Friday afternoon, I appeared with a colleague in New York City Housing Court on behalf of a client in an eviction proceeding. Aside from the unfortunate nature of the case, it was supposed to be a routine court appearance. But Housing Court is known to be unpredictable, and that afternoon, it lived up to its reputation. While appearing before the judge, opposing counsel—a white woman—yelled at me, interrupted me, talked over me, sighed and rolled her eyes when I spoke. Before this appearance, we had only seen each other in passing. Dumbfounded, I spent half of the time making legal arguments and the other half wondering whether my presence in court, as a Black woman, was the main factor in the attorney's scorn. Curiosity inched closer to certainty when I learned that my junior colleague, who is white, appeared by herself on the same case just weeks before. We danced around it—"That was ridiculous!" "Oh man, Housing Court"—until we finally made our way to: "She wasn't like that with me. She treated me with respect."

That weekend, still reeling from humiliation, I reimagined the court appearance. Would I have appeared too sensitive if I said that opposing counsel's conduct is racist? Is it professional to use the court's time to address racism and misogynoir when the negotiations for my client are still in progress? The answers were unclear, but what was certain was that if I had behaved like opposing counsel, I would have been seen as unprofessional and aggressive, and likely admonished by the judge.[1] Professionalism was a one way street—it applied to me but not my opposing counsel.

I wanted to scream. I wanted to tell both the judge and opposing counsel that they upheld systems of racial hierarchy. I did not. Instead, I shouted words on paper.

These words are my screams.

1. *See* Amanda Luz Henning Santiago, *How Can New York Change Its Court Culture?*, CITY & STATE N.Y. (Oct. 27, 2020), https://www.cityandstateny.com/politics/2020/10/how-can-new-york-change-its-court-culture/175516 [https://perma.cc/W3DP-PH5C] ("For many working within the court system, it's understood that in order to maintain a sense of professionalism, employees have to ignore blatant racism. 'It (racism and sexism) has become so ingrained into the culture (of the court system) that there is an underlying and silent expectation that people just put up with it and it's part of being professional, having a thicker skin,' Leah Goodridge, a supervising attorney at Mobilization for Justice, who has spent years working in Housing Court, told City & State. 'So instead of people challenging the racist behavior, for example, the burden has shifted to the person who bears it—and that is not limited to attorneys; sometimes it's judges as well.'").

I am one of the 4.7 percent of Black attorneys in the United States[2] and have been practicing law for the past decade.[3] In this Essay, I question whether professionalism is a tool to subjugate people of color in the legal field. Professionalism encompasses: (1) communication style, (2) interpersonal skills, (3) appearance, (4) how well a person adheres to the standards of their field and employer, and (5) efficacy at the job. Through this analysis, professionalism is revealed to be a racial construct.

The canon of Critical Race Theory shifted the understanding of racism from intentional hatred by individual actors to a set of systems and institutions that produce racial inequality and subordination.[4] Criminal justice is a system of laws and individuals who enforce them. While everyone is beholden to the laws, the criminal justice system disproportionately ensnares people of color within its grasp, resulting in harsher punishment. Similarly, professionalism is a standard with a set of beliefs about how one should operate in the workplace. While professionalism seemingly applies to everyone, it is used to widely police and regulate people of color in various ways including hair, tone, and food scents.[5] Thus, it is not merely that there is a double standard in how professionalism applies; it is that the standard itself is based on a set of beliefs grounded in racial subordination and white supremacy.

In Part I, I examine three main aspects of legal professionalism: (1) threshold to withstand bias and discrimination, (2) selective offense, and (3) the reasonable person standard. Each Subpart starts with a day in my life as an attorney to illustrate how these elements play out. Professionalism in the legal industry often carries the silent expectation that people of color, women, people with disabilities and people who identify as LGBTQIA have a high threshold to withstand discrimination.[6] Professionalism as a racial construct is not limited to attorneys

2. *See* AM. BAR ASS'N, PROFILE OF THE LEGAL PROFESSION 2021 (2021); *see also* Karen Sloan, *New Lawyer Demographics Show Modest Growth in Minority Attorneys*, REUTERS (July 29, 2021, 3:12 PM), https://www.reuters.com/legal/legalindustry/new-lawyer-demographics-show-modest-growth-minority-attorneys-2021-07-29.
3. Deborah L. Rhode, *Law is the Least Diverse Profession in the Nation. And Lawyers Aren't Doing Enough to Change That.*, WASH. POST (May 27, 2015), https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that [https://perma.cc/P6S6-F6YU].
4. Richard Delgado, *Liberal McCarthyism and the Origins of Critical Race Theory*, 94 IOWA L. REV. 1505, 1511 (2009).
5. *See* Shannon Cumberbatch, *When Your Identity is Inherently "Unprofessional": Navigating Rules of Professional Appearance Rooted in Cisheteronormative Whiteness as Black Women and Gender Non-Conforming Professionals*, 34 J.C.R. & ECON. DEV. 81 (2021).
6. Dylan Jackson, *George Floyd's Death Ushered in a New Era of Law Firm Activism and There's No Going Back*, AM. LAW. (May 25, 2021, 5:00 AM), https://www.law.com/American

