

PROCEEDINGS

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PROFESSIONAL IDENTITY AS LAWYERS AND WRITERS

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ISSUE 2

The first two essays in this issue resulted from a webinar organized in Spring 2023 by the Legal Writing Institute's Diversity and Inclusion Committee. Entitled "Engaging Students in Purposeful Education on Race, Ethnicity, and the Law," the webinar presented two concrete experiences for disrupting students' thinking about law as race-neutral and transforming their understanding of race and ethnicity through dialogue. The next two essays are from presentations at a regional conference the prior fall. One introduced a qualitative research project on how white, male lawyers think about and talk about diversity, centering their whiteness. The final essay explains a capstone project for welcoming students into the discourse community of lawyers. Together, the essays go to the heart of professional identity: who we are as lawyers, how we disrupt assumptions, and how we welcome the next generation of lawyers to our community.

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ISSUE 2

~~ORIENTATION~~ REORIENTATION TO DISMANTLE THE LEGAL NEUTRALITY MYTH

VANITA “SALEEMA” SNOW¹

I. Introduction

The relationship between race and the law runs deep.² Appropriately, the American Bar Association (ABA) is now mandating law schools address this relationship as a professional identity standard.³ Repeatedly, the law argued in many courtrooms remains filled with flawed assumptions about legal neutrality—assumptions the Black Lives Matter movement challenged and various statistics support.⁴ In *Utah v. Strieff*, Justice Sotomayor, in her dissent, also provided a stark reminder of the systemic impact of discriminatory policing.⁵

¹ Professor of Law, University of the District of Columbia David A. Clarke School of Law. This essay is drawn from Professor Snow’s presentation in a webinar entitled Engaging Students in Purposeful Education on Race, Ethnicity, and the Law, which was sponsored by the Legal Writing Institute’s Diversity and Inclusion Committee on March 29, 2023.

² Kevin R. Johnson, *Race Matters: Immigration Law and Policy Scholarship, Law in the Ivory Tower, and the Legal Indifference of the Race Critique*, 2000 U. Ill. L. Rev. 525, 532-33 (2000) (arguing facially neutral immigration policies prioritize white immigrants). See generally Civil Rights Div., U.S. Dep’t of Just., *Investigation of the Ferguson Police Department* 15-41 (2015), <https://www.courts.mo.gov/file.jsp?id=95274> (documenting the disparate impact law enforcement practices have on African Americans).

³ Am. Bar Ass’n Section of Legal Educ. & Admissions to the Bar, *ABA Standards and Rules of Procedure for Approval of Law Schools*, ABA 17-27, Chapter 3, Standard 303(c) (2023), <https://law.wm.edu/currentstudents/2022-2023-aba-standards-and-rules-of-procedure-for-approval-of-law-schools-chapter-3.pdf> [<https://perma.cc/4CSD-7R79>] [hereinafter ABA].

⁴ *The Latest: Black Groups in Cincinnati Upset by 2nd Mistrial*, The Associated Press: U.S. News (June 23, 2017), <https://perma.cc/EH3G-R96Q>.

⁵ *Utah v. Strieff*, 579 U.S. 232, 254 (2016) (Sotomayor, J., dissenting).

In legal practice, the law is not neutral. However, when students begin law school, professors encourage them to apply the black letter law neutrally to various hypotheticals.⁶ This approach overlooks that race matters. Race matters with defendants, plaintiffs, juries, judges, and lawyers. After the first year, law school clinics or other experiential opportunities are often where students begin to understand that the law is a human experience. It is a human experience filled with biases—some implicit and others explicit.

ABA standard 303(c) begins this process of reorienting law students about our imperfect legal system. The standard provides: “A law school shall provide education to law students on bias, cross-cultural competency, and racism: (1) at the start of the program of legal education, and (2) at least once again before graduation.”⁷ The standard creates an opportunity to begin the uncomfortable work of using law school Orientation to question lawyers’ roles to rectify racial inequities.

The University of the District of Columbia David A. Clarke School of Law (UDC Law) uses reflective lawyering practices as an initial vehicle for law students to understand what professional identity encompasses. Using Richard Rothstein’s *The Color of Law*,⁸ students explain, analyze, and question racialized housing laws and the students’ professional responsibility to dismantle racism. In this essay, I seek to share experiences associated with how students responded to *The Color of Law* assignment. I also highlight how reflective lawyering practices aligned with choices made, lessons learned, and work to be done. I begin with why I chose a housing topic.

II. Why Housing?

Law students generally understand the importance of a home and the nuanced difference between a house as a physical structure and a

⁶ Peter L. Davis, *Why Not a Justice School? On the Role of Justice in Legal Education and the Construction of a Pedagogy of Justice*, 30 Hamline L. Rev. 513, 526-28 (2007).

⁷ ABA, *supra* note 3, § 303(c).

⁸ Richard Rothstein, *The Color of Law* (2017).

home as a place of security.⁹ In a global context, South Africa, France, Belgium, and Cuba recognize the right to housing in their constitutions.¹⁰ In the United States, the Fourth Amendment memorializes and protects the sanctity of the home.¹¹

Students also quickly recognize that housing affects other aspects of people's lives, beyond shelter. For example, people who are unhoused have a ten-times greater risk of suicide.¹² Youth without permanent housing are more prone to depression than housed youth.¹³ Women who are unhoused experience sexual violence at rates significantly higher than housed women.¹⁴ Survivors of intimate partner violence may stay in abusive relationships because they lack alternative housing.¹⁵ Having permanent housing is also associated with being a member of a community and being whole. Often the first question we ask someone is where they live. Thus, housing is more than a building. It is a safety net. The law can protect and strengthen the net with strong tenant rights, enhanced due process protections for foreclosures, and financial assistance for those seeking housing. As Rothstein demonstrates, the law can also erode those rights.¹⁶

⁹ Karla V. Mardueno, Comment, *Fostered or Forgotten? Leveling the Playing Field for Foster Youth Aging Out of the Foster Care System*, 62 How. L.J. 989, 999-1000 (2019).

