Strategies and Techniques for Integrating Diversity, Equity, and Inclusion into the Core Law Curriculum

A Comprehensive Guide to DEI Pedagogy, Course Planning, and Classroom Practice

EDITORIAL ADVISORS

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PREFACE

If you are reading this book, chances are that the students, faculty, and administrators at your law school have been discussing how to integrate issues of diversity, equity, and inclusion (DEI) into the core curriculum. Conversations about DEI can be controversial and difficult, but they are timely and necessary. This book is designed with the challenges and benefits of integrating DEI issues into law school teaching in mind. For this reason, it is a departure from the other books in the Wolters Kluwer Legal Education Strategies and Techniques series in approach and content. It considers the entire scope of DEI pedagogies and classroom practice, which includes the universe in which they occur, obstacles to implementation, and possible solutions to facilitate implementation. For that reason it treats subjects usually thought of as background or contextual as part and parcel of developing viable and effective DEI pedagogies and classroom practice. In this text, understanding the tension between the First Amendment, academic freedom, and DEI initiatives is integral to unpacking our perceptions about integrating discussions of race into the curriculum and classroom. This understanding is also essential for removing barriers to inclusive educational practices. So too is developing concrete instructional methods to reach our students that are grounded in an acknowledgement of racism as trauma. Student experiences with race and racism affect how they navigate law school, legal education, and the legal profession.

Like its companions in the Strategies and Techniques series, this book also gives practical steps for implementing DEI curricular and classroom practices that focus on course planning and assessment along with subject specific examples. It is not based on one subject in the core law curriculum, but covers strategies and techniques for integrating DEI issues into them all. It does not instruct its readers how to "add on" some DEI materials to classes in a piecemeal fashion. Rather, it provides an overarching approach to the course planning, pedagogies, and classroom practices that are at the core of effective DEI education. This Strategies and Techniques book is interdisciplinary and comprehensive in scope.

Now that we've traced the outward contours of the book, let's talk about its heart. I offer this book as a love letter to our students, all of them, and to law professors as former law students. We too learned in classrooms where we were either cognizant of or oblivious to the silences in the core curriculum that erased our histories and lived experiences. As we graduated from law school, passed bar exams, and practiced law, we modeled our careers on the best and worst of what we were taught. Our ideas of how to present ourselves as lawyers, how to be a lawyer, and how to craft and deliver effective arguments were shaped by what was present and absent in our core curricula. For some of us, navigating law school and joining the legal profession meant presenting less of ourselves and embracing who we were told we must become. This alternate becoming, reinforced by the environments of our law schools, embodied by those who taught us, and by what they taught us (or not), often deprived us of our ability to choose how we would lawyer. The path presented was narrow, and what lay outside of it was context, explanation, and the lived experiences of the parties in our casebooks who stand eternally at the ready to guide class after class of law students to "the law." Legal education that discourages entry to the profession for those who arrive simply as they are cannot hope to develop effective advocates to meet the world's problems and promises.

This book offers law professors an opportunity to give our students their choices back—choices for how they become, present, and create themselves as lawyers. It invites us to listen to what our students insist their legal education is telling them, the implicit and explicit ways we teach them that they do or do not belong. We can change course by changing our courses, by broadening the path to the law and to the profession. I cannot promise that the path will be smooth, straight, or devoid of peril, but I can promise that there will be space enough for all of us who choose to walk and learn together. After we learn to walk, maybe we will dance.

INTRODUCTION

Vernæ Myers, author of *Moving Diversity Forward: How to Go From Well-Meaning to Well-Doing,* is credited with the popular and oft used phrase, "Diversity Is Being Invited to the Party; Inclusion Is Being Asked to Dance."[1] Addressing this concept in conversation with an organizational board at the cusp of embarking on diversity efforts, blogger Nadia Craddock asserts that, "Equity is ensuring everyone has appropriate transport to the dance, regardless of their station location."[2] But where is the dance located? With whom are we dancing? And who chooses the musical style and makes the music selection that sets the dance tempo and possibly even the dance? These questions are key for understanding the scope of diversity, equity, and inclusion (DEI) efforts, and for setting realistic expectations for what they can accomplish.

In the case of legal education, DEI initiatives writ large take place in an institutional setting. Educational institutions, with their layers of bureaucracy, constituent groups, and governing bodies are the location for the dance. For law schools that operate as part of a university, the law school is part of a system of colleges and professional schools and is responsible to provosts, chancellors, university presidents, trustees, and (in the case of public institutions) state legislators—all governing bodies external to the law school. These external governing bodies set the musical style for the DEI dance—the scope, type, and tenor of what DEI efforts might become. On the dance floor located at the law school, the law school dean and various associate deans and senior staff choose the music for the DEI dance at their location in the style set by the external governing bodies; in the absence of the external body, as in the case of an independent or "stand alone" law school, the law school dean and various associate deans and senior staff may set both the style of the music and choose the music for the dance. Of course, doing the tango to the Billboard 100 will not do; DEI efforts with the greatest potential for success must be in concert with the vision and mission of the university.

Through faculty governance, law school faculties negotiate the tempo of the dance. The law school dean, associate deans, and faculty committees may propose DEI initiatives, but ultimately, the faculty will determine if those initiatives languish in committee year after year, the pace at which they are implemented, and who bears primary responsibility for doing the work to implement the initiatives. Individual faculty decide whether they will participate in the dance, sit out, or be wallflowers anxiously awaiting suitors committed to the dance who will lead them—transport them—confidently to the dance floor. Although buy-in and enthusiasm for DEI programming is important and necessary, it would be naive to believe that all participants want to be there. Some are reluctant participants; some are present to assess where the institution is moving and whether they wish to go in that direction; and some participants welcome the work and wholeheartedly lend their support in service to their respective law school communities. Once on the floor, dance partners must persevere through the pain of stepped on feet, missed steps, and the ever present acknowledgement of power inherent in the alternating roles of leader and follower for the duration of the music selection.

Arriving to the site of the DEI initiative, whether that means attending designated events or serving on a planning committee, is only a beginning. Participation in any DEI initiative means continuously showing up despite offense and miscommunication. There will also be contestations of power between participants in how they conceptualize the initiative, their role in it, their position at the law school, and the mission to which they are in service. For participation to translate into success, faculty, staff, and students must exist in an educational environment where its constituent groups have honestly assessed its climate for minoritized racial, ethnic, class, and gender groups, and developed DEI strategies with those groups that best suit their needs and institutional needs.

This text is the music for our DEI dance. Its primary concerns are strategies and practices that facilitate DEI classroom and curricular interventions at American law schools. It is designed to help law professors at all stages of their professional lives to develop pedagogies and plan courses appropriate for racially, ethnically, class, and gender diverse students that (1) meet both professor and student where they are in their awareness of difference and its impact on learning; and (2) create classroom and curricular

space that accommodates their needs. That design occurs in three main parts: Part I—Challenges to Strategies and Techniques for Integrating DEI into the Core Law Curriculum (Chapters 1-3); Part II—Practical Steps for Integrating DEI into the Core Law Curriculum (Chapters 4-6); and Part III—Examples of How to Integrate DEI into the Core Law Curriculum by Subject Matter (Chapters 8-14). While it may be tempting to skip over Part I to get to what you may perceive as the "real" practical steps quickly, resist. Chapters 1-3 provide valuable context that will inform the success or failure of your DEI curricular and classroom endeavors.

Part I, **Chapter 1**, *The Scope of DEI Education & Pedagogy* details the evolution of teaching with a DEI lens. DEI education and pedagogy work to make the greatest positive change within the core structures of legal education by strategically employing critical pedagogies and curricula. **Chapter 2**, *The First Amendment, Academic Freedom, and the DEI Curricular Lens*, examines the pushback students, faculty, and administration have encountered when advocating for DEI pedagogical and curricular interventions. This pushback has been cast as a conflict around academic freedom. This chapter discusses the current conflicts in the battle between DEI and academic freedom, and provides strategies for how to navigate these issues on law school campuses. **Chapter 3**, *Assessing the Institutional Climate for DEI Curricula*, explores the varied considerations professors of all ranks and statuses *(e.g., Assistant, Associate, and Full Professors, non-tenure track full time faculty; adjunct faculty, etc.)* should make when implementing DEI issues into the classroom and curriculum. This chapter explores how rank, status, and campus climate influence which pedagogical and curricular choices are available to faculty. It also examines professor positionality and teaching, or how a professor "presents" to the class impacts available DEI curricular choices and pedagogical strategies.

Part II, **Chapter 4**, *Racial Trauma Informed Approaches to DEI Pedagogy*, discusses how microaggressions, macroaggressions, and other discriminatory practices leave an indelible mark on those who have survived them. The psychological and social science communities have examined these phenomena as trauma, and have detailed the emotional, psychological, and physical effects they have on minoritized groups. It is imperative that professors have an understanding of racial trauma and racial trauma

informed pedagogies as they prepare to discuss DEI issues in the classroom and design DEI curricula. **Chapter 5**, *Course Planning and Assessment for the DEI Classroom & Curriculum*, provides instruction on how to build a course that integrates a DEI curricular lens. It offers course planning templates that link skills and knowledge to learning outcomes, performance criteria, and learning activities – both for traditional and online classroom environments. It also connects the information in *Chapter 4: Racial Trauma Informed Approaches to DEI Pedagogy* to the course planning and assessment processes. **Chapter 6**, *Developing Instructional Materials for DEI Pedagogy & Practice*, lays out the processes for developing classroom DEI instructional materials that serve as learning activities to advance and measure learning outcomes. The chapter surveys multimedia resources, traditional learning techniques, microlearning techniques, and the like that are appropriate for traditional and online learning environments. It also provides levels of difficulty (easy, intermediate, difficult, and advanced) at which professors can access this work.

Answers to a list of frequently asked questions (FAQs) is located in Chapter 7. If you are working through this book with a committee, faculty, or other group, **Chapter 7** also provides discussion questions for Chapters 1-6 to facilitate group dialogue. Lastly, Part III, **Chapters 8-14,** provides examples of course planning, instructional materials, and assessment for core curriculum courses at the easy, intermediate, and difficult levels. The courses included are Contracts, Civil Procedure, Criminal Law, Property, Constitutional Law, Legal Writing, and Torts.

PART I —
Challenges to Strategies and Techniques for Integrating DEI into the Core Law Curriculum

CHAPTER 1:
The Scope of DEI Education & Pedagogy

DEI Education

As the Introduction to this text elucidates, DEI curricular initiatives occur within the boundaries set by the governing bodies at a university and/or law school, the ingenuity of the law school dean, associate deans, and the senior staff, and the capacities of these administrative groups and faculty to implement them. To this end, these groups envision DEI initiatives as helping their educational institutions to achieve the highest ideals as workplaces and spaces of learning. These idealized educational spaces rest on the affirmation of the university and/or law school as living embodiments of the intellectual imagination in structure and function. Accordingly, barriers to (1) achieving racial, ethnic, class, and gender diversity; (2) equipping minoritized individuals to navigate the institutions for their success; and (3) providing an environment that allows these groups to thrive are what prevent the institution from becoming the best it can be. This is significant, because DEI curricular interventions operate to move the needle forward by working *within* institutional structures that are the subject of critique and the aspirational objects of transformation.

Claude Steele's *Whistling Vivaldi: How Stereotypes Affect Us and What We Can Do* is instructive in this regard.[3] He argues that the conditions of identity—how access to resources is organized around the meaning given to an identity at a particular time, place, and circumstance—are reflected in institutional histories and the ways those operating within them compete for the opportunities they offer. When considered from this perspective, law school, as an educational institution, is an expression of organized elite race, class, and gender identity. Such organization reflects its curricular history as a phenomenon of the Gilded Age, as well

as the competition among its constituents for the opportunities legal education offers. For example, one site of this competition is admissions. Prospective law students must prepare for and take the Law School Admission Test (LSAT). Students may choose to prepare by purchasing a book and working through it at their own pace. This is certainly the cheaper option. Preparation books and study supplements range in price from about $30 to $150.[4] Preparation courses, plans of study led in person or online by skilled test taking and advising professionals, range in price from approximately $300 to $1,150.[5] These preparation courses are positively correlated with higher LSAT scores, which facilitate admission into the top 14 (T-14) schools (as ranked by U.S. News and World Report) and Ivy League schools that provide access to highly paid employment opportunities and elite spaces.

LSAT preparation courses are accessible primarily to prospective law students who have monetary resources, family support, and understanding about the importance of the LSAT in law school admissions and career choices.[6] To address this disparity, the Law School Admission Council (LSAC) has partnered with Khan Academy to create the first free online LSAT preparation course.[7] Minoritized students are more likely to be excluded from opportunities to take traditional LSAT preparation courses because they lack the funds and/or are first generation students who lack access to knowledge about the law school admissions process, law school, and the profession.[8] In turn, students from these groups are more likely to receive lower LSAT scores, which impacts the range of schools where they will be competitive applicants.[9] They are likely to attend schools outside of the T-14 and Ivy League, which may have an influence on their starting salaries and employment opportunities available to them. According to data provided in 2020 by the American Bar Association (ABA), only 14% of lawyers in the United States are people of color.[10] The National Association for Law Placement, Inc. (NALP) findings on *Representation of Women and People of Color in U.S. Law Firms* is equally alarming. They show that in 2020 people of color comprised 10.23% of law firm partners, with only 3.79% women of color among them.[11]

This confluence of events leads to how law school classes are constituted, and reveals the law school as an organized race, class, and gender identity. The best opportunities for admission to law

school, high salaries, and access to elite spaces are available to students who are White, male, and outside of the poor and working class. Prospective law students who are not included in these categories are at a competitive disadvantage. The admissions process, even getting to the gate to begin the process, amplifies their restriction from it based on identity. In this context, women and people of color's identities become what Steele refers to as "identity contingencies"—"circumstances [a person has] to deal with in order to get what [they] want or need in a situation."[12] In the law schools that these students enter, an identity contingency is detrimental to student success in that it consistently serves as an obstacle a student must overcome to fully access the resources of the institution. Law schools are "white spaces"[13]—spaces normed to White, male, elite experiences[14]—in the same way as the law school admissions process. Any member of the law school community not included in those categories carries one or multiple identity contingencies in this environment as they navigate the classroom and the curriculum.

DEI Pedagogy

DEI pedagogy aims to address and neutralize identity contingencies as barriers to law students and faculty accessing and utilizing the resources their law schools offer. Minoritized students and faculty come to law school with wisdom from their lived experiences on how to minimize the effects of their identity contingencies on their access to resources, to the extent those effects are in their ability to control. This wisdom evidences an awareness that benefits and punishments are doled out in white spaces for non-conforming individuals based, in part, on how they present themselves in the space. The closer non-conforming individuals appear to the norms of a space, the more benefits they will receive. The further non-conforming individuals appear from the norms of a space, the less benefits they will receive. The main behaviors minoritized students and faculty employ strategically to manage their identity contingencies are covering, assimilation, and passing.[15] The following example illustrates these concepts.

Tyler is an African American woman who is gender non-conforming. Her pronouns are she/her/hers. She is from Appalachia

(The Great Smoky Mountain area in Tennessee), and refers to herself as "Blackalachian" to remind people that Black people do indeed reside there. Tyler has received admission to law school, and is nervous about attending. She is concerned about how she may be perceived by her classmates, because she is masculine presenting, speaks with one of the varied Appalachian accents, and comes from a working class background. On the first day of her law school orientation week, she decides to dress in a simple pant suit (off the rack from a popular men's clothing store), no tie, and men's dress shoes—all purchases placed on her credit card. She has also donned what her mother calls her "telephone voice," a voice devoid of Appalachia and the patois she uses in casual conversation with her family and friends. Tyler's strategy for her presentation at 1L orientation is aimed at assimilation, or "fitting in" with all of the other law students. Her acts of dressing in a manner that does not immediately signal her gender or reveal her economic class and her use of her "telephone voice" are attempts at covering, or lessening the effects of her Blackalachian regional and racial identities, and her gender identity and performance.[16] If Tyler were to dress in a pantsuit and adorn herself with heels, earrings, and make-up, she would be attempting to pass, or to present herself as something other than her true, authentic self. Minoritized individuals utilize these strategies to eliminate or minimize the emotional, psychological, and physical violence that is possible due to their distance from institutional norms. In educational institutions, emotional and psychological violence take the form of microaggressions and their progeny—microinequities, microassaults, microinsults, microinvalidations,[17] and stereotype threat.[18]

Microaggressions are a broad category of offenses directed at minoritized individuals because they are classified as belonging to a maligned group.[19] Microaggressions can be verbal, non-verbal, or even environmental, but their impact is to set minoritized individuals apart as the "other" and to underscore their position as outsiders to the norms that govern the space. Law students of color routinely recount incidences where they are made to feel as if they do not belong at the law school or in its libraries, classrooms, lounges, and other casual spaces due to the constant barrage of microaggressions. Microaggressions that regularly occur in a classroom are when professors who are men speak over or

correct women students and/or do not correct this behavior when it occurs in student discussions; and when professors refuse to talk about race when it is explicit in cases and legal concepts.

Microinequities are instances where minoritized persons are sidelined and dismissed in business and other institutional settings.[20] In law schools, professors often perpetrate microinequities when selecting their research and teaching assistants, particularly when they do not select students because of the perceived intellectual deficiencies of their group. If a professor unconsciously holds the belief that most Latinx people are immigrants for whom English is a second language, then the professor would be less likely to see Latinx law students as viable candidates to help them with complex research projects or capable of exercising sufficient responsibility to help with teaching a class. Faculty of color are often subject to similar treatment in the tenure and promotion processes, where certain types of scholarly inquiry, specifically inquiry that concerns societal inequities in communities of color, may be discounted as not rigorous enough to meet the standards for scholarship at their schools.

Microassaults are negative, direct, conscious, verbal, nonverbal, and environmental actions against people from underrepresented groups that are meant to demean.[21] These actions cast members of these groups as inferior and in opposition to the norms set in any given space, and are meant to reinforce their exclusion from and/or isolation in it. Artwork, signage, course handouts, and pictures on PowerPoint, Keynote, or Prezi slides that depict women and people of color in a subordinate and derogatory manner are microassaults. Likewise, outright racist, sexist, classist, homophobic, and transphobic epithets fall into this category.

Microinsults are statements that appear superficially benign, but have meaning when directed toward marginalized persons.[22] Again, microinsults abound in classrooms during discussions of case law and legal concepts. They are pernicious in that the speaker, professor or non-marginalized student, can pass them off as misunderstandings when the person to whom the comments are directed understands them as insults. Law students of color routinely experience microinsults during Socratic questioning about cases involving people and communities of color. For instance, in a discussion of a case involving racial profiling in a criminal

law class, a professor may respond to a student's recitation of the issue in the case with the question "Why was the defendant in a part of town where he did not reside?" In the context of the class discussion, the question appears to be reasonable in that it seeks an answer to why the defendant was in a position to be a suspect. However, for students of color the question suggests that if the defendant "knew his place" and stayed in "his part of town" then he probably would not have experienced a negative police interaction. With the question, the professor places the blame on the person of color for being racially profiled, rather than on the police for engaging in racial profiling. In this scenario, the professor could further the microinsult by only calling on White students in the class even when students of color also raise their hands to answer the question. Not only would ignoring these students send the message that they had no valuable contributions to offer, but also reinforce that these students needed to "stay in their place" when discussing such issues.

Microinvalidations dismiss the lived experiences of women and people of color and discount their encounters with discrimination and inequity.[23] Typical microinvalidations in a classroom setting include a professor "praising" a student of color for being articulate when answering a question or "complimenting" a student on how good their English is based on the mistaken perception that the student is foreign born. Within a student's peer group, microinvalidations can take the form of tone policing, or attempting to regulate a woman or person of color's tone of voice when perceived as "weak," animated or loud; and/or denial of minoritized students' lived experiences with racism, sexism, classism, homophobia, and transphobia by insisting that society is colorblind, that acts of discrimination are individual and not systemic in nature, and/or that the student is just being "touchy" or "too sensitive."

Stereotype threat is a person's awareness of common stereotypes associated with their identity groups, and fear that their behavior in any given situation will be perceived as adhering to those stereotypes.[24] In law school classrooms, students of color are aware of stereotypes about their paths to law school and their ability to be successful in their coursework. A common stereotype is that a student of color "took a seat" from a prospective White law student due to affirmative action policies, and does not

deserve to be in the law school class. Thus, a student of color may feel fear that any of the growing pains, pitfalls, and failures of being a 1L that they experience actually support claims that they do not belong in law school.

Microaggressions, microinequities, microassaults, microinsults, microinvalidations, and stereotype threat affect minoritized groups and their denigrators. Collectively they "create psychological dilemmas that unless adequately resolved lead to increased levels of racial anger, mistrust, and loss of self-esteem for persons of color; prevent White people from perceiving a different racial reality; and create impediments to harmonious race relations."[25] Although minoritized students are conditioned to engage in a set a behaviors (assimilation, covering, and passing) that can impact how they are perceived in a given moment, it is unlikely that these behaviors will significantly lessen the instances of the myriad types of microaggressions that they encounter. Moreover, these behaviors cannot address systemic factors that necessitate such behaviors in the first place. DEI pedagogy stands in this gap, both in how it addresses classroom climate and the curriculum. This book explores these topics in depth in Chapters 4-6.

For more on the issues discussed in this chapter check out:

Lucy A. Jewel, Does the Reasonable Man Have Obsessive Compulsive Disorder?, 54 Wake Forest L. Rev. 1049 (2019).

Wendy Leo Moore, Reproducing Racism: White Space, Elite Law Schools and Racial Inequality (2008).

Azadeh F. Osanloo, Christa Boske & Whitney S. Newcomb, *Deconstructing Macroaggressions and Structural Racism in Education: Developing a Conceptual Model for the Intersection of Social Justice Practice and Intercultural Education,* 4 International Journal of Theory and Development 1(2016).

Valerie Jones Taylor and Gregory M. Walton, *Stereotype Threat Undermines Academic Learning*, 37 Psychology Bulletin 1055 (2011).

Gerald Wing Sue, Christina M. Capodilupo, Gina C. Torino, et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 American Psychologist 271 (2007).

CHAPTER 2:
The First Amendment, Academic Freedom, and the DEI Curricular Lens

Institutional attempts to integrate DEI issues into classrooms and curricula at K-12, post-secondary, graduate, and professional levels have been a flash point for assertions of First Amendment rights and academic freedom. The failure of faculty to work out what DEI initiatives mean to them in the context of institutional guidelines for academic freedom will almost certainly block their implementation. Understanding the dynamics at play will help faculty members to develop strategies and techniques for addressing them that honor our highest ideals as educators and demonstrate our commitment to all of our students.

The tension between DEI curricular and classroom initiatives, the First Amendment, and academic freedom is ongoing and unavoidable in legal education. In its present incarnation, the tension between the three has centered on whether a professor's use of racial epithets, espousal of views considered disparaging to communities of color, and emphasis on the primacy of individual actions over systemic oppression as part of classroom instruction is harmful to advancing DEI initiatives and maintaining inclusive educational environments. Conflicts concerning DEI, the First Amendment, and academic freedom usually break down along racial lines, with faculty, students, and administrators of color urging their colleagues to rethink how certain words and views work against creating inclusive communities, and White faculty, students, and administrators advocating for unlimited free speech and academic freedom as individual rights. Problems arise when students call for their institutions to reprimand White faculty and administrators for their words and views characterized as racist or racially insensitive. When institutions place maintaining

community at the center of their disciplinary strategies, individual rights advocates see institutional actions as trampling over First Amendment rights and academic freedom. When institutions elevate individual rights to shield a professor from allegations of racism, inclusive community advocates see these actions as maintaining systemic racial inequities at their institutions.

Often student racial and ethnic affinity groups, particularly the Black Law Students Association (BLSA), bring classroom DEI issues to the attention of law school faculty and administrators. A BLSA chapter at a public university in the South found itself in this role when named and unnamed members drafted a document titled "Request for Redress" to alert the law school dean, a White man, and other senior administrators about what they deemed a problematic racial climate at the law school that had persisted over a two-year time period.[26] The key events that were foundational to BLSA's concerns are illustrative of the tensions between law school pedagogy, DEI in student academic experience, the First Amendment, and academic freedom.

The most controversial part of BLSA's "Request for Redress" touched on how difficult conversations were handled in the classroom and during student organization events.[27] These incidents served as context for student allegations of a declining racially inclusive climate at the law school. At the center of the mishandled conversations was a White male law professor and his discussion of Affirmative Action, both at a BLSA sponsored event and in his Constitutional Law class.[28] Prior to what the BLSA students dubbed as an "Affirmative Action Rant" during the class, the organization had invited the professor to serve as a panelist at a law school town hall meeting it sponsored on Affirmative Action.[29] In the students' words, "[w]e knew then that he had some adverse opinions about Affirmative Action.[30] In that meeting he spoke of an internship he felt he was passed over for because of Affirmative Action. He also admitted to having racist friends and not seeing anything wrong with that."[31]

Weeks later during the Constitutional Law class in question, the BLSA students alleged that the professor "lectured that Affirmative Action was not needed, and Affirmative Action gave unqualified Black people chances over more qualified Whites."[32] The professor allegedly went on to denigrate Civil Rights icon Rosa Parks by entertaining a satirical article about her in the

publication *The Onion* during class, and then distribute a worksheet to the students that covered basic grammar.[33] His alleged justification for the handout was that "he'd noticed in recent years that the level of writing at the law school had gone down."[34] The BLSA students in the class did not perceive the timing of the handout as benign, and expressed that they "[did not] think it was a coincidence that [the professor] chose this class on Affirmative Action to express his feelings about the poor writing skills of some students at the law school."[35]

The class continued and the controversy escalated with a Socratic exchange involving *Grutter v. Bollinger*, a case about the use of Affirmative Action in law school admissions.[36] Allegedly the professor did not question the White student who was called on with the same rigor as he had previously engaged Black students in the class, which was demonstrated (in BLSA's view) by the student's uncorrected inaccurate statement of the facts of the case.[37] Over the course of the class time, Black students reported feeling increasingly scrutinized and noticed that "[the professor] kept looking to [the section where all of the Black students sat] expecting [them] to speak up and defend Affirmative Action," which they allege the professor confirmed when the students met with him privately.[38] Class ended with another handout, a form that the professor allegedly created to be submitted with the final exam.[39] BLSA students contend that all of the students in the class were to place their name and race on the form.[40] Allegedly, the professor's plan was to use the information on the form to allocate an extra point to Black students who earned the same scores as White students on the exam.[41] This troubled the students who believed that "by implication [such a practice] automatically assumes that a Black student wouldn't score as high as a white student. But *if* they did, then the Black student would be given an extra point."[42]

When BLSA took its concerns to the administration, they were allegedly told that the professor was within his First Amendment rights to speak as he did and reminded that he was a tenured professor.[43] At the administration's urging, the students met privately with the professor to express their concerns about the class and reservations that they would be treated anonymously and fairly in the grading process—especially if they were tested on Affirmative Action where the class was split along racial lines.[44] The professor agreed not to test on Affirmative Action, but according to the

students who attended the meeting he did not otherwise show remorse for what transpired during class.[45] The acts of redress they requested from the administration for their experiences in the Constitutional Law class were: (1) an apology from the professor; (2) an administrative reprimand for his interactions with Black law students; (3) the professor's removal as a professor from Constitutional Law and other required courses to protect Black students from possible racial bias; (4) his required attendance at a diversity training (developed in consultation with BLSA and other affinity groups); and (5) a formal note in his employment file "regarding his inability to deal fairly with Black students."[46] A state based Black attorney organization where the law school is located wrote a letter to the Dean in solidarity with the BLSA students. The letter decried "the racist remarks made by [the professor]" and expressed an interest in exploring "appropriate discipline" for the professor's behavior.[47]

Approximately one year after the BLSA students sent their "Request for Redress," the professor sued two students, as individuals and as representatives of BLSA, BLSA, the Black attorney organization, and its president for defamation, civil conspiracy, and punitive damages.[48] The crux of the professor's claim was that the named students and BLSA implicitly and falsely cast him as "racist," thus defaming him and maligning his character and professional reputation.[49] Together with the Black attorney organization, BLSA and its named representatives allegedly engaged in a civil conspiracy "with specific intent to accomplish an intentional and improper interference with [the professor's] contractual relationship with the [University system]," the end goal of which was to force his resignation or firing from the University and law school.[50] The professor specifically averred that "[the named Black law students, BLSA, the Black attorney organization, and its president's] false accusations of racism damaged [his] reputation, character, and integrity among the community at [the Law School] and [his] reputation, character, and integrity in the [state] legal community."[51] To redress this harm, he asked the court for punitive damages "sufficient to set an example and to discourage [the named Black law students, BLSA, the Black attorney organization, and its president] from engaging in future conduct of a similar nature."[52] Concerning damages, he explained

> The extent of [my] damages is not fully known at this time. [I] have suffered actual damages and losses, as well as physical and mental anguish and suffering, brought about by [the named Black law students, BLSA, the Black attorney organization, and its president's] false accusations of racism against me. As discovery in this case develops, it will be possible to predict with greater accuracy what [my] full losses will be, but it may be estimated that [my] reasonable actual losses, diminished earning capacity, and diminished other sources of income, along with [my] mental anguish and suffering, will exceed the jurisdictional limits for diversity jurisdiction in Federal district court.[53]

Contemporaneous to the formal litigation of his claims, the professor had requested that the law school conduct an investigation into the BLSA student allegations "to clear his name."[54] Six months after the professor filed his amended complaint, the law school concluded its investigation and the Interim Dean, a White man, sent the professor a letter stating the findings.[55] With respect to the professor's Constitutional Law class, the Affirmative Action town hall, and the Black attorney organization's solidarity letter, the Interim Dean stated that "[n]either [the previous Dean] nor I interpreted any of your statements or actions as indicating that you are a racist, or that your views on the subject are motivated by improper racial concerns," and that "nothing in the [Black attorney organization's] letter merited any action be taken against you. That remains my judgement today."[56] The Interim Dean went on to state that **"[w]ith reference to any charge of racism levied against you, there is no evidence that you are or have been racist or acted in a racist fashion during your employment at the law school.**"[57] The professor subsequently dropped his lawsuit.[58]

Ultimately in this case, two White men in positions of power and with decision-making authority (the Dean and Interim Dean) absolved a third of racism, being a racist, and racist conduct. Three years after he ended his litigation, the professor left the law school to join another in New England.[59] There he is the Chancellor Professor of Law[60]—an honor awarded to faculty who have "demonstrated excellence in the art and practice of teaching, a record of scholarship that contributes to the advancement of knowledge, and have made outstanding contributions to the

University or their profession."[61] He teaches Torts, Comparative Law, and Media Law with an emphasis on "free speech, access to information, defamation, privacy, and copyright."[62]

While most conflicts surrounding First Amendment rights, academic freedom, and minoritized students do not unfold in such a public and spectacular fashion as detailed, these types of incidents litter the road of American legal education on which the vehicles that transport us to the DEI dance must travel. Similar cases, formally reported in litigation or casually shared among minoritized law student and faculty peer groups, inform how legal educators approach curricular and pedagogical decisions and classroom climate. Again, when a White professor or student is accused of racist remarks in a classroom, strategies for resolution tend to focus on First Amendment rights and academic freedom, rather than on those who describe their harm, as did the BLSA students, in terms of how racist exchanges in the classroom undermine their learning, fracture their relationship with the law school community, and isolate them from fully participating in it.[63] As the professor asserted in one interview,

> If I did not think student interests were at stake, I would never have sued. That is, I was really not bringing a suit for my own interests. I was bringing a suit for the academic freedom of myself and my students because the problems we have in the academy, generally, is that a very small group of people is able to use being offended as a way to squelch discussions about matters of public interest.[64]

In contrast, the BLSA students asserted that "[w]hat happened in class that night was not First Amendment Free Speech . . . It was hateful and inciting speech, and it was used to attack and demean Black students in class," thus highlighting the harm to them as members of the law school community.[65] Again, these interactions emphasize the primacy of individual rights over building an inclusive community. Furthermore, discussions of First Amendment rights and academic freedom for faculty of color in conflict with White students reveal the limits of each, and how such rights and freedoms are not offered equally. The cases of two Black women professors, one at a university in New England and one at a community college in the Midwest, serve as exemplars.