and paralegals—it also extends to individuals participating in the legal process. For example, Black people have been excluded from serving on a jury because they "failed to make eye contact, lived in a poor part of town, had served in the military, had a hyphenated last name, displayed bad posture, were sullen, disrespectful or talkative, had long hair, wore a beard"—many of which are under the guise of professionalism.[7] In addition, I discuss how harmful and racist behavior in the legal profession are normalized to the point that challenges to such conduct are seen as unprofessional. Lastly, I analyze how the law functions in a colorblind fashion, having the effect of making any emphasis or focus on race seem impolite or—unprofessional. In Part II, I explore recommendations of how to deconstruct professionalism as a tool of white supremacy.

I. CONSTRUCTING THE CONCEPT OF PROFESSIONALISM IN THE LEGAL PROFESSION

A. Bias and Discrimination Threshold

In June 2018, a group of legal service organizations sent a letter to the Supervising and Administrative Judges of Housing Court. Typewritten words on paper laid bare the experiences that many tenant attorneys and paralegals endured for years: over eighty examples of alleged bias, microaggressions and incivility which took place in Bronx Housing Court by landlord attorneys, court clerks, officers and judges.[8] The purpose of the letter was to demand accountability. As a result, the Supervising Judge convened a meeting for tenant and landlord attorneys to discuss bias and incivility.

More than anything, this meeting revealed that there were at least two perceptions of what it meant to be a professional attorney. In one view, an attorney's inability to laugh and move along from microaggressions indicated that they were too unpolished or hypersensitive for the field. In the other, an attorney was race and equity conscious and when those norms were eschewed, readily

lawyer/2021/05/25/george-floyds-death-ushered-in-a-new-era-of-law-firm-activism-and-theres-no-going-back-405-84104 [https://perma.cc/P7A3-V8CZ].

7. Adam Liptak, *Exclusion of Blacks From Juries Raises Renewed Questions*, N.Y. TIMES (Aug. 16, 2015), https://www.nytimes.com/2015/08/17/us/politics/exclusion-of-blacks-from-juries-raises-renewed-scrutiny.html [https://perma.cc/WR97-4T2N].

8. The examples included court staff frequently mistaking attorneys for litigant-respondents or confusing two people of color, opposing counsel yelling or making racist comments. Many of the experiences noted in the letter were later reflected in a wider and first of its kind report on racism in the courts published in 2020. JEH CHARLES JOHNSON, REPORT FROM THE SPECIAL ADVISER ON EQUAL JUSTICE IN THE NEW YORK STATE COURTS 61–66 (2020).

called for accountability to create a workable and inclusive environment. During the meeting, it became clear that the former had been the standard for many years.

Professionalism was based on the notion that one withstood microaggressions and bias with grace and lightheartedness. The higher the threshold one had to tolerate bias, the more polished the attorney or paralegal appeared. This was particularly the case for women,[9] people of color, LGBTQIA people, and people with disabilities. Professionalism as a racial construct manifests itself in two ways. First, that professionalism is measured by how well a person adapts to a hostile work environment is in of itself a racial construct because that system is built for people of color to fail. Second, that professionalism incorporates the ideology to have a thick skin manifests as a racial construct because even the definition of thick skin aligns with who holds the most power. For example, if attorneys on the receiving end of microaggressions, bias, and racism are considered sensitive for not laughing along, why are the attorneys who engage in harmful behavior not also considered sensitive for their inability to handle criticism about their conduct? Thus, even in defining tolerance, whose feelings are prioritized and validated and whose are minimized within the context of professionalism shapes the narrative that people of color—not their white peers—need to develop thicker skin.

It was not coincidental that this meeting took place almost a year after the passage of the right to counsel law, which provides low-income tenants the right to free legal representation.[10] With the city's investment, there was a new legion of attorneys and paralegals of color in court that stood apart from the mostly white male landlord bar, many of whom had practiced in housing court for a decade of more prior to the demographic shift.[11]

