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Still Strangers in the Land: Achievement Barriers, Burdens, and Bridges Facing African American Students Within Predominately White Law Schools

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This Article examines the barriers to an environment where African American law students no longer view themselves, and no longer are viewed as, what American abolitionist Harriet Tubman coined, “a stranger in a strange land.”¹ In this Article, I explain the research on the structural, psychological, and social factors that face the African American community, and more specifically, the African American legal community. I discuss the implications of these factors for African American law students and law schools. Finally, I make recommendations to help overcome the achievement gap experienced by African American law students. The prognosis is one of optimism.

Introduction

These black students had “put aside” their problems about race, which is to say, they had internalized the self-hate engendered and sustained by societal pressures on all blacks, and resolved them by a determination to win white acceptance by becoming carbon copies of their white peers.²

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1. Derrick A. Bell, Jr., *Black Students in White Law Schools: The Ordeal and the Opportunity*, 2 U. TOL. L. REV. 539, 539 (1970) (quoting AUGUST MEIER & ELLIOTT RUDWICK, FROM PLANTATION TO GHETTO 146 (Am. Cont. Series ed. 1956)).

2. *Id.* at 544.

But the success was as black students trying hard to be white, accepting all manner of slights and insults, intended and unconscious, and attempting all too successfully not to remember that it was all a charade and that whatever the quality of the performance, it would never be accepted as truly authentic by the audience for whose benefit it was performed.³

I survived the class and somehow succeeded in my studies despite what seemed at the time the necessity of providing my classmates, most of whom were well-meaning, but few of whom had any prior contact with blacks, with a liberal education on race relations.⁴

The inability or plain unwillingness [sic] of faculties to adhere to the basic principle of teaching—start where the students are—constitutes the single most serious cause of black students' failure to adjust to white law schools.⁵

Each statement above was written in 1970 by the late Derrick Bell, Jr., Dean of Oregon School of Law, in the article *Black Students in White Law Schools: The Ordeal and the Opportunity*. Each statement was written fifty years ago, when African American law students entered and often graduated from white law schools as “stranger[s] in a strange land . . .” Many of those sentiments still ring true today.⁶

The quote “stranger in a strange land”⁷ refers to the alien experience described by American abolitionist Harriet Tubman after she escaped from slavery in the South to freedom in the North.⁸ As one of a small number of African Americans living in the North while free, Tubman was astonished to learn that this freedom would call her to live life in the North as an outsider within a white community.⁹ That community seemed to accept her presence but did not welcome it. Today, that same feeling of admission yet exclusion is a sentiment widely held by African American law students.¹⁰

3. *Id.* at 544–45.

4. *Id.* at 545 (noting that he “charged no tuition for a course that included explanations”).

5. *Id.* at 548.

6. *Id.* at 539.

7. *Id.*

8. *Id.*

9. *See id.* (comparing the experiences of African American law students today with Harriet Tubman's experience as an outsider).

10. *Id.* (analogizing to the “ambivalence so emotionally disorienting” of an African American's decision to go to law school and noting the continuing “systemic denial of black humanity” that still exists in the law today).

These students, comprising a small racial group in law school, “cross[] the line”¹¹ into a predominately white environment and struggle to pursue law as outsiders within a white community that seems to accept their presence but does not always welcome it.¹²

Hundreds of years before Harriet Tubman, when the first African slave arrived in Jamestown, America’s societal ills began to infect the African American community.¹³ Those societal ills, namely racial legacies that resulted in disparities and inequities, are still deeply rooted within the American pillars of education, government, health, housing, and commerce.¹⁴ While many of those racial legacies have been repealed and nullified, including the acts once wielded against African Americans by the Supreme Court, those legacies still influence how African American law students relate to the persistent structural, psychological, and social barriers.¹⁵ These barriers profoundly contribute to the African American law student achievement gap.

Although law school’s first year can be “academically and psychologically traumatic”¹⁶ for all entering students because of the unique mental challenges of legal analysis, for African American students, the first year of law school can be even more traumatic.¹⁷ Certainly, many African American law students succeed, yet some do not.¹⁸ It is difficult to surmise what specifically about the law school culture contributes to a negative or positive consequence

11. *Id.* at 539.

12. *Id.* at 539–40. There are 200 accredited law schools in the United States. *ABA-Approved Law Schools*, AM. BAR ASS’N https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/ [<https://perma.cc/62T3-LSDD>]. Only six of these are Historically Black Colleges and Universities. *Law Schools at Historically Black Colleges and Universities*, LAW CROSSING <https://www.lawcrossing.com/article/2518/Law-Schools-at-Historically-Black-Colleges-and-Universities/> [<https://perma.cc/LH3Y-886W>].

13. See Michael Katz, *Black Law Students in White Law Schools: Law in a Changing Society*, 2 U. TOL. L. REV. 589, 596–97 (1970).

14. See MICHELLE ALEXANDER, *THE NEW JIM CROW* 22–40, 194 (2012) (discussing how polices of segregation were replaced by polices of “law and order” that likewise functioned to keep African Americans at the bottom of the racial caste system).

15. See *id.*; see also Katz, *supra* note 13, at 597 (speaking specifically to the Supreme Court’s use of *Plessy v. Ferguson*, 163 U.S. 537 (1896), to “nullify the advances” of African Americans); Edward J. Littlejohn & Leonard S. Rubinowitz, *Black Enrollment in Law Schools: Forward to the Past*, 12 T. MARSHALL L. REV. 415, 422–23 (1986) (discussing how decisions like *Dred Scott v. Sandford*, 60 U.S. 393 (1857), left a legacy of difficulty for African American law students—including disparities in wealth and education).

16. Portia Y.T. Hamlar, *Minority Tokenism in American Law Schools*, 26 HOW. L.J. 443, 573 (1983).

17. *Id.*

18. See Bell, *supra* note 1, at 551.

because the Law School Admission Council (LSAC) data only reports three student credentials: the type of school attended, Undergraduate Grade Point Average (UGPA), and the Law School Admission Test (LSAT) score.¹⁹ Although the data provided by LSAC regarding the law school atmosphere is limited, data models and research suggest that atmosphere significantly impacts the achievement of African American law students.²⁰

In this Article, I offer specific explanations about how the law school culture contributes to negative or positive consequences for African American law students. Further, I describe the research on the structural, psychological, and social factors that face the African American community, and more specifically, the African American experience in the law school environment.²¹ I discuss the implications for African American students and law schools. Finally, I make recommendations to help overcome the academic achievement gap experienced by African American law students.

For the purposes of group identification, I will use the term “African American,” “students of color,” “white,” and “dominant culture.” These terms are used to reflect the socially recognized distinctions within the United States’ racial hierarchy. The terms “African American” and “students of color” are used to reference citizens of the United States with African ancestry. The terms “white” and “dominant culture” are used to reference the citizens of the United States with European ancestry. This is a generalization for the purposes of a broader discussion and is not meant to negate or overlook the individual nuances that are collapsed within each group identification category.

19. Katherine Y. Barnes, *Is Affirmative Action Responsible for the Achievement Gap Between Black and White Law Students?*, 101 NW. U. L. REV. 1759, 1803 (2007).

20. *Id.* at 1806. An alternative view is the mismatch theory. This theory is based on the idea that the fast-paced nature and competition of law school increases disparities between those with stronger and weaker academic credentials. See, e.g., Richard H. Sander, *A Systematic Analysis of Affirmative Action in American Law Schools*, 57 STAN. L. REV. 367, 450 (2004); Adam Shatz, *The Thernstroms in Black and White*, AM. PROSPECT (Dec. 10, 2001), <https://prospect.org/features/thernstroms-black-white/> [<https://perma.cc/Q59E-ZGKA>]. This view has been largely debunked. See Ian Ayres & Richard Brooks, *Does Affirmative Action Reduce the Number of Black Lawyers?*, 57 STAN. L. REV. 1807, 1839 (2005).

21. The Author recognizes that numerous barriers contribute to learning trauma within other group perspectives. This paper is meant to provide an African American perspective. Although African Americans are underrepresented in many professions, the underrepresentation within the legal profession is particularly problematic given the role that the legal profession plays in shaping social policy and societal norms. Disillusionment, alienation, and frustration have led African Americans to pursue career paths outside of law.

This Article seeks to examine those barriers and burdens faced by African Americans in the pursuit of law as outsiders, while offering bridges of hope for the future. My goal is to make visible the barriers that impede African American success within the law school environment and articulate practices that can narrow, and even eliminate, the achievement gap. I believe that “[t]he road may be rough, the journey may be tough and the experience may be bitter, but they are stepping stones to our future thrones.”²² This future is an unstigmatized realization of academic achievement. I hope that in another fifty years, the African American law student will no longer exist as a “stranger in a strange land.”