A short time prior to her official appointment in the Sociology Department, the Black woman professor at the New England university tweeted "white masculinity isn't a problem for [A]merica's colleges, white masculinity is THE problem for [A]merica's colleges."[66] In another tweet she opined "for the record, NO race outside of [E]uropeans had a system that made slavery a *personhood* instead of [a] temporary condition."[67] The professor is an expert in the areas of feminist sociology, race, ethnicity, and masculinity.[68] Her tweets entered the world in the midst of public protests about police use of force in the killings of Walter Scott[69] and Freddie Gray[70], and less than a year after Eric Garner[71] gasped for breath, police shot 12 year old Tamir Rice[72] for playing with a toy gun at a community recreation center, and Ferguson burned in fiery tribute to its native son Mike Brown.[73] It was in that climate that the professor's tweets went viral and were picked up by CNN, Fox News, NBC, and other local and national news outlets.

Before the professor even stepped into her first classroom to teach at the University its president, a White man, issued a statement denouncing her tweets as "statements that reduce individuals to stereotypes on the basis of a broad category such as sex, race, or ethnicity."[74] For the president, his letter to the University community was part of his "obligation to speak up when words become hurtful to one group or another in the way they typecast and label its members."[75] He reminded his audience that "[the University] does not condone racism or bigotry in any form," and reiterated to them the University's commitment "to maintaining an educational environment that is free from bias, fully inclusive, and open to wide-ranging discussions."[76] The professor was not fired, but arrived on campus where students had created a petition to have her fired,[77] and the National Youth Front papered the campus with flyers that called for the same.[78] The National Youth Front is the youth arm of the American Freedom Party (formerly the American Third Position), a group whose purpose is to "represent the interests of White Americans."[79] Among its foundational tenets is a quest "to take power from those who have weaponized our institutions against us. To put an end to the invasions of our nations. To stop the ongoing defamation of our people . . . To eliminate the endless ideological subversions of our nations[sic] most precious gift. Its youth."[80]

The student petition calling for the professor's dismissal likewise cast her tweets as part of the ideological subversions despised by the National Youth Front, and the professor as one who would weaponize an educational institution against the interests of White Americans. Citing their discontent with "the lack of respect for dialogue and free speech" on college campuses, the petitioners said of the professor "the level of hate she evinces for a majority group [White people], as expressed in her vitriolic assertions, and for which she has no substantiation or evidence, renders her absolutely unfit to hold any teaching position whatsoever."[81] Indeed, the professor's "vitriolic assertions" touched on the areas of white masculinity and African enslavement—both established areas of scholarly study.[82] Although the petition to *Dismiss [the] "Professor"* gathered only eleven signatories, it, along with another petition boasting over 200 signatories,[83] was part of the "many" the University President had eluded to in his letter who "expressed the view that some of [the professor's] comments are offensive and/or racist."[84] Faculty and students of color were not likely to be among the many who found her tweets problematic. According to demographic data collected a year prior to the incident about the University's faculty, Black faculty were 2.8% of the University community, 3.6% were Latinx, and 1% were multiracial. Black students comprised 4.7% of the student body in that year, Latinx students 9.3% and multiracial students 3.4%.[85] As the student petition *Stand in Solidarity with [the professor]* stressed "[her] appointment [as a professor in the Sociology and African American Studies departments] will bring a valuable critical perspective, a strong record of scholarship, and a commitment to public sociology to these two departments. Yet [the professor] is currently under fire for expressing her personal views on her private Twitter account."[86] The solidarity petition garnered almost 5,000 signatures.[87]

The professor in the Midwest faced similar backlash from several White male students in her interactions with the student newspaper, and as a professor in the English Department. A year prior to the first incident that involved her at the college, a White male student editor for the newspaper made his sweatshirt into a noose and hung it in the newsroom in the presence of the staff—among them two Black students.[88] The editor's stated reason for hanging the noose was that he was frustrated by missed deadlines

and wanted to make a point about meeting them; the note accompanying the noose expressed this sentiment.[89] When the Black students complained to the faculty advisor for the paper, they were dismissed and told that the editor's actions were not racist.[90] The students then made a formal complaint, but nothing came of it.[91] It is in front of this backdrop that the professor found herself in the same newsroom a year later, engaged in a discussion about why students were not reading the school paper.[92] Her response, informed by the recent history of that particular newsroom (the noose) and of newsrooms across the country, was to explain that

> this newsroom, and the newsroom in general, [has] historically been a space where white male experience has been centralized and validated, mostly to the exclusion of others . . . readership will continue to flag in a school that is more than half students of color, if the editorial staff does not represent their interests. In short, they don't see themselves in the paper because they are not in the paper.[93]

Her response resulted in another—an e-mail from a White male editor allegedly informing the professor that "[her] words had angered him, that it wasn't [her] place to say them, being a faculty member in the student newsroom, [and that her] comments were racist and hateful."[94] Furthermore, the editor allegedly told the professor that "[she] would not be welcome in the newsroom in the future, if [she] offered up a similar diatribe, and that what [she] had engaged in was racial harassment."[95] Another student, a White woman, supported the editor's characterization of the professor's comments as "racist and hurtful."[96] Subsequently, the editor filed a formal complaint, and what followed was an extensive investigation into his claims that the professor engaged in racial harassment.[97] Although the college found that she did not engage in racial harassment, she was told that "[her] comments were offensive to the complainant and to others and inappropriately made during the newspaper staff meeting."[98] Newsroom studies abound on the role of race in reporting and shaping the news.[99] As of 2020, 69.6% of all journalists are White, 13.7% are Latinx, 7.5% are Black, 7.0% are Asian, and 0.5% are people Indigenous to the U.S.[100]

Five years later, the same professor would again find herself the subject of a reprimand for devoting time to teaching about

systemic racism in her Intro to Mass Media class.[101] According to the professor, White students took her discussions about "white male supremacy" personally, despite her best efforts to discuss "whiteness as a system of oppression."[102] At some point during the discussion, the professor informed the students that if they found the class content problematic they "could go to legal affairs and file a racial harassment discrimination complaint."[103] The students did just that, setting in motion another investigation of the professor's classroom practices.[104] This investigation did conclude with a reprimand issued by the college's then Vice President of Academic Affairs, a White woman, which was placed in the professor's employment file.[105] In her letter to the professor the Vice President of Academic Affairs stated

> . . . I find it troubling that the manner in which you let a discussion of the very important topic of racism alienate two students who may have been most in need of learning about this subject. While I believe that it was your intention to discuss structural racism generally, it was inappropriate to single out white male students in your class. Your actions in [targeting] select students based on their race and gender, caused them embarrassment and created a hostile learning environment. For that reason, I have determined that a reprimand is warranted.[106]

In sum, both Black women professors were castigated informally and formally for advancing views rooted in disciplinary knowledge and statistical fact that made White students uncomfortable. Alarmingly, both were placed on *The Professor Watchlist*, a list available on the internet that seeks "to expose and document college professors who discriminate against conservative students and advance leftist propaganda in the classroom."[107] Chief among this propaganda is the so called myth of white supremacy.[108] *The Professor Watchlist* effectively makes the professors on it high profile targets in a national climate that sustained a government insurrection rooted in its same beliefs.[109] In contrast, university administrators at the public law school in the South officially declared the White male professor not racist for conducting class in a manner that alienated Black students, and for advancing views about Affirmative Action that arguably painted Black law students as inferior and unworthy for law school admission. These three

cases are part of an ongoing pattern in colleges, universities, and professional schools throughout the nation, where minoritized students are marginalized as they seek out space for belonging. Professors of color who speak out about systemic oppression are condemned, all while those who do the condemning emphasize their institutional commitment to DEI. Correspondingly, students of color who speak out about how systemic oppression affects their classroom experience are dismissed, as administrators underscore White professors' ability to exercise their right to free speech and the protections offered by academic freedom. These accounts fashion a lens through which DEI pedagogical and classroom practices are scrutinized, but nevertheless must develop.

Academic Freedom, DEI Pedagogy, and Building Inclusive Communities

DEI pedagogy and free speech remain in tension, so long as the historical context of the speech and the spaces where the speech is dispersed do not center minoritized community members in assessing its usefulness and harm.[110] This remains true at American law schools, where law deans' attempts to elevate community in resolving free speech and academic freedom issues are met with backlash and resistance. Attempts at a private law school in the South to reconcile free speech and academic freedom with building an inclusive community are instructive in this regard. They give us a frame of reference for where DEI pedagogy must begin, even when that beginning rests on shifting ground.

In late summer of 2020, a White male law professor at the University sued the Interim Dean of the law school, a Black man, for libel *per se* and racial retaliation due to events that transpired after his Torts class in August of 2018.[111] During the class in question, the professor was teaching the 1967 case *Fisher v. Carrousel Motor Hotel, Inc.* in which an Alabaman hotel employee expelled a Black patron from the hotel dining room because the establishment "would not serve a Negro."[112] In discussing the case, the professor exchanged the word "Negro" for the n-word in efforts to "stimulate class discussion."[113] The professor avers in his complaint that his use of the n-word was "[not directed] at any individual student, but instead [a] "teaching moment and integral part

of the lecture and discussion of the *Fisher* case."[114] Later on during that class day, the Interim Dean communicated to the professor that the Black law students in the class found his use of the n-word problematic.[115] The professor *did* apologize to the students in the presence of "BLSA representatives" and felt that the matter was closed.[116] The BLSA students would later write that the professor's "words and actions undermine the academic, social, and professional environment that we have worked to cultivate. [His] failure to understand the impact of his words and actions disrupts not only our ability to learn, but also our ability to thrive as aspiring attorneys."[117]

The Interim Dean e-mailed the law school community about the incident in August 2018.[118] Of that letter, the professor contends that the Interim Dean "grossly misconstrued [his] conduct [during the class] indicating that [he] had improperly used a racial slur in class without an academic purpose, portraying [him] as a racist, and igniting a wave of antipathy toward [him] throughout the [University] campus."[119] A little more than a week after the Interim Dean's letter, the professor apologized to the University community twice.[120] After the second apology, the Interim Dean posted a second letter to the law school and University in which he wrote,

> Based on my most recent conversations with the students who were in the class, and [the professor], there is no factual dispute as to what occurred in the classroom [in August]. [The professor] has taken or committed to take several substantial steps: 1) he has admitted to inappropriately using the "n-word"; 2) he has taken full responsibility for the harm its use has done to the immediately affected students, the Law School community, and the broader [University] community; 3) he has committed to take proactive steps to create a safe and inclusive environment in his classroom(s); 4) he has committed to engage in activities designed to repair his relationships within the Law School community; and 5) he has issued an unqualified apology to the law school community.[121]

To remediate the professor's conduct, the Interim Dean suspended him from teaching any classes in the mandatory core curriculum for two years, and further detailed that the professor

would "work with a small group of student leaders and faculty (with the assistance of experts from the University's Faculty Staff Assistance Program) to create opportunities to engage in [and engage in] dialogues focused on racial sensitivity," undergo DEI training with the University's Office of Equity and Inclusion, and voluntarily edit the teacher's manual for his books "to include suggestions of ways in which faculty who use his text might avoid offending students when covering racially sensitive materials."[122]

The Interim Dean ended the list of remedial measures by stating "[the professor] has agreed that each of the [listed] actions is appropriate, and he is in full support of them. Moreover, he has given me his express permission to share with the community this resolution"[123]—both contentions that [the professor] categorically denies and construes as libelous.[124] The professor also argues that was he was discriminated against as a White man, and that the Interim Dean's suspension of him was racial retaliation because Black faculty members and an Indigenous faculty member at the University had used the n-word in their classes and/or in their scholarship without reprimand.[125] The professor remains a tenured professor at the law school and was reinstated to teaching non-mandatory classes effective Fall 2021.[126] As of the writing of this text the lawsuit remains active.[127]

This case highlights the possible backlash law deans face when attempting to advance curricula, communities, and classrooms that are diverse, equitable and inclusive even when they have the support of their law school communities to do so. Insistence on protecting free speech rights and academic freedom in a vacuum, without regard for the position of the speaker and recipient(s) of the speech, is a losing proposition that undermines creating inclusive spaces for racially minoritized students to learn and thrive. As the cases throughout this chapter indicate, the resistance to community DEI strategies comes from majority group members, White faculty members and students, particularly when presented with knowledge, life experiences, and ameliorative measures that center racially and ethnically diverse community members. Psychologists Lisa B. Spanierman and Mary J. Heppner detail this phenomenon in their article *The Psychosocial Costs of Racism to Whites Scale (PCRW)*.[128] They argue that White people are rewarded for turning a blind eye to racial inequities.[129] In their words,

> The positive ways in which White individuals are affected by racism (also referred to as the benefits of racism) are numerous and widespread and include, but are not limited to the following: (a) access to society's resources, (b) advanced educational opportunities, (c) life within a culture that delineates one's worldview as correct, and (d) sense of entitlement. These positive consequences of racism are indicative of White privilege and typically result in negative consequences for people of color.[130]

We saw these dynamics play out in the cases involving the White male law professors, where both men sued their respective institutions, and in the one case students as well. The lawsuits indicate that these professors had access to the costs for legal counsel and a sense of entitlement to bring a lawsuit; this is especially true when we view the professor at the public university in the South in comparison to the law students that he sued as individuals. Further, the resolution of the cases involving the White male law professors demonstrate that both men occupy a culture where their world views about race are affirmed as correct. The professor at the public law school in the South went on to become a Chancellor's Professor at another law school, a high honor, and teaches in the areas of law (free speech and defamation) on which his case was litigated. The professor at the private law school in the South has been reinstated to teaching in the law school curriculum in the areas where he is qualified to do so, except in the core (mandatory) curriculum. Superficially this limitation may seem like punishment. However, it means that the professor would be allowed to teach in his areas of expertise, which, along with his Torts casebooks, have formed the basis for the majority of his scholarly production.[131]

Alternately, the two Black women professors were formally reprimanded and targeted by White students—the professor at the university in New England was targeted by a white nationalist group—for teaching and tweeting disciplinary knowledge in their areas of expertise. At no point in their cases were their world views or life experiences acknowledged or respected in any tangible way, especially one that reinforced their space as knowledge-producers in the academy for whom academic freedom comes with minimal costs. Their concerns, like the BLSA students, were dismissed,

minimized, and made subservient to the comfort and concerns of White students, faculty, and administrators. Centering the concerns of White people, particularly as a way to manage "white backlash" to DEI pedagogical and curricular interventions, is damaging to students and faculty of color, and does not come without costs to White faculty members and students.

As psychologists Lisa B. Spanierman, Nathan Todd, and Carolyn J. Anderson emphasize in their article *Psychosocial Costs of Racism to Whites: Understanding Patterns among University Students*, those costs are quantifiable and "include distorted beliefs about race and racism, such as reliance on stereotypes, guilt regarding unearned privilege and irrational fear of racial and ethnic minority persons, and limited association with people of different races or self-censoring in interracial contexts."[132] The Spanierman and Heppner research validating the PCRW Scale offers a ray of hope in showing that White people who increase their awareness of systemic oppression are more likely to show empathy for racially oppressed groups.[133] It is with this context and the lessons this chapter teaches about navigating DEI classroom and curricular interventions that we consider in Chapter 3 how a professor's rank, status, position, and the overall campus climate affect their success and adoption.

For more on the issues discussed in this chapter check out:

Keith E. Whittington, *Free Speech and the Diverse University*, 87 Fordham L. Rev. 2453 (2019).

Mari Matsuda, Words that Wound: Critical Race Theory, Assaultive Speech, and the First Amendment (2018).

Lisa B. Spanierman, Nathan Todd, and Carolyn J. Anderson, *Psychosocial Costs of Racism to Whites: Understanding Patterns among University Students,* 56 Journal of Counseling Psychology 239 (2009).

Lisa B. Spanierman and Mary J. Heppner, *The Psychosocial Costs of Racism to Whites Scale (PCRW): Construction and Initial Validation*, 51 Journal of Counseling Psychology 249 (2004).

CHAPTER 3:
Assessing the Institutional Climate for DEI Curricula

Standpoint and Positionality

As law schools around the country attempt to implement DEI initiatives in fits and starts, they may not be aware that those initiatives come at different costs to the various stakeholders in their communities. Advancing DEI initiatives requires vulnerability—the willingness to surface those things not commonly spoken of, all the while risking rejection or worse from those who would rather leave them buried. The burden of vulnerability is not shouldered equally on law school campuses. Faculty members are charged with implementing DEI initiatives that concern pedagogy and curricula. Although law schools may convene *ad hoc* committees, or place the primary responsibility for leading the faculty through the changes on diversity committees, in the end faculty are tasked with planning their courses and standing in front of classrooms where eager, complacent, anxious, and angry students stare back at them in equal turns. How much vulnerability professors are willing to show depends on who they are, the spaces they occupy, and the dangers attached to "showing up" fully in both. Our positions and places where we navigate them influence how we offer our knowledge and how it is received.

Standpoint theory posits that everyone operates in the world from a position shaped by their race, class, gender, and sexuality.[134] Multiple overlapping oppressions, and alternately multiple overlapping benefits, place us at various points in relation to power and privilege.[135] We decipher our actions and the actions of others based on our proximity to privilege and power as determined by our social position.[136] Even if we are unaware of our social position, we occupy it.[137] However, developing a standpoint based on race, class, gender, and sexuality requires an awareness of the

systems and structures that work to marginalize and majoritize us based on them.[138] Standpoints, particularly racial standpoints for people of color and White people, stand in stark contrast to each other. It should come as no shock that study after study, survey after survey confirm that people of color and White people view and experience the world in strikingly different ways.[139]

Positionality theory examines how our social positions influence our thinking and actions, including how we lead. In her work *Reconstructing Static Images of Leadership: An Application of Positionality Theory*, Adrianna Kezar argues that decisions that leaders make from their social positions can be interpreted by those in different social positions in a manner contrary to what the leader intended.[140] Leadership frameworks that do not accommodate and appreciate differences can lead to "miscommunication, devaluation of employees, decreased productivity and inefficiency."[141] Moreover, participatory leadership frameworks risk excluding important stakeholders by failing to acknowledge the role of social location in building and sustaining knowledge and belief systems.[142]

As leaders in our classrooms, professors interpret who can have discussions about race in the classroom and how they will be perceived based on their positionality. In the study *How White Faculty Perceive and React to Difficult Dialogues on Race: Implications for Education and Training*, psychologists found that White faculty members are reluctant to wade into discussions about race.[143] Many expressed anxiety and fear, fear of (1) losing control, (2) the anger expressed by minoritized students about ongoing racism and discriminatory practices, and (3) eliciting emotional responses (such as crying and withdrawal) from White students during the discussion.[144] Additionally, White professors "[felt uncertainty] related to their inability to anticipate what issues, dynamics, and feelings were likely to arise."[145] Significantly, fear of being perceived as racist, biased, or ill-equipped to facilitate discussions about race caused many White professors to avoid them.[146] This is problematic, because the majority of law professors employed by American law schools are White. Without White faculty members' purposeful investment in and willingness to move forward with DEI efforts, these efforts will most assuredly fail.

White faculty also perceived that faculty of color were better equipped to facilitate difficult dialogues about race, and that

students saw them as more credible.[147] The experiences recounted by faculty of color show that nothing could be further from the truth. Faculty of color have their authority, expertise, and intellect challenged regularly in law school classrooms. Multiple volumes of personal accounts and countless articles detail how faculty of color, especially women of color, are presumed to be incompetent professors and obscured as knowledge producers in the legal academy.[148]

When faculty of color raise issues of race in core curriculum classes (Contracts, Torts, Property, etc.), White students often remark that they want to be taught "the law" and not about race.[149] Perhaps most damaging is that these perceptions by White faculty serve to make every law professor of color a "race scholar," thereby dismissing studies of race, power, and privilege as areas of legitimate scholarly inquiry. These perceptions also reinforce stereotypes about faculty of color, namely that they are only at an institution because of their race and not because of what they offer as teachers and scholars.

Furthermore, dependence on stereotypes about faculty of color places a disproportionate responsibility on them for bridging racial divides. To the extent that racially minoritized faculty visibly (phenotypically) present as non-white, they grapple with personal and student expectations that they will discuss racial issues in the classroom. Unlike their White counterparts, they have limited space to decide not to speak. As critical race scholar Angela D. Gilmore reflects in her article *It Is Better to Speak*,

> Thinking about my experiences as a law student and lawyer and about breaking through my silence has led me to think about my role as a law professor. I don't think that my status as a Black lesbian law professor limits me to being an effective role model only for Black or lesbian or Black and lesbian law students. My limited experience in the legal academy has shown me that students respond to and respect professors who genuinely care about them as people and as students of the law. I do think that the experiences that I've had as a Black lesbian and the multiple consciousness that I've developed make me an especially effective role model for Black women and for lesbians, two groups of women who have been without very many

> role models in law teaching for a long time. One of the things I hope I am able to do, as a professor of law who is committed to ensuring that students do not feel invisible or legally insignificant in my classroom, is to reduce the level of dissonance that students who may not be white, or may not be male, or may not be straight often feel in the classroom.[150]

The title of Professor Gilmore's piece is an echo of the poem *A Litany for Survival* by scholar, activist, and poet Audre Lorde.[151] Lorde writes "So it is better to speak remembering we were never meant to survive."[152]

Law schools seeking to implement DEI initiatives should endeavor to understand the ways these initiatives contribute to minoritized faculty vulnerability in the classroom and among their peers. Initiatives that have the endorsement of Dean and whose aspects are regularly highlighted and celebrated from the Dean's suite at the law school give vulnerable faculty the most agency and protection. They help to set community standards for what is appropriate to discuss and teach in the classroom and law school community. Additionally, they reduce the chances that faculty who decide to speak about race, class, gender, and sexuality will be seen as outliers who are subject to exclusion by faculty peers and attacks by students. Committees who evaluate faculty members for tenure and/or promotion should be aware that negative student comments are not only possible, but usually inevitable when faculty of color raise issues of race in the classroom. At a minimum, they should weigh those comments appropriately, with peer teaching evaluations when available, and not automatically see them as a mark of bad teaching. Negative teaching evaluations in a DEI context are often a symptom of an institution's failure to set appropriate community standards for racial equity and inclusivity.

As an aspirational goal, evaluative tools for faculty should evolve with DEI pedagogical and curricular practices. For example, wholistic approaches to course evaluations that require students to reflect on their performance and contributions to the class encourage reflection about and individual responsibility for learning. Similarly, creating new tools to measure a faculty member's pedagogical, course planning, and course implementation skills as

assessed by their peers could help to create a supportive community of teachers. In such an environment, missteps in advancing DEI pedagogy and curricula are not treated punitively, but as learning opportunities. Additionally, including questions on course evaluations that ask whether a professor addresses questions of race and social justice in the classroom builds the expectation for students that discussions of race are a normal and necessary part of their learning.

Moreover, as detailed at length in Chapter 2, access to academic freedom protections breaks down inequitably along racial lines. In the absence of institutional support for DEI efforts, faculty of color are at a heightened risk for investigation, punishment, and censure for discussing systemic oppression. This risk is compounded by a faculty member's rank and status.

Rank and Status

There is a pecking order in academia that determines how much access a faculty member is granted to the benefits of their educational institution, as well as how much protection they receive from it. This pecking order moves from highest to lowest in benefits and protections as follows: full professor, associate professor, assistant professor, clinical professor, and adjunct professor. This large group finds division in three general categories: professors moving through the tenure-track, professors moving along the clinical track, and professors who are off the track. Professors moving along the tenure-track tend to have the most access to law school and university resources, and the most stable employment. Although they are employed for a probationary period until granted tenure, a professor hired on the tenure-track makes a permanent position as a law professor "their job to lose." Constitutional Law scholar William Van Alstyne explains,

> [T]enure provides . . . that no person continuously retained as a full-time faculty member beyond a specified lengthy period of probationary service may thereafter be dismissed without adequate cause . . . [T]enure is translatable as a statement of formal assurance that . . . the individual's professional security and academic freedom will not be

> placed in question without the observance of full academic due process.[153]

Nevertheless, there is vulnerability for all tenure-track faculty, ever conscious of senior tenured faculty who will cast votes that decide their tenure. On the whole, faculty of color face more resistance in climbing up the tenure ladder due to "devaluation of scholarly research; lower teaching evaluation scores; demanding service obligations; excessive new course preparations; greater number of student advisees; less mentoring compared to white faculty; and tokenism, racism, and discrimination."[154] These barriers to advancing through the ranks are significant, but do not obscure that access to the tenure-track is a privilege.

This distinction is acute with respect to professors moving along the clinical track. Unlike their colleagues on the tenure-track, their status relegates their "professional security and academic freedom" to the realm of what is capable to be "placed in question." Clinical professors, contract professors, and adjunct professors disproportionately teach clinical and legal writing courses. ABA Standards 405 (c) and (d) govern their employment relationship with their respective law schools, and their social relationships as well. That contract faulty are also referred to as "contingent faculty"—uncertain, dependent for existence—is equally telling. The Standards state,

> (c) A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominately staffed by full-time faculty members, or in an experimental program of limited duration.
>
> (d) A law school shall afford legal writing teachers such security of position and other rights and privileges of faculty members as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction . . . and (2) safeguard academic freedom.[155]

Much has been written about how these standards are inequitable and place these professors, who are overwhelmingly women, outside of the benefits and protections of the legal academy.[156] Professors employed under Standards 405 (c) and (d) are forced cyclically to prove they are worthy of contract renewal, a process that is overly dependent on student evaluations of their classroom performance.[157] Overwhelmingly, they are shut out of faculty governance. According to the ALWD/LWI Legal Writing Survey statistics for 2019-2020, 75% of 405 (d) professors, those who teach legal research and writing (LRW), are denied full voting rights.[158] They are not given a vote or a voice over decisions that affect the content and conduct of their classes.[159] These inequities subject LRW professors to firing "if [they] anger the Dean or a particularly powerful faculty member, [or a] well-connected student."[160] Their precarious position is further highlighted by a "worry that speech and scholarship about controversial ideas of pedagogy and equality will detrimentally affect [their] careers . . . a situation . . . inimical to meaningful concepts of academic freedom."[161] So pressing and entrenched is this disparate treatment that the former president of the Association of American Law Schools (AALS), Dean Darby Dickerson, called for law schools to "abolish the academic caste system."[162] Because these faculty teach courses required by the ABA accreditation standards, they will be impacted by any faculty and administrative decisions to implement curricular and pedagogical DEI initiatives.

The article *Papercuts: Hierarchical Microaggressions in Law Schools*, describes how LRW professors are especially vulnerable to microaggressions as a result of their status.[163] They are most likely to experience microaggressions that devalue, demean, degrade and discredit them and their contributions as legitimate law faculty.[164] These microaggressions are compounded for LRW professors of color. The experience of a Black woman LRW professor, told in the article *Challenged Xs 3: The Stories of Women of Color Who Teach Legal Writing*, illustrates the instability and unease that diminished status can bring.[165] In her words,

> I am an African American female, and I have taught LRW for over 10 years. I have given much thought to whether I would make the same choice if I had the opportunity to begin my academic career anew. Unfortunately, I am sorry

> to say that I would *not* make the same choice. Although I still love [teaching] LRW . . . teaching it is too painful. The second-class (and sometimes third class status) of being an LRW professor is too close to the other "isms" that I have faced throughout my life. The feelings triggered by being treated differently in this job (having less job security, less academic freedom, lower pay, less respect from students and other faculty) are too close [to] the feelings evoked by other discriminations I have experienced.[166]

Law schools must measure the costs of DEI efforts to all marginalized faculty, particularly marginalized faculty of color, and take steps to offset them. Otherwise, their efforts could do irreparable harm to the minoritized populations those initiatives are meant to help.

Campus Climate

The geographic location of a law school, internal and external political pressures, the make-up of its student body, its environment, and its active and passive surveillance of students of color all figure prominently into the success of proposed DEI initiatives that impact teaching and classroom interactions. The insurrection at our nation's Capitol on January 6, 2021 left no doubt that the United States remains deeply divided by race, and opponents to racial equity have grown increasingly vocal and violent. An indelible image from the insurrection is a White man holding a Confederate Flag while walking through the Capitol building.[167] This snapshot is emblematic of the reality of where racism lives and how it moves in our institutions. In the popular imagination, the Capitol stood as a monument to American democracy, protected from overt expressions of white supremacy. Among the lessons that January 6th taught us is that the halls of the Capitol could be marred by the footsteps of racial division. The same is true of our educational institutions, which are not shielded from the realities that exist beyond its walls.

The state, city or town where a law school sits can influence how education proceeds in its classrooms. We are a politically fractured nation, whose fault lines are drawn in black, brown,

and white. Police shootings of unarmed people of color and pending legislation to eliminate the rights of transgendered persons, restrict voting rights, eliminate tenure, curb social protests, and limit professors' ability to speak against injustice all influence how law professors teach the law and how students and faculty experience life inside and outside of law school. The way that universities and law schools respond to the politics of place will determine whether dialogue about difference is encouraged or suppressed, as well as the manner in which it is suppressed (social exclusion, censure, or firing).

The composition of the student body is also a factor in how far DEI interventions will advance. Whether the students come from a mix of states and countries or are primarily drawn from the state or region where the law school is located will all factor into the classroom experience. Additionally, the racial composition of students and whether they move together amicably or with hostility through their years at the law school will shape the campus climate. Students are not automatons who leave their social positions outside of the law school once they enter for formal study. On the contrary, their history with racial trauma (discussed extensively in Chapter 4) and racial incidents that occur where they live and work, will color their perspectives of the law school, their professors, and the points at which they access the law.

Likewise, how they encounter and experience the physical space of the law school can influence their perceptions of whether the law school is welcoming and inclusive for people of color. Instructive is civil rights attorney and professor Lani Guinier's emotional collision with the "stern larger-than-life gentleman portraits" that stared down at her from the law school walls.[168] Upon returning to the campus to participate in a panel about her career, she recalls her trepidation to speak:

> It was my turn. No empowering memories stirred my voice. I had no personal anecdotes for the profound senses of alienation and isolation caught in my throat every time I opened my mouth. Nothing resonated there in that room for a black woman, even after ten years as an impassioned civil rights attorney. Instead, I promptly began my formal remarks, trying as hard as I could to find my voice in a room in which those portraits spoke louder than I ever

> could. I spoke slowly and carefully, never once admitting, except by my presence on the podium, that I had ever been a student at that school or in that room before. I summoned as much authority as I could to be heard over the sounds of silence erupting from those giant images of *gentleman* hanging on the wall, and from my own ever-present memory of slowly *disappearing* each morning and becoming a *gentleman* of [the] Business Units I [class].[169]

With this and like experiences in mind, DEI interventions should also be directed at altering the spaces of the law school so that they reflect the aspirational and actual diversity of the law school, and celebrate the achievements of a representative group of alumni. Special care should be taken to hang art that represents racially diverse people, encounters, and observations visibly and prominently. As Professor Guinier's story shows, when law students do not see themselves reflected in the physical surroundings of their law schools, the place that shapes their formative years in the profession, they can develop negative associations that remain with them beyond graduation.