¹⁰ Maria Foscarinis, *TWENTIETH ANNIVERSARY REFLECTIONS: The Growth of a Movement for a Human Right to Housing in the United States*, 20 Harv. Hum. Rts. J. 35, 37 (2007) (referencing South Africa, France, and Belgium having constitutional right to housing and U.S. Constitution not). Article 71 of the Cuban Constitution provides: "The State recognizes the right to adequate housing and a safe and healthy home for all people." *Cuba's Constitution of 2019*, Constitute Project art. 71 (Apr. 27, 2022), https://www.constituteproject.org/constitution/Cuba_2019.pdf?lang=en; [<https://perma.cc/86H5-5SD8>].

¹¹ U.S. Const. amend. IV.

¹² *Suicide and Homelessness*, Nat'l Health Care for the Homeless Council 2 (May 2018), <https://nhchc.org/wp-content/uploads/2019/08/suicide-fact-sheet.pdf>.

¹³ *Id.*

¹⁴ Lisa Goodman et al., *No Safe Place: Sexual Assault in the Lives of Homeless Women*, VAWnet: The Nat'l Online Res. Ctr. on Violence Against Women 2-3 (Sept. 2006), https://vawnet.org/sites/default/files/materials/files/2016-09/AR_SAHomelessness.pdf.

¹⁵ Brenda V. Smith et al., *Domestic Violence in the United States: A Preliminary Report Prepared for Rashida Manjoo, U.N. Special Rapporteur on Violence Against Women*, Am. U. Digital Commons 55 (Apr. 18, 2011), https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1034&context=fasch_rpt.

¹⁶ Rothstein, *supra* note 8.

Accordingly, choosing an Orientation housing topic was deliberate. A housing theme creates familiarity across ethnic, racial, economic, and gender spectrums. This common ground is particularly important to reduce student resistance to discussing legal neutrality and race. The housing topic also effectively facilitates the Reorientation process.

III. Reorientation

The UDC Law Reorientation assignment demonstrates to students that the foundation of *stare decisis*—similarly situated facts and issues will result in similar outcomes—is foundationally flawed when viewed through a racial justice lens. However, reorienting students to a new perspective cannot be a “one and done” approach. Concededly, the UDC Law Orientation assignment simply begins students’ identity formation as legal professionals.

A. Reorienting Assignment

UDC Law actively engages new law students in thinking and writing about bias, cross-cultural competency, and racism before the fall semester begins. During the summer, the Director of Legal Writing identifies and assigns students their “first formal legal writing assignment,” which includes required reading. Most recently, students read Richard Rothstein’s book *The Color of Law*. Rothstein examines government policies that have perpetuated racially segregated communities. After reading the book, students are instructed to draft an essay with three major parts: description, critical analysis, and reflection. For the description, the instructions require students to provide a brief overview of the author’s purpose and structure of the book. For the critical analysis, students identify the sections they find most important, including the most persuasive points in the book. Students’ evaluations must also include whether the book adds value to the discussion about race, economic justice, and housing equality. Finally, students must reflect on their role as future lawyers concerning the issues raised.

Once students arrive for Orientation, professors divide them into discussion groups to analyze the overall themes of the assigned book topic. Through guided discussion prompts, students explain, analyze, and question their understanding of race and housing laws. Most significantly, students are encouraged and guided to think reflectively, including reflecting on past personal experiences to build creative solutions.

Notably, there are various stages of reflection, beginning with a naïve state of dismissing alternative views and moving to an optimum stage of reevaluating problems from diverse perspectives. The goal is to move students to the optimum stage of self-reflection, even when confronted with systems of authority, such as courtrooms and judges.¹⁷ Students are encouraged to meet this goal through deliberate reflection, a self-development process requiring multi-dimensional thinking.

B. Student Response

Students' responses to the Reorientation assignment varied and shifted at Orientation stages. For example, one white cisgender male declared at the end of a privilege walk discussion, "We are all here now."¹⁸ Despite being at the head of the privilege walk, he still felt there was a level playing field and prior racial barriers were insignificant to current opportunities. It was a heated moment for an introductory exercise, but a needed, unexpected conversation. His statement was likely part of a great concern—student resistance.

Despite the ABA mandate, discussions about race are frequently met with skepticism, discomfort, and even aggression. Students are not self-selecting to take a Critical Race Theory class. Instead, they are

¹⁷ Laurie Morin & Louise Howells, *The Reflective Judgment Project*, 9 *Clinical L. Rev.* 623, 627-29 (2003).

¹⁸ During Orientation, as a precursor to discussing *The Color of Law*, students participate in a privilege walk. The privilege walk begins with students standing on a horizontal line, as if starting a race. Through a series of questions, students are asked to take a step forward or backward based on their response. For example, step forward if either of your parents graduated from college. Step backward if you took out loans for your education. No questions involve race. However, for the past six years doing the exercise, cisgender white men have consistently been at the front, with black females at the back. It is a stark visual reminder of collateral effects of race.

enrolled in a mandatory Orientation, where they likely expect logistical and substantive information about how to succeed in law school. Thus, some students may initially find the conversations, assignments, and discussion groups part of a liberal agenda or, perhaps even more simply, a waste of their time. Convincing students of the subject's value may require even greater foresight and creative approaches.

However, this challenge is not new to legal writing professors. Students often come to law schools convinced that they are strong writers and thus automatically strong legal writers. Their legal writing courses often require weekly deliverables, sometimes with fewer credits than other courses. Students may resist and, in some instances, resent the time invested in the course or the feedback they receive. With engaging legal writing class exercises and problems, guest speakers, and summer internships, students quickly learn that lawyers are professional writers. Retrospectively, most students value the skills and substantive knowledge acquired in legal writing courses.