I. Origin: I Am Who I Am

The first group of factors that likely contribute to the academic achievement gap experienced by African American law students are antecedent and can be classified into their origin. Origin, in the ordinary meaning, is “ancestry, parentage.”²³ The ancestry or parentage of an individual, specifically an African American individual, is the framework from which one understands, perceives, and engages the world. This framework evolves from the early stages of life and is a dynamic accumulation of experience and information.²⁴ While this framework can be wholly fluid on one hand, it can be equally rigid and primal on the other hand, particularly when dominated by historical, political, cultural, and familial correlations.

Generally, law students operate under widely held perceptions of how to succeed within the framework of academia.²⁵ This framework, a product of organic cultivation, tends to standardize the prerequisites necessary to acquire a satisfactory body of legal knowledge.²⁶ For instance, all law students must learn the terms of the law as well as the methods to learn the law.²⁷ The terms of the

22. Bamigboye Olurotimi, *Quotations*, BAMBIGBOYE OLUROTIMI (Nov. 21, 2014), <http://bamigboyeolurotimi.blogspot.com/2014/11/quotations-by-bamigboye-olurotimi.html> [<https://perma.cc/B8B4-7R9T>].

23. *Origin*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/origin> [<https://perma.cc/UZ4E-DYSZ>].

24. See MATTHEW DESMOND, ON THE FIRELINE: LIVING AND DYING WITH WILDLAND FIREFIGHTERS 30, 170–72 (2007) (“[W]e possessed shared histories and competences, a country-masculine habitus, that helped us adjust to the demands of firefighting and coordinate our actions vis-a-vis one another.”).

25. See YUNG-YI DIANA PAN, INCIDENTAL RACIALIZATION 7 (2017).

26. *Id.* (“For many law students, learning such rules also compels them to take on the associated values, thus forever changing their moral outlook.”).

27. *Id.*

law can be various terms of art.²⁸ The method of learning law can be Socratic.²⁹ Because this framework, and the law, are derived from the dominant culture, those students who mirror that racial frame are preconditioned with some level of familiarity that facilitates the learning experience.³⁰ However, for the African American student, the familiarity instilled by a different racial frame must be acclimated to the prevailing worldview.³¹

Acclimation to that prevailing worldview is challenged by the reality that African Americans are underrepresented in legal education and the profession.³² These students often lack role models to provide guidance on how to prepare and succeed in this new environment.³³ This dilemma is further exacerbated by the fact that African American law students are less likely to have friends or family members who are lawyers, or even law students, when compared to white students.³⁴ Accordingly, African American students may enter the law school environment excluded from the “intra-institutional” methods that white students rapidly acquire from upper-class students, administrators, and faculty about the expectations and norms of their new role.³⁵ Such intra-institutional methods may include group study, course selection, word-of-mouth advice, and exam preparation.³⁶ Matriculating without that insight can create a knowledge void that breeds delay, tension, and blind spots, which constrain the learning experience.³⁷ Those consequences are further stoked by the resignation that legal achievement is “stacked in favor of white males of the middle and upper middle class”³⁸ For these reasons, origin is likely a primary contributor to the variance in the academic performance of African American law students.

28. See Kevin Deasy, *Enabling Black Students to Realize Their Potential in Law School: A Psycho-Social Assessment of an Academic Support Program*, 16 T. MARSHALL L. REV. 547, 562 (1991).

29. *Id.*; Hamlar, *supra* note 16, at 575.

30. See PAN, *supra* note 25, at 88–89.

31. Leslie P. Culver, *White Doors, Black Footsteps: Leveraging White Privilege to Benefit Law Students of Color*, 21 J. GENDER RACE & JUST. 37, 44, 48 (2017) (expressing how the white man’s perspective frames the foundation of this country, its ideologies, and its institutions).

32. *Id.* at 44–45.

33. Deasy, *supra* note 28, at 562.

34. *Id.*

35. *Id.* at 560, 562–63; Hamlar, *supra* note 16, at 574.

36. Hamlar, *supra* note 16, at 574. It might also include the mere comfort that a classmate would feel if that classmate’s parent were an academic at the university.

37. *Id.*

38. DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION HIERARCHY 78 (1983).

Origin and origin factors, as depicted in Figure 1, can be broken down into three different concepts: (1) general habitus, (2) linguistic habitus, and (3) culture. Habitus is “the presence of social and organizational structures in individuals’ bodies in the form of durable and generative dispositions that guide their thoughts and behaviors.”³⁹ In other words, “habitus is the source of one’s practical sense.”⁴⁰

Origin Factors
A. General Habitus
B. Linguistic Habitus
C. Culture

Fig. 1

A. General Habitus

General habitus can be understood as the way in which an individual is cultivated to envision and encounter the world from the early stages of childhood and adolescence.⁴¹ This notion points to knowledge that is not formally learned and serves as a deeper source of competence.⁴² As it relates to law school, general habitus suggests that African American law students enter the building with preconditioned notions of the learning environment that are largely different than the preconditioned notions of their dominant culture peers. These differences in preconditioned notions, left unguarded, can lead to an African American achievement gap.

American sociologist, professor, and author Matthew Desmond used wildland firefighters to illustrate general habitus as it relates to the unique competency of wildland firefighters.⁴³ In this illustration, Desmond observed that wildland firefighters generally work together in small teams during the fire season, which begins in early May and ends in late August.⁴⁴ These small teams, known as firecrews, are stationed in woodland areas throughout the United States.⁴⁵ During fire season, these firecrews eat, sleep, socialize, and travel together in between fighting fires.⁴⁶

39. DESMOND, *supra* note 24, at 12.

40. *Id.*

41. *Id.*

42. *See id.*

43. *See id.*

44. *Id.* at 2.

45. *Id.*

46. *Id.*

Many wildland firefighters possess a pre-existing knowledge about firefighting tools and forest landscape.⁴⁷ Specifically, these firefighters have a unique knowledge about the equipment, roads, forest, and terrain that is fixed before their basic training.⁴⁸ This unique knowledge is attributed to the fact that these firefighters are often descendants of family members who “chased smoke,” so firefighting comes naturally and is “in [their] blood.”⁴⁹ This know-how was coined by Desmond as *country competence*.⁵⁰

The majority of wildland firefighters have very limited advanced exposure to wildfires, and usually have only seen a few fire seasons under twenty acres of land.⁵¹ Hence, the proclamation that they “had to see it burn to learn . . .”⁵² Yet, even those firefighters with limited advanced experience were able to respond with swiftness, skill, and coordination.⁵³ Their fireline capacity spanned beyond experience and into another source of competence—general habitus.⁵⁴ In this illustration, these firefighters were able to easily adapt and respond in communities without ever having been there before.⁵⁵ These firefighters seemed to possess an inscribed know-how.⁵⁶

From Desmond’s interview with a wildland firefighter, the firefighter explains:

My crewmembers easily found the isolated mountain community, though they had never been there before, because the roads they drove to find smoke in the summer were the same ones they drove to find deer in the winter. Since many crewmembers took their driver’s license test in the seat of a four-by-four pickup, it was not difficult for them to adjust to driving the chase truck or the engine. J.J., George, and I knew how to swing an ax to destroy a half-burned porch because we had been chopping our parents’ and grandparents’ wood since we were children. We knew how to observe the forest because our eyes had been searching the tips of pines and the trunks of oaks for years. Our ears knew what to listen for; our noses knew what the forest was supposed to smell like. Our footing and balance, posture and hiking style, sense of touch and movement

47. *See id.* at 12 (describing “corporeal knowledge”).

48. *See id.* at 20.

49. *Id.*

50. *Id.* at 171.

51. *Id.* at 169.

52. *Id.*

53. *Id.*

54. *See id.*

55. *Id.* at 170–71.

56. *Id.* at 170.

were attuned to the forest, and this heightened awareness, this woody know-how inscribed in our histories and in our very bodies, allowed us to adapt quickly to the challenges of the fire.

When [we] returned to fire camp after doing battle on the line, our faces, necks, arms, and legs were caked with a thin crust of dried sweat, ash, dirt, and hardened foam. Our filthy fire shirts and pants bore evidence of the dirty work of firefighting; globs of mud stuck to our boots; and we smelled of body odor and smoke. But we were used to getting dirty. As children, we were encouraged to muck around in the outdoors, and as teenagers, we were urged to muddy ourselves on the football field.⁵⁷

Country competence facilitates wildland firefighting expertise.⁵⁸ It is the general habitus—the unspoken skills and knowledge that lie below the surface. General habitus preconditions the wildland firefighters to the demands of the forest and the fire.⁵⁹

Applying this illustration to the law school environment, general habitus can be discerned in the difference between how African Americans and their dominant culture peers navigate the learning environment. For instance, while dominant culture peers rapidly forge relationships with upper-class students, faculty, and peers, African American students may find it difficult to identify and cultivate those same relationships.⁶⁰ Such relational challenges may be reflected in the subtle neglect, rejection, and isolation that African American students experience by virtue of being different.⁶¹ These differences, likely the result of general habitus, can lead to a navigational, relational, and organizational gulf. When left unchecked, that gulf can quickly devolve into an insurmountable disadvantage that “follows its targets onto campus,” which affects speaking in class, seeking help, and peer connection.⁶² General habitus is likely a dominant contributor to the African American academic achievement gap.