Student movement throughout law school spaces and on the university campuses where they sit also impact DEI efforts. Students of color are increasingly policed on campus, informally and formally, and questioned for being in places where students are most likely to congregate. These incidents have a damaging effect on their relationship with their colleagues and campuses, and compounds the trauma of policing that regularly occurs in communities of color and with people of color.[170] Multiple examples of informal policing encounters between students of color, White students, campus employees, and parents demonstrate the pervasiveness of the problem.

In May 2018, a White student at Yale University called the campus police on a Black student who was sleeping in the common room of her dormitory.[171] The student had been working on a paper and fell asleep there.[172] At Colorado State University during a campus tour in the same month, a woman whose child was on the tour called the police on two prospective Native American students.[173] She reported that "two young men joined our tour who weren't part of the tour," that they "really [stood] out," and "that they did not answer questions about their names or intended fields

of study."[174] The campus police removed the prospective students, brothers, from the tour and directed them to empty their pockets.[175] They were released, but missed the remainder of the tour after traveling seven hours to get there.[176] In a statement addressing the incident, the president of the University opined,

> What can we learn from [this experience] to make ourselves and our community more just? It seems to me that we can all examine our conscience about the times in our own lives when we've crossed the street, avoided eye contact, or walked a little faster because we were concerned about the appearance of someone we didn't know but who was different from us. That difference often, sadly, includes race. We have to be alert to this, look for it, recognize it—and stop it. We simply have got to expect and to be better, our children and our world deserve it and demand it.[177]

Later on that year on the Smith College campus, administrators would have the opposite response. In October 2018, a campus employee called the police on a Black student who was eating lunch in a campus residence hall. After an investigation into the incident, "[no] sufficient evidence was found that the student's race or color motivated the phone call."[178] Investigators also found that "the caller provided a legitimate, non-discriminatory reason for calling campus police on the day of the incident."[179] Smith's president responded to the investigative findings by acknowledging the student's pain over what happened, and recommended that college community members "foster the capacity for person-to person conversations . . . thereby preventing unnecessary escalation involving the police."[180] The student wrote her account of the event and how it affected her relationship with the college.[181] "A few humiliating minutes later, the questioning was over," she wrote, "But the pain certainly wasn't."[182] She continued, "As I write this, I still feel overwhelmed with anxiety and sadness over what happened. I still struggle to leave my room. Walking to the dining hall fills me with dread."[183]

The statements by university administrators, perpetrators, and students reveal the tensions between identifying and understanding individual racist acts versus systemic racism. Even in the most careful treatment of discrimination on their campuses, the college presidents in the preceding accounts were reluctant or refused

to point to race or racism as the cause. In Chapter 4, we turn our attentions to how silences about systemic oppression further entrench and inflame racial trauma.

For more on the issues discussed in this chapter check out:

Nantiya Ruan, *Papercuts: Hierarchical Microaggressions in Law Schools*, 31 Hastings Women's L. J. 3 (2020).

Meera E. Deo, Unequal Profession: Race and Gender in Legal Academia (2019).

Anne Boring, *Gender biases in student evaluations of teaching*, 145 Journal of Public Economics 27 (2017).

Derald Wing Sue, Gina C. Torino, Christina M. Capodilupo, et al., *How White Faculty Perceive and React to Difficult Dialogues of Race: Implications for Education Training*, 37 The Counseling Psychologist 1090 (2009).

Etsuko Kinefuchi & Mark P. Orbe, *Situating Oneself in a Racialized World: Understanding Student Reactions to Crash through Standpoint Theory and Context Positionality Frames*, 1 Journal of International and Intercultural Communication 70 (2008).

Adrianna Kezar, *Reconstructing Static Images of Leadership: An Application of Positionality Theory*, 8 Journal of Leadership Studies 94 (2002).

PART II —
Practical Steps for Integrating DEI into the Core Law Curriculum

CHAPTER 4:
Racial Trauma Informed Approaches to DEI Pedagogy

If you have been on the legal education job market recently, it is likely that you were asked to submit a "Statement of Teaching Philosophy" along with your application materials. In the years since you developed your teaching philosophy, it probably has fallen from your memory and into one of the many folders occupying your cluttered hard drive. Now is the time to find it and reflect upon it as you contemplate how to approach DEI curricular and classroom initiatives. As we discussed in Chapter 3, standpoint, positionality, rank, status, and campus climate all impact how we approach curricular design and classroom teaching. Statements of teaching philosophy cannot be separated from the institutional contexts in which they evolve.[184] The best teaching philosophies address student needs by shaping instructional practices to (1) meet those needs; and (2) facilitate desired learning outcomes and classroom culture—all in the context of the institutions where teaching and learning take place.[185]

In their work on treating statements of teaching philosophy as career mission statements, professors Niall C. Hegarty and Benjamin Rue Silliman provide the framework of "The 'Now'" and "The 'Future'" as starting points to develop practical teaching philosophies.[186] In The 'Now', the professor "[understands] who [they] are teaching; how [they] like to teach; and the effect of [their] teaching."[187] In The 'Future', the professor [understands] who [they] will be teaching; how [they] would like to teach; and the desired effect of [their] teaching."[188] Implementing DEI curricular and classroom initiatives requires that faculty answer these questions anew, to see with fresh eyes who their students are and will be, how they do and would like to teach them, and to what

effect. Translated into DEI terms, these considerations call professors to grapple with the reality of racism as trauma historically and in the lived experiences of their students in and outside of their classrooms. Doing so is a fundamental step to DEI centered course development.[189]

Identifying Multigenerational Racial Trauma in the Silences of the "American" Story

Schoolhouse Rock! is the banner under which a series of children's programming was launched in the 1970's. The brainchild of advertising executive David McCall, Schoolhouse Rock! produced close to forty episodes from 1972-1980 and then approximately twenty additional episodes from the early 1990's until 2009.[190] The episodes were categorized as Multiplication Rock, Grammar Rock, America Rock, Science Rock, Money Rock, and Earth Rock, and originally aired between Saturday morning cartoons decades past their creation dates.[191] The America Rock series tells the story of American history in a series of educational short films.[192] In *Great American Melting Pot* (1977), viewers see "Lovely Lady Liberty," an animated version of the Statue of Liberty, take "her book of recipes," the content of which are the various racial and ethnic groups who make up America's melting pot.[193] As the chorus plays, people purportedly from those groups literally jump into a giant stewpot, where in the mixture they somehow become "American."[194] The chorus teaches "You simply melt right in, It doesn't matter what your skin. It doesn't matter where you're from, Or your religion, you just jump right in, To the great American melting pot. The great American melting pot. Ooh, what a stew, red, white, and blue."[195]

Another video, *Elbow Room* (1976), details the story of westward expansion in the United States.[196] It begins "One thing you will discover, When you get close to one another, Is everybody needs some elbow room, elbow room," and continues to tell us "And so, in 1803 the Louisiana Territory was sold to us, Without a fuss, And gave us lots of elbow room."[197] *Elbow Room* also recounts the story of Meriwether Lewis and William Clark (Lewis & Clark). The narrator sings, "It's the west or bust, In God we trust. There's a new land out there . . . Lewis and Clark volunteered to go. Goodbye, good luck, wear your overcoat! They

prepared for good times and for bad (and for bad). They hired Sacagawea to be their guide. She led them across the countryside. Reached the coast and found the most elbow room we've ever had."[198] At its crescendo the song declares, "The way was opened up for folks with bravery. There were many fights to win land rights, but the West was meant to be; it was Manifest Destiny!"[199] As viewers watch the video, they see wagon trains and arrows flying, and animated people jauntily dancing westward. Like those in *Great American Pot*, the lyrics are catchy, enduring, and ubiquitous. They are also fiction.

The process of assimilation into the American ideal has been and continues to be a violent process. This is true for the Western and Eastern Europeans that immigrated voluntarily to the United States. This is especially true for the 11 million Africans who were kidnapped, transported as cargo across the Atlantic to the Americas,[200] enslaved,[201] and sold as commodities[202]; those peoples indigenous to the Americas who were forcibly removed from their lands by state and federal troops,[203] and whose cultures were decimated by murder and rape at the behest of their European colonizers[204]; those who were indigenous to Mexico and became Americans seemingly overnight with the Treaty of Guadalupe Hidalgo,[205] with no respect for their land, language, culture and traditions[206]; and those Chinese, Japanese, Korean, Filipino, Vietnamese, Laotian, Cambodian, Indian, and Southeast Asian immigrants, many who arrived to the U.S. at Angel Island (not Ellis Island) and have been in the U.S. for generations, who worked in cane fields, built America's railways, redefined small business infrastructures, but whose languages were criminalized, citizenship denied, and bodies excluded by federal legislation.[207] Their stories paint a full picture of America—one that is marred by pain and survival, but also one etched with joy and community. The absence of these stories from Schoolhouse Rock! and America Rock are emblematic of their absence from the telling of the American story, an absence that is not without wide reaching consequences and implications for how we conceptualize the purpose and goals of DEI in our classrooms and curricula.

Attempts to present a complete American story to K-12 graders have been met with swift and immediate backlash almost as soon as the integration of American public schools began. For example, in his book *Civil Rights, Culture Wars: The Fight Over*

A Mississippi Textbook, Charles W. Eagles details the history of a history text created by the Mississippi History Project (MHP).[208] Formed in 1970, the MHP set out to develop a history textbook for adoption in ninth grade in Mississippi public schools.[209] The textbook was a response to the erasure of Mississippi's Indigenous, Chinese, and Black people from the widely adopted and lauded texts that were in use.[210] The book, *Mississippi: Conflict and Change* arrived on the scene in 1974 and was promptly kicked out again[211]; the Mississippi State Purchasing Board did not allow the book to grace its list of acceptable titles available for adoption in ninth grade in 1974.[212] A legal battle followed, at the conclusion of which Mississippi legislators were forced to include the book on the list of available book adoptions, but not required to compel its adoption or remove the books that relegated large swaths of Mississippians to the shadows.[213]

One of the MHP members and a named plaintiff, James Loewen, would go on to write *Lies My Teacher Told Me: Everything Your American History Textbook Got Wrong* in 1995.[214] Of it, Howard Zinn, the historian who offered his corrective of American History with the text *A People's History of the United State*s, wrote "Every teacher, every student of history, every citizen should read this book. It is both a refreshing antidote to what has passed for history in our educational system and a one-volume education in itself."[215] Loewen's book has sold approximately 2 million copies, with a new edition published in 2018.[216] In reflecting on the Mississippi lawsuit during an interview with National Public Radio (NPR) in 2018 he said, "That whole escapade proved to me that history can be a weapon. And that it had been used against my students. And that's what got me so interested in American History as a weapon."[217] Other historians who attempt to tell correct and comprehensive stories of American experiences have been bludgeoned with that weapon. K-12 school administrators, educators, and state legislators have attempted to remove *A People's History of the United States* from classrooms and libraries and/or outright ban it since its publication in 1980 on grounds that it is "un-American, leftist propaganda," a "biased account" that "presented an alternative view of American history characterized by an elite minority over the rest of the population."[218]

These battles have continued as recently as 2021 with continued fights over historical accounts like those written by Zinn

and found in the 1619 Project, which challenges us to rethink America's ideological and cultural founding in the year the first Africans arrived in Colonial America.[219] Arkansas House Bill 1231, introduced on February 8, 2021 was titled "An Act Creating the Saving American History Act of 2021; To Prohibit the Use of Public School Funds to Teach the 1619 Project Curriculum; To Reduce Funds Distributed to Public Schools That Teach the 1619 Project Curriculum, and for Other Purposes."[220] It urged the Arkansas General Assembly to find that

> (1) The true date of the founding of the United States of America is July 4, 1776, the day the Declaration of Independence was adopted by the Second Constitutional Congress; (2) The self-evident truths set forth in the Declaration of Independence are the fundamental principles upon which the United States of America was founded; (3) An activist movement is now gaining momentum to deny or obfuscate this history by claiming that the United States of America was not founded on the ideals of the Declaration of Independence, but rather on slavery and oppression; (4) This distortion of the history of the United States of America is being taught to students in public school classrooms via the New York Times' "1619 Project," which claims that "nearly everything that has truly made America exceptional" grew "out of slavery"; (5) the 1619 Project is a racially divisive and revisionist account of history that threatens the integrity of the Union by denying the true principles on which it was founded; and (6) The State of Arkansas has a strong interest in promoting an accurate account of the history of the United States of America in public schools and forming young people into knowledgeable and patriotic citizens.[221]

The drafter of the Arkansas bill later withdrew it, as did the drafter of a similar bill in the South Dakota legislature.[222] A Mississippi bill of the same ilk did not advance out of committee.[223] However, as of February 10, 2021 similar bills were pending in the Missouri and Iowa state legislatures.[224] The Missouri House completed a public hearing on its bill on April 19, 2021.[225] Collectively, they, and other initiatives like them, seek to maintain a narrative of history that does not speak to the experiences of the

Indigenous, Black, Asian, and Latinx inhabitants of the United States.

In these silences, the silences overflowing with the muted voices of people of color, the violence of assimilation and the pain of survival are ubiquitous and enduring. The multi-textured histories of people of color are lost to K-12 graders and from our collective American cultural history, but not to those who live them and whose experiences continue to be shaped by the ever spinning potter's wheel of the past. Psychologist Joy Degruy argues most prominently that the harm people of color have experienced up to and including the present day is indeed harm; it is trauma. Dr. Degruy defines trauma as "an injury caused by an outside, usually violent, force, event or experience [that can manifest] physically, emotionally, psychologically, and/or spiritually."[226] The traumas that Indigenous, Black, Asian, and Latinx populations have experienced historically and continue to experience directly or vicariously through group members form a "legacy of trauma" that is passed down through generations along with responses to the trauma, sets of behaviors, that group members have adopted as survival strategies.[227] Degruy describes this legacy of trauma as it has evolved in Black American communities as "Post Traumatic Slave Syndrome" (PTSS), "a condition that exists when a population has experienced multigenerational trauma resulting from centuries of slavery and continues to experience oppression and institutionalized racism today."[228]

At its foundation, PTSS is an expression of the conditions that give rise to Post Traumatic Stress Disorder (PTSD) in racial and cultural terms. These conditions, ways a person is "[exposed] to actual or threatened death, serious injury, or sexual violence," are drawn from the American Psychiatric Association (APA's) Diagnostic Statistical Manual of Mental Disorders (DSM) and include: "1. Directly experiencing the traumatic event(s); 2. Witnessing, in person, the event(s) as it occurred in others; 3. Learning that [violent or accidental] traumatic event(s) occurred to a close family member or close friend; and 4. Experiencing repeated or extreme exposure to aversive details of the traumatic event(s)."[229] All of these conditions have been experienced historically by members of Indigenous, Black, Asian, and Latinx populations and reemerge in their interactions with non-members as they live, work, and learn in the United States. In the section

Culture-Related Diagnostic Issues, the DSM V recognizes this trauma. It instructs,

> the risk of onset and severity of PTSD may differ across cultural groups as a result of variation in the type of traumatic exposure (e.g., genocide), the impact on disorder severity of the meaning attributed to the traumatic event (e.g., inability to perform funerary rites after a mass killing), the ongoing sociocultural context (e.g., residing among unpunished perpetrators in postconflict settings), and other cultural factors (e.g., acculturative stress in immigrants).[230]

Moreover, the range of traumatic events resulting from oppression extends beyond those that can result in death, sexual violence, the threat of death, and serious injury. Within this range are microaggressions, microassaults, microinsults, microinvalidations, and microinequities. Symptoms of PTSD include:

> Avoidance of or efforts to avoid external reminders (people, places, conversations, activities, objects, situations) that arouse distressing memories, thoughts, or feelings about or closely associated with the traumatic event(s)[231]; Persistent and exaggerated negative beliefs or expectations about oneself, others, or the world[232]; Persistent negative emotional state[233] (e.g., fear, horror, anger, guilt, or shame); Markedly diminished interest or participation in significant activities[234]; Feelings of detachment and estrangement from others[235]; Hypervigilance[236]; Problems with concentration[237]; and Sleep disturbance[238] (e.g., difficulty falling or staying asleep or restless sleep). The experience of PTSD is more prevalent among Indigenous, Black American, and Latinx people than White people in the United States.[239]

A growing number of psychological studies show that PTSD and microaggressions are linked. Minoritized people who experience microaggressions, microassaults, microinsults, and microinvalidations exhibit symptoms associated with PTSD.[240] In their study *Microaggressions and Posttraumatic Stress Disorder Symptom Scores Among Black Americans: Exploring the Link*, psychologists Tahirah Abdullah, Jessica R. Graham-LoPresti, Noor N. Tahirkheli, Shannon M. Hughley, and La Tina J. Watson

examined 258 Black Americans age 18-71 to determine the link between the frequency and distress of microaggressions and PTSD symptoms.[241] The study revealed:

> [1] The frequency of microaggressions related to Black Americans being in environments that lack Black representation, being treated as low achieving and part of an undesirable culture, and being treated as less valuable, lower status, or nonexistent were significantly associated with PTSD symptoms above and beyond age, gender, and education.
>
> [2] The finding that increased frequency of environmental microaggressions were associated with increased PTSD symptoms suggests that persistent environmental microaggressions of oppressive messages may result in anxiety, hypervigilance, and fear.
>
> [3] The finding that higher frequency of experiencing low achieving/undesirable culture microaggressions was associated with increased PTSD symptoms above and beyond demographic variables could be a result of a sense of fear, hypervigilance, and avoidance that may occur when frequently confronted with messages from others that any successes are not due to one's own achievement, intellect, and ability, but to special race-based accommodations.
>
> [4] Similar to low achieving/undesirable culture microaggressions, invisibility microaggressions are undergirded by the perception of Black Americans as less than human. [The] experience of being ignored, devalued, or treated like a second-class citizen as a result of being Black contributes to or exacerbates PTSD symptoms.[242]

Further, the participants in the study experienced increased PTSD symptoms regardless of the frequency (how many times) they experienced microaggressions.[243] Similar studies that focus on LGBTQIA+ communities and gendered racial trauma, respectively, also link microaggressions to increased traumatic stress.[244]

Given the silences on oppression's prevalence in the whole of the American story, educational institutions in the United States have not created a society familiar with acknowledging its harms or addressing them in any meaningful way. Consider, again, the BLSA student perspectives from Chapter 2. They demonstrate

how law schools replicate racially traumatic environments where professors are required to teach and students are expected to learn—all while their experiences with racial oppression are largely ignored.[245]

Understanding Multigenerational Racial Trauma in the Context of American Legal Education

The modern university exists in the American imagination as a place far apace from the average person in progressive thought and ideals. Internally, it is conflicted by an uneasy detente between historically excluded members and those who see it as their rightful domain. Racial integration at colleges and universities began in the bodies of people of color, and with the ideologies of the racial studies movements. These were loud, boisterous, and sometimes violent declarations of belonging that eventually led to the creation of enclaves on college campuses for Indigenous,[246] Black,[247] Chicanx,[248] and Asian American[249] students who had not seen themselves in the curriculum.

Law schools were not exempt from clashes with the faculty and students of color who would integrate their classrooms. In 1936, the University of Maryland School of Law admitted Donald G. Murray as its first Black law student.[250] Two years later, the U.S. Supreme Court required the University of Missouri to end its practice of sending Black students out of state as its compliance with *Plessy v. Ferguson*.[251] The court ruled that separate but equal was not equal if Black students could not attend a separate in state school out of the sight, if not the mind, of its White students and faculty.[252] The University of Arkansas admitted its first Black student in 1948 in anticipation of a lawsuit and possible damage to "race relations" between its residents.[253] The law schools at the University of Kentucky (Ollen B. Hinnant II[254]) and Oklahoma (Ada Sipuel[255]) followed a year later, and the University of Virginia (Gregory Swanson[256]) and Louisiana State University (Roy S. Wilson[257]) fell in line a year after that. By 1956, law schools at the University of Texas (Heman Sweatt[258]), University of North Carolina (Henry Frye[259]), William and Mary (Edward Augustus Travis[260]), University of Louisville (Aldred Van Calloway and Willie C. Fleming[261]),

St. Louis University (Theodore McMillian[262]), University of Kansas City (Harold Lee Holiday, Sr.[263]), Washington University,[264] St. Mary's University (Hattie Ruth Elam Briscoe[265]), American University, Catholic University, and Georgetown University (Winston A. Douglas, Elmer W. Henderson, William D. Martin, and Lutrelle F. Parker[266]) had nudged open their admission criteria enough to allow Black law students entrance.

Amidst the opening law school gates and the specter of *Brown v. Board of Education,*[267] the Association of American Law Schools (AALS) was contemplating what role, if any, it should play in desegregation efforts. As an accrediting body for American law schools, its leadership created the Special Committee on Racial Discrimination (SCRD) to take the organization's temperature on the matter.[268] At the time of its findings in 1957, a third of the law schools in the South refused to desegregate.[269] The question before the body was whether to compel desegregation among those law schools who refused admission to Black students. SCRD had rejected a proposal put forth by representatives from Yale Law School at the AALS annual meeting in 1950 to exclude from its membership "[Any] school which follows a policy of excluding or segregating qualified applicants or students on the basis of race or color."[270] This provision was controversial, as membership in the AALS at this time was "highly prized, not because the organization [was] an accrediting body but because its rigorous though reasonable standards and objectives [gave] recognized public assurance that member schools [were] genuinely interested in doing a good job of legal education [and] schools were seldom dropped or suspended as members."[271]

At the AALS annual meeting in 1951, SCRD offered its own recommendation on desegregation in lieu of the Yale proposal. The AALS would "encourage its members to maintain: Equality of opportunity in legal education without discrimination or segregation on the ground of race or color," in efforts to persuade its Southern member schools to desegregate rather than to exclude them for non-compliance.[272] The recommendation passed with eighty member schools voting to adopt it, seventeen schools voting against it, and six abstentions.[273] The rationale for the "no" votes was that the SCRD recommendation "did not relate to academic standards and the quality of law school performance as such, but rather to social policy, and therefore was outside of the

AALS field of competence."[274] It is significant that these schools viewed membership in AALS as an assurance to the public that they were "doing a good job of legal education," while actively excluding Black students from admission.

The resolution supporting the AALS recommendation stated that "Equality of opportunity in legal education without discrimination or segregation on the ground of race or color is beneficial to legal education and will contribute to the improvement of the legal profession. It is in accordance with our democratic creed and would enhance our nation's influence in world affairs."[275] SCRD presented its research findings that including Black students into American law schools would be good for Black students, because the Historically Black Colleges and Universities (HBCUs) that provided legal education to Black students were not as good as the Predominately White Institutions (PWI's) that did.[276] The SCRD report also asserted White students would benefit from Black student admission in the following ways:

> (1) they would meet able and intellectual [Black students] and thus get acquainted with a group with whom they would have to deal with in a professional way later; (2) when matters involving racial issues are discussed in the classroom, particularly in constitutional law and criminal law, the discussion would be rendered more responsible and informed by the participation or even by the presence of [Black students]; and (3) white students acquainted with intellectually capable [Black students] would be less likely thereafter to tolerate unjust racial discriminations in law and its administration.[277]

None of these rationales for equality of opportunity advanced a belief in the equality of law school applicants. On the contrary, the justification for Black student admissions underscored the perception that Black law students were unequal to White law students, and made them valuable as students only to the extent their presence was beneficial to White law students. Accordingly, law schools did not find it necessary to improve their ideological or administrative infrastructure to facilitate the admission of Black law students, and subsequently minoritized law students as a whole, into their highly contested spaces. The prevailing view among law school deans at this time was that they only need treat

Black law students as everyone else and consult with Black community leaders in advance of Black student admission to head off any negative racial issues at the pass.[278]

At this critical point in the history of legal education, law schools were developing views and attendant policies about law school admissions and curricula that are responsible for much of the racial trauma minoritized law students experience in the present day. As Dr. Degruy argues,

> At a community level, groups of people establish agreed-upon beliefs about their members' worth, beliefs that are reflected in the communities' standards and values regarding acceptable behavior, educational attainment and professional possibilities. These standards and values translate into what achievements are believed to be practical and feasible for its members. Problems can arise when these standards and values promote counter-productive behaviors or inaccurately limit what is truly attainable.[279]

The professionalization of law students inculcates this process for them as law students and for those among them who become law school faculty.[280] How Black students were admitted into American law schools solidified Black law students', and subsequently minoritized law students' uneasiness about their sense of belonging. Negative beliefs about Black students' intellectual capacity to succeed in law school, pass the bar exam, and practice law shaped and continues to shape perceptions of their worth in law school communities.

First, it was and remains patently false that HBCU law schools did not educate their students with rigor and to the standards necessary for competent, even excellent law practice. However, racial segregation throughout the United States, but most visibly in the Southern states, resulted in only one Black person in 20,425 Black people becoming a lawyer compared to one White person in 670 White people becoming a lawyer by 1969.[281] Early statistics note that a grand total of 506 Black lawyers resided in the states that comprised the former Confederate States of America by 1968.[282] Of the Black law students in the pipeline to become lawyers in that year, 68% (383) were enrolled at Howard University School of Law as compared to the eighty-three (83) that were enrolled in Southern law schools that allowed Black law students admission.[283]

The late jurist and civil rights icon Thurgood Marshall's legal education journey is instructive. Due to racial segregation, Marshall, though a Baltimore resident, would not have been able to attend the University of Maryland School of Law.[284] He went on to attend Howard University Law School where he matriculated under the leadership of Dean Charles Hamilton Houston.[285] When Thurgood Marshall was accepted into Howard Law School in 1930, it was unaccredited by the ABA on grounds that it lacked intellectual rigor.[286] With his HBCU legal education, Marshall went on to argue such cases as *Brown v. Board of Education*.[287] and become the first Black Supreme Court justice in the United States in 1967. A decade or so after the AALS had debated desegregation, approximately 22% of Black lawyers in private practice had received their law degrees from Howard Law School.[288] By 1972, 16% of the eighty-six Black judges in the United States had graduated from Howard Law School.[289] Today, HBCU law schools—Howard University School of Law (1869), North Carolina Central University School of Law (1939), Texas Southern University Thurgood Marshall School of Law (1947), Southern University Law Center (1947), Florida Agricultural and Mechanical School of Law (1949), and the University of the District of Columbia David A. Clarke School of Law (1972)—continue to educate the majority of Black law students in the United States.[290]

Second, rationales for Black students' admission into law school are coupled with perceptions about how their admission impacts White law students. As the SCRD report explained, under the heading *Negroes Admitted Quietly and Easily*, the peaceful integration of Black law students into law schools "has been quiet, easy and uneventful [because] white students have either been friendly with the [Black law students] or have ignored them, according to their personal inclination."[291] The report continues, "In every instance, [Black law students] were accepted into the student professional life of the school to the extent justified by their scholastic and general competence."[292] Again, the burden of belonging is placed on Black law students. The standards of belonging are set in racial terms—the extent to which they can conform to the academic standards calibrated to the norms of the White students, faculty, and administrators by which they have already been deemed incompetent to comply.

Furthermore, the SCRD report directly speaks to the role of DEI in the curriculum by making Black students the DEI curricular initiative and placing the responsibility upon them to "fill in the gaps" about racial inequities in criminal law and constitutional law, specifically. Justice Sandra Day O'Connor echoed this argument in her opinion for *Grutter v. Bollinger*, some fifty years after the SCRD report, reifying that minoritized law students were essential to "[promote] cross racial understanding, [help] to break down racial stereotypes, and [enable students] to better understand persons of different races."[293] Speaking directly to classroom discussion, Justice O'Connor explained it as " 'livelier, more spirited, and simply more enlightening and interesting' when students have 'the greatest possible variety of backgrounds.' "[294] As you may recall from Chapter 2, the BLSA students at the University of Arkansas Law School listed their White Constitutional Law professor's reliance on their opposing views about Affirmative Action as a source of anxiety and distress. Their experiences and those of minoritized law students continue more than sixty years after the SCRD report's declaration that in the early years of law school desegregation "No ostracism was apparent, and no noticeable social uneasiness has been reported among either white or [Black] law students."[295]

A major theme in approaches to the presence of minoritized law students in the halls and classrooms of U.S. law schools is that law students, faculty, and administrators have no responsibility to advance racial equality or revisit the curriculum beyond their presence. At the time the AALS was debating the issue, it found "The consensus of the schools was that it is not desirable to try in advance to adjust public opinion generally to [support desegregation] either in the community or on the campus apart from the law school."[296] What this has meant in the decades hence is that law school curricula, the parameters of which have not changed significantly since their formalization in 1879,[297] continue to treat the experiences of minoritized law students and their communities with indifference, dismissal, invalidation, aggression, insult, and assault. Unlike the Indigenous, Black, Chicanx, and Asian American studies movements that occurred on undergraduate campuses, legal education has not experienced a significant social

movement within the physical structures of law school buildings that has led to the inclusion of people of color centered interventions into the canon. The closest law schools have come is with the emergence of Critical Race Theory circa 1989.[298] Despite the impactful contributions of its scholars, CRT has not made a significant impact on the basic, core law school curriculum as a whole—CRT classes are taught as electives in the upper division law school curriculum.[299]

However, CRT remains in the public hearing as a dog whistle to signal an attack on any person or idea that seeks to recast American education in something other than White cultural terms. You may recall how President Barack Obama drew criticism for hugging Derrick Bell, a foundational CRT scholar and teacher, as Bell boycotted Harvard Law School over its failure to tenure any Black women faculty.[300] As a subject of the last presidential administration's ire, CRT's existence shows how attempts to center the experiences of people of color can bring a vicious backlash from the highest levels of government. As the memorandum about DEI training issued by Russell Vought, the former director of the Office of Management and Budget, states,

> [former President Donald Trump], and his administration, are fully committed to the fair and equal treatment of all individuals in the United States. The President has a proven track record of standing for those whose voice has long been ignored and who have failed to benefit from all our country has to offer, and he intends to continue to support all Americans, regardless of race, religion, or creed. The divisive, false, and demeaning propaganda of the critical race theory movement is contrary to all we stand for as Americans and should have no place in the federal government.

It turns out that the ideals CRT espouses—namely that racism is a guiding principle of American society, race is not biologically but socially determined, and that white supremacy is key in the psychological, social, and economic development of society[301]—have not been welcome in law school classrooms either.

White Identity Formation, Racial Trauma, and the Law School Classroom

In its Autumn 1995 edition, City Journal ran the article *Law School Humbug*.[302] The story introduces us to a White woman law student, Linda P., a casualty in the battle to decenter White students when discussing race in the law school classroom.[303] Her story begins,

> "I was going home crying every day," says Linda P., a law student at New York University. The source of her unhappiness was her "Race and Legal Scholarship" course [a CRT course]. "No matter what I said, the response was: you don't know because you're white. Some students wouldn't speak to me after class. It scared me, because I thought I was being liberal and I was treated like the devil."[304]

According to the author of the piece, the impact of CRT, as a movement influencing workplaces and First Amendment jurisprudence, was "remarkable when you consider that [it is] fundamentally antithetical to the very notion of law."[305] South of NYU, in a Tennessee law school classroom, a professor teaching "Discrimination and the Law" faced allegations from her White students that "class was simply a forum for white-bashing, that [the professor] favored black students, and that the class exacerbated racial tensions."[306] How stunning, startling is the trauma of being told through course readings and discussions that the place you thought you held in the world comes not solely by your own achievements, but is maintained by a system that reifies its position by buttressing your own. As the BLSA student accounts in Chapter 2 attest, each time minoritized students and faculty speak up to assert the significance of their life experiences, they are met swiftly with denial, dismissal, silencing, and sidelining. This is true of legal education writ large and those invested in centering white supremacy in its implementation.