Similarly, getting students to see the value of ABA standard 303(c) may not be immediate. At UDC Law, students welcomed reading the assigned book and writing a reflective essay, largely because they wanted to jump into law school. However, once they were placed in discussion groups and the hard and uncomfortable work of reflecting began, students struggled with engaging on the topic. Despite the bumps in the road, at the end of Orientation, students were overwhelmingly interested in how to fix the housing problem and the racialized legal system they are entering. The culminating exercise asked students to identify one word that summarizes the fix for addressing racialized legal system. Below is the snapshot of the Mentimeter word cloud. As documented, "accountability" was the most popular word chosen.

professional identity requires first exploring with them expectations of our self-regulated profession. Any Orientation program, even this Reorientation program, simply starts the journey to build law students' self-awareness. We are merely dipping students' toes into issues of race and legal practice, and little success will happen without knowledge transfer into practice. One goal is to ensure that the way students begin their professional identity in law school is not the way that they end in practice.

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INTERGROUP DIALOGUE: ENGAGING LAW STUDENTS IN TRANSFORMATIVE CONVERSATIONS AROUND RACE AND ETHNICITY

DEBORAH SUNDQUIST O'MALLEY¹

A mind “stretched by a new idea . . . never
shrinks back to its former dimensions.”

-Oliver Wendell Holmes Sr.²

The American Bar Association (ABA) and leaders within the legal field continue to call upon law schools to train our students as leaders for tomorrow. To put this call into action, the ABA House of Delegates in February 2022 revised the law school accreditation standards to include a requirement that law schools “provide education to law students on bias, cross-cultural competency, and racism.”³ This addition to Standard 303 recognizes that cross-cultural competency is important to professionally responsible legal representation and lawyers’ obligation to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law.

While the new standard requires that cultural competency training be provided twice during the program of legal education, it does not

¹ Associate Professor of Legal Analysis, Research, & Communication at Saint Louis University School of Law since fall 2022. This essay summarizes Professor O’Malley’s presentation in a webinar entitled Engaging Students in Purposeful Education on Race, Ethnicity, and the Law, sponsored by the Legal Writing Institute’s Diversity and Inclusion Committee on March 29, 2023.

² See Oliver Wendell Holmes Sr., *The Autocrat of the Breakfast-Table: Every Man His Own Boswell*, *The Atl. Monthly*, Sept. 1858 at 502.

³ Section of Legal Educ. & Admissions to the Bar, Am. Bar Ass’n, *Report to the House of Delegates*, No. 300, Standard 303(c), at 4-5 (Feb. 2022), <https://www.americanbar.org/content/dam/aba/administrative/news/2022/02/midyear-hod-resolutions/300.pdf>.

specify the form or content of the training.⁴ One way law schools can engage their students in purposeful education on racism and bias is through intergroup dialogue. Through the process of intergroup dialogue, students engage with diverse perspectives through a facilitated face-to-face conversation that encourages learning across differences.

I witnessed the power of intergroup dialogue firsthand in fall 2018, when I obtained a grant to bring a facilitated intergroup dialogue on race and ethnicity to student leaders at my law school. Over the course of ten hours, ten law student government and organization leaders met to discuss the impact of race, racism, and their experience with diversity throughout the course of their lives and in society. The experience included activities, readings, and short videos on institutional and structural racism, along with hours of group discussion. The students were urged to listen actively, to understand, to suspend judgment, and to use collaborative rather than combative discussion.

Ultimately, student participants reported that the experience helped them to recognize and appreciate different perspectives, and several acknowledged that what they learned impacted their work as student leaders. They reported increased comfort in discussing race and ethnicity and more willingness to speak up if they heard an offensive comment or joke. Months later, participants reported that the experience of dialogue had stayed with them and continued to impact the way they thought about race and racism.

In this essay, I provide background into the process of intergroup dialogue and explain its key characteristics. I then describe the intergroup dialogue on race and ethnicity that I organized, including its content and the steps taken in its wake. Finally, I summarize the benefits and offer additional considerations for law schools contemplating bringing intergroup dialogue to their institution.

What is Intergroup Dialogue?

While dialogue has long been used to bring individuals and groups together to address conflict, late in the last century the process of intergroup dialogue emerged as a means to engage across social

⁴ *Id.* at Interpretation 303-8 (“Standard 303 does not prescribe the form or content of the education on bias, cross-cultural competency, and racism required by Standard 303(c).”).

differences in a strategic and meaningful way.⁵ Intergroup dialogue brings together a group of people of diverse backgrounds who, guided by two facilitators, have a sustained, facilitated conversation about their differences.⁶ Rooted in prejudice-reduction education,⁷ the goals of intergroup dialogue include developing self-awareness around one's identity and systems of power and privilege, examining the similarities and differences between social groups and their impact, and fostering alliances among participants.⁸ For several decades, intergroup dialogue has been implemented to address race and other social group boundaries in communities, educational institutions, and workplaces across the country.⁹

Contemporary intergroup dialogue on social identity has several common characteristics. First, it brings together individuals from “two or more social identity groups with a history of conflict or potential conflict.”¹⁰ Examples of groups with such socially constructed distinctions include those based on race, ethnicity, gender, sexual orientation, ability, or religion.¹¹ The presence of diverse perspectives is key, as dialogue members discuss their personal experiences with identity in the process of breaking down misconceptions and barriers. Furthermore, the group size is small—fewer than eighteen participants—to encourage relationship-building and engaged interaction.¹²

A second important feature of intergroup dialogue is sustained conversation. Group discussions take place over several hours and many sessions, usually over weeks or months.¹³ This is to facilitate members'

⁵ See Adrienne Dessel & Mary E. Rogge, *Evaluation of Intergroup Dialogue: A Review of the Empirical Literature*, 26 *Conflict Resol. Q.*, 199, 200 (2008); David Schoem et al., *Intergroup Dialogue: Democracy at Work in Theory and Practice*, in *Intergroup Dialogue: Deliberative Democracy in School, College, Community, and Workplace* 1, 1-2 (David Schoem & Sylvia Hurtado eds., 2001).