B. Linguistic Habitus

Linguistic habitus is another component of origin that can factor into the achievement gap of African American law students.

57. *Id.* at 171.

58. *Id.*

59. *See id.*

60. Deasy, *supra* note 28, at 562–63; *see also* Hamlar, *supra* note 16, at 574 (giving examples of African American students being excluded at school).

61. Deasy, *supra* note 28, at 562; Hamlar, *supra* note 16, at 574.

62. Ayres & Brooks, *supra* note 20, at 1839 (quoting Claude M. Steele, *Expert Report of Claude M. Steele*, 5 MICH. J. RACE & L. 439, 445 (1999)).

Linguistic habitus refers to the language skills that take root early in childhood, adolescence, or young adulthood.⁶³ These language skills serve as a common code that both forms and informs a shared, historic competency.⁶⁴ Returning to the example of the wildland firefighters, the possession of a shared linguistic habitus enables firefighters to seamlessly and safely orchestrate routine and fireline tasks.⁶⁵ The firefighters who possess a shared linguistic habitus, evidence an uncanny ability to understand and act upon commands that are bantered in hasty, broken, or abrupt words.⁶⁶ Shouted commands like “[d]on’t use too much water” or “[l]et’s use a foam nozzle instead of a forester” rang familiar in the ears of those who had shared experiences.⁶⁷ Those shouted commands rang familiar because of their shared experience as youth football players under coaches who also yelled short orders and quick plays from the sidelines.⁶⁸ This shared language creates a chemistry that is forged in prior, high pressure circumstances.⁶⁹ As one firefighter summarized, this common voice enables a firefighter to be ready for the fire even before one foot is set on the fireline.⁷⁰

Turning to the law school environment, linguistic skills are clearly important features of legal education. And, the linguistic differences between African Americans and the dominant culture “of whose image the entire legal system is a reflection, are obvious.”⁷¹ As a minoritized group, African Americans must discern, as opposed to embody, the common legal voice. Since much of the societal cultural norms are unwritten and dynamic, there exists a high probability that the linguistics will be mutually lost in translation: The student will be encumbered in understanding the law, and the professor will be encumbered in understanding the student. Thus, the African American student’s ability to be “ready for the . . . fire before [they] set foot on the fireline” is encumbered.⁷² This difference not only muddies the learning waters, but can become a filter when African American students read cases, hear

63. DESMOND, *supra* note 24, at 170.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. J. Otis Cochran, *The Law Schools’ Programmatic Approach to Black Students*, 17 HOW. L.J. 358, 369 (1972).

72. DESMOND, *supra* note 24, at 170.

lectures, vocalize opinions, draft briefs, receive feedback, or take exams.

African American law students are less likely to share the common legal voice that facilitates socializing, networking, teaching, or learning, and thus, must follow a white, masculine script.⁷³ The African American script of communication differs from the dominant culture in pattern, tone, and structure.⁷⁴ Because that pattern, tone, and structure tend to run counter to the dominant culture, African American expressions may be mistaken as loud, abrupt, ignorant, emotional, or impassioned.⁷⁵ For example, class discussions about legal cases that have racial undertones may evoke issue surfacing,⁷⁶ recasting, or clarification by an African American student speaking with conviction. That conviction, however, expressed in tone, language, or mannerism, can be misinterpreted by white peers or faculty as anger, attitude, or aggression. Such misunderstandings, on either side of the racial line, are not uncommon and further challenge African American students' smooth entry, transition, existence, and achievement within the legal environment. Here, it may hold true that "[i]t's not how much you know when you answer the question, but whether you speak the same language as the person who asked it."⁷⁷ Linguistic habitus, thus, is likely a dominant player in the African American academic achievement gap.

C. Culture

The last component of origin is culture. Usually, when we think of culture, we think of a particular nation, people, or social group's customs, arts, institutions, or achievements.⁷⁸ Culture plays a pivotal role in the academic life of an African American law student. Chiefly, culture influences how a student manages their family, social, and financial dynamics.⁷⁹ With regard to family

73. See Carmen G. González, *Women of Color in Legal Education: Challenging the Presumption of Incompetence*, 61 FED. LAW. 49, 53 (2014); PAN, *supra* note 25, at 89.

74. Culver, *supra* note 31, at 75; see Cochran, *supra* note 71, at 369; Deasy, *supra* note 28, at 566; González, *supra* note 73, at 75.

75. González, *supra* note 73, at 53.

76. Issue surfacing is identifying a problem or social issue and giving voice to it. Sung Won Kim & Shaila M. Miranda, *A Call to Arms: A Social Movements Perspective on "Issue" Surfacing on Social Media*, 2011 ACAD. OF MGMT. PROC. 2.

77. Ralph Smith, *Double Exposure: The Sinister Magic that Would Turn Black Students into White Lawyers*, 2 LEARNING & L. 24, 28 (1975).

78. See *Culture*, MERRIAM-WEBSTER, <https://www.merriamwebster.com/dictionary/culture> [<https://perma.cc/BR78-VZTC>].

79. Bell, *supra* note 1, at 549–50; Hamlar, *supra* note 16, at 535–37.

dynamics, an often-quoted line of biblical wisdom within the African American community comes to mind: To whom much is given, much is required.⁸⁰ This saying is deeply ingrained and widely modeled within the African American community and simply means that those who have the knowledge, talent, time, or wealth are expected to help those that are less fortunate. From an early age, African Americans learn that the family member who is in the greatest position to help, should help.

Tied to law school, cultural demands emerge for African Americans who are first generation college students. These students are usually the family member who is in the greatest position to help, having forgone work to advance themselves and their families after college.⁸¹ This means that African American law students are likely called upon to prioritize and resolve their family's financial, social, or medical affairs while they also manage the pressures of law school.⁸² A refusal to assist their family, even for just cause, is frowned upon. Thus, the African American culture is likely a contributor to the academic success or failure of African American law students.⁸³ Students on a different cultural wave than the dominant culture, as described above, may not perform as well academically. Culture is likely a dominant contributor to the African American academic achievement gap.

II. Psychological Causal Factors: To Be or Not To Be

The next set of factors that contribute to the academic achievement gap experienced by African American law students can be classified as psychological and social. Unlike origin, these factors do not occur before law school, but occur within law school. These factors are really barriers because they impede academic success by creating an inhospitable law school climate and “obscure the minorit[ized] student's natural ability.”⁸⁴ Psychological and social barriers are typically subjective in nature and are centered within the African American law student's perspective or experience. Figure 2, below, depicts a list of psychological barriers and include phenomena such as imposter syndrome, stereotype threat, stereotype lift, low expectations, solo effect, and inter-role conflict.

80. See *Luke* 12:48 (New International) (“From everyone who has been given much, much will be demanded; and from the one who has been entrusted with much, much more will be asked.”).

81. See Bell, *supra* note 1, at 549.

82. See *id.*

83. See *id.*

84. Cochran, *supra* note 71, at 364.

Psychological Factors
A. Imposter Syndrome
B. Stereotype Threat
C. Stereotype Lift
D. Low Expectations
E. Solo Effect
F. Inter-role Conflict

Fig. 2

A. Imposter Syndrome

Impostor syndrome was first identified in 1978 by psychologists Pauline Rose Clance and Suzanne Imes.⁸⁵ It is a collection of inadequate feelings that one has only succeeded due to luck, and not as a result of talent or qualifications.⁸⁶ Imposters, despite success and accomplishments, battle with internal notions of intellectual fraud and self-doubt.⁸⁷ Some researchers maintain that imposter syndrome stems from the labels parents assigned their children such as “the brainy child” or “the athletic child.”⁸⁸

As an underrepresented group in a predominately white law school, African American students often feel like outsiders and likely suffer from chronic uncertainties about their accomplishments, credentials, and competence.⁸⁹ In recounting one illustrative experience, Professor Leslie Culver recalled that she “could *not* afford to be the black student asking the perceived dumb or irrelevant question because that would reflect on my intelligence, my value, my personhood, and ultimately my entire race.”⁹⁰ African American law students often struggle with a similar and perpetual feeling of being ill-perceived, accompanied by suspicions of whether they actually belong in the law school environment at all.⁹¹ These

85. Pauline Rose Clance & Suzanne Imes, *The Impostor Phenomenon in High Achieving Women: Dynamics and Therapeutic Intervention*, 15 PSYCHOTHERAPY THEORY RES. & PRAC. 241, 241 (1978).