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9. The roots of the "toughen up, buttercup" mentality for women as lawyers run deep. *See, e.g.*, Maryam Ahranjani, "*Toughen Up, Buttercup" Versus #TimesUp: Initial Findings of the ABA Women in Criminal Justice Task Force*, 25 BERKELEY J. CRIM. L. 99, 108 (2020) ("In the 1920s, the President of the Women's Bar Association reportedly told recently admitted women to never let anyone refer to them as a 'woman lawyer' because that in and of itself is an obstacle to practice. The idea was to mimic men as much as possible in order to fit in.").
10. Press Release, New York City Office of the Mayor, New York City's First-in-Nation Right-to-Counsel Program Expanded Citywide Ahead of Schedule, (Nov. 17, 2021), https://www1.nyc.gov/office-of-the-mayor/news/769-21/new-york-city-s-first-in-nation-right-to-counsel-program-expanded-citywide-ahead-schedule [https://perma.cc/JS3E-E6GL].
11. After a white male landlords' attorney referred to COVID-19 as "Chinese cooties" in a long email chain including judges, landlords, and tenants attorneys, several articles were published describing the incident. *See* Jane Wester, *Racist Comment by New York Landlords' Attorney is Symptom of Larger Problem, Bronx Tenants' Lawyers Say*, N.Y. L.J. (Aug. 31, 2020, 5:57 PM), https://www.law.com/newyorklawjournal/2020/08/31/racist-comment-by-new-york-landlords-attorney-is-symptom-of-larger-problem-bronx-tenants-lawyers-say (last visited Mar. 19, 2022) ("Several tenants' attorneys said Rogers' comment was an example of pervasive

These views on professionalism were not neatly cut along landlord and tenant attorney lines, or even by race. There were larger issues at play here. In the American capitalist economy, enduring a toxic and abusive work environment can be a rite of passage in some workplaces. Even in the sphere of public interest law, a gripe about the astronomical case dockets could be met with quips that "back in my day, I had two times as many cases." In both the nonprofit industrial complex and law firms, the measure of a good attorney was not only how much of an impact they had on their clients' lives, but also the quantity of cases they were able to handle at once.[12] In fact, some would say that a high number of cases *is* the impact. Beyond enduring microaggressions, racism and other discriminatory behavior, there seemed to be a wider expectation to tolerate abusive practices that was woven into the fabric of the American workforce.

In an attempt to navigate Housing Court better, I sought guidance from Black attorneys whom I admired and revered. They all practiced in different areas of law for over a decade. Their advice all started with "Don't let them make you look unprofessional." I spoke with at least ten Black attorneys with decades of experience in courtrooms and every single one understood and iterated that despite white opposing counsels or peers acting in the most inappropriate and unprofessional manner, I was the one who would look unprofessional if I came close to or matched their behavior. Professionalism did not apply to them, but it applied to me. Moreover, since racism permeated the profession, consistently complaining or challenging it would not necessarily indicate that it was pervasive; instead it would likely reflect that I was not cut out to be an attorney.

None of these attorneys advised me to file grievances. Racism is a reality and dealing with it meant survival. Survival meant avoiding direct challenges to racism which could lead to negative career consequences. Reflecting on their words, it became clear to me that they began their legal careers at a time when there were even fewer Black attorneys, and in the aftermath of the Civil Rights Act and other laws. There had been so much fight to get their foot in the door that appearing unnerved was not an option. Most advised indirect ways to challenge macro- or microaggressions—speedy, humorous comebacks in response to certain situations to assert dominance and show I was impermeable to anyone's discomfort of my existence. If I was mistaken for my client or any other Black person, a response

behavior they face in Bronx Housing Court. The number of tenants' attorneys working in housing court has grown since the city passed its Universal Access to Legal Services law in 2017, and the tenants' bar tends to be younger and more diverse than the landlords' bar, which is largely white and male, several lawyers said.").

12. *See generally* THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX (INCITE! Women of Color Against Violence eds., 2017).

could be, "Well, I can tell you apart from Brad Pitt. Now, where's the rent breakdown, Charles?"

I followed their approach, but its effectiveness quickly wore off. At the time, I was a new staff attorney making $50,000 with a docket of nearly forty eviction cases. I was navigating my own emotions of sometimes overhearing in Spanish in court "I'm getting evicted but at least I'm not Black," and dealing with helping many of those same tenants navigate the bureaucratic maze of government agencies. The job presented a rude awakening that the role of staff attorney also included hidden duties such as social worker, government agency advocate, and case administrative coordinator. Given the breadth of the position, I did not have the energy or bandwidth to engage in witty banter with opposing counsel during routine negotiations—it felt like playing the sassy Black woman and providing a form of entertainment where I was not the one amused.[13]

Moreover, the societal expectation of Black forgiveness seemed to be endemic to having a thick skin in the workplace.[14] Fear of Black rage spurred vagrancy and loitering laws, after all.[15] Black forgiveness soothed anxiety that there

13. One example of a macro-aggression is when a landlords' attorney filed at least forty eviction cases in Housing Court with termination notices referencing coronavirus as the "Chinese Wuhan Virus." The Court dismissed almost all of the notices. In an article for a legal publication, the landlords' attorney declined to comment on the offensive conduct but did say "I'm just waiting for them to pass universal rent control where they completely take away landlords' rights to do what they want with private property." *See* Emma Whitford, *NYC Eviction Judge Tosses Cases with "Wuhan Virus" Notice*, LAW360 (May 21, 2021, 9:54 PM), https://www.law360.com/realestate/articles/1387338/nyc-judge-tosses-eviction-cases-with-wuhan-virus-notice [https://perma.cc/CZ7U-Y7J2].