⁶ See Dessel & Rogge, *supra* note 5, at 201, 211.

⁷ See Patricia Gurin et al., *Dialogue Across Difference: Practice, Theory, and Research on Intergroup Dialogue* 12 (2013).

⁸ Ximena Zúñiga et al., *Intergroup Dialogues: An Educational Model for Cultivating Engagement Across Differences*, 35 *Equity & Excellence in Educ.* 7, 7-8 (2002).

⁹ See Schoem et al., *supra* note 5, at 7.

¹⁰ Zúñiga et al., *supra* note 8, at 7.

¹¹ *Id.*

¹² Schoem et al., *supra* note 5, at 7.

¹³ *Id.* at 8.

ability to form empathic connections and explore controversial topics more fully.¹⁴

Third, an intergroup dialogue is led by skilled facilitators who are trained in the dialogic method. Often the individuals represent two or more of the social identities that are present in the room.¹⁵ For example, in a dialogue on race and ethnicity, the two facilitators would represent two different races of participants in the room: thus, one may be a person of color and one may be white. The co-facilitators' roles are to structure and support participant engagement, model effective dialogue skills and strategies, and encourage meaningful exchanges and constructive conflict.¹⁶

One additional feature of an intergroup dialogue is that it is collaborative, not combative. Participants enter the process with the understanding that the dialogue will raise contentious issues through readings, media, activities, and group discussion. Nevertheless, participants discuss early on that the goal of the interactions is dialogue, not debate.¹⁷ In the first session, facilitators may share with participants the key differences between dialogue and debate, as shown below.¹⁸

Debate	Dialogue
Winning is the goal	Finding common ground is the goal
Combative: attempt to prove the other side wrong	Collaborative: work together toward common understanding
Whole-hearted investment in one's beliefs	Suspending one's beliefs
Listen to find flaws and make counterarguments	Listen to understand, to find meaning and agreement
Defends assumptions as truth	Reveal assumptions for reevaluation
Critiques the other side's position, seeks flaws and weaknesses	Re-examines all positions, searches for strengths and values in others
Seeks a conclusion that ratifies your position	Open-ended, without closure

¹⁴ Zúñiga et al., *supra* note 8, at 8.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See id.* at 10.

¹⁸ Daniel Yankelovich, *The Magic of Dialogue: Transforming Conflict into Cooperation* 39-40 (1999).

At its best, intergroup dialogue calls upon participants to “confront and leave behind the narrow lens through which they have previously viewed the world around them.”¹⁹ Indeed, studies on the benefits of intergroup dialogue suggest that participant changes include increased personal and social awareness about identity and difference; reduced stereotyping; improved communication skills; more complex thinking; a greater ability to manage conflict; and greater commitment to social responsibility and action.²⁰

Intergroup Dialogue for Student Leaders

In spring 2018, while a member of the Syracuse University College of Law community, I was awarded an internal university grant to bring a facilitated dialogue on race and ethnicity to the College of Law. The grant covered a single facilitated dialogue, which a local non-profit would plan and facilitate, in consultation with me. I invited law school student government and organization leaders to apply to participate in the dialogue. I hoped these leaders would form positive relationships, model this behavior for others in their orbit and, ultimately, impact the behaviors of other members of the student body toward collaboration and support.

Thus the “Student Leader Transformative Dialogue” (SLTD) was born, with 12 participants.²¹ Ten student leaders self-identified as black; Hispanic/Latinx; white; first-generation law students; and LGBTQ. To show that the College of Law was invested in the process, we included one staff member, and I served as the faculty participant.

Our dialogue group met for ten hours of discussion, facilitated by two trained members of the non-profit group’s organization. The ten hours were divided into five two-hour sessions, each with different goals. These goals were tailored to align with the framework that is typical to intergroup dialogue: first, to introduce the dialogue and to begin forming

¹⁹ Schoem et al., *supra* note 5, at 13.

²⁰ Sylvia Hurtado, *Research and Evaluation on Intergroup Dialogue*, in *Intergroup Dialogue: Deliberative Democracy in School, College, Community, and Workplace* 22, 30 (David Schoem & Sylvia Hurtado eds., 2001).

²¹ Student participants included Student Bar Association and 2L class leaders, student organization presidents, and upper-class student mentors for 1L students.

and building relationships; then, to explore differences and commonalities in experience; next, to learn and to dialogue about hot topics; and finally, to bring closure to the group discussion through brainstorming and action planning.²²

The feedback on the SLTD was overwhelmingly positive and created a remarkable forward momentum. Participants reported that as a result of the dialogue they were more aware of the impact that race and ethnicity had on their lives. Many stated that they were more open minded and felt more comfortable discussing issues of race and ethnicity than before they participated in the dialogue group. They felt motivated to do more.

In fact, once the intergroup dialogue activity was complete, the students decided to continue meeting to strategize about ways to bring what they had learned and experienced to their organizations and the larger student body. For example, one of the things that had come out in the dialogue was that the students felt their organizations were siloed; they felt that their organizations were not supported by students outside their group. During a subsequent meeting, they made a pact to attend one another's events and to bring at least one friend along.

The students from the SLTD took their findings to the College of Law's Committee on Inclusion Initiatives, whose members included faculty, staff, and students. During their presentation, they shared their feedback on the dialogue group experience and urged the Committee to bring more dialogue groups to the law school community. Afterward, members of the Committee worked with a dialogue expert across campus to develop and facilitate future dialogue groups for law students.