86. Abigail Abrams, *Yes, Imposter Syndrome Is Real. Here’s How to Deal with It*, TIME (June 20, 2018), <https://time.com/5312483/how-to-deal-with-impostor-syndrome/> [<https://perma.cc/5KHJ-JAKH>].

87. *See id.*

88. Gill Corkindale, *Overcoming Imposter Syndrome*, HARV. BUS. REV. (May 7, 2008), <https://hbr.org/2008/05/overcoming-imposter-syndrome> [<https://perma.cc/Y7TY-NUPP>].

89. *See* Smith, *supra* note 77, at 28.

90. Culver, *supra* note 31, at 51. The concern for representing the “entire race” is known as stereotype threat, discussed *infra*.

91. *Id.* at 67.

ongoing doubts, which are equally isolating and disorienting, not only erode the sense of belonging, but can trigger detached and distant learning.⁹²

B. Stereotype Threat

Stereotype threat is a term used to define the fear experienced when a minoritized person performs more poorly than expected because of a stereotype that the person will actually perform poorly.⁹³ According to Professor Russell McClain, “[t]his fear, and its associated anxiety, creates a cognitive load that affects working memory, ability to focus, confidence, self-esteem, and effort.”⁹⁴

For example, when African American students taking the Scholastic Aptitude Test (SAT) hear that African Americans generally do not perform well on the SAT, these students may become distracted, preoccupied, or angered by this low expectation, which can lead to poor test performance.⁹⁵ Similarly, checking a box on a test form to indicate race can also trigger stereotype threat. In a high stakes testing environment, just the reminder that African Americans perform less well can lead to suppressed performance.⁹⁶

In the white law school environment, African Americans may be separated from the very community support that helped counter negative stereotypes. As a result, African American students may quietly internalize, shun, or dispel racial stereotypes by suppressing words or conforming behaviors to avoid being seen as “the angry black woman”⁹⁷ or “the militant black woman.”⁹⁸ Such

92. Hamlar, *supra* note 16, at 578, 581; Meera E. Deo, Walter R. Allen, A.T. Panter, Charles Daye & Linda Wightman, *Struggles and Support: Diversity in U.S. Law Schools*, 23 NAT’L BLACK L.J. 71, 74 (2010).

93. Russell A. McClain, *Helping Our Students Reach Their Full Potential: The Insidious Consequences of Ignoring Stereotype Threat*, 17 RUTGERS RACE & L. REV. 1, 1 (2016).

94. *Id.*

95. Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOC. PSYCHOL. 797, 807–09 (1995); see Gregory M. Walton & Geoffrey L. Cohen, *Stereotype Lift*, 39 J. EXPERIMENTAL SOC. PSYCHOL. 456, 463 (2003).

96. Walter R. Allen & Daniel Solorzano, *Affirmative Action, Educational Equity, and Campus Racial Climate: A Case Study of Michigan Law School*, 12 BERKELEY LA RAZA L.J. 237, 249 (2001).

97. González, *supra* note 73, at 51; see also Deo et al., *supra* note 92, at 74 (describing the isolation and microaggressions that students of color experience in higher education).

98. See Culver, *supra* note 31, at 66 (quoting Jordan Carter, *Legally Brown*, MS. JD (Apr. 15, 2014), <https://ms-jd.org/blog/article/legally-brown> [<https://perma.cc/E5YN-ACDX>]); Valerie Daniel, *Exploring the Label of ‘the Angry Black Woman’*, #WOMENED (June 21, 2020), <https://www.womened.org/blog/exploring-the-label-of-the-angry-black-woman> [<https://perma.cc/2D3C-5FCB>].

steering, also known as code-switching,⁹⁹ makes optimal performance extremely difficult at best, particularly when African Americans believe that their success or failure is attributed not just to them, but to their entire race.

In the landmark decision *Grutter v. Bollinger*, the Supreme Court reminded that racial stereotypes cannot be reduced “with only token numbers of minority students.”¹⁰⁰ An increase in a group from just two to three members, can permit a range of expressions, personalities, and talents that undermine the stereotype from one individual’s behavior.¹⁰¹

C. Stereotype Lift

Stereotype lift is a companion to stereotype threat.¹⁰² Stereotype lift is “the performance boost caused by the awareness that a [minoritized] outgroup is negatively stereotyped.”¹⁰³ When that minoritized member’s worth or ability is negatively stereotyped or called into question, the dominant group member gets a performance benefit or boost.¹⁰⁴ By comparing themselves with the minoritized group, the dominant group member “may experience an elevation in their self-efficacy or sense of personal worth, which may, in turn, improve performance.”¹⁰⁵ Because negative stereotypes are so deeply ingrained within the American social and psychological fabric, either the majority or minoritized group can connect to negative stereotypes automatically, particularly as it relates to intellect or performance.¹⁰⁶

For African American students, stereotyped social comparisons can trigger self-doubt, anxiety, and fear of rejection that hinder academic performance.¹⁰⁷ Alternatively, a performance boost may be experienced by dominant culture students.¹⁰⁸ For example, when taking a law school exam, the African American student may feel exacerbated pressure, while the dominant culture

99. Carlos D. Morrison, *Code-Switching*, ENCYCLOPEDIA BRITANNICA (2020) (explaining how African American students shift from African American dialect, which they speak to maintain status in their community, to standard English, which they need to succeed in society at large).

100. *Grutter v. Bollinger*, 539 U.S. 306, 333 (2003).

101. Hamlar, *supra* note 16, at 578.

102. Walton & Cohen, *supra* note 95, at 456.

103. *Id.*

104. *Id.*; Ayres & Brooks, *supra* note 20, at 1840.

105. Walton & Cohen, *supra* note 95, at 456.

106. *Id.*

107. McClain, *supra* note 93, at 1.

108. Walton & Cohen, *supra* note 95, at 456.

peer, taking the same exam, may experience a pressure relief, or lift, assuming they will perform better than classmates who are persons of color because they might automatically link their exam performance to negative stereotypes.¹⁰⁹ Here, the implication is an indirect advantage to the dominant culture student. Stereotype threat may exacerbate pressures experienced by African American students, while stereotype lift may alleviate pressures experienced by dominant culture students.

D. Low Expectations

President George W. Bush coined the phrase “the soft bigotry of low expectations” when he announced the No Child Left Behind Act in 2000.¹¹⁰ President Bush stated that low expectations were yet another source of racial bias.¹¹¹ He further remarked that racial and socioeconomic barriers were dominant contributors to the educational achievement gap experienced by students in the United States.¹¹²

Although anti-discrimination laws principally guard against explicit forms of bias, implicit forms of bias, in the form of low expectations, persist. Explicit bias is a belief that is consciously endorsed, while implicit bias is a belief that is unconsciously endorsed.¹¹³ African American law students are particularly vulnerable to low expectations from dominant culture students and faculty due to low expectations resulting from implicit bias.¹¹⁴ Dominant culture students and faculty may consciously or unconsciously believe that African American students are academically unqualified or undeserving.¹¹⁵ Those low expectations can take the shape of seemingly innocent and ambiguous suggestions to light-load (not taking the typical number of courses), attain additional support (through extra meetings with professors or in programs designed for “academic success”), or extend coursework timelines (postponing graduation or adding summer

109. *Id.* at 463.

110. Laurie Rubel & Andrea V. McCloskey, *The Soft Bigotry of Low Expectations and Its Role in Maintaining White Supremacy Through Mathematics Education*, 41 OCCASIONAL PAPER SERIES 113, 115 (2019); Governor George W. Bush, Campaign Speech at the NAACP Convention in Baltimore, C-SPAN, at 33:30 (July 10, 2000), <https://www.c-span.org/video/?158142-1/bush-campaign-speech>.

111. *Id.*

112. *Id.*

113. Erik J. Girvan, *On Using the Psychological Science of Implicit Bias to Advance Anti-discrimination Law*, 26 GEO. MASON C.R.L.J. 1, 22–23, 32 (2015).

114. See Bell, *supra* note 1, at 544, 553; Hamlar, *supra* note 16, at 580, 582.

115. Hamlar, *supra* note 16, at 581–82.

coursework).¹¹⁶ While those suggestions may not necessarily signal a faculty member's lack of confidence or even bias, the rationale for the suggestion is still tricky for an African American student to decipher, especially in an opaque, predominately white institution. Preferential treatment, on the other hand, undermines confidence and magnifies an African American student's fear of failure.¹¹⁷ Such well-intentioned assistance, like additional office hours, can feel like preferential treatment that suggests that the African American student is not on par with classmates. Even when special assistance is badly needed, the professor's lack of confidence can be a clear and painful signal that may result in the African American student's predictable, yet understandable, rejection and resentment.¹¹⁸

In response to an inquiry about the performance expectations of African American associates, one anonymous minority law firm partner said that she almost did not want to recruit students of color:

No matter how qualified, no matter how much star quality these recruits have, they are going to be seen as people who will most likely not cut it. So, they are under the microscope from the first moment they walk in. And, every flaw is exaggerated. Every mistake is announced. And, it's like, aha. As soon as a [minoritized person] makes a mistake, they immediately say that that's what they were expecting all along.¹¹⁹

The low expectations of African American law students can create an unhealthy scholastic pressure and expectation to perform which can lead to physical and mental illness.¹²⁰ Professor Leslie Culver added that a "lifetime of ignorant incidents can take a toll on even the most confident of souls."¹²¹

E. Solo Effect

Upon entering the law school environment, African American students embark on an education and, subsequently, a profession with a history of discrimination and exclusion.¹²² The solo effect references the isolation experienced by individuals who make up a

116. See, e.g., Cochran, *supra* note 71, at 365, 369.

117. *Id.* at 366.