14. A Black woman tenants' rights attorney filed an attorney grievance against a white male landlords' attorney, alleging that he called her a "bitch" several times in court. In 2020, the Appellate Division of New York issued a decision suspending the white male attorney for three months. *See* Denenberg v. Att'y Grievance Comm. for First Jud. Dep't, 192 A.D.3d 76 (N.Y. App. Div. 2020). This is one of the very few and rare instances where an attorney is disciplined for misogynistic and racist conduct. What I found interesting about the decision is that there is much analysis on whether the Respondent apologized. *See id.* at 81. If he had apologized, it is unclear of whether he would have been so disciplined. Perhaps the onus would have been shifted to the grievant and, in turn, her bias threshold would have become the focal point of the grievance, not the white male attorney's conduct. Thus, an apology—which may not even be sincere—places the burden on the person experiencing bias to forgive.

15. Dorothy E. Roberts, *Foreword: Race, Vagueness, and The Social Meaning of Order-Maintenance Policing, Supreme Court Review*, 89 J. CRIM. L. & CRIMINOLOGY 775, 788 (1999). ("In the United States, vagrancy-type laws served the same function in the regime of white domination of Blacks. The colonies sought to prevent slave rebellions by enacting laws that prohibited slaves from traveling without a pass and permitted slave patrols to arrest slaves on mere suspicion of sedition. After Emancipation, white southerners tied freed Blacks to plantations through Black Codes that punished vagrancy. As the Court described them, 'vagrancy laws were used after the Civil War to keep former slaves in a state of quasi slavery.' A more contemporary example of the oppressive restriction of movement is the requirement of the apartheid regime in South Africa that Blacks carry passes while traveling in white districts.").

was not any rage, thus hug your brother's murderer, proclaim a church bomber has been forgiven—be gracious and dignified. The question remained: Why did I have to build my tolerance threshold to acclimate to a hostile environment but the people creating that environment could remain the same?

Perhaps the greatest irony is that the threshold standard is seen in the remedy for discrimination itself. The American Bar Association adopted a rule that incorporated discrimination as misconduct. Under 8.4(g), it is professional misconduct for a lawyer to:

> [E]ngage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.[16]

Most states have adopted the ABA's rules on professional conduct, thereby incorporating a measure for disciplinary procedures. The Chair of the Committee on Standards of Attorney Conduct of the New York State Bar Association stated: "Although Rule 8.4(g) does not expressly state that a complainant must exhaust administrative and judicial remedies before filing a discrimination complaint with a grievance committee, that is how the rule operates on a practical level."[17] The expectation to exhaust all remedies before filing a complaint under the rule effectively operates to force individuals to withstand bias and discrimination for a longer period of time than they would if they immediately sought relief. The abusive conduct is deprioritized, and the burden is placed on the complainant to prove that they tolerated a sufficient amount of it.

One of the main mistakes of the legal profession is to approach bias and discrimination complaints as personality conflicts. For example, sexual harassment in a legal office may be seen as two attorneys who do not get along rather than one lawyer harassing the other. Since attorneys, particularly from a marginalized group, are expected to have a high threshold to absorb bias, the imbalance of power in these situations may be ignored. The same happens in the courtroom. In my case when opposing counsel yelled and talked over me, the judge kindly asked her at least eight times to allow me to finish my sentence. There was no admonishment: "If you do not stop, I will hold you accountable, hold you in contempt, or stop the proceeding." Instead, it appeared as two attorneys

16. MODEL RULES OF PRO. CONDUCT r. 8.4 (AM. BAR ASS'N 2016).
17. Brandon Vogel, *Public Comments Requested: Proposal to Adopt ABA Model Rule 8.4(g) in New York's Rules of Professional Conduct*, N.Y. STATE BAR ASS'N (Mar. 25, 2021), https://nysba.org/public-comments-requested-proposal-to-adopt-aba-model-rule-8-4g-in-new-yorks-rules-of-professional-conduct [https://perma.cc/2HZS-FCTG].

sparring during a case rather than abusive and unprofessional behavior that should be addressed to prevent further disruption. Treating racist, misogynistic, transphobic, or other discriminatory behavior as two people in disagreement equalizes behavior where there is often an imbalance of power. The effect is that it allows the decisionmaker—whether it be a judge or head of a legal office—to avoid taking responsibility for stopping the unprofessional conduct.