For fifty years, scholars of white identity formation have been developing and testing models to ascertain its contours, determine its stages, and measure the harm of racism to it.[307] Their findings show that White people are socialized towards racism,

expressed as a belief in the superiority of their white racial identity, both individually and through institutions.[308] Psychologist Janet E. Helms' work on white racial identity provides a comprehensive framework for law schools and legal educators to see the interplay between White racial identity formation, racial trauma, law pedagogy and curricula. In her germinal article, *Toward A Model of White Racial Identity Development*, she argues that in order to develop a positive White racial identity, White people must gain an awareness that they are white, understand its significance in society and in their daily lives, and then actively work against acts of individual, cultural, and institutional racism.[309] To this end, Helms built a conceptual model for these stages in two phases: "Phase 1: Abandonment of Racism: Contact, Disintegration, Reintegration" and "Phase 2: Defining a Nonracist White Identity: Pseudo-Independence, Immersion/Emersion, Autonomy."[310]

The Contact stage of Phase 1 occurs when a White person encounters a person of color actually or ideologically. This stage is marked by a nascent White racial identity in which individual acts of racism may take on a subtle form, and where the White person is assessing how the person of color "measures up" to criteria for quality as set by White people.[311] Helms identifies some possible criteria as "White physical appearance [and] standardized tests."[312] These assessments occur without the White person being aware that other criteria exist for evaluation that are not based in White cultural norms.[313] While in this stage, a White person may make the comment that "I don't notice what race a person is" or "You don't act [insert racial identity]," and generally believe (and express) that people of color should be treated equally, equality being an abstract idea.[314] The Contact stage persists when there is no meaningful and/or prolonged contact between White people and people of color.[315] This stage gives meaning to the words in the AALS report on desegregation, "No ostracism was apparent, and no noticeable social uneasiness has been reported among either white or [Black] law students."[316] The research for the SCRD report was conducted at a time when Black enrollment in American law schools was small, and White students could choose to ignore them or limit interracial interactions.[317]

Stage 2, Disintegration, "implies a conscious, conflicted, acknowledgment of one's Whiteness," where awareness of being White throws a White person's self-perspective into disarray.[318] Helms argues that Disintegration brings with it a host of moral dilemmas:

> (a) the desire to be a religious or moral person versus the recognition that to be accepted by [White people] one must treat [people of color] immorally; (b) the belief in freedom and democracy versus the belief in racial inequality (c) the desire to show love and compassion versus the desire to keep [people of color] in their place at all costs; (d) the belief that treating others with dignity and respect versus the belief that [people of color] are not worthy of dignity or respect; [and] (e) the belief that each person should be treated according to his or her individual merits versus the belief that [people of color] should be evaluated as a group without regard to individual merits and talents.[319]

The growing awareness that White people and people of color are not treated in the same manner can have negative effects for White people socially when they fail to acknowledge the inequality.[320] For instance, the tools that a White person has developed to interact with people of color, tools developed based on ideas of who people of color are without meaningful interaction with them, may fail them in the Disintegration stage.[321] Law student Linda P. expressed this when she said "Some students wouldn't speak to me after class. It scared me, because I thought I was being liberal and I was treated like the devil."[322]

In this uncomfortable space is dissonance—an irreconcilable state between perceptions of identity and the realities of that identity.[323] As a White person experiences dissonance in their White racial identity, they may seek to reduce it by "(a) changing a behavior [to avoid] further contact with [people of color]; (b) changing an environmental belief [persuading people in their social circles that people of color are not inferior]; or (c) developing new beliefs [by] seeking information from [White people or people of color] to the effect that either racism is not the White person's fault or does not really exist."[324] To further reduce dissonance, a White person in the Disintegration stage might sift through information

and people for those who support their new beliefs.[325] Any options (a-c) chosen at this stage are dependent on whether the choice to interact with non-White people and ideas is voluntary.[326] Options (a) and (b) are more viable if the decision to interact with people of color is voluntary.[327] If not, option (c) becomes the best alternative.[328]

The Disintegration stage ends when a White person sees themselves as possessing a White racial identity.[329] Thus begins Stage 3, Reintegration, where "in the absence of contradictory experiences, to be White in America is to believe that [White people are] superior to people of color." The Reintegration stage shapes a White person's interpretative lens to sort information in ways that support beliefs of White superiority, and stereotypes that reinforce the inherent inferiority of people of color.[330] White people's experience with anxiety and guilt during this stage turn to fear and anger, expressed explicitly or simmering, until an interaction perceived as threatening pushes it to boiling.[331] Linda P.'s peers in the "Discrimination and the Law" class are illustrative. Their description of their class as "a forum for white-bashing," "[exacerbating} racial tensions," and where their professor "favored black students" evidence a need to interpret class interactions in a manner that supports their belief (implicit or explicit) in White racial superiority. Psychotherapist Resmaa Menakem in his book, *My Grandmother's Hands: Racialized Trauma and the Pathway to Mending Our Hearts and Bodies*, offers additional examples of reactions in the Reintegration stage:

> [1] Not listening or paying attention to someone, or outright ignoring them, as if [people of color] were invisible; [2] Interrupting or talking over [people of color]; [3] Not taking someone seriously (for example, saying, "You don't really mean that" or "You don't really feel that way," or "It's wrong to feel that way"); [4] Giving a brief, perfunctory, minimalist, or non-committal response (such as "Fine-whatever you say" or "Yes. I care. I need to go now"; [5] Refusing to acknowledge someone's lived experience, either by denying that it happened or by fleeing into statistics or legalisms; [6] Acting visibly frustrated and impatient with someone, as if his or her presence is burdensome, or as if what he or she is saying is childish or ludicrous; [7] Saying,

> "Be reasonable," then demanding something unreasonable or impossible; [8] Speaking words of care or concern, but without empathy or sincerity . . . The main message behind all of these are the same: first, *You're not important*; and second, *This bullshit I'm doing right now—I and others like me are going to keep doing it indefinitely*.[332]

Reintegration is a ubiquitous stage of White identity in stasis.[333] It takes a significant event to propel a White person from Reintegration toward *Phase 2: Defining a Nonracist White Identity*.[334] In our most recent history that event, for the United States and the world, was the nine minutes and twenty nine seconds that we watched Derek Chauvin kneel casually on George Floyd's neck while his hands lay tucked in his pockets. We watched as second by agonizing, excruciating second George Floyd's breaths slowed and then ended as he died. The protests and riots in cities throughout the United States that followed landed in American law schools, as racial and ethnic affinity groups (and their allies) called for changes to the law school curriculum and the climates of their classrooms. Thus, we are in a moment in legal education where it is possible as educators to help our colleagues, administrations, and students along Phase 2. To do so, law schools must accept that White student and faculty resistance to DEI curricula is a foregone conclusion. It will happen. What can be different is our resolve to not let it derail efforts to change our curricula and classroom climates. We can develop tools that anticipate the resistance and allow us to meet it effectively.

Stage 1 of Phase 2, the Pseudo-Independent stage is the adolescent stage for positive White racial identity.[335] It is neither naive nor mature, but unstable and searching for positive ways to have a White racial identity that is not defined by oppression.[336] The key attributes of this stage are empathy for minoritized groups and taking responsibility for perpetuating Phase 1 identity characteristics.[337] Additional attributes include a sense of unease when discussing racial issues among other White people, and attempts to reckon with these new feelings by attempting to make people of color act "White" in order to receive the benefits of whiteness.[338] Helms explains, "cultural and racial differences are likely to be interpreted by using White life experiences as the standards.

Moreover, the Pseudo-Independent person still looks to [people of color] rather than White people to explain racism and seeks solutions for it in hypothetical [perceived] cultural dysfunctionalities [among communities of color]."[339] Ultimately, the Pseudo-Independent stage signifies a White person's willingness to move forward in forming a positive racial identity.[340]

The Immersion/Emersion stage is the stage where law school administrators and faculty can make important interventions in positive White identity formation. In this stage, White people work through the process of abandoning negative stereotypes and beliefs about people of color and White people with "accurate information about what it means and has meant to be White in the United States [and the world]."[341] Knowledge during this stage is ever evolving, and we can spur that evolution through law school curricula by providing meaningful opportunities with mandatory and elective coursework for White law students to work through this stage.[342] It is common for White people to reflect on previous encounters and incidents with persons of color, and to view them from fresh, informed perspectives.[343] The more White law students learn about power and privilege, the more their focus turns to forming a positive White racial identity that serves the interests of justice.[344] Non-racial and ethnic affinity groups at law schools that signed on to accountability letters following the Floyd protests provide examples of White students in the Immersion/Emersion stage.

The last stage in Phase 2, Autonomy, is where White racial identity reaches maturity. Gone is the need to tear down people of color to build up White racial identity.[345] Instead, White people in the Autonomy stage embrace the learning experiences that new cultures present.[346] Significantly, Autonomy brings with it the ability to make connections between multiple overlapping systems of oppression (white supremacy, patriarchy, etc.).[347] This stage is ongoing and involves "internalizing, nurturing, and applying the new definition of Whiteness evolved in the earlier stages."[348] Ideally, as law schools begin to replan their courses, curricula, and classrooms, they would do so in anticipation of supporting and encouraging White students and faculty who reach this stage to actively move DEI initiatives forward.

Developing a Racial Trauma Informed Pedagogy for Legal Education

Multigenerational racial trauma and White racial identity formation unfold in the context of how legal educators teach "the law." The canon of the law, as taught in the core curriculum, is presented as an unchallenged body of truth in which White racial identity is the norm. Debate is allowed within that truth, but not about that truth. In this sense, the law as we teach it in our classrooms does not evolve beyond the Reintegration stage of its identity; it constantly develops interpretive tools that reify whiteness as supreme and superior by failing to acknowledge the experiences of minoritized students and faculty and seriously grappling with their legal and societal implications. A comparison of Chief Justice Roberts' majority opinion in *Shelby Counter v. Holder* and the dissenting opinion by Justice Ginsberg is instructive.[349]

Roberts begins his justification for removing the pre-clearance requirement in section 5 of the Voting Rights Act (VRA) for States included in the coverage formula for section 4(b) as follows:

> The Voting Rights Act of 1965 employed extraordinary measures to address an extraordinary problem. Section 5 of the Act required States to obtain federal permission before enacting any law related to voting—a drastic departure from the basic principles of federalism. And section 4 of the Act applied that requirement only to some States—an equally dramatic departure from the principle that all States enjoy equal sovereignty. This was strong medicine, but Congress determined it was needed to address entrenched racial discrimination in voting, "an insidious and pervasive evil which had been perpetrated in certain parts of our country through unremitting and ingenious defiance of the Constitution." As we explained in upholding the law, "exceptional conditions can justify legislative measures not otherwise appropriate." Reflecting the unprecedented nature of these measures, they were scheduled to expire after 5 years. Nearly 50 years later, they are still in effect; indeed, they have been made more stringent, and are scheduled to last until 2031. There is no denying, however, that the conditions that originally justified these

> measures [voter suppression] no longer characterize voting in the covered jurisdictions.[350]

The "covered jurisdictions" to which Justice Roberts refers are the states that comprised the Confederate States of America: Alabama, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Virginia, Texas, and Florida (with the exception of Tennessee and Arkansas), as well as Arizona, California, Michigan, New York, and South Dakota.[351] Roberts' emphasis that the VRA requirements were "dramatic" departures from the well-settled rules of federalism and state sovereignty, which would otherwise be inappropriate but for voter suppression, reinforce that these principles as they functioned in 1965 were operating correctly. In reality, they operated to maintain segregation and the everyday violence of Jim Crow.

The dissenting opinion pushes back against the narrative that voter suppression had abated to the extent that the misdeeds of the former Confederate States and those others named had sufficiently passed, or more accurately were in the past. As Justice Ginsberg describes,

> A recent FBI investigation provides a further window into the persistence of racial discrimination in state politics. Recording devices worn by state legislators cooperating with the FBI's investigation captured conversations between members of the state legislature and their political allies. The recorded conversations are shocking. Members of the state Senate derisively refer to African-Americans as "Aborigines" and talk openly of their aim to quash a particular gambling-related referendum because the referendum, if placed on the ballot, might increase African-American voter turnout. Legislators and their allies expressed concern that if the referendum were placed on the ballot, "every black, every illiterate" would be "bused [to the polls] on HUD financed buses." These conversations occurred not in the 1870's, or even in the 1960's, they took place in 2010. The District Judge presiding over the criminal trial at which the recorded conversations were introduced commented that "the recordings represent compelling evidence that political exclusion through racism remains a real and enduring problem" in Alabama. Racist sentiments,

> the judge observed, "remain regrettably entrenched in the high echelons of state government."[352]

Today, the narrative that Justice Roberts' parroted by judicial opinion persists. It is almost eight years since the *Shelby County* case, and on March 25, 2021 Georgia passed the most virulently racist voter suppression bill since the Jim Crow era.[353] Yet, Georgia Governor Brian P. Kemp maintains that "This bill expands voting access, streamlines vote-counting procedures, and ensures election integrity. There is nothing 'Jim Crow' about [it]."[354] As of April 1, 2021, 361 voter suppression bills had been introduced in 47 of 50 state legislatures.[355]

Teaching the law as continually reinforcing negative White racial identity makes our common legal education pedagogy a cog in the wheel of white supremacy. In this sense, it acts as a macroaggression, an active, though perhaps "mindless [participant] in or [complicit] with big, systemic forms of oppression rather than interpersonal forms of bias or discrimination."[356] In their article *Deconstructing Macroaggressions and Structural Racism in Education: Developing a Conceptual Model for the Intersection of Social Justice Practice and Intercultural Education*, educators and scholars Azadeh F. Osanloo, Christa Boske, and Whitney S. Newcomb argue that macroaggressions "occur at a structural level [and encompass] actions that are meant to exclude either by act or omission."[357] Macroaggressions manifest themselves as a series of microassaults,[358] which in a legal education context begin as soon as a law professor plans syllabi and develops teaching plans that exclude discussions of race and inequality from the acceptable core curricular canon. The authors argue further that "macroaggressions are verbal and non-verbal communications that are not only purposeful and deliberate, but are meant to create longitudinally debilitating and depressive results in the victim."[359]

In legal education, the longitudinally debilitating and depressive results occur in teaching our students to "think like a lawyer," insofar as it requires them to recite the events in real people's lives and the court's responses to those events in neat sanitized packages containing legally relevant facts, issues, rules, analyses and conclusions without more—without context and critical inquiry into what these decisions mean societally. We press on, purposely and deliberately, under the guises of "course coverage" and "bar

passage." For minoritized students and faculty, this process is an especially violent and traumatic one, in that they are "expected to change their interactions to align with, adjust to, and or tolerate harmful intercultural interchanges."[360] They do so in classrooms where "their realities go unnoticed, they are often rendered invisible, and [in which] dominant beliefs are imbedded throughout intercultural communication, beliefs, interaction, and policy."[361] In the courses that we teach, legal concepts as presented through individual cases or as cases grouped under units act to perpetuate microaggressions, microinequities, microassaults, microinsults, microinvalidations, and stereotype threat—all of which act as barriers to minoritized law students experiencing equitable and inclusive classroom and curricular environments. When viewed in this light, our curricular and pedagogical goal is conformity, not diversity, equity, or inclusion.[362]

Accordingly, DEI pedagogical and curricular interventions must be undergirded with a racial trauma informed pedagogy. According to such a pedagogy, racial trauma exists when minoritized students and faculty experience multigenerational racial trauma as a result of centuries of oppression directed at their respective group, that goes unaddressed societally and is then revisited on them in the classroom and curriculum. Added to this condition is a belief (real or imagined) that the benefits of the educational institution in which they learn are not accessible to them, to the extent that they fail to conform to institutional norms calibrated to White racial identity and culture. Practically, this compels legal educators to examine their course materials for instances where microaggressions and its progeny occur, plan for opportunities to address and discuss them, teach and manage the classroom climate effectively during class discussions and student interactions, and assess student learning in these areas. Collectively this is DEI course planning, the subject of Chapter 5.

For more on the issues discussed in this chapter check out:

Resmaa Menakem, My Grandmother's Hands: Racialized Trauma and the Pathway to Mending Our Hearts And Bodies (2017).

Niall C. Hegarty and Benjamin Rue Silliman, *How to Approach Teaching Philosophy Statements as Career Mission Statements*, 6 Journal of Business and Educational Leadership 103 (2016).

Edward Baptist, 'The Half Has Never Been Told': Slavery and the Making of American Capitalism (2016).

Roxanne Dunbar-Ortiz, An Indigenous Peoples' History of United States (2014).

Joy Degruy Leary, Post Traumatic Slave Syndrome: America's Legacy of Enduring Injury and Healing (2005).

Ronald Takaki, Strangers from a Different Shore: A History of Asian Americans (1998).

Richard Griswold del Castillo, The Treaty of Guadalupe Hidalgo: A Legacy of Conflict (1990).

CHAPTER 5:
Course Planning and Assessment for the DEI Classroom & Curriculum

Deconstructing the DEI Classroom in Two Acts

ACT I — SETTING THE STAGE

1Ls are gathered in a first semester Contracts class. One of the assigned cases for this class session is *Williams v. Walker-Thomas Furniture Co*.[363] What follows is the class dialogue for the discussion of the case.

Professor: Good afternoon. We are winding up the semester and continuing our discussion of defenses to contracts and other doctrines of avoidance. Up for discussion in today's class is the case *Williams v. Walker-Thomas Furniture Co.*, which falls in your casebook under the heading "Unconscionability." Can someone tell me what this case is about?

DEI Embracing Student *(raises hand and is called on)*: I can. The case is about the plaintiff, Ora Lee Williams. Ms. Williams bought some furniture and other items for her children, there were seven of them . . .

DEI Resistant Student *(abruptly cuts off DEI Embracing Student)*: I'm sorry for cutting her/him/they off, but I don't want to be confused during this session. Where are these facts coming from? I didn't note them in the case.

Professor: You are correct that information about Ms. Williams' family was not in the case, at least not prominently. The court states how many children she has on page two of the opinion.

DEI Embracing Student: I wanted to learn more about the case, so I Googled it. Wikipedia gave me some interesting information that I think is relevant.

Professor: Wikipedia is not the best source for case facts. Let's move on as stated in the actual case located in your Contracts text. *Motions to DEI Resistant Student to continue.*

DEI Resistant Student: I thought I missed something from the case. O.K. So Williams bought various goods on installment contract from the Walker-Thomas Furniture Company from 1957-1962. The contract for those goods, I guess they were separate contracts but it appears from the opinion that the contracts were similar or the same, was pretty boilerplate. It basically said that if Williams missed a payment on any item, then Walker-Thomas Furniture would repossess all of the items that she bought on any of the installment contracts, whether she had paid for the items or not.

Professor: Thanks. Does anyone else wish to add more information?

DEI Embracing Student *(raises hand and is called on)*: I do. From what I've read, Ms. Williams had seven children. She could not afford to buy the things she needed for herself or her family, so her option was to purchase the items through installment contracts. She was on public assistance and received only $218 each month.

Professor: Didn't DEI Resistant Student already state that Williams purchased the items through installment contracts?

DEI Embracing Student: Yes, but he/she/they did not mention who Ms. Williams is. I mean, isn't it relevant that she was poor?

DEI Resistant Student: Why does her class matter? This is a case about the contract that she signed. She knew exactly what she was doing, and besides if she didn't have cash to buy what she wanted she could have saved up. It's no one's fault she decided to go into debt. Typical. Just irresponsible. And she had the nerve to buy a stereo set. *(incredulously)* For $514! Are you kidding me?

Professor *(beseechingly)*: Please, let's get back to the legal issue in the case as framed by the court. What is the issue?

DEI Resistant Student *(raises hand and is called on)*: The issue is whether the type of installment contract that Ms. Williams entered into was unconscionable.

DEI Embracing Student *(blurts out)*: Aren't there additional facts we should include, like Ms. Williams being on public assistance? What about how many of the items she paid for that were also repossessed? Don't any of those facts matter?

DEI Resistant Student *(in exasperation)*: Those facts don't matter. How are they relevant? The only legally relevant facts are those that relate to the contract terms.

Professor: I agree. What is the legal definition of unconscionability according to this court?

DEI Embracing Student *(raises hand and is called on)*: The absence of meaningful choice on the part of one of the contracting parties plus contract terms that are unreasonably more favorable to the other party. See, that's why Ms. Williams' class status is important. Doesn't that impact whether she was able to actually make a meaningful choice?

DEI Resistant Student: Not all poor people are stupid. She obviously should have understood the terms of the contract. Isn't that all that is relevant? She had a bunch of kids and was living off the government. Why should Walker–Thomas be responsible for her bad choices?

Professor: Well, let's resolve this debate with the law. What approach does the court take to decide whether a contract is unconscionable?

DEI Resistant Student: It turns on whether the affected party, in this case Ms. Williams, had meaningful choice in entering into the contract. A court determines whether meaningful choice is present by considering all of the circumstances surrounding the transaction. There may not be meaningful choice when there is a gross inequality of bargaining power.

Professor: Anything else?

DEI Embracing Student: Yes. The court also looks at the **manner** in which the contract was entered. To me, this means that the

court would take into account just what type of company Walker-Thomas is.

Professor: And in your opinion, what type of company is it?

DEI Embracing Student: It's just like Rent-A-Center. Companies like that set up shop in poor communities and take advantage of people who cannot afford to pay cash for things that they need.

DEI Resistant Student *(raises hand and blurts out)*: Wait a minute. Are you actually saying that Walker-Thomas should be held accountable for poor people making bad choices? It's simple, if you don't have the money then wait until you do. That's the choice. Walker-Thomas operated in poor, ghetto, minority communities at its own risk. Those contract terms are more to protect it than the consumer, and rightly so. How many of **those** people default on contracts like this? Walker-Thomas would have to assume a heck of a risk financially to offer its services to communities like this. The court states that you assume the risk of your bargain even when it is one-sided. Ms. Williams knew exactly where she stood.

DEI Embracing Student: First, where are you getting that Ms. Williams is poor, Black, and lives in (*makes air quotes*) "the ghetto?" The opinion doesn't state her race or where she lives.

DEI Resistant Student: Well, she's on welfare and she is entering into an installment contract for furniture.

Professor: Let's get back on track with the case. *(motions to DEI Embracing Student)* You were saying? What was your second point?

DEI Embracing Student: The court also said that whether the contract is unreasonable depends on the terms of the contract as considered in context, when the contract was made. The court went on to say that the test for unconscionability couldn't be applied mechanically.

DEI Resistant Student: None of this matters anyway. Ultimately the court remanded the case with instructions to the trial court to apply the test it set out. We don't know how the case turned out, but I can only hope that the court protected the furniture company.

DEI Embracing Student: Professor, how did the case turn out? Do you know?

Professor: Look at the time. We'll pick up here next class.

THE END

DEBRIEFING THE EXPERIENCE

In this first incarnation of the class, the professor conducts the discussion of the case for the sole purpose of teaching the students how a court arrives at/interprets the requirements necessary for it to find a contract unconscionable. While the professor is prepared to teach the aspects of the case that concern "the law," he/she/they do not teach the class with a racial trauma informed pedagogy. It is rather obvious that the professor does not want to address any of the issues that the case raises that are normally considered "non-legal" (e.g., Ms. Williams' race; her status as a public assistance "welfare" recipient; and any judgment about her purchasing a stereo or other items ("luxury" items vs. necessities).

Next, the professor seems to lack an awareness of how failing to address student comments that assign stereotypes to Ms. Williams based on her perceived race, class, and gender identities is a damaging practice that especially affects the minoritized students in the class. The DEI Resistant Student's comments that Walker-Thomas furniture "operated in poor, ghetto, minority communities at its own risk," and that Ms. Williams is a Black woman who lives in the inner-city because she is on public assistance and bought furniture on installment are microassaults. These comments perpetuate the worst stereotypes about poor and working class Black women—that they are "welfare queens" who buy luxury items on the government's dime, lack the discipline to save money, and the intellect to make good financial choices. These racialized gender stereotypes are reinforced for students in the classroom, and could shape their interactions with their classmates and clients outside of it. That the person with the most authority in the classroom, the professor, met these stereotypes with silence conveys the possibility that they may be true.

Third, the professor advances the view that the risk rental companies take in doing business in low-income areas justifies strict contract terms, such as those in the contract that Ms. Williams signed. The DEI Embracing Student tries to no avail to spark a discussion about the "non-legal" issues, which the professor continually shuts down as "irrelevant to the class discussion" and/or "a distraction from the legal issues." These actions cast the DEI Embracing Student as "other," "off," and "stupid," and their questions as obstacles to getting to "the law." They also send a message to the class that the law is separate from the human condition, and that the experiences of the parties to a lawsuit can be irrelevant to the resolution of legal disputes. In contrast, the DEI Resistant Student raises the issues about business risk and contract terms and is rewarded by positive reinforcement from the professor. These actions reinforce that the law is a macroaggressor, in which White cultural imperatives are normative ("the law" vs. the experiences of minoritized persons) and that behavior that does not conform to it is legally irrelevant.[364]

ACT II — RESETTING THE STAGE

1Ls are gathered in a first semester Contracts class. One the cases up for discussion during the class session is *Williams v. Walker-Thomas Furniture Co*.[365] What follows is the class dialogue for the discussion of the case. In advance of the class discussion, the professor (a Black woman) assigned an article written in 1968 by the former chief staff attorney for the Legal Assistance Office of the District of Columbia.[366] The author was familiar with the business practices of the *Walker-Thomas Furniture Co*. and its impact on the poor and working class people they affected.[367] The professor also prepared as a handout the relevant language from the contracts Walker-Thomas used, which is also excerpted in the article.[368] To further educate herself for the discussion on this unit of cases, the professor read several articles to determine the context in which claims of unconscionability arise, and familiarized herself with scholarly work on the different theories used to understand the parties' actions.[369]

Professor: Good afternoon. We are winding up this unit and continuing our discussion of defenses to contracts and other doctrines

of avoidance. We will begin our discussion with the *Williams v. Walker-Thomas Furniture Co*. case. Before getting started with our discussion, let's take a short 10-minute quiz to assess your understanding of the contract terms that Ms. Williams was presumed to understand when renting from the furniture company. *The professor then administers a Cloze reading test (discussed in the "Assessments" portion of this chapter) to ascertain (1) whether the students read the Williams v. Walker-Thomas case and the assigned article; and (2) understood the relevant contract terms as excerpted in the article.*

Professor *(after 10 minutes has passed)***:** How did everyone do?

DEI Resistant Student: That test was hard. It was difficult to read that contract provision in 10-minutes, let alone understand it, and I read the article for class ahead of time. Good thing Ms. Williams had a social worker present to help her decipher them.

Professor: Funny you should mention Ms. Williams' social worker. Because she received public assistance, she was assigned a social worker who managed her case. However, as the article points out, the social worker was listed on the back of one of the rental forms she signed.[370] There is no indication that the social worker was present when she signed the forms or helped her to decipher them. We will get back to this point in a moment, but I want to get some additional reactions about the test you just finished on the contract terms.

DEI Embracing Student: Full disclosure, I didn't read the article for class, and that provision was unintelligible to me.

DEI Resistant Student: The article says that the print was in four point type with cramped spacing.[371]

Professor: Yes. Four-point type! The handout I provided with the contract terms for your test was in 12-point font. O.K. Let's jump into our discussion. *Williams v. Walker-Thomas Furniture Co*. falls in your casebook under the heading "Unconscionability." Can someone tell me what this case is about?

DEI Resistant Student *(raises hand and is called on)*: I can. Plaintiff purchased goods on an installment contract from 1957-1962.[372] The terms of the contract were that if she defaulted on

any of the payments, then she would lose all of the items included in the contract even if she technically paid for them.[373]

Professor: Thank you, that's accurate. However, it would be great if we could refer to the plaintiff as Ms. Williams. There were additional plaintiffs, the Thornes,[374] but let's focus our discussion on Ms. Williams. Tell me, do you think the terms of the installment contract were fair?

DEI Resistant Student: I think they were, but what does that matter? This woman, Ms. Williams, it looks like she was on welfare and that she was buying all kinds of things on installment that she didn't need. This seems to be typical of these types of people. At any rate, companies like Walker-Thomas Furniture take a big risk doing business in these types of communities where **these types of people** cannot pay. If the contract terms weren't so strict, how would companies like Walker-Thomas furniture make money?

Professor: You raise some points here that we need to unpack a bit further. First, our discussion today is about unconscionability, so fairness in a legal sense is applicable. Second, and this question is for you DEI Resistant Student, should we as a society make judgment calls about what people on public assistance should and should not buy or what they do and do not need?

DEI Resistant Student: Well, of course you would say that . . .

Professor: I'm sorry? Why would I say that?

DEI Resistant Student: Well, you are a person of color (Black), so obviously you would be defensive or a little touchy about these issues. I am just citing statistics here. More Black people, Black women, are on welfare than anyone else.

Professor: If you are implying that I have an inability to be objective about issues surrounding poverty, inequality, and race because I am Black, then you are mistaken. First, I disagree that an analysis that does not take those things into account is "objective." Second, it is important for you to understand as law students and future attorneys that the law impacts people differently because of their race, class, and gender.

DEI Resistant Student: Whatever.

Professor: DEI Resistant Student, this classroom is a space where we strive to have important discussions raised by the issues in the cases assigned. It is important that we be respectful of one another. If you feel as if you cannot contribute meaningfully to our class discussion, you are welcome to excuse yourself. If you have personal issues that you would like to discuss with me, then you are more than welcome to come and see me during office hours.

DEI Resistant Student: Are you kicking me out?

Professor: No. However, I am asking that if you stay, you participate in the discussion in a way that does not disrespect me or make assumptions about the parties in the case based on racial stereotypes.

DEI Embracing Student: I have a question, *(addresses the question to DEI Resistant Student),* how do you know what race Ms. Williams is? The opinion doesn't state it.

DEI Resistant Student: I just assumed based on the facts of the case.

Professor: Actually, it might surprise you to know that the majority of people on welfare are White, but that Black welfare recipients are disproportionately represented in the statistics and negatively stigmatized. Let me tell you a bit about Ms. Williams. Although the case does not tell us her race, it is widely assumed that she is Black because at the time the case was litigated the District of Columbia had a majority Black population.[375]

DEI Resistant Student: *(snickers)*

DEI Embracing Student *(gives DEI Resistant Student the side-eye)***:** It seems that given the standard set out by the court that we need to know more information. The court defines unconscionability as the lack of meaningful choice on the part of someone in Ms. Williams' position, and contract terms that are unreasonably more favorable to the other party, like Walker-Thomas Furniture.[376] The court says that to determine what unconscionability is, we must take context into account, how the contract was entered into.[377] That's why I think we need to know more, but the case doesn't tell us more. It's so frustrating.

Professor: I can tell you more. Ora Lee Williams was a mother of seven. Between the years 1957-1962 she purchased various

items through installment contracts, like drapes, a rug, an apron set, a fan, typewriter, and stereo.[378] This information is in the case and in the assigned article, by the way.

DEI Resistant Student *(abruptly)***:** See, that's what I'm talking about. What is someone on welfare doing purchasing a stereo?

Professor: Should a court make a judgment call about what a person buys if they are on public assistance? Can the poor not enjoy music too?

DEI Resistant Student: We, the taxpayers, are paying for her and her seven children, so **we** should have some oversight over what luxury items she gets to buy.

Professor: This is an important issue you raise here; Judge Danaher's dissenting opinion also raises it. What does it say?

DEI Embracing Student: That we shouldn't necessarily make a judgment between what items are luxury items or not, because we can never know how a person might use them.[379] I don't think that the poor should be regulated any more than the rich. I agree with the dissent. Who can determine what is a luxury item or what is a necessity? A person with a stereo could D.J. a party and make some additional funds. Does that suddenly make the item a necessity? *(shakes head)* That's a slippery slope.