118. Bell, *supra* note 1, at 551.

119. Culver, *supra* note 31, at 54.

120. Yin Paradies, *A Systematic Review of Empirical Research on Self-Reported Racism and Health*, 35 INT'L J. EPIDEMIOLOGY 888, 892, 895 (2006).

121. Culver, *supra* note 31, at 59.

122. Deasy, *supra* note 28, at 550; Katz, *supra* note 13, at 589.

small number within a larger community.¹²³ This isolation, triggered by actual, perceived, or imagined differences, results in an added strain that can take a toll upon an individual's sense of self or physical well-being.¹²⁴

Law school has become infamous for an intensely competitive and inhospitable climate which is further aggravated for students of color.¹²⁵ Many African American law students find this highly competitive environment artificial, alien, hostile, and filled with patronizing and disdainful professors and peers.¹²⁶ This climate has been the subject of numerous diversity studies which describe the correlation between the law school atmosphere and the performance of African American students who feel like outsiders, given different cultural experiences, perspectives, and values.¹²⁷ Being accepted by an "in-group" can lead to self-consciousness, over- and under-conformity, and distancing as a result of being both included as a token and excluded as an outsider.¹²⁸ Again, African American students may be excluded from the intra-institutional methods by which white students tend to acquire information about how to function within their new role (as a law student), including advice from upper-class students and faculty members.¹²⁹

Numbers matter. The number of students of color matters in terms of group representation.¹³⁰ As a critical mass, the number of students of color can help "relieve the soul-crushing isolation, the painful stigma, and the exhausting service requirements" that African American law students experience.¹³¹

F. Inter-role Conflict

Inter-role conflict occurs when an individual's prior reference group reacts negatively to changes in that individual's behavior. It has been said that:

Every Negro who is higher than lower class has a sense of guilt

123. See Sean Darling-Hammond & Kristen Holmquist, *Creating Wise Classrooms to Empower Diverse Law Students: Lessons in Pedagogy from Transformative Law Professors*, 17 BERKELEY J. AFR. AM. L. & POL'Y 47, 47 (2016) (discussing "solo status"); Hamlar, *supra* note 16, at 576.

124. See PAN, *supra* note 25, at 90; Deasy, *supra* note 28, at 561.

125. Deo et al., *supra* note 92, at 73.

126. Smith, *supra* note 77, at 28.

127. See Deo et al., *supra* note 92, at 73-74.

128. Hamlar, *supra* note 16, at 577-78.

129. Deasy, *supra* note 28, at 562-63.

130. See González, *supra* note 73, at 50, 53.

131. *Id.* at 53.

to other Negroes because he considers success a betrayal of his group and a piece of aggression against them. Hence, he has frequently what might be called a “success phobia” and occasionally cannot enjoy the fruits of his achievements.¹³²

This success phobia includes demands to adopt the new role’s language, mindset, behavior, and appearance.¹³³ Since the new role’s language is not compatible with the prior reference group’s language, the prior reference group may now view the individual in the new role as arrogant or “selling out.”¹³⁴ Specifically, African American students in their new identity as law school students and future lawyers grapple with being viewed by their family and old friends as an “Uncle Tom” or “traitor.”¹³⁵ Because their life experiences often defy the legal concepts of due process and probable cause, African Americans are also not a natural fit within the new reference group. This challenge often leads to role overload, a burdensome balance of too many obligations and expectations.¹³⁶ Many African American students are largely unprepared for their new role in the law, and for the related conflicts and pressures that arise inside and outside the law school walls.¹³⁷

Students are typically faced with what W. E. B. Du Bois termed the “duality’ of being black in America.”¹³⁸ Because African Americans place a heavy emphasis on family, the fear of being separated through education from extended family, childhood friends, and neighborhood peers, causes many African American law students to perform below academic standards.¹³⁹ And, the inability to be fully accepted by either reference group provokes the sense of being othered and unbelonging. The late Dean Derrick Bell stated that the “quasi-acceptance and role-playing that often pervade these integrated scenes are neither positive nor healthy.”¹⁴⁰

Dean Bell believed that African American students would never be accepted by the white audience for whose benefit the “charade” was performed, although the students’ talents and ability

132. Bell, *supra* note 1, at 549 (quoting ABRAM KARDINER & LIONEL OVESEY, *THE MARK OF OPPRESSION* 316 (Meridian ed. 1962)).

133. *See id.*; Deasy, *supra* note 28, at 566.

134. Deasy, *supra* note 28, at 566; González, *supra* note 73, at 53.

135. *See* Deasy, *supra* note 28, at 566.

136. *Id.* at 567.

137. *Id.* at 561–62.

138. Smith, *supra* note 77, at 28; *see* W. E. B. DU BOIS, *THE SOULS OF BLACK FOLK* 5 (1903) (describing the sensation of “double-consciousness”).

139. Bell, *supra* note 1, at 549; González, *supra* note 73, at 53.

140. Bell, *supra* note 1, at 557.

to internalize the rage from “slights and insults, intended and unconscious,” would yet enable them to get through law school.¹⁴¹ While not an exhaustive list, the aforementioned negative psychological experiences can make the study of law a pursuit that is persistently and profoundly vacillating, agonizing, and tormenting, particularly during the first year of law school.

III. Social Causal Factors

Social factors are typically subjective in nature and shape the choices, perspectives, and experiences of African American law students. Although the list of potential social factors is limitless, Figure 3 indicates factors may include the choice and magnitude of assimilation and accommodation, racial capitalism and tokenism, and mentorship and sponsorship.

Social Factors
A. Assimilation and Accommodation
B. Racial Capitalism and Tokenism
C. Mentorship and Sponsorship

Fig. 3

A. Assimilation and Accommodation

African Americans struggle with the many facets of their identity: first as African Americans, and second, as African Americans who are raised in a European culture.¹⁴² In his 1903 bestseller, *The Souls of Black Folk*, W. E. B. Du Bois explored this internal conflict that is experienced by African Americans who seek to reconcile their African heritage with their European upbringing.¹⁴³ There, he crafted the term “double-consciousness” and explained:

It is a peculiar sensation, this double-consciousness, this sense of always looking at one’s self through the eyes of others, of measuring one’s soul by the tape of a world that looks on in amused contempt and pity. One ever feels his two-ness,—an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.

The history of the American Negro is the history of this

141. *Id.* at 544–45.

142. See Smith, *supra* note 77, at 28.

143. DU BOIS, *supra* note 138, at 5.

strife—this longing to attain self-conscious manhood, to merge his double self into a better and truer self. In this merging he wishes neither of the older selves to be lost. He would not Africanize America, for America has too much to teach the world and Africa. He would not bleach his Negro soul in a flood of white Americanism, for he knows that Negro blood has a message for the world. He simply wishes to make it possible for a man to be both a Negro and an American, without being cursed and spit upon by his fellows, without having the doors of Opportunity closed roughly in his face.¹⁴⁴

In an extraordinary effort to fit in, make others feel more comfortable, or “follow the crowd,” African American law students regularly face the choice to mute their identity by assimilating or accommodating to the dominant culture.¹⁴⁵ Sadly, such agonizing efforts are attempted and carried out in hopes of finding belonging within a legal community that looks nothing like them. Assimilation is the choice to *fully* adapt to the dominant culture by conforming one’s appearance, language, decisions, principles, or perspectives.¹⁴⁶ Accommodation, on the other hand, is the choice to *selectively* adapt to the dominant culture by conforming one’s appearance, language, decisions, principles, or perspectives.¹⁴⁷ For instance, the African American student’s choice to wear an ethnic hair style, speak in a familial dialect, or wear culturally inspired clothing is often preceded with internal deliberation and inquiry.¹⁴⁸ Internal deliberation and inquiry is triggered by the reality that many decision makers in the legal community tend to mentor, sponsor, or hire individuals who look like themselves.¹⁴⁹ This is a “cloning effect” or effort to reproduce a social order through individuals.¹⁵⁰ For African Americans, in order to be cloned, or at least chosen, conforming on some level is essential.¹⁵¹ Even when efforts to fit in succeed, students of color may be left feeling

144. *Id.*

145. Hamlar, *supra* note 16, at 584 (describing the “social conformity theory” of prejudice and stating that “it means ‘follow the crowd’ and always conform with the thoughts and decisions of others”); *see also* González, *supra* note 73, at 51 (discussing experiences of female faculty of color).