B. Selective Offense: Constructing What Is Unprofessional

In a meeting, a white male colleague called me derogatory names. I reacted the way many do during an attack: I froze. This behavior was not new for him and as it wore on, my bias threshold reached its capacity. Later that day, I challenged his behavior openly as misogynistic and racist. He was clearly unprofessional—or so I thought. As I sat in various conversations processing while simultaneously explaining what happened, reality slowly sunk in that his behavior was not offensive to everyone. Lips moved, but I only heard garbled words in twos: "team player," "get along," "minor bump," "take personally," "right approach." These words pieced together an ugly truth—one that my elders long warned. Some are more offended by a Black woman challenging racism than by a white person perpetuating it.

Selective offense is the normalization of racist, misogynistic, ableist or otherwise discriminatory behavior while the denunciation of said behavior is seen as disruptive. For example, this is seen when employees sit in meetings for months or years with a known problematic colleague who engages in harmful racist, misogynistic, or transphobic behavior and take no action to meaningfully admonish or halt the behavior; yet the same employees are suddenly—or selectively—offended when someone from a marginalized group challenges the problematic employee's behavior. This manifests professionalism as a racial construct because the problematic employee who engages in racist, misogynistic, or transphobic behavior is not deemed unprofessional, yet the tone, approach, and timing of the person who challenges said behavior is so scrutinized.[18]

There are four stages to selective offense. First, people minimize and fail to admonish the harmful behavior. Second, people impute charm or innocence to the harmful behavior. Even the most clear-cut inappropriate behavior could be likened to humor or quirk. Not deemed harmful, it is instead attributed to the personality of the person perpetuating the harm. The distinction between

18. Erika Stallings, *When Black Women Go From Office Pet to Office Threat*, MEDIUM (Jan. 16, 2020), https://zora.medium.com/when-black-women-go-from-office-pet-to-office-threat-83bde710332e [https://perma.cc/7SCP-5UN3].

personality and behavior is crucial because many believe a person can correct another's behavior—but not their personality. Third, people accept the harmful behavior. Fourth, any challenges to the harmful behavior are seen as a personal character attack rather than rectifying harm.

During my tenure in the legal field, I have observed how these four stages unfold, particularly when the person engaging in harmful conduct is a white male. Once in conversation with attorneys, one mentioned a white male judge who was known to have a moody disposition. He remarked with a chuckle, "We call him Grumpy Grandpa." The judge's disgruntled disposition was transformed into a charming quirk that humanized him. For all intents and purposes, his behavior was unprofessional. A judge's demeanor is essential to the role, especially when interfacing with litigants who are traumatized or stressed by the eviction process. Yet not only was the harmful effect ignored, it was turned into an attribute of his personality. There is also another layer as to why this harmful behavior is attributed to charm or humor. The act of humiliating, regulating, or rebuking people of color, especially in a public setting, has historically been a form of entertainment. From lynching as an American pastime to interactions with the police to degrading interactions in the workplace, inflicting pain on people of color is a public sport. Thus, when a person perpetuates this harm, they are seen as humorous because their actions are amusing for some to watch.

This begged the question: If a person of color or woman judge came in every day for years with a grouchy disposition, would they also be likened to charming or would they be perceived as unprofessional and temperamental?[19] Conversely, I have also observed some judges of color attempt to implement order in their courtrooms by chiding attorneys who engage in conduct that is racist, misogynistic, or otherwise discriminatory. In response, their judicial temperament and bias

19. A group of judges of color issued a report on institutional racism within the New York court system. *See* THE JUDICIAL FRIENDS ASSOCIATION, REPORT TO THE NEW YORK STATE COURT'S COMMISSION ON EQUAL JUSTICE IN THE COURTS 45 (2020), https://www.nycourts.gov/LegacyPDFS/ip/ethnic-fairness/pdfs/Judicial-Friends-Report-on-Systemic-Racism-in-the-NY-Courts.pdf [https://perma.cc/9237-XQRT] ("Housing Court does not reflect the diversity of the community, either ethnically or with respect to race. This diversity is lacking both in the judiciary and among court attorneys. For example, in Kings County, over 80 [percent] of the population which utilizes the court as litigants are people of color. Further, these litigants are typically unrepresented. Of the fifty (50) New York City Housing Court Judges, fifteen (15) judges are assigned to Kings County, yet there are only three (3) judges of color in the borough."). Similarly, a group of Latinx and Hispanic judges in New York courts issued a report noting that out of fifty Housing Court judges, only four are Latinx. *See* SALLIE MANZANET-DANIELS, OVERVIEW OF LATINOS/HISPANICS IN THE NEW YORK COURT SYSTEM 2020 (2020), https://www.nycourts.gov/LegacyPDFS/ip/ethnic-fairness/pdfs/Overview-of-Latino-Judges-2020.pdf [https://perma.cc/E63P-LP94].

threshold are scrutinized as much or more than the attorneys' harmful conduct. It is yet another example of how inappropriate behavior is normalized.