Professor: Also a point raised in the dissenting opinion. Why do you say this is a slippery slope, given the dissent's reasoning?

DEI Embracing Student: As you asked previously "can the poor not enjoy music too?" What if Ms. Williams bought the stereo for the sole purpose of listening to music? I don't think the judge or courts would withhold judgment about her choice.

Professor: Perhaps when we get to our discussion of consumer protection legislation, we can discuss the government's financial regulation of the poor in distributing public benefits. Let's stay with Ms. Williams' case specifically at this moment. Ms. Williams entered into 14 transactions to purchase household items from 1957 to 1962.[380] The contracts were identical.[381] Some were left blank; some were signed when a salesman from Walker-Thomas visited Ms. Williams at her home.[382] The Company knew that she was on public assistance.[383] In fact, as previously mentioned, the

name of her social worker was on the back of the form used when she signed for the stereo.[384] Walker-Thomas Furniture used contracts where the writing was in small, inadequately spaced four-point type.[385] The words "lease" and "hire" were only listed once in each of the forms.[386] At trial, Ms. Williams stated that she understood that each contract was different from the other, but that she didn't understand the actual contracts.[387]

DEI Embracing Student: This is just what the court was talking about when it said context. That type of business practice seems deceptive to me.

DEI Resistant Student *(raises hand and is called on)***:** What about the Company's risk? The court does say that context includes common business practices at the time.

DEI Embracing Student: So, if everyone doing similar business in a community takes advantage of people in that community then it's fine? *(emphatically)* Come on!

Professor: It might surprise you that the case was ultimately resolved by settlement. Williams and the Thornes settled the claims for the fair market value of the items they bought from Walker-Thomas Furniture.[388] Both replaced the items repossessed on their own when they could.[389] However, the lawyers who took the case, lawyers from the Legal Assistance Office of the DC Bar, petitioned the Federal Trade Commission (FTC) to investigate Walker-Thomas Furniture.[390]

DEI Resistant Student: What happened?

Professor: After a nine-month investigation the FTC found no reason for further action.[391] I want to get back to your question about business practices and risk when we pick up with class next session, and discuss the other cases on your syllabus for this week. It might give us insight into why the FTC failed to investigate Walker-Thomas further.

DEI Embracing Student: That's it? So Ms. Williams got no justice?

Professor: Not really. However, her case was the impetus for consumer protection legislation, which addressed business practices like those Walker-Thomas Furniture used. *(pause)* O.K. we're at time. See you next class.

THE END

DEBRIEFING THE RACIAL TRAUMA INFORMED CLASSROOM EXPERIENCE

As we discussed at the end of Chapter 4, a racial trauma informed pedagogy presumes that racial trauma exists when minoritized students and faculty experience multigenerational racial trauma as a result of centuries of oppression directed at their respective group, that goes unaddressed societally and is then revisited on them in the classroom and curriculum. Added to this condition is a belief (real or imagined) that the benefits of the educational institution in which they learn are not accessible to them, to the extent that they fail to conform to institutional norms calibrated to White racial identity and culture. Teaching the law from the foundation of a racial trauma informed pedagogy means that professors take responsibility for the deliberate planning of their course(s) to discuss issues concerning inequity, rather than waiting for (or dreading) them to arise organically via student class discussions.

In "take two" of the discussion for *Williams v. Walker-Thomas Furniture Co.*, the professor has a definite goal for the class discussion, which is to address the microassault on Ms. Williams in the court opinion, made possible by the silences and suggestions about her identity and its meanings. The professor accomplishes this by humanizing her and providing context for the interactions that give rise to the cause of action. It is the professor who first raises the issues of race, class, and gender as they arise in *Williams*, and weaves them into the discussion of how the court developed the guidelines for adjudicating unconscionability. She sets the expectation that the discussion will involve more than just "the law" by the article she assigned, and that preparation for the discussion is important by assessing student comprehension of the contract terms that are the subject of dispute.

The class discussion does not proceed without conflict, as the professor's exchange with the DEI Resistant Student shows. After several disrespectful exchanges between the two, the professor calls out the student behavior and asserts the proper social parameters for the class discussion. This is an important act of disruption; as the authority figure in the classroom, the professor demonstrates

respect for the student, but also indicates by her actions that the discussion will move through the conflict. By surfacing the DEI Resistant Student's dependence on stereotypes, the professor is able to rebut them, and in doing so explain how the context of the case is relevant to the formulation of the legal framework for analysis with respect to unconscionability.

It is a common perception that a professor's ability to walk the thorny path of discussing hard topics and not be bloodied is "natural"—either you have it or you don't. However, planning a course built on a foundation of racial trauma informed pedagogy that adequately weaves in issues of difference and effectively manages classroom discussion is a practice that can be learned, planned, and implemented successfully. Doing so requires time, effort, and attention, and begins before the start of the semester.

DEVELOPING DEI LEARNING OUTCOMES & COURSE PLANNING TEMPLATES

Approaches to facilitating discussions about difficult material are a learned practice that has been widely written about by scholars. Many times the work of these scholars is not respected, which leads to professors attempting to integrate DEI issues into their courses without careful study or based on lived experiences alone. While the experiences of minoritized persons are valid and important, it is false to assume that because a person belongs to a minoritized group they are experts in the scholarly study of minoritized people and systems of oppression. Thus, to be most effective prior to incorporating DEI related materials into their classes, faculty should approach doing so as a scholarly practice that engages the work of subject matter experts, as well as experts on teaching and learning, classroom and campus climate issues, and approaches to assessment. Incorporating DEI issues into our classes requires deliberate planning at the inception of a course and conscious relationship building with students to be effective. Faculty cannot presume that lived experience alone is sufficient to effectively facilitate conversations around difference in the classroom.

Standard 302 of the American Bar Association's Standards and Rules of Procedure for Approval of Law Schools (ABA Standards) states:

> A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:
>
> (a) Knowledge and understanding of substantive and procedural law;
>
> (b) Legal analysis and reasoning, legal research, problem solving, and written and oral communication in the legal context;
>
> (c) Exercise of proper professional and ethical responsibilities to the legal system; and
>
> (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.[392]

A learning outcome is a description of what a student will know or be able to do as a result of a specific set of learning activities or performance criteria. Student achievement of the stated learning outcome is measured through defined criteria assigned to each learning activity.

Generally, the approach to incorporating DEI issues into a course stops at awareness. Traditionally, professors have viewed raising DEI issues as episodic—based on a particular case or current event that implicates minoritized communities. For example, a professor might devote a class to racial profiling. They may bring in a guest speaker or utilize video and additional class readings for a class session, but will not link the discussion to a learning outcome for the course, utilize a learning activity to reinforce the concepts taught, and assess how well a student has learned those concepts through formative and summative assessments. All three—Learning Outcomes + Learning Activities + Assessment—are necessary to cement DEI pedagogy and practice as a permanent part of law school curricula.

Benjamin Bloom's Taxonomy of Educational Objectives (Bloom's Taxonomy) and Bloom's Digital Taxonomy of Educational Objectives (Bloom's Digital Taxonomy) are good places to begin when crafting learning outcomes.[393] A quick web search will yield numerous examples of each. Bloom's Taxonomy (original and updated) is most useful for in-person classes held synchronously, and primarily offers guidance for drafting learning outcomes related to thinking.[394] In the Taxonomy, thinking skills are ordered from low order thinking skills to high order thinking skills as follows: Knowledge, Comprehension, Application,

Analysis, Synthesis, and Evaluation.[395] Bloom's Taxonomy was later updated by using verbs to describe the thinking skills, and adjusting their order from low to high order thinking skills as follows: Remembering, Understanding, Applying, Analyzing, Evaluating, Creating.[396] Each of these broad categories contain additional verbs that are useful starting points for describing the learning activities that correlate to each category.[397] Bloom's Digital Taxonomy updates the thinking categories to include digital resources, and links each thinking category to a possible learning activity utilizing digital media.[398] It also adds a category for skills and activities that involve collaboration.[399]

DEI Learning Outcomes should be designed to address the law as a macroaggressor, how it perpetuates microaggressions, microassaults, microinsults, microinequities, and microinvalidations (collectively referred to as microaggressions) through its reasoning and analytical processes, and how professors and students perpetuate these microaggressions in classroom practices. The following is a chart of broadly drafted learning outcomes that act congruent with the competency areas set out in ABA Standard 302.

Table 1 Course Level DEI Learning Outcomes

Learning Outcome	Type of Thinking Skill	Level of Thinking Skill
LO 1-0: Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts *(e.g., cases, statutes, pleadings)*, scholarly legal texts *(i.e. journal articles)*, and other types of texts *(e.g., legislative bills, non-legal disciplinary scholarship)*	Remembering	Lowest
LO 1-1: Explains how practical legal texts, scholarly legal texts, and other types of texts are shaped by race, class, gender, and sexuality	Understanding	Low
LO 1-2: Deconstructs how race, class, gender, and sexuality influence how lawyers and courts frame legal issues	Analyzing	Middle
LO 1-3: Deconstructs how race, class, gender, and sexuality influence legal analytical and reasoning processes	Analyzing	Middle

Learning Outcome	Type of Thinking Skill	Level of Thinking Skill
LO 1-4: Critiques the implicit and explicit ways that practical legal texts, scholarly legal texts, and other types of texts utilize race, class, gender, and sexuality in ways detrimental to minoritized groups. *Note: The focus for this learning outcome is minoritized groups.*	Evaluating	High
LO 1-5: Critiques the implicit and explicit ways that cases, statutes, and other practical and scholarly legal texts utilize race, class, gender, and sexuality in ways that support white supremacy. *Note: The focus of this learning outcome is White racial identity/social position.*	Evaluating	High
LO 1-6: Designs new legal analytical and reasoning frameworks that challenge white supremacy and disrupt harm to minoritized groups	Creating	Highest
LO 1-7: Designs new legal analytical and reasoning frameworks that are equitable and inclusive for all groups	Creating	Highest

Table 2 Classroom Level DEI Learning Outcomes

Learning Outcome	Type of Thinking Skill	Level of Thinking Skill
LO 2-0: Recognizes how a person's position (race, class, gender, sexuality) in comparison to other group members shapes classroom interactions and discussions	Remembering	Lowest
LO 2-1: Identifies how their personal position (race, class, gender, sexuality) in comparison to other group members shapes classroom interactions and discussions	Remembering	Lowest
LO 2-2: Uses awareness of personal position (race, class, gender, sexuality) to engage respectfully and meaningfully in classroom interactions and discussions	Applying	Middle
LO 2-3: Evaluates awareness of personal social position(s) to engage respectfully and meaningfully in classroom interactions and discussions	Evaluating	High

Table 3 DEI Learning Outcomes Grouped by ABA Standard 302

Knowledge and understanding of substantive and procedural law	Legal analysis and reasoning, legal research, problem solving, and written and oral communication in the legal context	Exercise of proper professional and ethical responsibilities to clients and the legal system	Other professional skills needed for competent and ethical participation as a member of the legal profession
LO 1-0 - LO 1-1	LO 1-0 - LO 1-7	LO 2-0 - LO 2-3	LO 1-0 - LO 2-3

Planning Your Syllabus to Discuss DEI Issues

Now that you have a working list of learning outcomes, you can think about how to best utilize your class materials to (1) address macro and microaggressions as they appear in the court's issues, facts, analyses, and reasoning processes; and (2) address microaggressions that you anticipate in a classroom setting as a result of the issues raised in cases. One approach is to look at the Table of Contents in the casebook you have assigned to ascertain the thematic categories under which the cases are grouped. If you are compiling your own materials, then you can decide how you will group the cases you choose. You will also want to begin thinking about any supplemental readings or digital media you may want to use as you go through each unit and case.

Mapping the Cases

From the working list of learning outcomes, you can decide which one(s) you want to use to plan class discussions for the cases you assign in your syllabus. In our classroom dialogue example, we used the *Williams v. Walker-Thomas Furniture Co.* case, which will also serve as our exemplar here. A close read of cases for microaggression and macroaggression is necessary, because legal language inculcates inequitable power relationships and hierarchies that shape societal interactions.[400]

Table 4 Microaggression Case Map
Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965)
LO 1-0: Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts

Williams v. Walker-Thomas Furniture Co.	**Microassault**	**Microinsult**	**Stereotype Threat**
Relevant case language	"The record reveals that prior to the last purchase appellant had reduced the balance in her account to $164. The last purchase, a stereo set, raised the balance due to $678. Significantly, at the time of this and the preceding purchases, [Walker-Thomas Furniture] was aware of [Ms. Williams'] financial position. The reverse side of the stereo contract listed the name of appellant's social worker and her $218 monthly stipend from the government. **Nevertheless, with full knowledge that [Ms. Williams] had to feed, clothe and support both herself and seven children on this amount, appellee sold her a $514 stereo set.**" (p.448)	(Same language)	(Same language)

Williams v. Walker-Thomas Furniture Co.	Microassault	Microinsult	Stereotype Threat
Explanation	Suggests that Ms. Williams is irresponsible with money and needed the paternalistic hand of the state to protect her; implies that Ms. Williams' inability to make good choices is the problem, as opposed to Walker-Thomas Furniture's sharp business practices; students could rely on stereotypes about Black women who receive public assistance as truth to confirm the judge's assessment of her behavior ***(anticipate that this may turn into a microassault during class discussion)***	Suggests that Ms. Williams is irresponsible with money and needed the paternalistic hand of the state to protect her; implies that Ms. Williams' inability to make good choices is the problem, as opposed to Walker-Thomas Furniture's sharp business practices; could be understood by Black students in the group as insulting to Black women by seemingly confirming stereotypes about Black women on public assistance	Suggests that Ms. Williams is irresponsible with money and needed the paternalistic hand of the state to protect her; implies that Ms. Williams' inability to make good choices is the problem, as opposed to Walker-Thomas Furniture's sharp business practices; seems to confirm stereotypes about Black women receiving public assistance; could confirm for students outside of class that this stereotype is true because it is reinforced by legal authority; could lead to negative interactions between students if left unaddressed

Table 5 Macroaggression Case Map
Williams v. Walker-Thomas Furniture Co., 350 F.2d 445 (D.C. Cir. 1965)
LO 1-0: Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts

Relevant Language	*Explanation*
In determining reasonableness or fairness, the primary concern must be with the terms of the contract considered in light of the circumstances existing when the contract was made. The test is not simple, nor can it be mechanically applied. The terms are to be considered 'in the light of the general commercial background and the commercial needs of the particular trade or case.' (p.450)	Reasonableness and fairness are calibrated to White cultural norms, in that they disregard what would be reasonable and fair to poor people of color with limited resources and limited opportunities to obtain those resources. The focus is on the commercial needs of a particular trade or case *(what is best for commerce and fair given the commercial risks of a particular enterprise)* vs. what is best for poor consumers of color who are vulnerable and occupy inferior positions of power with respect to a particular business or type of business.
Dissent: "My view is thus summed up by an able court which made no finding that there had actually been sharp practice. Rather, the appellant seems to have known precisely where she stood."(p.450)	Disregards Ms. Williams' experience as a poor woman raising seven children on her own with limited resources and limited opportunities to secure those resources. Implies that she acted with full awareness of the possible risks.
Dissent: "There are many aspects of public policy here involved. What is a luxury to some may seem an outright necessity to others. Is public oversight to be required of the expenditures of relief funds? A washing machine, e.g. in the hands of a relief client might become a fruitful source of income."(p.450)	Justifies purchase of "luxury items" only so far as they are used for supplemental income. Do perceptions and practices about public assistance allow Ms. Williams the opportunity to enjoy items (e.g., a stereo) for purely their aesthetic value?

You can use this map to plan out all of the cases for a thematic unit in a casebook, or for individual cases. Examples of case maps, unit maps, and macro and microaggression maps are located in chapters 8-14.

Choosing Supplemental Reading Materials

Even if you are a subject matter expert for the course that you teach in the core curriculum, it is unlikely that you are a subject matter expert in how the topics covered in your scholarship are implicated by issues of race, class, gender, and sexuality. Accordingly, you will need to do research to supplement your learning based on the items in your macroaggression and microaggression case maps that you want to cover. In researching these issues, you should cast your net widely and across disciplines. Once you have compiled your supplemental research list, read through the research, and have taken notes, you will need to select which pieces or excerpts are the most appropriate to assign to the students in your course.

There is a concern among law professors that assigning "too much reading" in the core curriculum is counterproductive, as it detracts from "course coverage." However, given the discussion in the previous chapters of this book, the proper concern is whether course coverage is sufficient to meet DEI goals. Law school is not vocational school. Our purpose as legal educators is not for our students to achieve technical mastery outside of context. To that end, law school can and should be a time of rigorous critical inquiry, meaningful discussion, and mastery of the legal skills and values that inform socially responsible lawyering.[401] Lawyers read, interpret, analyze, evaluate, and communicate orally and in writing for a living. Without a comprehensive set of tools that adequately contextualizes those activities in DEI, new lawyers will continue to replicate systems of oppression that undermine the cause of justice.

Assessment for the DEI Classroom and Curriculum

Helping law students to develop useful tools in service of DEI requires assessment. ABA Standard 314 provides that "A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students."[402] In our

Williams v. Walker-Thomas Furniture Co. example, the students completed a Cloze reading test as a formative assessment (1) to determine whether they had read the assigned reading; and (2) to measure their comprehension of the excerpted contract terms. An added benefit of this assignment is that it places the students in the position of a consumer (like Ms. Williams) who would have read and attempted to comprehend the contract terms under pressure (in our fictional case, the 10-minutes allotted for test taking). Placing the students in this position encourages empathy for Ms. Williams in furtherance of **LO 1-0:** Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts.

Cloze reading tests have been proven effective to measure the test-taker's reading comprehension and their ability to understand the ideas present in the text as a whole.[403] The test measures these things through the strategic removal of certain words and replacing them with blanks.[404] How well the test-taker is able to replace the removed words indicates how well they understood the actual words of the text when they read it, as well as the comprehensive meaning of the text.[405] Ten minutes is an acceptable time period for the test-taker to complete the test.[406] In our example, here is the original text from Walker-Thomas Furniture Co.'s lease document

> If I am now indebted to the Company on any prior leases, bills or accounts, it is agreed that the amount of each periodical installment payment to be made by me to the Company under this present lease shall be inclusive of and not in addition to the amount of each installment payment to be made by me under such prior leases, bills or accounts; and all payments now and hereafter made by me shall be credited *pro rata* on all outstanding leases, bills and accounts due the Company by me at the time such payment is made.[407]

The Cloze reading test might look like this:

> **Course:** Contracts I
> Reading Comprehension Test for Week X, Unconscionability
>
> The following test is designed to measure your literal comprehension of the relevant contract terms referred to in the

Williams v. Walker-Thomas Furniture Co. case, as well as your understanding of the ideas that the terms represent. For each of the excerpts below, fill in the blanks with the exact word or similar word that helps the excerpt to make sense. You will have 10-minutes to complete this test.

If I am now indebted to the Company on any_____ leases, bills or accounts, it is agreed that the amount of _____ periodical installment payment to be made by _____ to the Company under this _____ lease shall be inclusive of and not _____ the amount of each installment payment to be made by me under such prior leases, bills or accounts; and all payments now and hereafter made by me shall be credited _____ on all outstanding leases, bills and accounts due the Company by me at the time such payment is made.

The grading scale for this assignment is as follows:
40% or less correct = Little or no comprehension
41%-90% correct = Minimal to good comprehension *(the student understands the information but its meaning remains somewhat illusive/challenging to completely comprehend)*
91%-100% correct = Excellent comprehension

These tests can be scored quickly, but given the purpose for the test in our example they need not be scored to add meaning and context to the class discussion.

Turning a Class into a Community

As this chapter demonstrates, it is imperative to plan, design, and manage how subject matter is communicated and assessed in any course, whether that course is offered in-person or online. However, there is a disconnect that occurs in thinking about those tasks as separate from the social and community building dimensions of the class experience. The "community of inquiry" (COI) approach best captures how integral the social experience is to supporting and enriching student and professor pedagogical, managerial, and technical experiences in a course. COI posits

that **social presence** (community building, collaboration), **teaching presence** (pedagogy, course management, and technology), and **cognitive presence** (critical inquiry, facilitated analysis and meaning-making, reflection) are necessary, essential components for an impactful learning environment.[408]

The COI approach is a dynamic, operative theoretical framework that implicitly and explicitly guides course design and management. It is useful to help faculty connect how they teach with the level of student engagement, and to view themselves and students as partners in creating and building knowledge.[409] In a DEI context, this means that students and faculty will work together to create new areas of inquiry based on their experiences with systemic oppression and racial trauma. The purpose of their creation is to build knowledge from which to construct new interpretative frameworks by which they read, understand, analyze, and utilize the law. According to the National Survey of Student Engagement (NSSE), there are five guiding principles to increase student engagement: "1. Active and collaborative learning; 2. Student interactions with faculty members; 3. Level of academic challenge; 4. Enriching educational experiences; and 5. Supportive campus environment."[410] The learning outcomes and approaches to class preparation in this chapter engage items 1-3. Chapters 3 and 4 engage items 2, 4, and 5.

One way to think about community building in the classroom is to create a repetitive, sustained set of practices throughout the semester that are course and student specific. Each practice should (1) advance the DEI learning outcome designated for each unit and/or class day of the course and/or a DEI learning outcome of increasing difficulty level; (2) incorporate the information assigned in the syllabus with a prompt that engages any of the DEI issues raised by your macroaggression and/or microaggression chart; and (3) provide a space for student reflection and meaning-making through discussion and collaboration. A preliminary step in this process is to get to know the students in your class. You can accomplish this by a designing a student survey that you distribute and list as an assignment on the syllabus that is due in the first week of classes. Once you read through the student responses you can get a sense of the class personality, and how you might want to structure small discussion groups, participation in discussion boards, and the like. As a partner with students in creating and building knowledge, you should plan to participate meaningfully

in these discussions either synchronously (in real time) or asynchronously (by offering guidance and/or reflections in response to the community building activity).

An example of a community building exercise for the unconscionability class discussed in this chapter could be a discussion board prompt about predatory lending and leasing practices. The prompt would need to (1) **advance the DEI learning outcome designated for the unit and/or class day and/or a DEI learning outcome of an increasing difficulty level**: e.g, **LO 1-0:** Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts; **LO 1-1:** Explains how practical legal texts, scholarly legal texts, and other types of texts are shaped by race, class, gender, and sexuality; **LO 1-4:** Critiques the implicit and explicit ways that practical legal texts, scholarly legal texts, and other types of texts utilize race, class, gender, and sexuality in ways detrimental to minoritized groups; (2) **incorporate the information assigned in the syllabus with a prompt that implicates any of the DEI issues raised by your macroaggression and/or microaggression chart:** e.g., The reasonableness and fairness requirements for unconscionability; and (3) **provide a space for student reflection and meaning-making through discussion and collaboration:** e.g, The discussion board located on the course learning management system (LMS). With these things in mind, the prompt and instructions to the students could take this form:

> Discussion Activity X, Week X[411]
> **Course:** Contracts I
> **Professor:**
> **Introduction:** The purpose of this assignment is for us to understand and evaluate how the racial context for legal standards influences the reasoning and outcomes for a court case.
>
> **Instructions for the Discussion Activity**
>
> 1. Prior to beginning this assignment, please review the assigned readings in the syllabus for this week.
>
> 2. Read through both questions in the Discussion Questions list below. Address the question prompts thoroughly, reflectively, and comprehensively by responding to

the questions in one post. Do not recount mechanically the facts of the case or holding, but rather tell the reader your thoughts, feelings, and anxieties as you read through the contract language.

3. When you are ready to post your response go to the "Discussion Board" link on our course page located on the LMS and select the thread "Week X: Evaluating Fairness and Reasonableness in a Racial Context." Click on "Reply" and in the subject line give a brief description for your post. (*For example, "Who Determines What Is Fair and Reasonable?"*)

4. Draft and post your answer as a response in the text box. Please do not submit your response as an attachment. Your response should be at least 350 words in length, but should not exceed 500 words.

5. Respond to at least two different classmates' posts. When responding to posts, choose two-three points in the post to engage with the writer's ideas. Before responding to a post that has a response, please prioritize those posts without responses. Do not neglect to respond to the replies to your posts.

Please make sure your posts uphold our highest community standards that show respect for each other, acknowledge our various social positions (race, class, gender, sexuality), and respect for community members' social positions.

Discussion Questions (*You must respond to all three*)

1. Explain the racial context/social position for the reasonableness and fairness requirements in the *Williams v. Walker-Thomas Furniture Co.* case as discussed in the court opinion;

2. Evaluate whether the relevant contract text in the *Williams v. Walker-Thomas Furniture Co.* case, as excerpted in the Dostert article on your syllabus, meets the reasonableness and fairness requirements as socially positioned in the court opinion.

3. Describe the implications of your evaluation in question 2 for people similarly situated to Ms. Williams.

Assessment: This post counts towards the class participation/community building part of your grade. You will be assessed using the following criteria:

1. Your ability to explain how the reasonableness and fairness requirements have a racial context despite their presentation as neutral *(X points)*;

2. Your reflective and thoughtful critique of whether the contract text, as utilized and presented by Walker-Thomas Furniture Co., meets the fairness and reasonableness requirements and the potential issues this raises for poor and minoritized communities *(X points)*;

3. Your reflective and thoughtful engagement with your classmates' posts and replies to your posts;

4. The readability of your posts *(X points)*; and

5. Timely submission of your posts *(X points)*. *All posts must be completed by the end of this class week*.

I will respond to your posts in a class memo that I will distribute to you at the beginning of class next week. I will provide feedback on your posts in a graded rubric with brief comments.

Additional examples of DEI learning activities, activity plans, assessments and assessment criteria are available in Chapter 6 and throughout Chapters 8-14.

Beyond Course Preparation

Law professors and law students read hundreds of cases as preparation for law school courses. Given targeted reading practices that encourage sorting the information in cases into case briefs and other formats that prepare students for Socratic questioning, meaningful reflection about the parties, their experiences, and the wider societal implications for case outcomes is lost. Jettisoned

with it is the recognition of the people in the disputes as people, and that their experiences mirror professor and student experiences. As we discussed in Chapter 4, the site of racial trauma is the body, and the body recognizes and experiences that trauma when it is reminded of it through words, thoughts, and actions.[412] Lawyer wellness expert Rhonda Magee instructs us to be present in our bodies as a way to connect to the pain of injustice and move to the possibilities for change.[413] When reading through your course materials "sit" with them; think about the parties; their race, class, gender, and sexuality; how the court reported what happened to them; and what the silences about their experiences in the court opinions tell us. Professor Magee's book *The Inner Work of Racial Justice: Healing Ourselves and Transforming Our Communities Through Mindfulness* is a building block for developing a practice of racially informed mindfulness.[414]

For more on the issues discussed in this chapter check out:

Teri A. McMurtry-Chubb, *The Practical Implications of Unexamined Assumptions: Disrupting Flawed Legal Arguments to Advance the Cause of Justice*, 58 Washburn L. J. 531 (2019).

Martina Riedler and Mustafa Yunus Eryaman, *Complexity, Diversity and Ambiguity in Teaching and Teacher Education: Practical Wisdom, Pedagogical Fitness and Tact of Teaching*, 12 International Journal of Progressive Education 172 (2016).

Norman D. Vaughn, *A blended community of inquiry approach: linking student engagement and course redesign*, 13 Internet and Higher Education 60 (2010).

Elizabeth Mertz, The Language of Law School: Learning to "Think Like A Lawyer" (2007).

Lorraine Bannai and Anne Enquist, *(Un)Examined Assumptions and (Un)Intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language*, 27 Seattle University L. Rev. 1 (2003).

Gary A. Munneke, *Legal Skills for a Transforming Profession*, 22 Pace L. Rev. 105 (2001).

Elizabeth Mertz, *Legal Language: Pragmatics, Poetics, and Social Power*, 23 Annual Review of Anthropology 435 (1994).

CHAPTER 6:
Developing Instructional Materials for DEI Pedagogy & Practice

DEI Learning Outcomes, Performance Criteria and Assessments

Chapter 5 underscores the importance of approaching DEI course planning and classroom practice with seriousness and deliberation. The aims of this chapter are threefold. The first is to provide a set of approaches to developing general performance/assessment criteria (performance criteria) for each learning outcome according to difficulty level, adaptable to any learning activity that you may choose. You may recall from Chapter 5 that a learning activity is a student activity that occurs either synchronously or asynchronously, and is built on the particular learning outcome(s) that a professor desires to engage during a lesson or series of lessons. Performance criteria are how a student achieves the learning outcome, the particular skill set that is attached the goals of each learning outcome. The second aim of this chapter is to demonstrate possible ways that a professor may use the performance criteria to develop assessment rubrics that measure student performance. The third aim is to link performance criteria to the possible sources for learning activities to encourage thinking about the possible scope and shape of those activities. All three—Learning Outcome + Learning Activity + Assessment—are necessary to cement DEI pedagogy and practice as a permanent part of law school curricula and classroom practice.

Performance criteria are useful for thinking about the range of learning activities that you can create for a particular learning outcome, as well as for formulating the instructions that you will give to students to guide them through each learning activity. As a starting point for developing them, we will sort our learning outcomes according to thinking skills and difficulty level, and then review the descriptive verbs attached to the thinking skills listed in Bloom's traditional and digital taxonomies[415] for each level. You will note that for each type of thinking skill one of the verbs on the list is the verb used in the correlating learning outcome. This does not preclude use of the other verbs as descriptors for potential performance criteria for each learning activity. For example, a student can show that they recognize a particular DEI concept by listing where and how it occurs in a textual or digital resource. Additionally, Bloom's Taxonomy assumes that each lower order thinking skill is included in a higher order thinking skill. For example, a student must first understand a text before they can begin to apply it.[416]

Performance criteria not only make creating instructions for learning activities easier, but also facilitate creating assessment rubrics to measure student performance on a learning activity. Included in the tables below are general assessment rubrics for each set of learning outcomes and performance criteria by skill level. These general assessment rubrics are adaptable, and can be combined or otherwise modified for specific learning activities and instructions. Examples of assessment rubrics adapted to learning activity and skill level by subject are located in Chapters 8-14. Ultimately, having a working set of learning outcomes, performance criteria, and general assessment rubrics will give you flexibility when you are planning out your syllabus to decide (1) at which difficulty level you wish to integrate DEI curricular materials and classroom practices into your course; and (2) how many you will use over the course the semester.

Table 1a Course Level Learning Outcomes, Thinking Skills, and Descriptive Verbs: Easy

Learning Outcome	Type of Thinking Skill	Descriptive Verbs from Bloom's Taxonomies	Level of Thinking Skill
LO 1-0: Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts *(e.g., cases, statutes, rules, pleadings)*, scholarly legal texts *(i.e., journal articles)*, and other types of texts *(e.g., legislative bills, non-legal disciplinary scholarship)*	Remembering	recognizing, listing, describing, identifying, retrieving, naming, locating, finding	Lowest
LO 1-1: Explains how practical legal texts, scholarly legal texts, and other types of texts are shaped by race, class, gender, and sexuality	Understanding	interpreting, summarizing, inferring, paraphrasing, explaining	Low

Table 1b Course Level Learning Outcomes and Performance Criteria: Easy

Learning Outcomes	Performance Criteria
LO 1-0: Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts	**PC 1-0:** (**a**) Students will identify how lawyers and courts implicitly and explicitly use race, class, gender, and sexuality and/or exclude them in framing legal issues. (**b**) Students will describe how lawyers and courts implicitly and explicitly use race, class, gender, and sexuality and/or exclude them by retrieving the cases and/or sources for concepts named as binding and persuasive legal precedent.