Looking Forward: Benefits and Challenges

Participating in an intergroup dialogue presents an opportunity for law students to develop skills they will use as attorneys—active listening, asking questions to deepen understanding, and working with those with

²² See Zúñiga et al., *supra* note 8, at 10-12 (describing the four-stage developmental design intergroup dialogue model, including Stage I: Group Beginnings: Forming and Building Relationships; Stage II: Exploring Differences and Commonalities of Experience; Stage III: Exploring and Dialoguing about Hot Topics; and Stage IV: Action Planning and Alliance Building).

different perspectives. These may be skills that students don't have a chance to practice much, if at all, in their other law school classes.

Law schools that implement intergroup dialogue have the potential to impact the student body and the overall culture at the institution. The collaborative spirit of the intergroup dialogue offers an alternative to the debate culture—and competition—that is fostered in law school.

Past participants of the SLTD say the dialogue experience remained with them beyond graduation. Through the dialogue experience, the participants experienced empathy and understanding for the different identities that existed in the group. This deeper understanding across identities will undoubtedly increase their ability to work in multicultural teams, to successfully navigate diverse workplaces, and to better serve their clients.

These experiences can be challenging, so a school considering intergroup dialogue should be strategic. First, the institution should consider its goals and isolate the target audience for the dialogue activity. Should only student government and/or student organization leaders be invited to participate? Or will it be geared toward first-year students? Upper-class students? The entire student body? The target audience should be selected strategically to ensure that the institution will meet its goals. Furthermore, the organizers should consider the vehicle for the dialogue implementation. Depending on its goals, the institution might consider implementing dialogue as an orientation activity; as part of student leader training; as an extra-curricular event offered by the law school; or within a credit-bearing course.

Further, intergroup dialogue seems to work best when the participants are willingly engaged, or at least open-minded as they enter the experience. If it is a mandatory activity, for example, it may not be as rich of an experience because the sharing and vulnerability may be one-way, which will impact group dynamics.

Another consideration around this experience is the criticism that the benefits of dialogue may not be shared equally across the participants. Specifically, there is research to suggest that this experience benefits so-called dominant groups, or majoritized participants, more readily.²⁵

²⁵ Dessel & Rogge, *supra* note 5, at 227.

Facilitators of the dialogue would need to monitor the group carefully to ensure that minoritized voices are not exploited through the process.

Finally, intergroup dialogue may require significant resources, given the time and effort that goes into planning a dialogue and training its facilitators, as well as the small number of participants. However, there are options. The law school might identify a local non-profit or another department on campus that is trained in the dialogue process, as we did for the STLD, and receive materials and facilitators for free or at a reduced rate. Alternatively, the law school might choose to develop its own materials and build a dialogue program from the ground up. Each year, the University of Michigan Program on Intergroup Relations (IGR) hosts a training conference for academic institutions interested in developing their own intergroup dialogue materials using the IGR model.²⁴

Conclusion

The potential benefits of intergroup dialogue extend far beyond fulfilling the ABA cultural competency standard. Through my experience with the SLTD and in my years of developing materials and facilitating dialogue groups, I can attest that intergroup dialogue participants confront issues around racism and bias in a unique and, for many, transformative way. Law school administrators and educators who are looking for a high-impact DEI activity that has the potential to affect their students, their law school community, and ultimately the legal profession should consider incorporating intergroup dialogue into their program of legal education.

²⁴ See *The Program on Intergroup Relations*, Univ. of Mich., <https://igr.umich.edu> (last visited Apr. 24, 2023).

THE PALE VEIL: DECENTERING WHITENESS AS POWER AND COMMUNICATION NORMS IN THE LEGAL PROFESSION

LESLIE PATRICE CULVER¹

Overview

While academic literature is filled with works discussing whiteness as a construct, few works have explored the white man's voice on his own terms. *The Pale Veil*, my current project, does just that. Focusing on the American legal profession, this work is grounded in qualitative research and provides a unique account of how white, male lawyers think and talk about diversity. Along with two co-researchers, I used a phenomenological approach to interview approximately fifty lawyers across the country. This project focuses only on those who were perceived or identified as white males.

Presented as constructed vignette autoethnography, our critical postmodern approach highlights behaviors that maintain the white males' lives and experiences as the referent point of normalcy, making them blind to their own centering of whiteness. It further challenges white male essentialism and pushes for a reimagining of the relationship between whiteness and power. Ultimately, the goal of the project is to shift the gaze for the white male beyond their veil toward the oft invisible Other, inviting him in as a listener to recognize historical privilege and power and to be equipped to partner as an agent of change toward equality and inclusion.

¹ Leslie Patrice Culver is a Professor (Clinical) at University of Utah S.J. Quinney College of Law. She presented the ideas in this essay at the Western States Legal Writing Conference at the University of Oregon School of Law in October 2022.

The Research

In the fall of 2018, myself and my two co-researchers from the communication discipline collaborated on a research project titled *The Communicative Lived Experiences of Lawyers: A Phenomenological Inquiry*.² I was the Principal Investigator for this research project, and I am the sole author of the data analysis for the current project, *The Pale Veil*.

In the spring of 2019, we three Researchers interviewed attorneys both across the country and across varying identities. The interviews were guided by the following approved research questions:

- How do lawyers describe their everyday communicative experiences?
- How, if at all, do these communicative experiences differ depending on identity, context, and/or audience?
- How do these communicative experiences compare to expectations that lawyers had of the profession?

According to the ABA's 2022 Profile of the Legal Profession, the legal profession is 81% white and 62% male.³ This ABA profile is important to the current project for two reasons. First, given the homogeneous nature of the legal profession, *The Pale Veil* focuses only on the ten interviews⁴ with those who presented or self-identified as white males. Second, because the legal profession is heavily driven by data—counting its members more so than recounting their stories—I did not believe the legal discipline held the tools to help me authentically explore the stories of these white males. Thus, the communication discipline heavily informs the methodology used in *The Pale Veil*. The primary research paradigm is

² I acknowledge my co-researchers, Dr. Mark P. Orbe (Western Michigan) and Dr. Robert Razzante (ASU), who were central to creating the foundations of the larger national study, including the university-approved IRB documents. Collectively, I refer to the three of us as "Researchers."