An additional contributing factor to selective offense is the use of public interest work as cover for racism or bias. Why challenge a person's harmful behavior when they are supposedly doing the work of social or racial justice?[20] The "my best friend is Black" defense to allegations of racism becomes "my clients are Black," "my staff is Black," or "my courtroom litigants are Black." Proximity to people of color or any marginalized group is weaponized to inoculate the person engaging in harmful conduct. And so it becomes offensive and even unprofessional when a person identifies racism against such a person. The spoken truth: "I'm not like the virulent racists on our TV screen." The unspoken truth: "I could be like them thus I deserve recognition for even moderately attempting to be racially aware."

C. Justice Is Blind and the Reasonable Person Is White

On June 1, 2020, I learned that police officers killed a Black man in Minneapolis. Against my better judgment, I watched the video of the murder circulating on social media. The video depicted hatred, violence, and a visual display of antiblackness.

During the first days after George Floyd's murder, I questioned whether everyone watched the same video. There was unusual silence in the American workplace, including the legal sector. I am part of many different communities in the legal profession such as working groups, boards, and coalitions. Routine business emails continued. Since I spent years internalizing the bias threshold discussed in Subpart I.A, I began to wonder whether I was unprofessional for my inability to complete work due to trauma. I was jarred back to reality in an unexpected way. A former client of mine, a Black woman, emailed me: "Ms. Goodridge, with all that's going on, I just wanted to see if you were okay." I had

20. Anastasia Reesa Tompkin, *How White People Conquered the Nonprofit Industry*, NONPROFIT Q. (May 26, 2020), https://nonprofitquarterly.org/how-white-people-conquered-the-nonprofit-industry [https://perma.cc/JG3P-NDSN] ("The philanthropic sector, by its very nature and definition, purports to serve 'disadvantaged communities,' and over the years has presented itself as a more people-centered, equity-driven alternative to the cold corporate world. Due to historical racism and systemic inequalities, the majority of 'disadvantaged communities' are predominantly lower-income [B]lack and brown citizens, who have little social capital and little financial security. The nonprofit industry rakes in billions of dollars annually off the creation of programs and services designed with this demographic in mind. Then, white supremacy in a basic definition, means white people having the most access to and control over money, resources and people. If we sift through the centuries from slavery through segregation and ask whether there has been any distinct transference of wealth and power to [B]lack and brown people, the answer would be a resounding no.").

been operating on the lie that I was justified in ignoring the pangs of anxiety quietly roaring inside of me while I continued working to protect my clients. In five words—"with all that's going on"—my client forced me to confront the underbelly of American racism. In that moment of vulnerability, I replied that I was not okay. She responded with a lengthy Bible passage and words of encouragement that we will get through this.

I called Black colleagues and friends who also worked in public interest law in various positions to inquire if they were experiencing the same silence. I was not alone. One friend said, "I just saw a Black man get lynched on television and people are sending emails about service and motions. *What* is going *on*?" In almost all instances that I knew of, legal organizations were mostly silent until a person of color raised that the murder of George Floyd required more than a cursory mention—this was a racial reckoning.

Many people adhere to the axiom that discussion of politics in the workplace must be avoided in order to maintain a harmonious environment. In the legal profession, however, it goes beyond politics. Lawyers have been taught for centuries that thinking like a lawyer means putting all emotions aside.[21] Divesting of emotion for the sake of legal reasoning in and of itself is an exercise of privilege. For example, law students have been forced to complete exam questions that reenact situations such as Michael Brown's murder in Ferguson, Missouri.[22] Even the way law students are taught to view defendants and their circumstances is through the narrow prism of the reasonable person standard. The reasonable person is supposedly a raceless and genderless blank slate which parallels with the ideology that justice is blind. However, stripping identity from the reasonable person means that whiteness becomes the norm and lens which legal advocates

21. Susan A. Bandes, *Feeling and Thinking Like a Lawyer: Cognition, Emotion, and the Practice and Progress of Law*, 89 FORDHAM L. REV. 2427 (2021).