Learning Outcomes	Performance Criteria
	(**c**) Students will identify how legislatures and other rule-making bodies implicitly and explicitly use race, class, gender, and sexuality and/or exclude them in drafting statutory/rule language.
	(**d**) Students will identify how legal scholars implicitly and explicitly use race, class, gender, and sexuality and/or exclude them in drafting the theses and introductory sections of their scholarly work.
	(**e**) Students will identify how drafters of legal/law related texts other than cases, statues, and scholarly legal work implicitly and explicitly use race, class, gender, and sexuality and/or exclude them in drafting their work.
	PC 1-1:
LO 1-1: Explains how practical legal texts, scholarly legal texts, and other types of texts are shaped by race, class, gender, and sexuality	(**a**) Students will explain how lawyers and courts implicitly and explicitly use race, class, gender, and sexuality and/or exclude them in summarizing and paraphrasing legal issues.
	(**b**) Students will explain how lawyers and courts implicitly and explicitly use race, class, gender, and sexuality and/or exclude them in interpreting the meaning(s) of precedent.
	(**c**) Students will explain how legislatures and other rule-making bodies implicitly and explicitly use race, class, gender, and sexuality and/or exclude them in interpreting the problem(s) that the statutes/rules are meant to address.
	(**d**) Students will identify how legal scholars implicitly and explicitly use race, class, gender, and sexuality and/or exclude them in interpreting the principle texts used to support their theses and introductory sections of their scholarly work.
	(**e**) Students will identify how drafters of legal/law related texts other than cases, statues, rules, and scholarly legal work implicitly and explicitly use race, class, gender, and sexuality and/or exclude them interpreting the principle texts they use to support the arguments in their work.

Table 1c Course Level General Assessment Rubric: Easy

Score	LO 1-0 Learning Activity Criteria
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively	1. Identifies how lawyers and courts include and/or exclude race, class, gender, and sexuality implicitly and explicitly in framing legal issues.
Good – B (80%-89%) Exceeds required criteria	2. Retrieves the cases used as binding and persuasive legal precedent in law and/or law related texts; describes how lawyers and courts include or exclude race, class, gender, and sexuality implicitly and explicitly by their choice of texts.
Average – C (70%-79%) Meets required criteria	3. Identifies how legislatures and other rule-making bodies include and/or exclude race, class, gender, and sexuality implicitly and explicitly in drafting statutory/ rule language.
Poor – D (60-69%) Falls below required criteria	4. Identifies how legal scholars include and/or exclude race, class, gender, and sexuality implicitly and explicitly in drafting the theses and introductory sections of their scholarly work.
No Credit – F (less than 60%) Does not meet required criteria	5. Identifies how drafters of legal/law related texts other than cases, statutes, and scholarly legal work include and/ or exclude race, class, gender, and sexuality implicitly and explicitly in drafting their work.
Score	**LO 1-1 Learning Activity Criteria**
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively	1. Explains how lawyers and courts include and/or exclude race, class, gender, and sexuality implicitly and explicitly in summarizing and paraphrasing legal issues.
Good – B (80%-89%) Exceeds required criteria	2. Explains how lawyers and courts include and/or exclude race, class, gender, and sexuality implicitly and explicitly in interpreting the meaning(s) of precedent.
Average – C (70%-79%) Meets required criteria	3. Explains how legislatures and other rule making bodies include and/or exclude race, class, gender, and sexuality implicitly and explicitly in interpreting the problem(s) that the statutes/rules are meant to address.
Poor – D (60-69%) Falls below required criteria	4. Identifies how legal scholars include and/or exclude race, class, gender, and sexuality implicitly and explicitly when interpreting the problem(s) that the statutes/rules are meant to address.

Score	LO 1-1 Learning Activity Criteria
No Credit – F (less than 60%) Does not meet required criteria	5. Identifies how drafters of legal/law related texts other than cases, statutes, rules, and scholarly texts include and/or exclude race, class, gender, and sexuality implicitly and explicitly when interpreting the principle texts they use to support the arguments in their work.

Table 2a Course Level Learning Outcomes, Thinking Skills, and Descriptive Verbs: Intermediate

Learning Outcome	Type of Thinking Skill	Descriptive Verbs from Bloom's Taxonomies	Level of Thinking Skill
LO 1-2: Deconstructs how race, class, gender, and sexuality influence how lawyers and courts frame legal issues	Analyzing	comparing, organizing, deconstructing, attributing, outlining, finding, structuring, integrating	Middle
LO 1-3: Deconstructs how race, class, gender, and sexuality influence legal analytical and reasoning processes	Analyzing	(Same)	Middle

Table 2b Course Level Learning Outcomes and Performance Criteria: Intermediate

Learning Outcomes	Performance Criteria
LO 1-2: Deconstructs how race, class, gender, and sexuality influence how lawyers and courts frame legal issues	**PC 1-2:** (**a**) Students will organize lawyers' briefs and/or pleadings for a case or set of cases that involve a discrete legal issue to compare how lawyers frame the legal issues in each according to race, class, gender, and sexuality. (**b**) Students will organize the case precedent in a case or set of cases for a discrete legal issue to compare how the court frames the legal issues in each according to race, class, gender, and sexuality. (**c**) Students will compare how lawyers and courts frame a discrete legal issue in a case or set of cases according to race, class, gender, and sexuality.

Learning Outcomes	Performance Criteria
LO 1-3: Deconstructs how race, class, gender, and sexuality influence legal analytical and reasoning processes	**PC 1-3:** (**a**) Students will organize lawyers' briefs and/or pleadings for a case or set of cases that involve a discrete legal issue to compare how lawyers integrate those cases to build analytical frameworks according to race, class, gender, and sexuality that resolve the legal issue. (**b**) Students will organize the case precedent in a case or set of cases for a discrete legal issue to compare how courts integrate those cases and build analytical frameworks according to race, class, gender, and sexuality that resolve the legal issue. (**c**) Students will compare how lawyers and courts integrate a case or set of cases and build analytical frameworks according to race, class, gender, and sexuality that resolve a discrete legal issue.

Table 2c Course Level General Assessment Rubric: Intermediate

Score	LO 1-2 Learning Activity Criteria
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively **Good – B** (80%-89%) Exceeds required criteria **Average – C** (70%-79%) Meets required criteria **Poor – D** (60-69%) Falls below required criteria **No Credit – F** (less than 60%) Does not meet required criteria	1. Organizes lawyers' briefs and/or pleadings for a case or set of cases involving a discrete legal issue to compare how lawyers frame the legal issues in each according to race, class, gender and sexuality. 2. Organizes the case precedent in a set of cases for a discrete legal issue to compare how the court frames the legal issues in each according to race, class gender and sexuality. 3. Compares how lawyers and courts frame a discrete legal issue in a set of cases according to race, class, gender, and sexuality.
Score	**LO 1-3 Learning Activity Criteria**
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively **Good – B** (80%-89%) Exceeds required criteria	1. Organizes lawyers' briefs and/or pleadings for a case or set of cases that involve a discrete legal issue to compare how lawyers integrate those cases and build analytical frameworks according to race, class, gender, and sexuality that resolve the legal issue.

Score	LO 1-3 Learning Activity Criteria
Average – C (70%-79%) Meets required criteria **Poor – D** (60-69%) Falls below required criteria **No Credit – F** (less than 60%) Does not meet required criteria	2. Organizes case precedent in a case or set of cases for a discrete legal issue to compare how courts integrate those cases and build analytical frameworks according to race, class, gender, and sexuality that resolve the legal issue. 3. Compares how lawyers and courts integrate a case or set of cases and build analytical frameworks according to race, class, gender, and sexuality that resolve a discrete legal issue.

Table 3a Course Level Learning Outcomes, Thinking Skills, and Descriptive Verbs: Difficult

Learning Outcome	Type of Thinking Skill	Descriptive Verbs from Bloom's Taxonomies	Level of Thinking Skill
LO 1-4: Critiques the implicit and explicit ways that practical legal texts, scholarly legal texts, and other types of texts utilize race, class, gender, and sexuality in ways detrimental to minoritized groups. *Note: The focus for this learning outcome is minoritized groups.*	Evaluating	checking, hypothesizing, critiquing, experimenting, judging, testing, detecting, monitoring	High
LO 1-5: Critiques the implicit and explicit ways that cases, statutes, and other practical and scholarly legal texts utilize race, class, gender, and sexuality in ways that support white supremacy. *Note: The focus of this learning outcome is White racial identity/ social position. This focus is necessary, because students may be able to critique harm to minoritized groups, but not articulate how white supremacy supports and perpetuates harm.*	Evaluating	(Same)	High

Table 3b Course Level Learning Outcomes and Performance Criteria: Difficult

Learning Outcomes	Performance Criteria
LO 1-4: Critiques the implicit and explicit ways that practical legal texts, scholarly legal texts, and other types of texts utilize race, class, gender, and sexuality in ways detrimental to minoritized groups	**PC 1-4:** (**a**) Based on assigned readings and/or additional research, students will form a hypothesis for how a subject and/or issue specific legal text implicitly or explicitly uses race, class, gender, and sexuality (separately or in combination) in ways detrimental to minoritized groups. (**b**) Upon formulating a hypothesis, students will offer a short explanation of their theory for how a subject and/or issue specific legal text implicitly or explicitly uses race, class, gender, and/or sexuality (separately or in combination) in ways detrimental to minoritized groups. (**c**) Students will test their theory by applying it to a set of cases, statutes, rules or other texts that touch on the same or related legal subject and/or issue(s). (**d**) Students will explain via written, oral, visual, and/or digital media how their findings conform to or disprove their theory.
LO 1-5: Critiques the implicit and explicit ways that cases, statutes, rules and other practical and scholarly legal texts utilize race, class, gender, and sexuality in ways that support white supremacy	**PC 1-5:** (**a**) Based on assigned readings and/or additional research, students will form a hypothesis for how a subject and/or issue specific legal text implicitly or explicitly uses race, class, gender, and sexuality (separately or in combination) in ways that support white supremacy. (**b**) Upon formulating a hypothesis, students will offer a short explanation of their theory for how a subject and/or issue specific legal text implicitly or explicitly uses race, class, gender, and sexuality (separately or in combination) in ways that support white supremacy. (**c**) Students will test their theory by applying it to a set of cases, statutes, rules or other texts that touch on the same or related legal subject and/or issue(s). (**d**) Students will explain via written, oral, visual, and/or digital media how their findings conform to or disprove their theory.

Table 3c Course Level General Assessment Rubric: Difficult

Score	LO 1-4 Learning Activity Criteria
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively **Good – B** (80%-89%) Exceeds required criteria **Average – C** (70%-79%) Meets required criteria **Poor – D** (60-69%) Falls below required criteria **No Credit – F** (less than 60%) Does not meet required criteria	1. Reads assigned readings and/or conducts additional research on relevant subject and/or issue; forms hypothesis based on research for how a subject and/or issue specific legal text implicitly or explicitly uses race, class, gender, and sexuality (separately or in combination) in ways detrimental to minoritized groups. 2. Explains theory for how a subject and/or issue specific legal text implicit or explicitly uses race, class, gender, and sexuality (separately or in combination) in ways detrimental to minoritized groups. 3. Tests theory through application to a set of cases, statutes rules or other texts that touch on the same or related legal subject and/or issue(s). 4. Explains via written, oral, visual, and/or digital media how their findings conform to or disprove their theory.
Score	**LO 1-5 Learning Activity Criteria**
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively **Good – B** (80%-89%) Exceeds required criteria **Average – C** (70%-79%) Meets required criteria **Poor – D** (60-69%) Falls below required criteria **No Credit – F** (less than 60%) Does not meet required criteria	1. Reads assigned readings and/or conducts additional research on relevant subject and/or issue; based on research forms hypothesis for how a subject and/or issue specific legal text implicitly or explicitly uses race, class, gender, and sexuality (separately or in combination) in ways that support white supremacy. 2. Explains theory for how a subject and/or issue specific legal text implicit or explicitly uses race, class, gender, and sexuality (separately or in combination) in ways that support white supremacy. 3. Tests theory through application to a set of cases, statutes rules or other texts that touch on the same or related legal subject and/or issue(s). 4. Explains via written, oral, visual, and/or digital media how their findings conform to our disprove their theory.

Table 4a Course Level Learning Outcomes, Thinking Skills, and Descriptive Verbs: Advanced

Learning Outcome	Type of Thinking Skill	Descriptive Verbs from Bloom's Taxonomies	Level of Thinking Skill
LO 1-6: Designs new legal analytical reasoning frameworks that challenge white supremacy and disrupt harm to minoritized groups	Creating	designing, constructing, planning, producing, inventing, devising, making	Highest
LO 1-7: Designs new legal analytical reasoning frameworks that are equitable and inclusive for all groups	Creating	(Same)	Highest

Table 4b Course Level Learning Outcomes and Performance Criteria: Advanced

Learning Outcomes	Performance Criteria
LO 1-6: Designs new legal analytical reasoning frameworks that challenge white supremacy and disrupt harm to minoritized groups	**PC 1-6:** (**a**) After reading a set of cases, statutes, rules, pleadings, and/or other relevant resources, students will identify and name how the analytical reasoning frameworks that inform them or that they employ support white supremacy. (**b**) Students will plan an adaptation of an analytical reasoning framework that supports white supremacy in its inception or application that harms minoritized groups. (**c**) Students will adapt an analytical reasoning framework that supports white supremacy in its inception or application to disrupt the harm it causes or is likely to cause minoritized groups.

Learning Outcomes	Performance Criteria
LO 1-7: Designs new legal analytical reasoning frameworks that are equitable and inclusive for all groups	**PC 1-7:** (**a**) After reading a set of cases, statutes, rules, pleadings and/or other relevant resources, students will identify and name how the analytical reasoning framework(s) that inform them or that they employ harms or could lead to harm for minoritized and majoritized groups. (**b**) Using the named harms, students will plan an analytical reasoning framework that remediates or eliminates the possible or actual damage to minoritized and majoritized groups. (**c**) Students will construct an analytical reasoning framework that remediates or eliminates the possible or actual damage to minoritized and majoritized groups. ***Please note:*** *Harm to majoritized groups in this context draws on the research presented in Chapter 4 on White racial identity formation and racial trauma. The discussion there concerns the harm/damage that White people (as a majoritized racial group) sustain by not recognizing and addressing historic and immediate racial trauma.*

Table 4c Course Level General Assessment Rubric: Advanced

Score	LO 1-6 Learning Activity Criteria
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively **Good – B** (80%-89%) Exceeds required criteria **Average – C** (70%-79%) Meets required criteria **Poor – D** (60-69%) Falls below required criteria **No Credit – F** (less than 60%) Does not meet required criteria	1. Reads a set of cases, statutes, rules, pleadings, and/or other relevant resources; identifies and names how the analytical reasoning frameworks that inform them or that they employ support white supremacy. 2. Plans how to adapt an analytical reasoning framework that supports white supremacy in its inception or application that harms minoritized groups. *Note: A plan can be demonstrated by an outline, mind map, flow-chart, etc.*

Score	LO 1-6 Learning Activity Criteria
	3. Adapts an analytical reasoning framework that supports white supremacy in its inception or application to disrupt the harm it causes or is likely to cause minoritized groups.
Score	**LO 1-7 Learning Activity Criteria**
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively **Good – B** (80%-89%) Exceeds required criteria **Average – C** (70%-79%) Meets required criteria **Poor – D** (60-69%) Falls below required criteria **No Credit – F** (less than 60%) Does not meet required criteria	1. Reads a set of cases, statutes, rules, pleadings, and/or other relevant resources; identifies and names how the analytical reasoning frameworks that inform them or that they employ harms or could lead to harm for minoritized and majoritized groups. 2. Plans how to adapt an analytical reasoning framework that remediates or eliminates the possible or actual damage to minoritized and majoritized groups. *Note: A plan can be demonstrated by an outline, mind map, flow-chart, etc.* 3. Constructs an analytical reasoning framework that remediates or eliminates the possible or actual damage to minoritized and majoritized groups.

Table 5a: Classroom Level Learning Outcomes, Thinking Skills, and Descriptive Verbs: Easy

Learning Outcome	Type of Thinking Skill	Descriptive Verbs from Bloom's Taxonomies	Level of Thinking Skill
LO 2-0: Recognizes how a person's position (race, class, gender, sexuality) in comparison to other group members shapes classroom interactions and discussions	Remembering	(See Table 1a)	Lowest

Learning Outcome	Type of Thinking Skill	Descriptive Verbs from Bloom's Taxonomies	Level of Thinking Skill
LO 2-1: Identifies how their personal position (race, class, gender, sexuality) in comparison to other group members shapes classroom interactions and discussions	Remembering	(See Table 1a)	Lowest

Table 5b Classroom Level Learning Outcomes and Performance Criteria: Easy

Learning Outcomes	Performance Criteria
LO 2-0: Recognizes how a person's social position *(race, class, gender, sexuality)* in comparison to other group members shapes classroom interactions and discussions	**PC 2-0:** (**a**) Students will identify how social position(s) shape(s) individual actions and reactions in a specific group context. (**b**) Students will identify how social position(s) shape(s) group actions and reactions in a specific context.
LO 2-1: Identifies how their personal social position(s) *(race, class, gender, sexuality)* in comparison to other group members shapes classroom interactions and discussions	**PC 2-1:** (**a**) Students will describe how their social position influenced their actions and reactions in a specific group context. (**b**) Students will describe how their social position influenced group actions and reactions in a specific context.

Table 5c Classroom Level General Assessment Rubric: Easy

Score	LO 2-0 Learning Activity Criteria
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively **Good – B** (80%-89%) Exceeds required criteria **Average – C** (70%-79%) Meets required criteria	1. Identifies how social position(s) shape(s) individual actions and reactions in a specific group context. 2. Identifies how social position(s) shape(s) group actions and reactions in a specific context.

Score	LO 2-0 Learning Activity Criteria
Poor – D (60-69%) Falls below required criteria **No Credit – F** (less than 60%) Does not meet required criteria	

Score	LO 2-1 Learning Activity Criteria
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively **Good – B** (80%-89%) Exceeds required criteria **Average – C** (70%-79%) Meets required criteria **Poor – D** (60-69%) Falls below required criteria **No Credit – F** (less than 60%) Does not meet required criteria	1. Describes how personal social position(s) influenced action and reaction in a specific group context. 2. Describes how personal social position(s) influenced group action and reaction in a specific context.

Table 6a Classroom Level Learning Outcomes, Thinking Skills, and Descriptive Verbs: Intermediate

Learning Outcome	Type of Thinking Skill	Descriptive Verbs from Bloom's Taxonomies	Level of Thinking Skill
LO 2-2: Uses awareness of personal position *(race, class, gender, sexuality)* to engage respectfully and meaningfully in classroom interactions and discussions	Applying	implementing, carrying out, using, executing	Middle

Table 6b Classroom Level Learning Outcomes and Performance Criteria: Intermediate

Learning Outcomes	Performance Criteria
LO 2-2: Uses awareness of personal position *(race class, gender, sexuality)* to engage respectfully and meaningfully in classroom interactions and discussions	**PC 2-2:** **(a)** Students will plan how to use their social position(s) to engage respectfully and meaningfully in a specific classroom interaction and/or discussion.

Learning Outcomes	Performance Criteria
	(**b**) Students will document their plan for how to use their social position(s) to engage respectfully and meaningfully in a specific classroom interaction and/or discussion. (**c**) Students will implement their plan during a specific classroom interaction and/or discussion.

Table 6c Classroom Level General Assessment Rubric: Intermediate

Score	LO 2-2 Learning Activity Criteria
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively **Good – B** (80%-89%) Exceeds required criteria **Average – C** (70%-79%) Meets required criteria **Poor – D** (60-69%) Falls below required criteria **No Credit – F** (less than 60%) Does not meet required criteria	1. Plans how to use personal social position(s) to engage respectfully and meaningfully in a specific classroom interaction and/or discussion. 2. Documents plan for how to use personal social position(s) to engage respectfully and meaningfully in a specific classroom interaction and/or discussion. 3. Implements plan during a specific classroom interaction and/or discussion.

Table 7a Classroom Level Learning Outcomes, Thinking Skills, and Descriptive Verbs: Difficult

Learning Outcome	Type of Thinking Skill	Descriptive Verbs from Bloom's Taxonomies	Level of Thinking Skill
LO 2-3: Evaluates awareness of personal social position(s) to engage respectfully and meaningfully in classroom interactions and discussions	Evaluating	(See Table 3a)	High

Table 7b Classroom Level Learning Outcomes and Performance Criteria: Difficult

Learning Outcomes	Performance Criteria
LO 2-3: Evaluates awareness of personal social position(s) to engage respectfully and meaningfully in classroom interactions and discussions	**PC 2-3:** (**a**) Students will critique how respectfully and meaningfully they engaged in a specific interaction or discussion in a manner that demonstrated awareness of their personal social position(s). (**b**) Students will document that critique in a manner acceptable for professor and/or peer review.

Table 7c Classroom Level General Assessment Rubric: Difficult

Score	LO 2-3 Learning Activity Criteria
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively **Good – B** (80%-89%) Exceeds required criteria **Average – C** (70%-79%) Meets required criteria **Poor – D** (60-69%) Falls below required criteria **No Credit – F** (less than 60%) Does not meet required criteria	1. Critiques how respectfully and meaningfully they engaged in a specific interaction or discussion in a manner that demonstrated awareness of their personal social position(s). 2. Documents critique in a manner acceptable for professor or peer review.

We now turn to the task of developing traditional active learning and microlearning learning activities for each skill level.

Sources for Active Learning & Microlearning Activities for DEI Classroom and Curricula

A traditional active learning activity allows students to practice and demonstrate their knowledge using particular skills in defined contexts. A microlearning activity breaks down the complex set of skills needed to complete a goal or task into small parts, and gives students the opportunity to practice and demonstrate their knowledge in each part. Because this book discusses integrating DEI skills

into the core law curriculum, the learning activities will include the foundational skills that law students are taught, utilize most often in their core classes, and that are integral to law practice—separately or in combination. These skills are as follows: case reading; case briefing; statutory analysis *(including understanding and analysis of procedural rules)*; outlining; synthesizing the law from a set of cases to create an analytical reasoning framework that resolves a discrete legal issue(s); applying the law from a set of cases to law and/or facts; and communicating that application *(legal analysis)* in writing and/or orally in a variety of contexts *(litigation, transactional, legislative, judicial)*. This list is not exhaustive of the types of learning activities that are possible given the scope of the listed performance criteria. The tables that follow link performance criteria to possible sources for learning activities. In Chapters 8-14, you will see how to turn both into a learning activity that reinforces DEI learning outcomes by skill level for each core subject area.

Table 8(a) Curricular Performance Criteria and Sources for Learning Activities: Easy

Performance Criteria	Sources for Learning Activities
PC 1-0: (**a**) Students will identify how lawyers and/or courts implicitly and/or explicitly use race, class, gender, and sexuality and/or exclude them in framing legal issues. (**b**) Students will describe how lawyers and/or courts implicitly and explicitly use race, class, gender, and sexuality and/or exclude them by retrieving the cases and/or sources for concepts named or implied as binding and persuasive legal precedent. (**c**) Students will identify how legislatures and other rule-making bodies implicitly and explicitly use race, class, gender, and sexuality and/or exclude them in drafting statutory/rule language. (**d**) Students will identify how legal scholars implicitly and explicitly use race, class, gender, and sexuality and/or exclude them in drafting the theses and introductory sections of their scholarly work.	• Cases • Procedural Rules • Pleadings • Briefs *(Motion, Trial, Appellate)* • Judicial Opinions & Orders • Jury Instructions • Direct Examination Questions for Witnesses • Cross Examination Questions for Witnesses • Deposition Questions • Interrogatories • Voire Dire Examination Questions • Subpoenas • Plea Agreements • Arbitration Agreements • House and Senate Bills *(State, Federal)* • Bills from the Committee on Indian Affairs

Performance Criteria	Sources for Learning Activities
(**e**) Students will identify how drafters of legal/law related texts other than cases, statues, rules, and scholarly legal work implicitly and explicitly use race, class, gender, and sexuality and/or exclude them in drafting their work.	• Tribal Law • Statutes • Administrative Rules • Law Review Articles • Journal Articles (*non-legal disciplines)* • Journal Articles *(interdisciplinary)* • General Contracts • Shrink-wrap/Click-wrap Agreements • Opinion Letters • Coverage Opinions • Demand Letters • White Papers • Policy Analysis • Policy Research
PC 1-1: (**a**) Students will explain how lawyers and courts implicitly and explicitly use race, class, gender, and sexuality and/or exclude them in summarizing and paraphrasing legal issues (**b**) Students will explain how lawyers and courts implicitly and explicitly use race, class, gender, and sexuality and/or exclude them in interpreting the meaning(s) of precedent. (**c**) Students will explain how legislatures and other rule-making bodies implicitly and explicitly use race, class, gender, and sexuality and/or exclude them in interpreting the problem(s) that the statutes/rules are meant to address. (**d**) Students will identify how legal scholars implicitly and explicitly use race, class, gender, and sexuality and/or exclude them in interpreting the principle texts used to support their theses and introductory sections of their scholarly work.	• Cases • Briefs *(Motion, Trial, Appellate)* • Judicial Opinions & Orders • House and Senate Bills *(State, Federal)* • Bills from the Committee on Indian Affairs • Tribal Law • Statutes • Administrative Rules • Law Review Articles • Journal Articles *(non-legal disciplines)* • Journal Articles *(interdisciplinary)* • General Contracts • Shrink-wrap/Click-wrap Agreements • Opinion Letters • Coverage Opinions • Demand Letters • White Papers • Policy Analysis • Policy Research

Performance Criteria	Sources for Learning Activities
(**e**) Students will identify how drafters of legal/law related texts other than cases, statues, and scholarly legal work implicitly and explicitly use race, class, gender, and sexuality and/or exclude them interpreting the principle texts they use to support the arguments in their work.	(same as above)

Table 8(b) Curricular Performance Criteria and Sources for Learning Activities: Intermediate

Performance Criteria	Sources for Learning Activities
PC 1-2: (**a**) Students will organize lawyers' briefs and/or pleadings for a set of cases the involve a discrete legal issue to compare how lawyers frame the legal issues according to race, class, gender, and sexuality in each. (**b**) Students will organize the case precedent in a set of cases for a discrete legal issue to compare how the court frames the legal issues according to race, class, gender, and sexuality in each. (**c**) Students will compare how lawyers and courts frame a discrete legal issue in a set of cases according to race, class, gender, and sexuality.	• Cases • Procedural Rules • Pleadings • Briefs *(Motion, Trial, Appellate)* • Judicial Opinions & Orders
PC 1-3: (**a**) Students will organize lawyers' briefs and/or pleadings for a set of cases that involve a discrete legal issue to compare how lawyers integrate those cases and build analytical frameworks according to race, class, gender, and sexuality that resolve the legal issue. (**b**) Students will organize the case precedent in a set of cases for a discrete legal issue to compare how courts integrate those cases and build analytical frameworks according to race, class, gender, and sexuality that resolve the legal issue.	• Cases • Procedural Rules • Pleadings • Briefs *(Motion, Trial, Appellate)* • Judicial Opinions & Orders

Performance Criteria	Sources for Learning Activities
(**c**) Students will compare how lawyers and courts integrate a set of cases and build analytical frameworks according to race, class, gender, and sexuality that resolve a discrete legal issue.	(same as above)

Table 8(c) Curricular Performance Criteria and Sources for Learning Activities: Difficult

Performance Criteria	Sources for Learning Activities
PC 1-4: (**a**) Based on assigned readings and/or additional research, students will form a hypothesis for how a subject and/or issue specific legal text implicitly or explicitly uses race, class, gender, and sexuality (separately or in combination) in ways detrimental to minoritized groups. (**b**) Upon formulating a hypothesis, students will offer a short explanation of their theory for how a subject and/or issue specific legal text implicitly or explicitly uses race, class, gender, and sexuality (separately or in combination) in ways detrimental to minoritized groups. (**c**) Students will test their theory by applying it to a set of cases, statutes, or other texts that touch on the same or related legal subject and/or issue(s). (**d**) Students will explain via written, oral, visual, and/or digital media how their findings conform to or disprove their theory.	• Cases • Procedural Rules • Pleadings • Briefs *(Motion, Trial, Appellate)* • Judicial Opinions & Orders • Jury Instructions • Subpoenas • Plea Agreements • Arbitration Agreements • House and Senate Bills *(State, Federal)* • Bills from the Committee on Indian Affairs • Tribal Law • Statutes • Administrative Rules • General Contracts • Shrink-wrap/Click-wrap Agreements • Law Review Articles • Journal Articles *(non-legal disciplines)* • Journal Articles *(interdisciplinary)* • White Papers • Policy Analysis • Policy Research • Outlining Software • Mindmapping Software • Visual Presentation Tools • Audio Presentation Tools • Video Production Tools

Performance Criteria	Sources for Learning Activities
PC 1-5: (**a**) Based on assigned readings and/or additional research, students will form a hypothesis for how a subject and/or issue specific legal text implicitly or explicitly uses race, class, gender, and sexuality (separately or in combination) in ways that support white supremacy. (**b**) Upon formulating a hypothesis, students will offer a short explanation of their theory for how a subject and/or issue specific legal text implicitly or explicitly uses race, class, gender, and sexuality (separately or in combination) in ways that support white supremacy. (**c**) Students will test their theory by applying it to a set of cases, statutes, or other texts that touch on the same or related legal subject and/or issue(s). (**d**) Students will explain via written, oral, visual, and/or digital media how their findings conform to or disprove their theory.	• Cases • Procedural Rules • Pleadings • Briefs *(Motion, Trial, Appellate)* • Judicial Opinions & Orders • Jury Instructions • Subpoenas • Plea Agreements • Arbitration Agreements • House and Senate Bills *(State, Federal)* • Bills from the Committee on Indian Affairs • Tribal Law • Statutes • Administrative Rules • General Contracts • Shrink-wrap/Click-wrap Agreements • Law Review Articles • Journal Articles *(non-legal disciplines)* • Journal Articles *(interdisciplinary)* • White Papers • Policy Analysis • Policy Research • Outlining Software • Mindmapping Software • Visual Presentation Tools • Audio Presentation Tools • Video Production Tools

Table 8(d) Curricular Performance Criteria and Sources for Learning Activities: Advanced

Performance Criteria	Sources for Learning Activities
PC 1-6: (**a**) After reading a set of cases, statutes, rules, pleadings and/or other relevant resources, students will identify and name how the analytical reasoning frameworks that inform them or that they employ support white supremacy.	• Cases • Procedural Rules • Pleadings • Briefs *(Motion, Trial, Appellate)* • Judicial Opinions & Orders

Performance Criteria	Sources for Learning Activities
(**b**) Students will plan an adaptation of an analytical reasoning framework that supports white supremacy in its inception or application that harms minoritized groups. (**c**) Students will adapt an analytical reasoning framework that supports white supremacy in its inception or application to disrupt the harm it causes or is likely to cause minoritized groups.	• House and Senate Bills *(State, Federal)* • Bills from the Committee on Indian Affairs • Tribal Law • Statutes • Administrative Rules • Law Review Articles • Journal Articles *(non-legal disciplines)* • Journal Articles *(interdisciplinary)* • White Papers • Policy Analysis • Policy Research • Outlining Software • Mindmapping Software • Visual Presentation Tools • Audio Presentation Tools • Video Production Tools
PC 1-7: (**a**) After reading a set of cases, statutes, rules, pleadings and/or other relevant resources, students will identify and name how the analytical reasoning framework(s) that inform them or that they employ harms or could lead to harm for minoritized and majoritized groups. (**b**) Using the named harms, students will plan an analytical reasoning framework that remediates or eliminates the possible or actual damage to minoritized and majoritized groups. (**c**) Students will construct an analytical reasoning framework that remediates or eliminates the possible or actual damage to minoritized and majoritized groups.	• Cases • Procedural Rules • Pleadings • Briefs *(Motion, Trial, Appellate)* • Judicial Opinions & Orders • House and Senate Bills *(State, Federal)* • Bills from the Committee on Indian Affairs • Tribal Law • Statutes • Administrative Rules • Law Review Articles • Journal Articles *(non-legal disciplines)* • Journal Articles *(interdisciplinary)*

Performance Criteria	Sources for Learning Activities
Please note: Harm to majoritized groups in this context draws on the research presented in Chapter 4 on White identity formation and racial trauma. The discussion there concerns the harm/damage that White people (as a majoritized group) sustain by not recognizing and addressing historic and immediate racial trauma.	• White Papers • Policy Analysis • Policy Research • Outlining Software • Mindmapping Software • Visual Presentation Tools • Audio Presentation Tools • Video Production Tools

Table 9(a) Classroom Performance Criteria and Sources for Learning Activities: Easy

Performance Criteria	Sources for Learning Activities
PC 2-0: **(a)** Students will identify how social position shapes individual actions and reactions in a specific group context. **(b)** Students will identify how social position shapes group actions and reactions in a specific context.	• Cases • Pleadings • Briefs *(Motion, Trial, Appellate)* • Judicial Opinions & Orders • Law Review Articles • Journal Articles *(non-legal disciplines)* • Journal Articles *(interdisciplinary)*
PC 2-1: **(a)** Students will describe how their social position influenced their actions and reactions in a specific group context. **(b)** Students will describe how their social position influenced group actions and reactions in a specific context.	• Print Journal *(personal)* • Portfolio and/or Journaling Software • Visual Presentation Tools • Audio Presentation Tools • Video Production Tools

Table 9(b) Classroom Performance Criteria and Sources for Learning Activities: Intermediate

Performance Criteria	Sources for Learning Activities
PC 2-2: **(a)** Students will plan how to use their social position(s) to engage respectfully and meaningfully in a specific classroom interaction and/or discussion. **(b)** Students will document their plan for how to use their social position(s) to engage respectfully and meaningfully in a specific classroom interactions and/or discussion. **(c)** Students will implement their plan during a specific classroom interaction and/or discussion.	• Law Review Articles • Journal Articles *(non-legal disciplines)* • Journal Articles *(interdisciplinary)* • Outlining Software • Mindmapping Software • Print Journal *(personal)* • Portfolio and/or Journaling Software • Visual Presentation Tools • Audio Presentation Tools • Video Production Tools

Table 9(c) Classroom Performance Criteria and Sources for Learning Activities: Difficult

Performance Criteria	Sources for Learning Activities
PC 2-3: **(a)** Students will critique how respectfully and meaningfully they engaged in a specific interaction or discussion in a manner that demonstrated awareness of their personal social position(s). **(b)** Students will document that critique in a manner acceptable for professor and/or peer review.	• Law Review Articles • Journal Articles *(non-legal disciplines)* • Journal Articles *(interdisciplinary)* • Outlining Software • Mindmapping Software • Print Journal *(personal)* • Portfolio and/or Journaling Software • Visual Presentation Tools • Audio Presentation Tools • Video Production Tools

As you think about how and where you might incorporate learning outcomes and activities into your syllabus, it is helpful to map your syllabus. By doing so, you can get a holistic picture of your quarter or semester, and determine the best unit, class week(s) and/or class day(s) to implement them. If you are new to teaching, mapping your syllabus is an effective way to ensure course coverage that adequately integrates DEI pedagogy and curricular materials. If you are not new to teaching, syllabus mapping provides an opportunity for you to revisit your existing syllabus to determine how and where you are teaching the fundamental concepts of your course, and determine where might be best to integrate DEI learning outcomes and activities. Below is an example of a simple table that will aid you in your planning.