³ *Profile of the Legal Profession 2022*, ABA, <https://www.abalegalprofile.com/demographics.php#anchor3> (last visited Feb. 20, 2023).

⁴ Special Note: As I am the only woman and African American co-researcher, the Researchers collectively decided that I would not personally interview, or sit in on the interviews of, any white male attorneys.

a constructed vignette⁵ autoethnography⁶ that uses a critical⁷ postmodern⁸ paradigmatic framework. Yes, that's a mouthful, but the footnotes provide a deeper meaning of the terms.

Here is the CliffNotes version: I wanted to narrate this research as a story (not as data), where, as a co-researcher, I had the credible space to include my own voice and reflection as I explored a deeply rooted problem that is simply difficult to remedy and also highlighted marginalized views that are often ignored. Ultimately, critical researchers question common sense assumptions and remain concerned with powerlessness being viewed as normal.

The Methodology

All the interviews for the research project were transcribed and resulted in close to 600 pages of transcript. Focusing first on the interviews of white males, I read through each transcript and noted words and phrases of the phenomenon (or interviewer) that triggered an emotional reaction as it related to the larger project of cultural awareness in the legal profession. Next, I created a digital mind map (see below) to catalog both the triggering statement and related content across individual interviews and focus groups, so I could

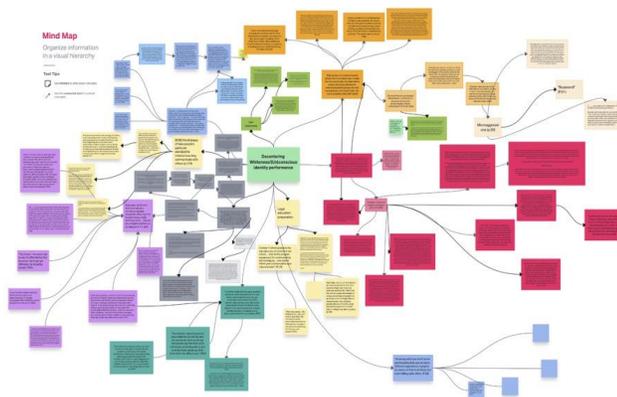
⁵ A vignette generally “add[s] to the richness of the analysis as the personal leads into the academic reflexive voice.” Jayne Pitard, *Using Vignettes Within Autoethnography to Explore Layers of Cross-Cultural Awareness as a Teacher*, 17:1 Forum: Qualitative Social Research (Jan. 2016), <https://www.qualitative-research.net/index.php/fqs/article/view/2393/3922#g3>. Constructed vignette is “a focused description of a series of events constructed from various sources of data and typically considered to be representative, typical or emblematic.” Sarah J. Tracy, *Qualitative Research Methods: Collecting Evidence, Crafting Analysis, Communicating Impact* 263 (2020).

⁶ Two types of viewing and analyzing stories are ethnography and autoethnography. Autoethnography places the researcher in the center of the cultural interaction, as they “explore[] the impact of an experience on the writer[,]” and holds the researcher accountable for their “situatedness in systems of power and privilege.” Pitard, *supra* note 5; Tracy, *supra* note 5, at 69 (cleaned up).

⁷ Critical paradigm is rooted in the belief that “[k]nowledge is constructed through communications and historical power relations.” Tracy, *supra* note 5, at 42. In other words, the connections of knowledge to power frame how we view the world.

⁸ Critical research can fall into a positivist (realist or modern), or post-modern camp. A post-modern/positivist view assumes a true reality, but presumes that the full nature of this reality cannot be fully known, and thus is unstable and can shift. Tracy, *supra* note 5, at 55-56.

begin to see broader themes, which will eventually comprise the book chapters.⁹



The Purpose

The primary purpose of *The Pale Veil* is to push for a reimagining of the relationship between (1) whiteness and (2) power and communication norms in the American legal profession. Of relevance, the roots of the legal profession originate from a long-standing, homogeneous system built on whiteness. For decades, the legal profession has grappled with its homogenous branding with little success beyond a myriad of national reports echoing the same message: the white male dominates. Law firms continue to wave their banners of diversity through tokenizing people of color on websites and marketing materials, offering special diversity career pathways for unsuspecting law students of color, and employing a dizzying number of people in trending DEI (diversity, equity, inclusion) positions. Yet still the needle of change barely moves.

The events of 2020 starkly exposed both the failure of organizations around the world to process ethnic divides and injustices, and the need to gain skills to create meaningful change and lasting impact. Legal education was one such institution that saw the need to better equip its educators and students in this space. Thus,

⁹ Because I have been working on this project for many years, and the chapter titles and related content continue to grow as I grow, I've opted not to set out tentative chapter titles or excerpts from the interview transcripts in this essay.

during the summer and fall of 2020 much was written and discussed about the ways in which law faculty might pedagogically teach race, racism, and related inequities in the classroom. But the elephant in the room still heavily lingered, and while 2020 grossly reminded us of the hegemony of a particular ethnic group in the legal profession, we seemed unable to discuss how to grapple with the reality of the “white male lawyer” archetype in a meaningful and non-threatening or divisive way.

Sadly, traditional professional responsibility and related courses also fail to meaningfully inform students about the origin of the white male archetype and its current dominance within the legal profession—and further that such origins mandate that certain cultural groups have identity strategies as a means of emotional, mental, and professional survival. For white law students, understanding the reality of a historically white profession that daily intersects with multiculturalism and gaining tools to bridge cultural gaps are particularly important because a whiteness construct can act as a blind spot for well-meaning white lawyers seeking to be effective within culturally diverse communities.