146. For a visual representation of how “communication practices . . . might be organized in relation to . . . separation, accommodation, [and] assimilation,” *see* Leslie P. Culver, *Conscious Identity Performance*, 55 SAN DIEGO L. REV. 577, 597–98 (2018).

147. *See id.*

148. *See* González, *supra* note 73, at 51.

149. *See id.* at 52.

150. *Id.*

151. *See id.*

unsupported, alienated, and anxious because essential parts of who they are became misrepresented or not represented at all.¹⁵²

B. Racial Capitalism and Tokenism

Racial capitalism is defined as “the process of deriving . . . value from the racial identity of another person.”¹⁵³ In the article *Racial Capitalism*, Nancy Leong expressed concern about racial exploitation whereby white people, and predominately white institutions, obtain value from people of color.¹⁵⁴ This value is typically derived in the name of diversity.¹⁵⁵ Instead of helping create a truly diverse environment, students of color may be left feeling as if their identity is just a commodity in a place that once eagerly sought their presence, but now takes no stake in their racial identity.¹⁵⁶ While the diversity mission of predominately white institutions was justified by the Supreme Court’s ruling in *Fisher v. University of Texas at Austin*, these institutions still run the risk of negatively capitalizing upon the racial identity of African American students.¹⁵⁷

In the law school environment, racial capitalism can take on a tokenistic construct. Specifically, a predominately white law school may rely on the few students of color to be the face of diversity initiatives, recruitment efforts, or social activities. This is racial capitalism. The untold reductions and daily microaggressions¹⁵⁸ experienced in the legal environment by students of color echo the “incessant lesson . . . that [they are] insignificant and irrelevant.”¹⁵⁹ For this reason, while African American students may want to help their school’s diversity efforts, this help cannot be extended at the expense of their privacy and independence. Thus, a natural tension

152. *See id.* at 50–53.

153. Nancy Leong, *Racial Capitalism*, 126 HARV. L. REV. 2151, 2153 (2013).

154. *Id.* at 2153–54.

155. *Id.* at 2152.

156. *See id.*

157. *See id.*; *Fisher v. Univ. of Tex. at Austin*, 136 S. Ct. 2198, 2214 (2016).

158. Microaggressions, in a racial context, are bias subtleties in word or deed. *See generally* Tori DeAngelis, *Unmasking Racial Micro Aggressions*, 40 MONITOR ON PSYCHOL. 42 (Feb. 2009) (describing the study of microaggressions and associated vocabulary). *See, e.g.*, Deo et al., *supra* note 92, at 74 (discussing the daily microaggressions experienced by African American law students); González, *supra* note 73, at 50 (“[Law] students from underrepresented groups . . . report isolation, discomfort expressing their views, and daily ‘microaggressions’ in the form of subtle and not-so-subtle sexist and racist affronts.”).

159. Allen & Solorzano, *supra* note 96, at 249 (quoting Chester Pierce, *Is Bigotry the Basis of the Medical Problem of the Ghetto?*, in *MEDICINE IN THE GHETTO* 301, 303 (J. Norman ed., 1969)).

exists for African American students who want to increase African American presence and decrease image exploitation.

C. Mentorship and Sponsorship

In the law school environment, faculty and student interactions form the foundation of learning and socialization.¹⁶⁰ Therefore, building rapport and establishing a network are critical to the success of African American students.¹⁶¹ Because African American students may believe that the onus is solely upon them to initiate such interactions, they may be reluctant for fear of repeat racial rejection or other prejudice.¹⁶² It has been said that higher education is “littered with landmines and unwritten rules that may torpedo the careers of those who do not receive proper guidance and support.”¹⁶³ Students of color need mentors to provide that proper guidance and support, while also offering advice, insight, and encouragement.¹⁶⁴ Students of color also need sponsors to advocate, leverage, and promote their contributions.¹⁶⁵ Mentorship and sponsorship are essential means for African American students to successfully navigate the legal journey.

IV. Institutional and Structural Realities

It has been well-established that African American life in the United States has been a life of mainstream exclusion. United States Supreme Court decisions, such as *Dred Scott v. Sandford*¹⁶⁶ and *Plessy v. Ferguson*,¹⁶⁷ served to “nullify the advances, both political and economic, that characterized the black experience during the Reconstruction period, and compelled its leadership to settle for a ‘separate but equal’ place in American society”¹⁶⁸ African American law students continue to face institutional and structural barriers in pursuit of higher education.

160. Hamlar, *supra* note 16, at 584.

161. See Culver, *supra* note 31, at 43–44.

162. See Hamlar, *supra* note 16, at 579.

163. González, *supra* note 73, at 52.

164. See *id.*

165. *Id.*

166. 60 U.S. 393 (1857).

167. 163 U.S. 537 (1896).

168. Katz, *supra* note 13, at 597.

Institutional and Structural Factors
A. Barriers Built into the Law
B. The Uncommon Code
C. Economic Inequality

Fig. 4

A. Barriers Built into the Law

Today, given anti-discrimination laws, those more overt forms of discrimination from the past have now made way for more covert indignities. Such indignities have become more apparent with the help of modern technology, yet a veiled “separate but equal” standard remains carefully woven into the fabric of this country’s culture, policies, and practices.¹⁶⁹ A cursory review of the heightened rate of African American contact with the juvenile and criminal justice system along with a seemingly erratic societal perception of justice aptly demonstrates two deeply separate organisms: the African American community and the legal system.¹⁷⁰

The institutional codes, societal structures, and traditional criteria of the American legal community prefer those of the white majority “of whose image the entire legal system is a reflection,” and thus, the concept of law does not even carry the same meaning for African Americans.¹⁷¹ Author Michael Katz once stated that large portions of the African American community no longer view law as effective or relevant to the troubles in society.¹⁷² He further added:

The black person in America has been excluded from the process of formulating the legal principles which constitute the normative order of our society. Therefore, the legal system constructed by white America has become both irrelevant and unresponsive to the needs of the black/poor and the deprived.¹⁷³

169. *See id.* (“The end of Reconstruction, the violent repression of the blacks in the South and the Supreme Court’s perverse interpretation of the Reconstruction Amendments combined to deny to black Americans those attributes of citizenship which the draftsmen of the Amendments believed were being accorded them. The net effect of the Supreme Court’s decisions in *The Civil Rights Cases* and in *Plessy v. Ferguson* was to nullify the advances, both political and economic, that characterized the black experience during the Reconstruction period, and compelled its leadership to settle for a ‘separate but equal’ place in American society, to prevent even greater encroachments on its already perilous condition.”).

170. *See Cochran, supra* note 71, at 359–60.

171. *Id.* at 369.

172. Katz, *supra* note 13, at 589.

173. *Id.*

African American citizens are needed in the legal process that controls their very destiny.¹⁷⁴ African American lawyers are needed to be the voice and hands of a legal revival for the benefit of their community.¹⁷⁵ This burden rests primarily upon law schools who were once the perpetrators of legal inequity, given the field's "lingering reputation for professional discrimination"¹⁷⁶ Law school administrators and faculty must now accept the higher calling of legal reformation.

B. The Uncommon Code

African American law students may not have the social capital garnered by their dominant culture peers to help navigate and decipher the secret social behaviors and norms within the legal community.¹⁷⁷ Because the "landmines and unwritten rules" of the academic landscape can be fatal to students who lack guidance and support, deciphering the code is essential to the academic success of African American students.¹⁷⁸ Without an understanding of the secret, and not so secret, social behaviors and norms that govern every day behavior, this uncommon code, or hidden curriculum, may cause African American students to miss out on opportunities that would enhance their academic and social experience in law school.¹⁷⁹ Such experiences include garnering insight on how to gather professional advice, participate in informal networks, or benefit from external systems of support.¹⁸⁰ African American students often miss out on this insight for lack of knowledge that it is needed or even exists.

C. Economic Inequality

Financial considerations also impact the African American law student's experience. Disparities in income and wealth between African American and dominant culture students necessarily result in different abilities to afford lengthy and expensive legal

174. Cochran, *supra* note 71, at 361.

175. *See id.*

176. *Id.* at 362 (quoting Peter A. Winograd, Hughes Graham & Robert B. McKay, *The Disadvantaged Student and Preparation for Legal Education: The New York University Experience*, 2 TOL. L. REV. 701, 706 (1970)).

177. González, *supra* note 73, at 52.

178. *Id.*

179. *See* Deasy, *supra* note 28, at 563 (discussing the Mellon Program, a week-long orientation and ongoing training that "addresses the problem of role discontinuity by providing preparation for, and support throughout, the black student's first year as a law student").