Table 10 Syllabus Mapping

Week(s) and/ or Class Day Covered	Unit Topic	Learning Outcomes Engaged	Possible Learning Activities
Week X, Day X			

Sample active learning and microlearning activities, subject-specific sources for each learning activity, instructions for each activity, and assessment tools follow in Chapters 8-14 for each core subject area.

CHAPTER 7:
FAQs and Discussion Questions by Chapter

Frequently Asked Questions (FAQs)

1. Does my law school need a "diversity trainer" in advance of implementing DEI curricula and pedagogy?

Answer: A workshop or lecture that generally covers DEI material is not likely to be effective for faculty members who wish to implement DEI curricula and pedagogy. Specifically targeted workshops or lectures on facilitating difficult conversations, working through racial trauma, and creating an inclusive campus climate are most effective.

2. Does my law school need to implement DEI curricula and pedagogy law school-wide?

Answer: A law school that engages in campus-wide DEI initiatives provides the best protection against backlash and damaging criticism for its students, staff, faculty, and administration. However, individual faculty members can choose to implement DEI curricula and pedagogy without them being imperatives of their law schools.

3. How do we get reluctant faculty to implement DEI curricula and pedagogy in their classes?

Answer: Provide a forum to listen to faculty concerns about implementing DEI initiatives and strategize together to address those concerns. It is important to maintain forward momentum in efforts to create inclusive educational environments in a manner that respects all stakeholders, but that does not allow detractors to derail the process.

4. Do I have to utilize all of the learning outcomes and performance criteria in a single semester?

Answer: No! Start small and continue to add more to your course each time you teach it as your comfort level increases.

Chapters 8-14 provide examples for how to use learning outcomes and performance criteria in subject specific contexts.

5. How many learning activities should I have?

Answer: Assess how many learning activities you already use in your classes, then map your syllabus to determine where you may be able to fit additional ones. There is no set number for success. Focus on quality over quantity and on the goals that you have for student learning to determine how many learning activities are best for your course.

6. Do I need to create all of my learning activities from scratch?

Answer: No! Review the learning activities that you already use in your classes. There may be some that you can duplicate or modify for DEI purposes. If you are overwhelmed with creating learning activities from scratch, Chapters 5-6 and 8-14 contain examples to guide you.

7. Should I integrate learning outcomes and performance criteria from a variety of skill levels or should I stick with one skill level?

Answer: The academic ability of your students and the skill level of your course will determine the skill level of your learning outcomes and performance criteria. The general learning outcomes for your law school and/or your subject area that your faculty have agreed upon are a good starting point to assess what is possible for your particular course.

Discussion Questions for Chapter 1: The Scope of DEI Education & Pedagogy

1. To what extent have we involved the various stakeholders at the law school *(students, staff, faculty, administrators)* in developing DEI curricular and classroom initiatives?

2. What are the barriers at our law school to faculty implementing DEI curricular and classroom initiatives?

3. What are some ways that we can incentivize buy-in for DEI curricular and classroom initiatives?

4. What are some steps that faculty can take to build accountability with each other for implementing agreed upon DEI curricular and classroom initiatives?

5. What are some steps that faculty can take to build accountability with students for implementing agreed upon DEI curricular and classroom initiatives?

Discussion Questions for Chapter 2: The First Amendment, Academic Freedom, and the DEI Curricular Lens

1. What perceptions do our faculty have about the limits/boundaries for academic freedom at the law school?

2. What perceptions do our faculty have about the articulated goals for our DEI curricular and classroom initiatives?

3. In what ways do faculty perceptions about the First Amendment and academic freedom conflict with the articulated goals for our DEI curricular and classroom initiatives?

4. In what ways do faculty perceptions about the First Amendment and academic freedom conflict with the expectations our students have for our DEI curricular and classroom initiatives?

5. What strategies can we develop to help resolve the tension between the First Amendment, academic freedom, and DEI curricular and classroom initiatives that exist at the law school?

Discussion Questions for Chapter 3: Assessing the Institutional Climate for DEI Curricula

1. How has my standpoint shaped the ways I approach teaching and learning, particularly in my interactions with students and colleagues?

2. How has my positionality shaped the decisions I make about whether and how I discuss race, gender, class, and sexuality in the classroom?

3. How has my positionality shaped the decisions I make about whether and how I integrate race, gender, class, and sexuality into my course materials?

4. What are some barriers to faculty members implementing DEI curricular and classroom initiatives based on their rank and status? What are steps that the faculty members can take to remove those barriers?

5. What events at the law school or in our city/state/region over the past 3-5 years have positively and/or negatively affected our climate for implementing DEI curricular and classroom initiatives?

Discussion Questions for Chapter 4: Racial Trauma Informed Approaches to DEI Pedagogy

1. In what ways can I edit my *Statement of Teaching Philosophy* to practically address racial trauma and the developmental stages of White racial identity formation in teaching and learning?

2. In what ways have racial trauma and the developmental stages of White racial identity formation manifested in my classroom during class discussions?

3. How have I addressed racial trauma and/or the developmental stages of White racial identity formation as they manifested during classroom discussion?

4. In what ways have my strategies to address racial trauma and/or the developmental stages of White racial identity formation when they arose during classroom discussions been effective or ineffective?

5. What are my biggest concerns about addressing racial trauma and/or the developmental stages of White racial identity formation as they arise in classroom discussions? What strategies can I develop to address them?

Discussion Questions for Chapter 5: Course Planning and Assessment for the DEI Classroom & Curriculum

1. What are the general learning outcomes that we have developed as a faculty for the law school?

2. Have we created a set of learning outcomes for specific subject areas? If so, what are they?

3. In what ways can we utilize or modify the DEI learning outcomes from this chapter to build them into our existing learning outcomes?

4. How do the approaches to integrating DEI curricular and classroom initiatives in this chapter challenge my perceptions

about how to implement them? What are some perceptions or misconceptions that I carried with me into this process? How have they been affirmed for rebutted?

5. What are some ways that I can build community with my students in the classroom to facilitate difficult discussions about race, class, gender, and sexuality?

Discussion Questions for Chapter 6: Developing Instructional Materials for DEI Pedagogy & Practice

1. What are some of the learning activities that I presently employ in my classes?

2. Based on Bloom's Taxonomy and Bloom's Digital Taxonomy (discussed in Chapter 5), what are the types of thinking skill for the learning activities that I presently employ? *(Remembering, Understanding, Applying, Analyzing, Evaluating)*

3. Based on Bloom's Taxonomy and Bloom's Digital Taxonomy (discussed in Chapter 5), what are the levels of thinking skill for the learning activities that I presently employ? *(Lowest, Low, Middle, High, or Highest)*

4. Given the most recent syllabus that I use for my course, in which weeks can I integrate DEI learning activities?

5. How can I modify or duplicate the learning activities that I presently employ for DEI purposes?

PART III —
Examples of How to Integrate DEI into the Core Law Curriculum by Subject Matter

CHAPTER 8:
Contract Law DEI Course Planning Template

Table 1 Syllabus Mapping

Week(s) and/or Class Day Covered	Unit Topic	Learning Outcomes Engaged	Possible Learning Activities
Week X, Day X	Theories of Obligation *(consideration; promissory estoppel (detrimental reliance); quasi contract; unjust enrichment; material benefit/moral obligation)*		
	Offer		
	Acceptance		
	Erosions of the Classical Model of Offer and Acceptance *(contracts of adhesion; "shrink wrap," "browse wrap" & "click-wrap" agreements)*		
	Contracts for the Sale of Goods		
	Preliminary, Incomplete, and Indefinite Agreements		
	The Statute of Frauds; Statutes of Fraud		
	Avoidance Based on Bargaining Misbehavior or Other Deficiencies in the Bargaining Process *(misrepresentation, fraud, duress, undue influence; unconscionability; impracticability/ frustration of purpose; misunderstanding; mistake)*		

Week(s) and/or Class Day Covered	Unit Topic	Learning Outcomes Engaged	Possible Learning Activities
	Avoidance Based on Broader Notions of Public Policy *(illegality; lack of capacity)*		
	The Content of Contractual Obligations *(interpretation; gap-fillers by statute and common law; good faith, fair dealing, reasonableness; conditions; parole evidence rule)*		
	Performance and Breach *(material breach; "perfect tender"; anticipatory repudiation; material breach, substantial performance)*		
	Remedies *(specific performance; payment of damages)*		
	Third Party Beneficiaries		
	Assignment and Delegation		

** All unit topics, with the exception of third party beneficiaries & assignment and delegation, are taken from Amy C. Bushaw, Strategies and Techniques for Teaching Contracts (2012), available as part of the Wolters Kluwer Law & Business Strategies and Techniques series.*

Table 2 Common Cases in Contract Law Courses by Topic

Unit Topic	Common Cases & Statutes
Theories of Obligation *(consideration; promissory estoppel (detrimental reliance); quasi contract; unjust enrichment; material benefit/moral obligation*[417]*)*	*Kirksey v. Kirksey*[418]*; Hamer v. Sidway*[419]*; Alaska Packers Ass'n v. Domenico*[420]*; Angel v. Murray*[421]*; Mills v. Wyman*[422]*; Webb v. McGowin*[423]*; Ricketts v. Scothorn*[424]*; Schott v. Westinghouse Electric Corporation*[425]*; Congregation Kadimah Toras-Moshe v. DeLeo*[426]*; Steinberg v. United States*[427]*; Fiege v. Boehm*[428]*; Martin v. Little, Brown & Co.*[429]
Offer	UCC Article 2 Part 2 *Lucy v. Zehmer*[430]*; Lonergan v. Scolnick*[431]*; Leonard v. Pepsico*[432]*; Dickinson v. Dodds*[433]*; Beall v. Beall*[434]*; Sateriale v. R.J. Reynolds Tobacco Company*[435]

Unit Topic	Common Cases & Statutes
Acceptance	UCC 2-207; Generally Article 2 Part 2 *La Salle National Bank v. Vega*[436]*; Ever-Tite Roofing Corp. v. Green*[437]*; Davis v. Jacoby*[438]*; Adams v. Lindsell*[439]*; Carlill v. Carbolic Smoke Ball Co.*[440]
Erosions the Classical Model of Offer and Acceptance *(contracts of adhesion; "shrink wrap," "browse wrap" & "click-wrap" agreements*[441]*)*	*Berkson v. Gogo LLC*[442]*; DeFontes v. Dell, Inc.*[443]*; Long v. Provide Commerce, Inc.*[444]*; ProCD, Inc. v. Zeidenberg*[445]*; Nguyen v. Barnes & Noble Inc.*[446]*; Feldman v. Google*[447]
Contracts for the Sale of Goods	UCC Article 2 *Audio Visual Artistry v. Tanzer*[448]*; Conwell v. Gray Loon Outdoor Marketing Group, Inc.*[449]
Preliminary, Incomplete, and Indefinite Agreements[450]	*Brown v. Cara*[451]; *Cochran v. Norkunas*[452]; *Arbitron, Inc. v. Tralyn Broadcasting, Inc.*[453]; *Baer v. Chase*[454]
The Statute of Frauds; Statutes of Fraud	UCC 2-201 *McIntosh v. Murphy*[455]*; Crabtree v. Elizabeth Arden Sales Corp.*[456]
Avoidance Based on Bargaining Misbehavior or Other Deficiencies in the Bargaining Process *(misrepresentation, fraud, duress, undue influence; unconscionability; impracticability/ frustration of purpose; misunderstanding; mistake*[457]*)*	UCC Article 2 Part 3 *Raffles v. Wichelhaus*[458]*; Varney v. Ditmars*[459]*; Halpert v. Rosenthal*[460]*; Swinton v. Whitinsville Savings Bank*[461]*; Odorizzi v. Bloomfield School District*[462]*; Williams v. Walker-Thomas Furniture Company*[463]*; Daughtrey v. Ashe*[464]*; Webster v. Blue Ship Tea Room, Inc.*[465]*; Office Supply Co., Inc. v. Basic/Four Corporation*[466]*; Taylor v. Caldwell*[467]*; Krell v. Henry*[468]*; Lenawee County Board of Health v. Messerly*[469]*; Sherwood v. Walker*[470]*; Wood v. Boynton*[471]*; Rodi v. Southern New England School of Law*[472]*; Psenicska v. Twentieth Century Fox Film Corp.*[473]*; Feldman v. Google*[474]
Avoidance Based on Broader Notions of Public Policy *(illegality; lack of capacity*[475]*)*	*Dodson v. Shrader*[476]*; Hanks v. Powder Ridge Restaurant Corp.*[477]*; Valley Medical Specialists v. Farber*[478]*; Sparrow v. Demonico*[479]*; Danzig v. Danzig*[480]*; L.B. v. Facebook, Inc.*[481]*; Farnum v. Silvano*[482]

Unit Topic	Common Cases & Statutes
The Content of Contractual Obligations *(interpretation; gap-fillers by statute and common law; good faith, fair dealing, reasonableness; conditions; parole evidence rule*[483]*)*	UCC 1-205, 1-303; 2-202, 2-208 *Wood v. Lucy, Lady Duff Gordon*[484]*; Locke v. Warner Bros., Inc.*[485]*; Frigaliment Importing Co., Ltd. v. B.N.S. Int'l Sales Corp.*[486]*; Pacific Gas & Electric Co. v. G.W. Thomas Drayage & Rigging Co.*[487]*; Atwater Creamery Co. v. Western National Mutual Insurance Co.*[488]*; Sound Techniques, Inc. v. Hoffman*[489]
Performance and Breach *(material breach; "perfect tender"; anticipatory repudiation; material breach, substantial performance*[490]*)*	UCC Article 2 Parts 5 & 6 *Jacob & Youngs, Inc. v. Kent*[491]*; ESPN, Inc. v. Office of the Commissioner of Baseball*[492]*; Hochster v. De La Tour*[493]
Remedies *(specific performance; payment of damages*[494]*)*	UCC Article 2 Part 7 *Hawkins v. McGee*[495]*; Groves v. John Wunder Co.*[496]*; Peevyhouse v. Garland Coal & Mining Co.*[497]*; Parker v. Twentieth Century-Fox Film Corp.*[498]*; R.R. Donnelley & Sons Co. v. Vanguard Transp. Systems, Inc.*[499]*; Hadley v. Baxendale*[500]*; The Case of Mary Clark, A Woman of Colour*[501]
Third Party Beneficiaries	*Lawrence v. Fox; Midwest Grain Products of Illinois, Inc. v. Productization, Inc. and CMI Corp.*[502]*; Olson v. Etheridge*[503]*; Vogan v. Hayes Appraisal Associates, Inc.*[504]*; Chen v. Chen*[505]
Assignment and Delegation	*Sally Beauty Co. v. Nexxus Products Co.*[506]*; Herzog v. Irace*[507]

** All unit topics, with the exception of third party beneficiaries & assignment and delegation, are taken from Amy C. Bushaw, Strategies and Techniques for Teaching Contracts (2012), available as part of the Wolters Kluwer Law & Business Strategies and Techniques series. Table of contents taken from Brian A. Blum and Amy C. Bushaw, Contracts: Cases, Discussion, and Problems (4th ed. 2017) and Charles L. Knapp, Nathan M. Crystal & Harry G. Prince, Problems in Contract Law: Cases and Materials (9th ed. 2019), available at Wolters Kluwer Legal Education.*

Table 3 Contract Law Sources for Learning Activities

Litigation	Transactional
Complaint	*General/Simple Contracts*
Answer	*Shrink-wrap & Click-wrap Agreements*
Client Letters	*Promissory Notes*
Letters to Opposing Counsel	*Bills of Sale*

Requests for Production	*Settlement Documents*
Interrogatories	*Mediation & Arbitration Agreements*
Affidavits	*Trust Agreements*
Subpoenas	*Powers of Attorney*
Deposition Questions	*Partnership Agreements*
Office Memoranda	*Joint Venture Agreements*
Demand Letters	*Franchise Agreements*
Motions	*Articles of Incorporation*
Briefs	*Corporate Bylaws*
Direct and Cross-Examination Questions for Witnesses	*Mortgages*
Proposed Jury Instructions	*Leases*
Proposed Orders	

** This list is not exhaustive.*

Sample DEI Assignment Plan for Contract Law

LO 1-0: *Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts*

Skill Level: Easy

Resources/Materials:
Lucy v. Zehmer, 84 S.E.2d 516 (Va. 1954)

Cases cited in Lucy v. Zehmer that form its analytical framework:
Taliaferro v. Emery, 98 S.E. 627 (Va. App. 1919)

First Nat'l Exchange Bank of Roanoke v. Roanoke Oil Co., Inc., 192 S.E. 764 (Va. 1937)

Bond v. Crawford, 69 S.E.2d 470 (Va. 1952)

Articles:
Marissa Jackson Sow, *Whiteness As Contract*, 78 Washington & Lee L. Rev. _____ (2021)

Barak Richman & Dennis Schmelzer, *When Money Grew on Trees: Lucy v. Zehmer and Contracting in a Boom Market*, 61 Duke L.J. 1511 (2012)

L. Diane Barnes, *Southern Artisans, Organization, and the Rise of a Market Economy in Antebellum Petersburg,* 107 The Virginia Magazine of History and Biography 159 (1999)

DEI Lesson Description

Lucy v. Zehmer is commonly taught in Contract Law courses as part of instruction about contract formation. The exchange between Welford Ordway Lucy and Adrian Hardy Zehmer occurred in Dinwiddie County, Virginia.[508] Prior to European settlement, the land that would become Dinwiddie County was home to the Appomattox, Catawba, and Monacan tribes of indigenous peoples.[509] By 1725, Europeans had decimated the indigenous populations. The few that remained became trading partners.[510]

Like their contemporaries in Jamestown and Petersburg along the James and Appomattox rivers, the Dinwiddie County powerbrokers were primarily wealthy White male planters who occupied large tracts of land.[511] They continued to build their wealth in the tobacco trade on the land from which indigenous peoples had been expelled. As Africans were brought to the colonies and later enslaved, tobacco crops joined with cotton crops. The Petersburg Manufacturing Company opened in 1826 to process the cotton from the county into finished goods.[512] It would operate well into the early twentieth century as cotton made way for the growing lumber trade.[513] At the height of the pulp and paper trade, fights over Jim Crow, and tests of the durability of racial segregation is where the events of *Lucy v. Zehmer* occur.[514]

The purpose of this assignment is to explore whether the objective theory of contracts, primarily as it relates to the manifestation of intent to be bound in contract and its evolution through case precedent, is indeed objective. This concept, widely introduced to law students through the case *Lucy v. Zehmer*, rests on a legal interpretation of the controlling facts that is flawed based on the context in which they unfolded. Through a retelling of *Lucy v. Zehmer* in its social, historical, and economic contexts, the

"objective" theory is animated by racial capitalism, specifically how capitalist imperatives rooted in white supremacy work to the detriment of the Zehmers *as white people*. From this perspective, the court's validation and enforcement of Zehmer's "contract" to sell his family farm to Lucy is not reducible to an unfortunate outcome as a result of intoxication. Rather, it is another link in the chain of ongoing land grabs that began with indigenous removal at Dinwiddie County's settlement.

Assignment Title: Is the Objective Theory of Contracts Objective?

Directions (adapted from the performance criteria for LO 1-0):

1. Read *Lucy v. Zehmer*, 84 S.E.2d 516 (Va. 1954).

2. Retrieve the cases the court cited in *Lucy v. Zehmer* - the case precedent it uses to build its analytical framework for facts in the case: *Taliaferro v. Emery*, 98 S.E. 627 (Va. 1919); *First Nat'l Exchange Bank of Roanoke v. Roanoke Oil Co., Inc.*, 192 S.E. 764 (Va. 1937); *Bond v. Crawford*, 69 S.E.2d 470 (Va. 1952).

3. Complete case briefs for each of the cases. You should have 4 case briefs total. Take special care in identifying the legal issue in each case. I will collect your briefs.

3. [Listen to, review notes on, etc. — see **"Additional Professor Preparation"** below] the professor's lecture [on, that included] the *Lucy v. Zehmer* case. Be sure to take notes on the material that supplements your case briefs and provides context for the case.

4. After you have read the cases, briefed them, listened to the lecture, and taken notes, identify how the courts in *Lucy v. Zehmer* and the precedent authority include and/or exclude race, class, gender, and/or sexuality implicitly and explicitly in framing the legal issues. You may present your identification for each case by listing the cases as headings and placing the language/concepts you identify with a brief explanation for your choices under the relevant heading.

5. Be prepared to discuss your work as part of future lectures on this unit.

Assignment Rubric

Score	LO 1-0 Learning Activity Criteria
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively	1. Retrieves full cases from a legal research database *(if not provided by the professor)*. 2. Cites the cases correctly on the case briefs.
Good – B (80%-89%) Exceeds required criteria	3. Creates case briefs that summarize **all** of the legally relevant facts in the context of the precedent authority and the assigned readings.
Average – C (70%-79%) Meets required criteria	4. Creates case briefs that demonstrate an understanding of the analytical frameworks used by the courts to build their theories and legal concepts for the objective theory of contracts.
Poor – D (60-69%) Falls below required criteria	5. Identifies how the courts in *Lucy v. Zehmer* and the precedent authority include and or exclude race, class, gender, and/or sexuality implicitly and explicitly in framing the legal issues.
No Credit – F (less than 60%) Does not meet required criteria	6. Organizes the identification in a manner that demonstrates comprehension of how each authority frames the legal issue in the context of race, class, gender, and/or sexuality.

Additional Professor Preparation

Because the skill level for this exercise is easy, you might elect to teach the content of the articles as part of a lecture or through another medium *(short video presentation, narrated Powerpoint, etc.)* that students can view outside of class. However, you can adapt this lesson to a higher skill level by incorporating these materials into a learning activity for a learning outcome at the intermediate, difficult, or advanced level. At any of those levels, you might want to assign one or both articles to the students.

For this assignment, you may want to do both microaggression and macroaggression maps for each of the cases cited in *Lucy v. Zehmer*. This will help to surface the ways that (White) racial capitalism operates in the opinion (macroaggression), as well as

the court's silences about the class of the two parties and their bargaining positions (microaggressions based on class).

Table 4 Microaggression Case/Resource Map
LO 1-0: *Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts*

Lucy v. Zehmer	**Microassault**	**Microinsult**	**Micro-invalidation**	**Micro-inequity**	**Stereotype Threat**
Relevant case language					
Explanation					

Taliaferro v. Emery	**Microassault**	**Microinsult**	**Micro-invalidation**	**Micro-inequity**	**Stereotype Threat**
Relevant case language					
Explanation					

First Nat'l Exchange Bank of Roanoke v. Roanoke Oil Co., Inc.	**Microassault**	**Microinsult**	**Micro-invalidation**	**Micro-inequity**	**Stereotype Threat**
Relevant case language					
Explanation					

Bond v. Crawford	**Microassault**	**Microinsult**	**Micro-invalidation**	**Micro-inequity**	**Stereotype Threat**
Relevant case language					
Explanation					

Table 5 Macroaggression Case/Resource Map
LO 1-0: *Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts*

Case Name	Relevant Language	Explanation
Lucy v. Zehmer		
Taliaferro v. Emery		
First Nat'l Exchange Bank of Roanoke v. Roanoke Oil Co., Inc.		
Bond v. Crawford		

Microlearning Activity: Case Briefing

Directions:

1. Review the case brief template for our course in advance of completing this assignment.
2. Read the *Lucy v. Zehmer* case, assigned for Week X on our course syllabus.
3. When you have finished reading, please complete a case brief for *Lucy v. Zehmer*.
4. Submit your work to our Learning Management System under the assignment heading X on our course page.