To my knowledge, *The Pale Veil* is a qualitative research project of first impression that responds to this curricular gap, as well as to the ache of 2020 that left many white males feeling attacked. First, the project highlights the need to incorporate cultural awareness and identity performance as a necessary component of professional responsibility into legal education.¹⁰ Notably, it challenges both the essentialism of white males and the presumption of their intentional disregard for diversity in the legal profession, a notion that starkly contrasts the overwhelming statistics of the American legal profession. Second, the project provides a unique account of how white male lawyers think and talk about diversity. It ultimately contends that power need not be fixed in the white male body; rather, that power is dynamic, capable of being relocated and shared in Other spaces.

¹⁰ This aspect of the project builds on an earlier article, Leslie P. Culver, *Conscious Identity Performance*, 55 San Diego L. Rev. 577 (2018).

The Pale Veil is a bold and critical step toward grappling with the “white” cloud that looms over the legal profession, without rendering white males categorically inept as agents of change. Theoretically, it brings critical whiteness studies to the legal profession by exposing the blind spots of white male lawyers in a non-threatening way and offers insight to address the homogeneity of the legal profession. Many authors have written on “whiteness” as a systemic racist framework, triggering racial stress, requiring racial reconciliation, or pushing against African American advancement.¹¹ These authors add richness to the complex history of constructed whiteness in America.

And while *The Pale Veil* is similar in that it too focuses on “whiteness,” it adds balance to this space through its unique starting place. It begins from a proposition grounded in statistical data, qualitative research, and interdisciplinary methodologies to explore the relationship between whiteness and power as it relates to the legal profession. It examines the white male’s voice with depth and complexity. Specifically, the aesthetic merit of *The Pale Veil* is narratively portrayed to move the heart and the head.¹² Based on qualitative research, its pages lift the veil for the white male lawyer, allowing him to see how his viewpoint differs from the marginalized perspective.

¹¹ E.g., Joe R. Feagin, *The White Racial Frame: Centuries of Racial Framing and Counter-Framing* (2020) (examining how and why the “white racial frame”—described as systematic racism framework that encompasses stereotyping, bigotry, and racist ideologies—emerged and evolved socially in North America); Robin DiAngelo, *White Fragility: Why It’s So Hard for White People to Talk About Racism* (2018) (documenting the ways in which white Americans are unable to emotionally withstand even minor amounts of racially triggered stress and retreat into a defensive posture when forced to discuss racism); Daniel Hill, *White Awake: An Honest Look at What It Means to Be White* (2017) (explaining what he terms the seven stages to expect on a path to cultural awakening for a white person that focus on reconciliation and how the white person can be an agent of change); Tsedale M. Melaku, *You Don’t Look Like a Lawyer: Black Women and Systemic Gendered Racism (Perspectives on a Multiracial America)* (2019) (emphasizing how gender and race pose obstacles to black women’s advancement to partnership in prestigious corporate law firms and to their professional development).

¹² Tracy, *supra* note 5, at 69; see also Communication and Culture: An Introduction 56 (Tony Schirato & Susan Yell, eds. 2000) (“Narratives are used as ways of interpreting and structuring everyday life, and can take on a very powerful function in validating the events in people’s lives.”).

“What if, in reinventing anthropology, anthropologists were to study the colonizers rather than the colonized, the culture of power rather than the culture of the powerless, the culture of affluence rather than the culture of poverty?”

~Nader, 1972

TEACHING GENRE THROUGH SELF-REGULATED LEARNING AND DESCRIPTIVE ANALYSIS

SUSAN TANNER¹

Legal writing faculty have long been teaching professional genres like legal briefs and memos. In teaching these genres, the goal has not been solely to get students to produce the form. Rather, by learning the genres, students begin to develop professional identities and processes,² and by learning rhetorical situation, they learn how to enter a new discourse community.³ This process relies heavily on students' ability to take ownership over their own learning, on metacognition and self-regulated learning.⁴ For one cannot passively join a discourse community; in choosing to join the community, students must develop their own voice and make decisions about how they will participate.

In my classroom, students sometimes struggle to understand that the value of what they learn in the legal writing course will not

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² E.g., Jo Anne Durako et al., *From Product to Process: Evolution of a Legal Writing Program*, 58 U. Pitt. L. Rev. 719 (1997).

³ E.g., J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: The View From Within*, 61 Mercer L. Rev. 705 (2010) (exploring the identity of legal writers through discourse communities).

⁴ That student-centered learning is foundational to writing pedagogy and student transfer is not new to our field. See, e.g., Robin A. Boyle, *Employing Active-Learning Techniques and Metacognition in Law School: Shifting Energy From Professor to Student*, 81 U. Det. Mercy L. Rev. 1 (2003); Laurel Currie Oates, *I Know That I Taught Them How to Do That*, 7 Legal Writing 1 (2001); Craig T. Smith, *Teaching Students How to Learn in Your Course: The "Learning-Centered" Course Manual*, 12 Persps.: Teaching Legal Res. & Writing 1 (2003).

be fully realized until after the class is over—that the course is not as much about mastering a form or genre as it is about learning skills and processes that students will employ later to write as legal professionals.⁵ Despite my continued emphasis on process, students do not always share my expectations about our course goals but rather get caught up in making their final product perfect. Perhaps this is a reasonable adaptation on their part; their final grade for my class rests on how well they are able to write within a particular legal genre like the memo or brief. In doing so, students are rewarded for “cramming” for the final paper rather than engaging in a productive process of deep learning. If they can figure out how to perform well on the particular assignment in front of them, they will do well in the class. By contrast, if they have done the hard work of internalizing processes that will help them succeed later, they will not necessarily see an instant reward in terms of their grade. My solution in past years was to introduce more reflective activities into my core curriculum. This year, I re-organized and re-thought the purpose of those reflective activities to create a capstone assignment meant to foster student engagement in process.