180. *See id.*

training.¹⁸¹ Further, African American students are typically “heavily dependent on financial aid because they [are] disproportionately burdened with undergraduate debt and [have] relatively little family support compared to white students.”¹⁸² Such structural forces are compounded by the escalating costs of law school and disproportionate reductions in financial scholarships, grants, and loans.¹⁸³ Economic inequality is a structural impediment that can challenge African American law student’s experience and professional journey.

V. Closing the African American Achievement Gap

Admittedly, the challenges facing African American law students, administrators, and faculty within predominately white institutions are daunting. Author Michael Katz stated:

If the institutions of the law are not to find themselves rendered obsolete by the swift pace of events, if they are to continue to perform their traditional function of providing the necessary framework for peaceful social change, something is demanded of them that goes beyond the rigorous and diligent enforcement of the law.¹⁸⁴

Law schools must carry this burden.¹⁸⁵

Scholars have proposed many ideas about how to resolve the achievement gap experienced by African American students.¹⁸⁶ Without a drastic change in this society’s social order, the gap may always exist. Yet, I can imagine a world where the achievement gap narrows. I can imagine a world where the achievement gap significantly narrows. I can even imagine a world where the achievement gap becomes imperceptible. Together, we can significantly improve the law school climate, quality, and experience—for all. If it holds true that “a journey of a thousand miles starts under one’s feet,”¹⁸⁷ I see no need for further delay.

181. Edward J. Littlejohn & Leonard S. Rubinowitz, *Black Enrollment in Law Schools: Forward to the Past*, 12 T. MARSHALL L. REV. 415, 416 (1986).

182. *Id.* at 437.

183. *Id.* at 446–47.

184. Katz, *supra* note 13, at 602.

185. *Id.* at 603.

186. See, e.g., González, *supra* note 73, at 54 (highlighting structural reforms to “create an equitable campus climate and address the unique barriers faced by historically underrepresented groups”).

187. LAO TZU, TAO TE CHING, ch. 64 (c. 4th Century B.C.E.) (Gia-fu Feng & Jane English trans., 2005), <https://terebess.hu/english/tao/gia.html> [<https://perma.cc/6AUT-ZJ9L>].

The following five institutional recommendations may help narrow the academic achievement gap experienced by African American law students within predominately white institutions. In some instances, these recommendations expand upon progressive efforts in other institutions, such as Historically Black Colleges and Universities (HBCUs).¹⁸⁸ There, a wide range of personalities, talents, and expressions are allowed to flourish and grow unfettered by stereotypes that can undermine a community. Generally, at HBCUs, students overperform because there are enough African American community members to provide the level of security, support, and esteem for students to function as individuals within their race, as opposed to spokespeople for their race.¹⁸⁹ Further, students feel less racially isolated and alone.¹⁹⁰ Until there is a critical mass of African American students, their problems, pressures, and personal discomfort within predominately white schools will likely persist, but can be managed.¹⁹¹ There is hope.

Five ways to Help Close the Achievement Gap
A. Dispel the Hidden Curriculum
B. Dispel Negative Innuendos and Attitudes
C. Dispel Harmful Coping Mechanisms
D. Leverage Community Support
E. Equip Community in Advance

Fig. 5

A. *Dispel the Hidden Curriculum*

Dispelling the hidden curriculum can help overcome the achievement gap. Linking back to habitus, the hidden curriculum is a concept that refers to unspoken values, norms, and behaviors that operate within an institution.¹⁹² These unspoken values,

188. Cf. Ayres & Brooks, *supra* note 20, at 1840–43 (discussing the concept of giving “empirical content to the idea of identifying the regime that would maximize the number of black lawyers”). The author is a graduate of Fisk University, an HBCU in Nashville, Tennessee.

189. *See id.* (using data to disprove an argument that removing affirmative action measures would increase “the overall probability of blacks becoming lawyers”); Hamlar, *supra* note 16, at 576–77 (noting that a critical mass of minoritized students could enable them to assert themselves as individuals, without the responsibility for the image, welfare, and ideas of their race).

190. *See Fisher v. Univ. of Tex. at Austin*, 136 S. Ct. 2198, 2236 (2016) (discussing racial isolation).

191. *See* Deo et al., *supra* note 92, at 74.

192. Merfat Ayesh Alsubaie, *Hidden Curriculum as One of Current Issue of Curriculum*, 33 J. EDUC. & PRAC. 125, 125 (2015).

norms, and behaviors serve to promote, enforce, and influence educational practices and people.¹⁹³ Accordingly, those law students who possess this hidden knowledge or access are advantaged.¹⁹⁴ For example, beginning law school students are advantaged by their connections to upper-class students or graduates who can share doctrinal class notes, practice exams, and informal networks. These peer advisors, informal networks, and activities are often undetected by African American students, yet provide invaluable insight, counsel, and support to dominant culture classmates.

To dispel the law school hidden curriculum, administrators and faculty can begin by acknowledging that it even exists, and then take measured steps to understand how it takes shape within their institution.¹⁹⁵ With that understanding, methods and strategies can be tailored to distribute the knowledge and resources that advantage some students, but not others. Here, student affinity groups like the Black Law Students Association (BLSA) should be funded and empowered to play a larger role in equipping its members with academic resources and support. While it is not BLSA's burden, such equipping could also include assistance to form a repository for study aids along with connections to academic mentors. As first year law students, African American students should be matched with an upper-classman peer advisor who is willing to help illuminate the academic path. Programs like the Academic Excellence Program at the University of Oregon School of Law could play a greater role to help surface and dispel the hidden curriculum by providing handouts and conducting information sessions on topics that everyone is presumed to know.¹⁹⁶ Such support mechanisms may better equip all students with the tools, norms, and expectations necessary to succeed within their new role as law students. Dispelling the hidden curriculum helps ensure that all students, specifically African American students, possess and access the same tools to succeed in law school.¹⁹⁷

193. *Id.*

194. *See id.*

195. *See id.* at 127.

196. *See Student Success*, UNIV. OF OR. SCH. OF L., <https://law.uoregon.edu/academics/student-success#:~:text=The%20Academic%20Excellence%20Program,and%20advising%2C%20and%20academic%20advising> [https://perma.cc/CM6Z-4ZHB] (discussing the Academic Excellence Program).

197. *See Deasy*, *supra* note 28, at 570 (discussing the Mellon Program at the University of Pittsburgh as a successful "academic support component . . . structured to address problems of performance that are related to the history of exclusion of blacks from legal education, and the profession in general").

B. Dispel Negative Attitudes and Innuendos

African American students should rely on their administrators' and faculty's ability to identify, navigate, and derail hidden attitudes and innuendos. Professor Culver noted that:

"Lawyers bring to their work their implicit biases that are embedded in the dominant power and prestige of identity groups in society." Naturally, it follows then that white law professors, the flagship of the dominant group in legal academia, bring their implicit bias into the classroom, where students of color are [minoritized].¹⁹⁸

These hidden attitudes and innuendos tie back to the psychological and social factors experienced by African American students, which on a good day, can crop up at least a dozen times.¹⁹⁹ African American students teeter between being negatively seen and being unseen. Such teetering creates a vulnerability that enters the student's classrooms and exits the professor's office.²⁰⁰ In general, administrators and faculty seem largely unprepared or unwilling to address the unique needs and challenges that African American law students face, particularly in the classroom.²⁰¹ For instance, when race is featured in legal cases or class discussions, professors and peers often look to African American students for translation.²⁰² This appeal for translation burdens African American students to breathe context, rationale, or insight into the

198. Culver, *supra* note 28, at 64 (quoting Russell G. Pearce, Eli Wald & Swethaa S. Ballakrishnen, *Difference Blindness vs. Bias Awareness: Why Law Firms with the Best of Intentions Have Failed to Create Diverse Partnerships*, 83 *FORDHAM L. REV.* 2407, 2413 (2015)).

199. See Allen & Solorzano, *supra* note 96, at 283 ("Understanding the pervasiveness of racial incidents inside and outside the classroom begins with acknowledging the subtle, yet stunning, insults endured by students of color on a daily basis.").

200. See Deo et al., *supra* note 92, at 74 ("[L]egal education continues to focus on white males as the primary recipients of legal knowledge and classroom attention . . . This often leaves students of color feeling 'othered,' voicing concerns that their race negatively affects how they are treated by professors in the classroom. Law students of color have higher attrition rates and lower academic outcomes than whites, as many disengage from classrooms focused primarily on white students.").

201. See Culver, *supra* note 31, at 65 ("Minority students across the country . . . not only feel disappointment and dissatisfaction with the 'problems of diversity in the nation's law schools,' but also recognize how their educational experience is negatively impacted by a dominant viewpoint that permeates their classroom experience, often discounting various perspectives.").