22. *See* Conor Friedersdorf, *At Law School, Is Insensitivity Grounds for Objection?*, ATLANTIC (Dec. 19, 2014), https://www.theatlantic.com/education/archive/2014/12/at-law-school-is-insensitivity-grounds-for-an-objection/383882 [https://perma.cc/F3FB-RT2U] ("Law Professor Eugene Volokh recently wrote about a controversial exam question at UCLA, where he teaches. The question noted a protest in Ferguson, Missouri, where the stepfather of Michael Brown, the unarmed man killed by police, reacted to news that Officer Darren Wilson would not be charged in the killing. Overcome with anger, he shouted to a crowd of protestors, 'Burn this bitch down!' Students were asked to write a memo analyzing how the First Amendment applies to such speech. Several complained. Said one UCLA student: 'These kinds of questions create a hostile learning environment for students of color, especially [B]lack students who are already disadvantaged by the institution.' The professor who gave the test agreed to adjust grades of test-takers who did worse on that question than the rest of their First Amendment exam."). *See also* Conor Friedersdorf, *Are Today's Law Students Tough Enough?*, ATLANTIC (Jan. 12, 2015) https://www.theatlantic.com/education/archive/2015/01/are-todays-law-students-tough-enough/384376 [https://perma.cc/HD8C-NHDJ].

look through. Though fictional and imaginary, the reasonable person in "its present manifestation, applied within the trappings of the past, becomes less reflective of the population that will soon become the majority, becomes less legitimate if law's purpose is to serve the People."[23]

Even in antiracist, progressive spaces, I observed how the law was envisioned as motion-writing, research, and oral arguments while racial and social justice were ancillary. Activities such as attending a protest related to the attorney's field or engaging in racial justice learning were seen as additional tasks to the legal work—even though they helped an attorney to have cultural competency to better understand their clients. I also observed that courts often inferred a dichotomy between the fields of housing and fair housing. Housing denotes Housing Court, which typically handles eviction and repair cases. Fair housing applies to cases pertaining to antidiscrimination laws such as the Fair Housing Act. In my experience, housing operates in a more colorblind fashion than fair housing. Some legal organizations have a racial justice best practice to name the client's race in legal motions. Other than the mention of a client's race in a motion, race or the role it plays is rarely emphasized in housing cases, even in a practice where people of color comprise the majority of tenants facing eviction, the effects of gentrification and systemic racism.[24] In contrast, a client's disability, income and contours of reasonable accommodation are more readily understood. I noticed that the actual teaching of race discrimination was not common and often referred to as a fair housing issue, even if the legal claims pertaining to race were squarely in legal codes related to eviction. This, of course, is a function of how the law and the reasonable person centers whiteness.

This occurs in other areas as well. After the murder of George Floyd, many legal institutions such as law firms, courts, and legal service organizations provided ongoing antiracism initiatives for their employees. Though there are multiple ways to discuss antiracism, equity, and inclusion, I noticed that in many instances, the framing focused almost entirely on white allyship. This meant that there were only rudimentary discussions of racism, (centering questions like: What does

23. Marvin L. Astrada & Scott B. Astrada, *Law, Continuity and Change: Revisiting the Reasonable Person Within the Demographic, Sociocultural and Political Realities of the Twenty-First Century*, 14 RUTGERS J.L. & PUB. POL'Y 196, 210 (2017).

24. In October 2020, I organized the conference *Good Trouble: A National Conversation on Black Lives Matter and Tenants' Rights*, sponsored by the UCLA School of Law Critical Race Studies Program and New York Law School. The conference featured all Black attorneys, organizers, and professors who work in anti-eviction. It was one of the first conferences to feature an all-Black panel in legal services speaking on Black lives. One of the many topics discussed was the concept of justice as blind and raceless. Critical Race Studies, *Good Trouble: A National Conversation on Black Lives Matter and Tenants' Rights*, YOUTUBE (Oct 6, 2020), https://www.youtube.com/watch?v=DmAezCniQGc [https://perma.cc/3EP4-23BF].

racism look like?) which did not allow for a more nuanced understanding of concepts like colorism, featurism, intraracial violence, and intersectional identities.[25] In addition, the tailoring of racial justice education for a white audience often resulted in examining race only through a Black and white binary. This excluded other racial groups such as Asian American and Pacific Islander and Native American. As a result, the only way for people of color in those rooms to participate was to be of service to the learning experience of their white peers rather than to process their own pain or even learn themselves.[26] This functions to make the purpose of the presence of marginalized groups to be useful to the education of their white peers.[27]

In fact, when I later asked non-Black people why there was stifling silence when the news first showed the murder, the responses were: "I did not know what to say," "I did not feel I had license to speak because I am not Black," "I thought it might be impolite to raise this topic at work," and "I did not think it was related to our work of eviction." Attorneys who represent people of color everyday still felt they did not have license to talk about race. This is a systemic reflection of how legal practice functions in a largely colorblind fashion.