The capstone assignment brought the reflective activities I had assigned in the past together with several assignments intended to train students to notice genre features. The resulting assignment is a manual that students write over the course of an entire academic year that explains to their future selves the steps necessary to write legal office memoranda and appellate briefs.⁶ The how-to manual has two goals: 1) to have students develop their metacognition of processes of legal writing and to verbalize those processes; and 2) to change students from passive receivers of knowledge to writers with agency over their learning processes as they discover new genres and new modes of writing.⁷

⁵ Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 34 *Seattle U. L. Rev.* 51 (2010); Alexa Z. Chew & Katie Rose Guest Pryal, *The Complete Legal Writer* (2d ed. 2022).

⁶ Email the author for the capstone assignment description and lesson plans based on the assignment.

⁷ For more about this second goal, see Katie Rose Guest Pryal, *The Genre Discovery Approach: Preparing Law Students to Write Any Legal Document*, 59 *Wayne L. Rev.* 351 (2013); Susan L. Tanner, *Teaching Genre Through Descriptive Analysis*, 35 *Second Draft* (May 2022), <https://www.lwionline.org/article/teaching-genre-through-descriptive-analysis>.

Self-Regulated Learning

The genesis for the capstone assignment was work I had done in the past on self-regulation strategies. I had seen, in prior classes, that reflection activities are important for self-regulated learning and that metacognition is key to student knowledge transfer. But students often view reflection activities as separate from the process of writing, as extra “busy work.” I wanted the reflections to build toward something the students would see as valuable. Because I see the primary benefit of reflection activities as aiding knowledge transfer in post-classroom contexts, I needed a way to make those reflections focus on future, rather than past, writing. I thought an instruction manual that students could use during their first summer interning might help students see the forward-facing goals of our legal writing course. As I designed the capstone assignment, it was important to me that students narrate their process and document that they are working through the steps so that students take more ownership of their own learning and thereby practice a form of self-regulation.

I borrowed much of my understanding of self-regulation from Educational Psychologist Barry Zimmerman, who argues that, when we self-regulate our writing, we reflect on our current progress and circumstances in order to develop our aspirations and motives for completing a project. Zimmerman’s socio-cognitive model of self-regulation postulates that students experience three intertwined phases of self-regulation, including forethought (developing a sense of goals and motives), performance monitoring practices, and self-reflection (evaluating accomplishments and orienting reactions).⁸

My students are generally fairly adept with their performance monitoring practices. They are engaged when they draft and revise their drafts, eager to talk with me about ways they can improve when we conference about their drafts, and fantastic about following up after the fall semester is over to see how they could improve their writing, and therefore their grade, in the spring. But, too often, they

⁸ Barry J. Zimmerman, *Becoming a Self-Regulated Learner: An Overview*, 41 *Theory into Practice* 64 (2002).

need to be more engaged during the parts of the class that do not involve drafting their final papers. I wanted students to spend more time and effort in the forethought and self-reflection spaces, to focus more on reflection and on metacognition of writing tasks. I also wanted to make sure that their teaching assistants and I were there to help them when they struggle, especially at the beginning of an assignment, when they're trying to figure out what a legal memorandum is.

In the past, my students would give up too quickly when they got stuck at the beginning of an assignment. They would complain in conferences that they didn't feel like they knew what they were doing. I would respond that they should not know, before they write something, what it will end up looking like. That pre-work and drafting were important parts of the process, but that the point of the pre-work was not to arrive at a fully formed and perfected first draft, with no need to revise.

Having my students create a writing manual as they learn how to draft their memos and briefs is meant to reinforce that they do not need to know everything all at once. When we look at models of memos and briefs, it is enough to notice some features, but we need not know everything that there is to know about the genre before we can begin to outline and draft. We will build our knowledge of genre in the same ways students learn to build their knowledge of the other legal subjects they are studying—one case at a time.⁹

The Capstone Process

Students work on their capstone every time they sit down to write. Before they begin drafting, they write a sentence or two about their intention for the writing session. They set goals for the session about what they would like to accomplish. They, then draft and take

⁹ I do not mean to suggest here that the case method is the only or even the best way to teach. But I do see a value in having the method I use in my legal writing class more closely resemble the way my students are learning in their other courses. Thus, I have my students learn genre through a modified case method, where they examine several models of the genres we are learning, notice features about those models, and build a framework for what the genre looks like in practice. This is how many new lawyers learn how to write—by seeing examples of what more senior attorneys have written in the past and modeling their writing on those examples. *See, e.g., Chew, supra* note 5.

notes about the process. After they have finished writing a productive amount of text, they respond to some reflection questions about their process. The whole process adds about five minutes of reflection activity onto each of their writing sessions. Then, as they finish sections of the memo, they write up a bit of a description about the genre features that appear in that section. For example, as a class, we review several types of model memos that each have different ways of phrasing the Issue. For instance, we examine Issue statements that follow the “under...does...when” method and the “whether” method. We see examples where the issue statement is a single, complex sentence and examples where the issue statement is broken into sub-issues or several issues. Students describe the various features they have noticed and give examples of the various ways they’ve seen to form issue statements.

Students repeat this process for each section of the memo. Each time we meet, I check in with them about what they have written. The manual serves as another way I can check their understanding of the course material. Some students will have written statements that are false or contrary to what we have learned. These statements help me to clarify some of the finer points that they may have misunderstood. Some students will just not have written as much as I would have expected, which shows that they have not been as engaged in reflective thought as they should be. Pointing out a lack of development allows me to focus on the process they’re using to draft. We have productive discussions about whether they are keeping up with the class and whether they are putting in enough effort at the front so that they will not be struggling at the end.

Conclusion

The results of this pilot assignment have been promising. In anonymous surveys, students have reported lower levels of stress and fewer anxieties about their final than students in prior years. Their first drafts were more complete, and students relied less on conferences with me to make sure they were on the right track. Additionally, my final raw scores for the fall memorandum were the highest they had been since I began teaching LRW in 2020. I certainly cannot attribute all these gains to the capstone assignment

alone; undoubtedly, COVID has impacted both performance and stress. But the results were promising enough to convince me to incorporate the capstone assignment into my regular curriculum.