202. See *id.* at 66 ("The subtle or overt forms of bias, or complete absence of social and racial context, can mean that attending class for students of color requires them to 'deal simultaneously with intellectual and discriminatory stressors.'").

legal narrative.²⁰³ Further, this burden creates anxiety, frustration, and fatigue. African American students look to their professors to assume leadership of racially infused text and dialogue. A professor's failure to assume that leadership by laying the racial foundation, acknowledging a racial lens, or anticipating student discomfort, sends a signal of indifference, ignorance, or insignificance.²⁰⁴ Professors should not miss an opportunity to acknowledge and validate other racial perspectives.

To dispel these negative attitudes and innuendos, administrators and faculty should at least make the effort to see the world and legal issues the way that African American students do. As Kent Greenwalt noted, "a white student [or faculty member] who has never talked seriously with [African Americans] will be unlikely to understand many very important things about life in the United States."²⁰⁵ Such very important things may eliminate or blur stereotypes that can inhibit one's practice as an administrator, lawyer, or judge.²⁰⁶ In order to see the world the way that African American students do, administrators and faculty should be required to certify, formally, as culturally competent scholars. And, that cultural competence should be recertified annually. Without formal and ongoing training to become more racially sensitive and aware, blind spots will persist at the expense of a tiny, recruited community.

Administrators and faculty should deepen their cultural understanding and connection to African American students. One lasting and effective way to deepen cultural understanding and connection, is to build a relational bridge. Administrators and faculty can actively seek feedback from students of color to gauge diversity impact and classroom impressions. Administrators and faculty should also attend a BLSA event or meeting each year. Administrators and faculty should invite students of color to stop by their office to check-in, have coffee or a sandwich, or should offer to call or set up an online conference. Administrators and faculty could also email articles of interest or support, make time to hear student viewpoints, and offer faculty viewpoints. Granted, the educational system may emphasize scholarship over service, yet

203. *See id.* at 66–67.

204. *See id.* at 79 n.230 (citing examples of mishandled classroom environments when discussing race).

205. Hamlar, *supra* note 16, at 584; *see also* Bell, *supra* note 1, at 548 ("If white law professors are to teach effectively black law students, however, they must at least make the effort to see the world and the legal issues as the black students see them.").

206. *See* Hamlar, *supra* note 16, at 584.

“these times do not afford [you] the opportunity to maintain [your] scholarship in an ivory tower, to be detached and self-indulgent.”²⁰⁷

C. Dispel Harmful Coping Mechanisms

The law school does not provide adequate tools for minoritized people to navigate experiences when racial identity is at issue. Thus, African American students are largely unequipped to anticipate and manage the psychological and social fallout that their presence and perspective may invite.²⁰⁸ As a result, many of the psychological factors previously mentioned can be triggered. For example, in class or in hallway conversations, when an African American student raises social or economic issues that are unique to the African American experience, those issues may be met with debate, ignorance, or denial.²⁰⁹ When left to defend this narrative alone, African American students may quickly become at odds with other equally impassioned expressions that are narrated by dominate culture peers. From the African American student’s perspective, that debate, ignorance, or denial discredits and devalues their sense of worth and worthiness within the learning environment. These negative feelings linger and are likely suppressed or unaddressed because the tools to navigate such racial dynamics are not present.

Administrators and faculty should provide effective tools to help African American students address common racial dynamics in law school. The law school’s Diversity, Inclusion, and Leadership Development Director, or someone in a similar position, should create a toolbox that is tailored to the African American psychological and social experience in law school. This toolbox should include a “lunch and learn” session early in the fall semester and a “check-in” session during the semester’s midpoint. These sessions should also include one joint opportunity to listen and learn with faculty. More importantly, the law school should have counselors on site who are dedicated to the mental and emotional well-being of all students, specifically African American students. The mental health statistics for legal practitioners are staggering

207. Cochran, *supra* note 71, at 379.

208. See Deasy, *supra* note 28, at 548–49 (explaining the theories defining “the strain experienced by many black students in entering the role of law student, a role from which black individuals were for many years largely excluded, and in which they remain severely underrepresented”).

209. See Culver, *supra* note 31, at 63–69.

and the pursuit of law can be a breeding ground for mental crisis.²¹⁰ Law school leadership should dedicate resources for an inhouse mental support team. These tools, sessions, and support will better equip African American students to successfully navigate the racial terrain in law school.

D. Leverage Community Support

African American students need a village. Students can matriculate and spend three years in this environment largely unaware of who those village members are. Those village members are allies. These allies have demonstrated a willingness to be a part of the African American student experience and can readily speak to the common concerns and missteps in pursuit of law. Allies should be invited, regularly, to connect with students and share lessons learned, offer encouragement, counsel, and support. For African American students in a predominately white institution, ongoing conversations are essential.

To identify and leverage the village, allies within the legal community should be identified and communicated to African American students. One informal way to make this introduction is to fund an annual BLSA student dinner. This dinner will help communicate, establish, and maintain community connections. This dinner should be hosted at the beginning of the school year. A reception, also hosted at the beginning of the school year, should include administration, faculty, and BLSA members. Here, allies within the legal community can be invited and introduced. This reception should be an informal gathering. These social occasions can help provide the village that African American students need within the legal community.

It cannot be overstated how critical it is for the law school to hire African American administrators, faculty, and staff as rapidly as African American students are recruited. In addition, utilizing visiting professors until permanent positions can be hired, for even one semester, not only benefits the students, but the law school.²¹¹ These professors, legal scholars, and trailblazers will be fully capable to stand as informative and inspirational beacons of learning and change. Their visits can serve to “bridge the gap while

210. See Dina Roth Port, *Lawyers Weigh in: Why Is There a Depression Epidemic in the Legal Profession?*, ABAJOURNAL (May 11, 2018), https://www.abajournal.com/voice/article/lawyers_weigh_in_why_is_there_a_depression_epidemic_in_the_profession [<https://perma.cc/M4QY-HGTZ>].

211. Bell, *supra* note 1, at 557–58.

a number of permanent [African American] faculty and staff members are being acquired.”²¹²

E. Equip Community in Advance

African American students should be equipped in advance for the many institutional, social, and psychological challenges that they will face. The challenges facing African American students are common, predictable, and well-known. For this reason, administration and faculty should ensure that African American students are not left unaware or ignorant. To that end, administrators and faculty should also not be left unaware or ignorant. Experiences that trigger psychological factors such as stereotype threat or imposter syndrome are not unusual given the racial dynamics and rigors of the law school environment. Equipping African American students, administrators, and faculty, in advance, with the capacity to identify these experiences while providing these groups with the tools to cope, is essential. To disseminate these tools, law school administrations should arrange a group discussion with African American students and include representatives from the school’s counseling center and equity and inclusion department. This discussion should occur externally, away from the building where the challenges will arise.

Conclusion

In 1965, during Howard University’s commencement, President Lyndon B. Johnson stated:

You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, “You are free to compete with all the others,” and still justly believe that you have been completely fair.²¹³

While African American students may still contend with those chains in the form of structural, psychological, and social barriers, the achievement gap that they experience can be narrowed. Law schools have an obligation to create access for these students who have been historically excluded from the legal profession.²¹⁴ To that

212. *Id.* at 558.

213. Hamlar, *supra* note 16, at 534; President Lyndon B. Johnson, Commencement Address at Howard University, C-SPAN, at 13:09 (June 4, 1965), <https://www.c-span.org/video/?326895-1/president-lyndon-b-johnson-commencement-address-howard-university>.

214. *Id.* at 459.

end, African American students will require a more sensitive and timely approach to address their unique needs.²¹⁵ Today, admissions criteria, teaching methods, and course curriculum should reflect the African American lawyer's function and responsibility to society. As Dean Bell aptly stated, "Blacks do not expect the law schools to advocate revolution. They do, however, expect a view of the world, the law, and society more encompassing than that held by Louis XIV."²¹⁶ Law schools must lead the legal profession and our society in justice for all. Dean Bell envisioned that "[a]s the transition from a white law school with a few token [African Americans] evolves to a multi-racial law school (including faculty and administration) issues of . . . 'racist teachers,' [administrators, and students] . . . 'recede.'"²¹⁷ African American law students should no longer have to enter and graduate as "strangers in a strange land."²¹⁸ The prognosis is one of optimism.

215. *See id.* at 537 ("[L]aw schools which admit minority students and other students who have been disadvantaged by academic and/or economic inequality have a legal obligation to provide compensatory academic and financial assistance to assure equal opportunity in competition to such students.").

216. Bell, *supra* note 1, at 548.

217. Hamlar, *supra* note 16, at 584 (quoting Derrick A. Bell, *In Defense of Minority Admissions Programs*, 119 U. PA. L. REV. 364, 368-69).

218. Bell, *supra* note 1, at 540 (referencing Harriet Tubman's quote cited in AUGUST MEIER & ELLIOTT RUDWICK, *FROM PLANTATION TO GHETTO* 146 (Am. Cont. Series ed. 1956)).