25. In many ways, diversity in law school provided the testing ground for civil rights cases that would impact public schools throughout the nation. Four years before the U.S. Supreme Court decided the landmark decision *Brown v. Board of Education*, 347 U.S. 483 (1954), the Court ruled in another case about racial segregation in schools. In *Sweatt v. Painter*, Herman Sweatt, a Black man, challenged the decision by the University of Texas Law School to deny his admission because of his race. *See* 339 U.S. 629, 631 (1950). Ruling in Sweatt's favor, the Court made an interesting observation: "The law school, the proving ground for legal learning and practice, cannot be effective in isolation from the individuals and institutions with which the law interacts." *Id.* at 634. On its face, this seems to align with the idea that lawyers must reflect the communities they serve. But the key issue in the case was integration, therefore the point indicates that it would be beneficial for an all-white law school to admit Black students as an opportunity for white future lawyers to gain cultural competency. Like in *Grutter v. Bollinger*, the rationale for admitting Black students in the law school was not to recognize historical discrimination and exclusion of those Black students, but for the benefit of their white classmates to gain real world experience. *See* Grutter v. Bollinger, 539 U.S. 306, 308 (2003) ("But the Law School defines its critical mass concept by reference to the substantial, important, and laudable educational benefits that diversity is designed to produce, including cross-racial understanding and the breaking down of racial stereotypes. The Law School's claim is further bolstered by numerous expert studies and reports showing that such diversity . . . better prepares students for an increasingly diverse work force, for society, and for the legal profession.").

26. *See* Derrick A. Bell, Jr., Brown v. Board of Education *and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980); *see also* Derrick A. Bell, Jr., *Diversity's Distractions*, 103 COLUM. L. REV. 1622 (2003).

27. Symposium, *On* Grutter *and* Gratz*: Examining "Diversity" in Education*, 103 COLUM. L. REV. 1588 (2003).

II. ACCOUNTABILITY: DECONSTRUCTING PROFESSIONALISM AS A RACIAL CONSTRUCT

After laying out my experiences and thoughts on professionalism as a racial construct, it is time for you to take action. The first step is to absorb this Essay in its entirety and identify what your role has been: target, bystander, accomplice, challenger, or perpetuator of professionalism as a racial construct. If it is difficult to identify your role, ask yourself how you are reacting to this Essay. Are you defensive? Ready to share it privately to an individual colleague? Ready to share it publicly to all of your colleagues? Or are you reticent about sharing this Essay with colleagues because you believe it will negatively impact your career? Will you ignore this Essay entirely? How you react to this Essay—the experiences of a Black woman attorney speaking on professionalism as a tool for white supremacy—may correlate with the role you play in challenging it within your own institution.

Next, send the Essay to family or friends to discuss ways that you can (further) challenge professionalism as a racial construct. The basis of professionalism as a racial construct is the belief that the racial hierarchy which produces the phenomenon will remain the same and that practitioners will adapt to it rather than challenge it. Since it has been deeply inculcated into the legal practice and American workforce, these conversations may prove difficult and enlightening because fear of change undergirds much of the perpetuation of professionalism as a racial construct.

The next step is to send this Essay to your colleagues for a discussion at the next staff meeting. You can discuss the Essay generally or discuss the Subparts over multiple meetings. The main question should be: How does professionalism as a racial construct manifest at this institution?

Moving forward, in order to disrupt professionalism as a racial construct, you must name it by using the framework in this Essay to identify the conduct as it happens. For example, you can say:

> Why are you so bothered that Jane, a Black woman, called out an attorney for his racist conduct but you do not have this same reaction towards John, a white man, who still cannot correctly pronounce the names of people of color after ten years of working here? This seems like selective offense.

> Your Honor, opposing counsel has interrupted me several times and there has been no warning of contempt or forcing them to

> leave the courtroom. Are my client and I expected to silently endure this—a high bias threshold—during this proceeding?
>
> Respondent is Chinese American and lives in the Soho section of New York. The area has historically been comprised of 70 percent Asian American and Pacific Islanders; however in the last decade, that population has drastically declined due to gentrification, redlining and displacement. This eviction case is not divorced from that. Respondent would like to remain in her community.

In writing this Essay, I had an internal tug of war in speaking about my experiences and those of many people of color in the legal profession. I struggled with the reality that some will be more offended by reading the truth of professionalism as a racial construct on these pages than the fact that it exists in the halls of courthouses, law firms and legal organizations. I almost quelled my own voice and the fire within. Then I remembered the court appearance in 2020, after George Floyd's murder, where the Black judge and I both had weary eyes which met, for a moment, as opposing counsel rattled on about the eviction moratorium. I remembered brunch with friends when they spoke about being the first generation of Black, Latinx, and Asian immigrant parents and internalizing the bias threshold—sacrifices their parents made to come to this country meant ignoring and tolerating racism at work. I remembered the many times I watched people of color shy away from staunch racially progressive positions under a belief that disassociation would help them appear more professional. I remembered the conversations with relatives, friends, and colleagues of color, venting and processing a racist incident and in determining how to respond, the pendulum swinging between comfort of white peers, self-respect, and rage. And I remembered using chemicals to destroy and straighten my natural hair during job interviews in law school in the hopes of increasing my chances of securing employment. I remembered all of these contours of professionalism as a racial construct. And I remembered my own duty to disrupt the system and get in good trouble.