Case Brief Template

Unit:
Week X

Case Name:

Procedural Posture:

Facts:

Issue:

Ratio Decidendi *(the rules or rationale for the decision)*:

Synthesis of Legal Authority *(rule as synthesized from the cited authority)*:

Factual Analysis *(court's application of the rule to the facts of the case)*:

Ruling:

Holding:

CHAPTER 9:
Civil Procedure DEI Course Planning Template

Table 1 Syllabus Mapping

Week(s) and/or Class Day Covered	Unit Topic	Learning Outcomes Engaged	Possible Learning Activities
Week X, Day X	Notice and opportunity to be heard *(Due Process Clause)*		
	Personal Jurisdiction *(Constitutional basis (Due Process Clause)*: minimum contacts, general-jurisdiction, consent, waiver, presence; statutory or rule basis: including long-arm statutes and Rule 4(k))		
	Subject-matter jurisdiction *(federal question: constitutional and statutory basis; diversity; supplemental; removal)*		
	Venue		
	The Erie Doctrine		
	Pleading *(complaint; service of process; responses; answer; amendments; sanctions)*		
	Joinder *(claim: by plaintiff, counterclaims, crossclaims; party: permissive, required, intervention, interpleader, class actions)*		
	Discovery *(techniques, scope: relevance, proportionality & e-discovery; privilege; work product; protective orders and sanctions)*		
	Case Management and Pretrial Conferences		
	Summary Judgment		

Week(s) and/or Class Day Covered	Unit Topic	Learning Outcomes Engaged	Possible Learning Activities
	Trial *(right to jury trial; selecting a jury; judgment as a matter of law; renewal of judgment as a matter of law; motion for a new trial; nonjury trial)*		
	Appeal *(appealability; standards of review: facts, law, discretionary decisions)*		
	The effect of judgment *(relief from judgment; preclusion: claim; issue: mutual, non-mutual)*		
	Remedies *(damages: compensatory, punitive; injunctions: permanent, preliminary, TROs; declaratory relief)*		
	Alternative Dispute Resolution *(settlement; arbitration, mediation, and other forms)*		

** Unit topics are taken from Jay Tidmarsh, Strategies and Techniques for Teaching Civil Procedure (2013), available as part of the Wolters Kluwer Law & Business Strategies and Techniques series.*

Table 2 Common Cases in Civil Procedure Courses by Topic

Unit Topic	Common Cases, Statutes & Rules
Notice and opportunity to be heard *(Due Process Clause)*	*Goldberg v. Kelly*[515]*; Mullane v. Central Hanover Bank & Trust Co.*[516]*; Jones v. Flowers*[517]*; Hamdi v. Rumsfeld*[518]
Personal Jurisdiction *(Constitutional basis (Due Process Clause)*: minimum contacts, general-jurisdiction, consent, waiver, presence; statutory or rule basis: including long-arm statutes and Rule 4(k))	*Pennoyer v. Neff*[519]*; International Shoe Co. v. Washington*[520]*; World-Wide Volkswagen Corp. v. Woodson*[521]*; Burger King v. Rudzewicz*[522]*; Asahi Metal Industry Co. v. Superior Court of California*[523]*; Daimler AG v. Bauman*[524]*; Harris v. Balk*[525]*; Shaffer v. Heitner*[526]*; Burnham v. Superior Court of California*[527]

Unit Topic	Common Cases, Statutes & Rules
Subject-matter jurisdiction *(federal question: constitutional and statutory basis; diversity; supplemental; removal)*	28 U.S.C. section 1331 28 U.S.C. section 133228 U.S.C. section 1367 28 U.S.C. sections 1441, et seq. *Osborn v. Bank of the United States*[528]*; State Farm Fire & Cas. Co. v. Tashire*[529]*; United Mine Workers v. Gibbs*[530]*; Louisville & Nashville Railroad Co. v. Mottley*[531]*; Gunn v. Minton*[532]*; Owen Equipment & Erection Co. v. Kroger*[533]*; Exxon Mobil Corp. v. Allapattah Services*[534]*; Ceglia v. Zuckerberg*[535]
Venue	28 U.S.C. section 1390, et seq. 28 U.S.C. section 1404 *Uffner v. La Reunion Francaise*[536]*; MacMunn v. Eli Lilly Co.*[537]*; Piper Aircraft Co. v. Reyno*[538]*;*
The Erie Doctrine	*Erie Railroad Co. v. Tompkins*[539]*; Guaranty Trust Co. of New York v. York*[540]*; Hanna v. Plumer*[541]*; Walker v. Armco Steel Co.*[542]
Pleading *(complaint; service of process; responses; answer; amendments; sanctions)*	FRCP 4; 8-9; 11; 12(b), (c), (e), (f); 15 *Ashcroft v. Iqbal*[543]*; Bell Atlantic Corp. v. Twombly*[544]*; Virgin Records America, Inc. v. Lacey*[545]*; Reis Robotics Usa, Inc. v. Concept Industries, Inc.*[546]*; Ingraham v. United States*[547]*; State Farm Mutual Automobile Insurance Co. v. Riley*[548]*; Hays v. Sony Corp. of America*[549]*; Hunter v. Earthgrains Co. Bakery*[550]*; Krupski v. Costa Crociere S.p.A.*[551]
Joinder *(claim: by plaintiff, counterclaims, crossclaims; party: permissive, required, intervention, interpleader, class actions)*	28 U.S.C. section 1335 FRCP 13 (a)-(b), (g); 14; 18; 19; 20; 22; 23; 24 *Grutter v. Bollinger*[552]*; Hansberry v. Lee*[553]*; Temple v. Synthes Corporation, Ltd.*[554]
Discovery *(techniques, scope: relevance, proportionality & e-discovery; privilege; work product; protective orders and sanctions)*	FRCP 26(b)(1)-(4); 26(c); 26(g), 30-37 *Oxbow Carbon & Minerals Llc v. Union Pacific Railroad Co.*[555]*; Hickman v. Taylor;*[556] *Zubulake v. UBS Warburg LLC*[557]*; Sacramona v. Bridgestone/Firestone, Inc.*[558]

Unit Topic	Common Cases, Statutes & Rules
Case Management and Pretrial Conferences	FRCP 16 *J.F. Edwards Construction Co. v. Anderson Safeway Guard Rail Corp.*[559]*; Davey v. Lockheed Martin Corp.*[560]
Summary Judgment	FRCP 56 *Slaven v. City of Salem*[561]*; Tolan v. Cotton*[562]*; Celotex Corp. v. Catrett*[563]*; Adickes v. S.H. Kress & Co.*[564]
Trial *(right to jury trial; selecting a jury; judgment as a matter of law; renewal of judgment as a matter of law; motion for a new trial; nonjury trial)*	FRCP 38; 47; 50(a)-(b); 52; 59 *Dairy Queen Inc. v. Wood*[565]*; Curtis v. Loether*[566]*; Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*[567]
Appeal (appealability; standards of review: facts, law, discretionary decisions)	28 U.S.C. sections 1291-92 *MacArthur v. University of Texas Health Center at Tyler*[568]*; In re Recticel Foam Corp.*[569]*; Mohawk Industries v. Carpenter*[570]*; Husain v. Olympic Airways*[571]
The effect of judgment *(relief from judgment; preclusion: claim; issue: mutual, non-mutual)*	FRCP 60 *Taylor v. Sturgell*[572]*; Otherson v. Dep't of Justice, INS*[573]*; Parklane Hoisery Co. v. Shore*[574]*; Guggenheim Capital, LLC v. Birnbaum*[575]
Remedies *(damages: compensatory, punitive; injunctions: permanent, preliminary, TROs; declaratory relief)*	28 U.S.C. sections 2201-02 FRCP 65 *Walgreen Co. v. Sara Creek Property Co.*[576]*; Brown v. Plata*[577]*; Carey v. Piphus*[578]
Alternative Dispute Resolution *(settlement; arbitration, mediation, and other forms)*	FRCP 68 *Kindred Nursing Centers Limited Partnership v. Clark*[579]*; AT &T Mobility LLC v. Concepcion*[580]

** Unit topics taken from Jay Tidmarsh, Strategies and Techniques for Teaching Civil Procedure (2013), available as part of the Wolters Kluwer Law & Business Strategies and Techniques series. Table of contents taken from Steven N. Subrin, Martha L. Minow, Mark S. Brodin, et al., Civil Procedure: Doctrine, Practice, and Context (6th ed. 2020), and Joseph W. Glannon, Andrew M. Perlman, and Peter Raven-Hansen, Civil Procedure: A Coursebook (4th ed. 2021), available at Wolters Kluwer Legal Education.*

Table 3 Civil Procedure Sources for Learning Activities

Sources
Entry of Appearance
Complaint
Answer
Client Letters
Letters to Opposing Counsel
Requests for Production
Requests for Admission
Interrogatories
Affidavits
Subpoenas
Deposition Questions
Office Memoranda
Motions
Briefs
Trial Notebooks
Jury Exhibit Notebooks
Voire Dire Examination Questions
Direct and Cross-Examination Questions for Witnesses
Proposed Jury Instructions
Proposed Orders

** This list is not exhaustive*

Sample DEI Assignment Plan for Civil Procedure

LO 1-2: *Deconstructs how race, class, gender, and sexuality influence how lawyers and courts frame legal issues*

Skill Level: Intermediate

Resources/Materials:
Cases:
Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007)

Ashcroft v. Iqbal, 556 U.S. 662 (2009)

EEOC v. Catastrophe Management Solutions, 852 F.3d 1018 (2016)

Statute:
Title VII of the Civil Rights Act of 1965 *as amended*

Pleadings:
EEOC's Complaint and Jury Demand (available here: https://www.wklegaledu.com/resources/law-school-faculty/law-school-faculty at the "Supplemental Materials" link)

Defendant Catastrophe Management Solutions' Motion to Dismiss, available at 2013 WL 9467502

Plaintiff's Brief in opposition to Defendant Catastrophe Management Solutions' Motion to Dismiss, available at 2014 WL 4745282

Plaintiff's Memorandum in Support of Motion for Leave to Amend Complaint, available at 2014 WL 4745295

Article:
Shirin Sinnar, *The Lost Story of Iqbal*, 105 Georgetown L. J. 379 (2017)

DEI Lesson Description

The purpose of this assignment is to examine how the pleading standards set forth in *Iqbal* and *Twombly* are calibrated to white cultural norms that function invisibly as neutral. The case *EEOC v. Catastrophe Management Solutions* illustrates how the difference between a "sufficient factual allegation" and a "legal conclusion" differs depending on through which cultural lens it is viewed. In dispute was whether Catastrophe Management Solutions (CMS) discriminated against a prospective employee on the basis of race, when it made cutting off her hair to comply with company grooming standards a condition of the job offer.[581] The prospective employee, Ms. Chastity Jones (a Black woman) wore her hair in dreadlocks (locs) at the time of her interview.[582] The company grooming policy at that time required employees "to be dressed and groomed in a manner that projects a professional and businesslike image while adhering to company and industry standards and/or guidelines... [H]airstyle should reflect a business/professional image. No excessive hairstyles or unusual colors are acceptable[.]"[583]

The United States District Court for the Southern District of Alabama dismissed Ms. Jones' case pursuant to FRCP 12(b)(6) and also denied the EEOC's motion for leave to amend its complaint,

which it deemed "futile."[584] The Eleventh Circuit Court of Appeals affirmed the District Court's decision, but incorporated the averments of the amended complaint into the facts of its opinion. The amended pleading, as set out in the court opinion, alleged in relevant part:

> [1] When Ms. Jones said that she would not cut her hair, Ms. [Jeannie] Wilson [a White woman] told her that CMS could not hire her, and asked her to return the paperwork she had been given. Ms. Jones did as requested and left.
>
> [2] [Dreadlocks] are a manner of wearing hair that is common for black people and suitable for black hair texture. Dreadlocks are formed in a black person's hair naturally, without any manipulation, or by manual manipulation of hair into larger coils.
>
> [3] During the forced transportation of Africans across the ocean [into enslavement], their hair became matted with blood, feces, urine, sweat, tears, and dirt. Upon observing them, some slave traders referred to the [captured and enslaved Africans] as "dreadful," and dreadlock became a commonly used word to refer to the locks that had formed during [captured and enslaved Africans'] long trips across the ocean.
>
> [4] [Race] is a social construct and has no biological definition.
>
> [5] The concept of race is not limited to or defined by immutable physical characteristics.
>
> [6] The concept of race encompasses cultural characteristics related to race or ethnicity [including] grooming practices.
>
> [7] [Although some non-black persons] have a hair texture that would allow the hair to lock, dreadlocks are nonetheless a racial characteristic, just as skin color is a racial characteristic.
>
> [8] [The hair of black persons] grows in very tight coarse coils [which is different from the hair of white persons].
>
> [9] Historically, the texture of hair has been used as a substantial determiner of race [and] dreadlocks are a method of hair styling suitable for the texture of black hair and [are] culturally associated [with black persons].

> [10] [When black persons] choose to wear and display their hair in its natural texture in the workplace, rather than straightening it or hiding it, they are often stereotyped as not being "team players," "radicals," " 'troublemakers," or not sufficiently assimilated into the corporate and professional world of employment.[585]

Both CMS and subsequently the court deemed these averments to be legal conclusions and not well-pleaded factual allegations sufficient to support a claim of racial discrimination under Title VII. A sticking point with the court was that the EEOC did not allege that locs are an immutable characteristic.[586]

CMS' and the court's assessment of the EEOC amended complaint raises concerns about which cultural standards are used to evaluate facts and conclusions. Shirin Sinnar's article places the *EEOC v. CMS* in the shadow of *Iqbal*, albeit an *Iqbal* unknown to most. In her words "Juxtaposing the lost story of Iqbal and the [post-9/11] detentions against the Court's decision [in *Ashcroft v. Iqbal*] ultimately sheds light on the ability of procedural decisions to propagate particular normative visions and understanding of substantive law without full recognition of legal audiences."

Assignment Title: Legal Conclusion or Sufficient Factual Allegation?

Directions (adapted from the performance criteria for LO 1-2):

1. For the case *EEOC v. Catastrophe Management Solutions (CMS)*, 852 F.3d 1018 (2016), please retrieve and read the EEOC's complaint, the EEOC's amended complaint, *CMS's Motion to Dismiss*, the *EEOC's Brief in opposition to Defendant Catastrophe Management Solutions' Motion to Dismiss*, and the *EEOC's Memorandum in Support of Motion for Leave to Amend Complaint*. As you read through these documents, take notes. Pay particular attention to how the court and lawyers frame the legal issues in their pleadings and briefs.

2. Also review your case briefs for *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *EEOC v. Catastrophe Management Solutions (CMS)*, 852 F.3d 1018 (2016). Pay particular attention to how the court in *EEOC v. CMS* discusses the holdings of *Iqbal* and *Twombly*.

3. Read Shiran Sinnar's article *The Lost Story of Iqbal*. As you read, jot down how your understanding of *Iqbal* and *Twombly* changes by the arguments the author makes and evidence that she presents.

4. Compare and contrast the framing of the issues between the courts, and opposing counsel. In doing so, discuss how the framing reflects white cultural norms as neutral and the attendant problems with such framing.

5. You may present your comparisons to me in writing, as a podcast, or through a digital video medium (YouTube, TikTok, etc.). A complete comparison will thoroughly discuss the courts and lawyers framing of the legal issues, and integrate key concepts from Professor Sinnar's work.

Assignment Rubric

Score	LO 1-2 Learning Activity Criteria
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively **Good – B** (80%-89%) Exceeds required criteria **Average – C** (70%-79%) Meets required criteria **Poor – D** (60-69%) Falls below required criteria **No Credit – F** (less than 60%) Does not meet required criteria	1. Retrieves the EEOC's complaint, the EEOC's amended complaint, *CMS's Motion to Dismiss*, the *EEOC's Brief in opposition to Defendant Catastrophe Management Solutions' Motion to Dismiss*, and the *EEOC's Memorandum in Support of Motion for Leave to Amend Complaint* from a legal research database. 2. Drafts a comparison of the court and lawyers' issue framing that explores how the court in *EEOC v. CMS* interprets/discusses the holdings in *Iqbal* and *Twombly* in its decision to dismiss the EEOC's complaint on 12(b)(6) grounds. 3. Drafts a comparison of the court and lawyers' issue framing that explores the lawyers' interpretation/discussion of *Iqbal* and *Twombly* and their application to *CMS's Motion to Dismiss*. 4. Drafts a comparison of the court and lawyers' issue framing that contextualizes it in the main arguments advanced in *The Lost Story of Iqbal* by discussing the cultural lenses through which the issues are framed.

Additional Professor Preparation

To aid in your own preparation for this assignment, you may want to do a microaggression map for the *CMS Motion to Dismiss* and a macroaggression map for the cases. Additionally, you may

choose to integrate the substance of the Sinnar article into your lecture about *Iqbal* and *Twombly*.

Table 4 Microaggression Case/Resource Map
LO 1-2: *Deconstructs how race, class, gender, and sexuality influence how lawyers and courts frame legal issues*

CMS Motion to Dismiss	**Microassault**	**Microinsult**	**Micro-invalidation**	**Micro-inequity**	**Stereotype Threat**
Relevant case language					
Explanation					

Table 5 Macroaggression Case/Resource Map
LO 1-2: *Deconstructs how race, class, gender, and sexuality influence how lawyers and courts frame legal issues*

Case Name	**Relevant Language**	**Explanation**
Bell Atlantic Corp. v. Twombly		
Ashcroft v. Iqbal		
EEOC v. CMS		

Microlearning Activity: Discussion Post Applying *Iqbal v. Twombly*

Directions:

1. The cases *Ashcroft v. Iqbal* and *Bell Atlantic Corp. v. Twombly* are assigned on the syllabus for [X week/day].
2. Please read both cases.
3. Also read the sample complaint, the *Equal Employment Opportunity Commission Complaint*, that I uploaded to the Learning Management System on our course page under the heading X.
4. After reading both cases and the complaint, answer the following question: **Did the EEOC meet the pleading standards set out in *Iqbal* and *Twombly*?** Your answer should be 250 words or less. Do not restate the question in your

answer. The topic sentence of your answer should be either "Yes, the EEOC met the pleading standard." or "No, the EEOC did not meet the pleading standard."

5. No later than 24 hours prior to [the class day where we will discuss *Iqbal* and *Twombly*], post your response to the "Discussion Board" link "Twiqbal" on our course page located on the Learning Management System. I will use your responses as the basis for our class discussion.

Please make sure that your posts uphold our highest community standards that show respect for each other, acknowledge our various social positions (race, class, gender, sexuality), and respect for community members' social positions.

CHAPTER 10:
Criminal Law DEI Course Planning Template

Table 1 Syllabus Mapping

Week(s) and/or Class Day Covered	**Unit Topic**	**Learning Outcomes Engaged**	**Possible Learning Activities**
Week X, Day X	The Act *(actus reus)*		
	Mental State *(mens rea)*		
	Results and Causation		
	Attendant Circumstances		
	Proof		
	Basic Crimes		
	Inchoate Offenses		
	Accomplice *(and other derivative)* Liability		
	Defenses		
	The Death Penalty		
	Corporate Crime		

** General unit topics and structure taken from Andrew E. Taslitz, Strategies and Techniques for Teaching Criminal Law (2012), available as part of the Wolters Kluwer Law & Business Strategies and Techniques Series.*

Table 2 Common Cases in Criminal Law Courses by Topic

Unit Topic	**Common Cases** *(and the Model Penal Code & State Penal Codes where applicable)*
The Act *(actus reus)*	*Lawrence v. Texas*[587]*; Rogers v. Tennessee*[588]*; City of Chicago v. Morales*[589]

Unit Topic	**Common Cases** *(and the Model Penal Code & State Penal Codes where applicable)*
Mental State *(mens rea)*	*Lambert v. California*[590]*; Elonis v. United States*[591]*; Hendershott v. People*[592]
Results and Causation	*Commonwealth v. Rhoades*[593]*; People v. Kevorkian*[594]*; Oxendine v. State*[595]
Basic Crimes	***Intentional Homicide:*** *Francis v. Franklin*[596]*, People v. Wu*[597]*;* ***Unintentional Homicide:*** *Commonwealth v. Welansky*[598]*, People v. Hickman*[599]*;* ***Rape:*** *People v. Dorsey*[600]*, Commonwealth v. Lopez*[601]*, Boro v. People*[602]*;* ***Theft:*** *The Case of the Carrier Who Broke Bulk Anon v. The Sheriff of London*[603]*, Rex v. Chisser,*[604] *The King v. Pear*[605]*;* ***Physical Battery:*** *People v. Peck*[606]*;* ***Assault:*** *Commonwealth v. Boodoosingh*[607]*;* ***Kidnapping:*** *Goolsby v. State*[608]*;* ***Fraud:*** *People v. Sattlekau*[609]*, United States v. Phillips*[610]*;* ***Extortion:*** *People v. Dioguardi*[611]*;* ***Robbery:*** *Lear v. State*[612]*;* ***Burglary:*** *State v. Colvin*[613]*;* ***Perjury:*** *Bronston v. United States*[614]*;* ***False Statements:*** *Brogan v. United States*[615]*;* ***Obstruction of Justice:*** *United States v. Aguilar*[616]*, Arthur Anderson LLP v. United States*[617]
Inchoate Offenses	***Attempt:*** *State v. Lyerla*[618]*, People v. Lubow*[619]*; People v. Rizzo*[620]*;* ***Impossibility:*** *Booth v. State*[621]*;* ***Abandonment:*** *Ross v. Mississippi*[622]*;* ***Conspiracy:*** *State v. Verive*[623]*, United States v. Recio*[624]*, United States v. Shabani*[625]*, Commonwealth v. Nee*[626]*;* ***Solicitation:*** *People v. Breton*[627]*; People v. Decker*[628]
Accomplice (and other derivative) Liability	*State v. Ochoa*[629]*, People v. Beeman*[630]*, People v. Kessler*[631]
Defenses	***Defensive Force:*** *People v. La Voie*[632]*, Tennessee v. Garner*[633]*;* ***Self-Defense:*** *People v. Goetz*[634]*;* ***Defense of Property:*** *People v. Ceballos*[635]*;* ***Defense of Others:*** *People v. Kurr*[636]*;* ***Necessity:*** *The Queen v. Dudley & Stephens*[637]*, People v. Unger*[638]*;* ***Duress:*** *State v. Hunter*[639]*;* ***Intoxication:*** *Montana v. Egelhoff*[640]*, People v. Garcia*[641]*;* ***Mental Illness:*** *People v. Serravo*[642]*, Smith v. State*[643]
The Death Penalty	*Olsen v. State*[644]*; Tison v. Arizona*[645]*; McKlesky v. Kemp*[646]*; Roper v. Simmons*[647]*; Kennedy v. Louisiana*[648]*; Glossip v. Gross*[649]

Unit Topic	Common Cases *(and the Model Penal Code & State Penal Codes where applicable)*
Corporate Crime	*State v. Christy Pontiac-GMC, Inc.*[650]*; United States v. Hilton Hotels Corp.*[651]*; State v. Far West Water & Sewer, Inc.*[652]*; United States v. Park*[653]

** General unit topics and structure taken from Andrew E. Taslitz, Strategies and Techniques for Teaching Criminal Law (2012), available as part of the Wolters Kluwer Law & Business Strategies and Techniques Series. Table of contents taken from John Kaplan, Robert Weisberg, and Guyora Binder, Criminal Law: Cases and Materials (9th ed. 2021), and Jens David Ohlin, Criminal Law: Doctrine, Application, and Practice (2nd ed. 2018).*

Table 3 Criminal Law Sources for Learning Activities

Sources
Retainer Agreements
Entry of Appearance
Indictments
Requests for Production
Requests for Admission
Disclosures
Deposition Questions
Affidavits
Preservation of Evidence Notices
Subpoenas
Motions
Briefs
Trial Notebooks
Jury Exhibit Notebooks
Voire Dire Examination Questions
Direct and Cross Examination Questions for Witnesses
Proposed Jury Instructions
Plea Agreements

** This list is not exhaustive*

Sample DEI Assignment Plan for Criminal Law

LO 1-5: *Critiques the implicit and explicit ways that cases, statutes, and other practical and scholarly legal texts utilize race, class, gender, and sexuality in ways that support white supremacy*

Skill Level: Difficult

Resources/Materials:
The Nine Indictments for the Flint Water Crisis (available here: https://www.wklegaledu.com/resources/law-school-faculty/law-school-faculty at the "Supplemental Materials" link)

The Flint Water Crisis, summary of the investigation and key players, available at Michigan.gov.[654]

Laura Pulido, *Flint, Environmental Racism, and Racial Capitalism*, 27 Capitalism Nature Socialism 1 (2016).[655]

Malini Ranganathan, *Thinking with Flint: Racial Liberalism and the Roots of an American Water Tragedy*, 27 Capitalism Nature Socialism 1 (2016).[656]

DEI Lesson Description

The purpose of this assignment is to review how the indictments handed down by the Grand Jury in Genesee County, Michigan do not connect the criminality of the accused to the ongoing environmental disparities based on race for Flint residents. As drafted, the indictments address criminal misconduct by governmental officials and the death of and harm to Flint residents due to tainted drinking water, but remain silent about race. This silence reinforces the operation of white supremacy in definitions of criminal misconduct. The named misconduct addresses the acts that led to the harm (as specified by the criminal code), but not why the acts were allowed, continued, and will have negative health impacts for generations of Flint residents.

Assignment Title: The Flint Water Crisis and the Limits of Criminality

Directions (adapted from the performance criteria for LO 1-5):

1. Please read [any cases or other materials as assigned to a particular unit on the crimes named in the indictments], the nine Flint indictments, the summary of the investigation into the Flint water crisis, and the articles by Malini Ranganathan and Laura Pulido. As you are reading, take notes. Based on what the scholars argue in their work, what is missing from the indictments? What are the assumptions about race (including the invisibility of white supremacy and racial capitalism) on which the indictments are crafted?

2. When you have finished the readings, review your notes. Craft an analytical framework from the scholars' work by weaving together their key arguments in a manner that will allow you to examine the parts of any text to which it is applied. You will be most familiar with this process as "synthesis" — how you have been taught to synthesize case law into an analytical framework that you apply to the facts of various hypothetical situations. As you write a cohesive version of your framework, be sure that it thoroughly captures the main ideas and arguments of the authors' work.

3. Apply your framework to the nine Flint indictments.

4. Write out your analysis for all of the indictments as a group. Explain how the way the indictments were drafted meet to do not meet the requirements of your framework. A possible way to organize your analysis is by the common charges in the indictments *(misconduct in office; perjury; obstruction of justice; willful neglect of duty; and involuntary manslaughter)*. You may present your explanation in written form or orally through an in-person presentation, podcast format, or by video upload.

Assignment Rubric

Score	LO 1-5 Learning Activity Criteria
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively	1. Demonstrates understanding of how the Ranganathan and Pulido articles surface the silences in the Flint indictments with respect to the named crimes.
Good – B (80%-89%) Exceeds required criteria **Average – C** (70%-79%) Meets required criteria	2. Uses that understanding to create an analytical framework that weaves together the major arguments of the Ranganathan and Pulido articles, and is sufficient to analyze the indictments and the named crimes.

Score	LO 1-5 Learning Activity Criteria
Poor – D (60-69%) Falls below required criteria	3. Applies the framework to the indictments systematically in a manner that shows evaluation of each part of the indictments.
No Credit – F (less than 60%) Does not meet required criteria	4. Organizes the analysis so that is readable/viewable and easy to comprehend by the intended audience.

Additional Professor Preparation

To facilitate your grading and discussion of this assignment, you may want to complete a macroaggression resource map for the Flint indictments, as well as your own notes on the Pulido and Ranganathan articles and the summary of the Flint water investigation.

Table 4 Macroaggression Case/Resource Map
Source: *The Nine Flint Indictments*
LO 1-5: *Critiques the implicit and explicit ways that cases, statutes, and other practical and scholarly legal texts utilize race, class, gender, and sexuality in ways that support white supremacy*

Flint Indictment	Relevant Language	Explanation
Jarod Agen		
Gerald Ambrose #1		
Gerald Ambrose #2		
Richard Baird		
Howard Croft		
Darnell Earley #1		
Darnell Earley #2		
Nicholas Lyon		
Nancy Peeler		
Richard Snyder		
Eden Wells		

Microlearning Activity: Guided Reading Reflection

Directions:

1. Review the Guided Reading Reflection Form in advance of reading the assigned articles.
2. Read the articles by Laura Pulido and Malini Ranganathan.
3. When you have finished the readings, please complete a Guided Reading Reflection Form for each article.
4. Submit your work to our Learning Management System under the assignment heading X on our course page.

Guided Reading Reflection Form

Your Name: _____

Week #_____

Article Title: _____

Concisely summarize the thesis *(primary argument)*:

Explain the main arguments in the article:

How would you describe the kinds of questions the author is interested in and the manner the author tries to answer those questions?

Describe the type and quality of the evidence on which the argument is based:
(State with specificity your criteria for assessing quality)

How is the work organized *(chronologically, topically, etc.)*? Briefly describe the important elements of the work's organization:

What aspects of the reading resonated with you most deeply?

In what ways has the reading enhanced your understanding of how white supremacy and capitalism shape notions of criminality?

CHAPTER 11:
Property Law DEI Course Planning Template

Table 1 Syllabus Mapping

Week(s) and/or Class Day Covered	Unit Topic	Learning Outcomes Engaged	Possible Learning Activities
Week X, Day X	What Is Property?		
	The Acquisition of Property Other Than By Voluntary Transfer *(*the rule of discovery; the rule of capture; the law of finders; adverse possession; gift; creation)*		
	*The Rights of Ownership *(exclude, alienate, abandon, destroy)*		
	Estates and Future Interests		
	Concurrent Estates		
	Landlord/Tenant Law		
	Land Transactions: The Purchase and Sale of Land		
	*Judicial Land Use Controls *(nuisance)*		
	Private Land Use Controls: Servitudes *(easements, covenants, common interest communities)*		
	Legislative Land Use Controls *(zoning)*		
	Eminent Domain		

** Unit topics and structure are taken from Paula A. Franzese, Strategies and Techniques for Teaching Property (2012), and the table of contents from Jesse Dukeminier, James E. Krier, Gregory Alexander, et al., Property (9th ed. 2018), available at Wolters Kluwer Legal Education.*

Table 2 Common Cases in Property Law Courses by Topic

Unit Topic	Common Cases
The Acquisition of Property Other Than By Voluntary Transfer *(*the rule of discovery; the rule of capture; the law of finders; adverse possession; gift; creation)*	**Discovery:** *Johnson v. M'Intosh*[657]; **Capture:** *Pierson v. Post*[658], *Keeble v. Hickeringill*[659], *Popov v. Hayashi*[660]; **Finders:** *Armory v. Delamirie*[661], *Hannah v. Peel*[662]; **Adverse Possession:** *Van Valkenburgh v. Lutz*[663], *O'Keefe v. Snyder*[664], *Newman v. Bost*[665]; **Gift:** *Gruen v. Gruen*[666]; *Brind v. International Trust Co.*[667]; **Creation:** *Moore v. Regents of the University of California*[668], *Eldred v. Ashcroft*[669]
*The Rights of Ownership *(exclude, alienate, abandon, destroy)*	*Jacque v. Steenberg Homes, Inc.*[670]; *Everyman v. Mercantile Trust Co.*[671]
Estates and Future Interests	*White v. Brown*[672]; *Mahrenholz v. County Board of Trustees*[673]; *Jee v. Audley*[674]; *The Symphony Space, Inc. v. Pergola Properties, Inc.*[675]
Concurrent Estates	*James v. Taylor*[676]; *Tehnet v. Boswell*[677]; *Riddle v. Harmon*[678]; *Delfino v. Vealencis*[679]; *Swartzbaugh v. Sampson*[680]; *Sawada v. Endo*[681]; *In re Marriage of Graham*[682]; *Obergefell v. Hodges*[683]
Landlord/Tenant Law	*Garner v. Gerrish*[684]; *Hannan v. Dusch*[685]; *Ernst v. Conditt*[686]; *Sommer v. Kridel*[687]; *Village Commons, LLC v. Marion County Prosecutor's Office*[688]; *Berg v. Wiley*[689]; *Hilder v. St. Peter*[690]
Land Transactions: The Purchase and Sale of Land	*Hickey v. Green*[691]; *Lohmeyer v. Bower*[692]; *Stambovsky v. Ackley*[693]; *Brown v. Lober*[694]; *Rosengrant v. Rosengrant*[695]; *Luthi v. Evans*[696]; *Messersmith v. Smith*[697]; *Board of Education of Minneapolis v. Hughes*[698]
*Judicial Land Use Controls *(nuisance)*	*Morgan v. High Penn Oil Co.*[699]; *Boomer v. Atlantic Cement Co.*[700]
Private Land Use Controls: Servitudes *(easements, covenants, common interest communities)*	**Easements:** *Willard v. First Church of Christ, Scientist*[701], *Millbrook Hunt, Inc. v. Smith*[702], *Kienzle v. Myers*[703], *Van Sandt v. Royster*[704]; **Covenants:** *Tulk v. Moxhay*[705], *Shelley v. Kraemer*[706], Western Land Co. v. Truskolaski[707]; **Common Interest Communities:** *Nahrstedt v. Lakeside Village Condominium*[708]

Unit Topic	Common Cases
Legislative Land Use Controls *(zoning)*	*Village of Euclid v. Ambler Realty Co.*[709]; *PA Northwestern Distributors, Inc. v. Zoning Hearing Board*[710]; *Commons v. Westwood Zoning Board of Adjustment*[711]; *Anderson v. City of Issaquah*[712]; *Moore v. City of East Cleveland*[713]; *Village of Belle Terre v. Boraas*[714]; *Southern Burlington County NAACP v. Township of Mount Laurel*[715]
Eminent Domain	*Kelo v. City of New London*[716]; *Pennsylvania Coal Co. v. Mahon*[717]; *Lucas v. South Carolina Coastal Council*[718]; *Horne v. Department of Agriculture*[719]; *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*[720]; *Koontz v. St. Johns River Water Management District*[721]

** Unit topics and structure are taken from Paula A. Franzese, Strategies and Techniques for Teaching Property (2012), and the table of contents from Jesse Dukeminier, James E. Krier, Gregory Alexander, et al., Property (9th ed. 2018), available at Wolters Kluwer Legal Education.*

Table 3 Property Law Sources for Learning Activities

Litigation	Transactional
Complaint	*Deeds*
Answer	*Leases*
Client Letters	*Mortgages*
Letters to Opposing Counsel	*Promissory Notes*
Requests for Production	*Construction Contracts*
Requests for Admission	*Easements*
Interrogatories	*Restrictive Covenants*
Affidavits	*Bailment Contracts*
Subpoenas	*Bills of Sale*
Deposition Questions	*Wills*
Office Memoranda	*Powers of Attorney*
Motions	*Proposed Orders*
Briefs	*Settlement Documents*
Jury Exhibit Notebooks	*Mediation & Arbitration Agreements*
Direct and Cross-Examination Questions for Witnesses	
Proposed Jury Instructions	
Proposed Orders	

** This list is not exhaustive*

Sample DEI Assignment Plan for Property Law

LO 1-0: *Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts*

Skill Level: Easy

Resources/Materials:
Case:
Johnson v. M'Intosh, 21 U.S. 543 (1823)

Treaties and Acts:
Treaty of Fort Laramie 1851, available online[722]

Treaty of Guadalupe Hidalgo 1848, Articles VIII, IX, and XI, available online[723]

Act to Settle Private Land Claims in California, March 3, 1851, U.S. Government Legislation and Statutes, sections 8-11 (pages 632-633), available online[724]

Articles:
Loretta Fowler, *Arapaho and Cheyenne Perspectives: From the 1851 Treaty to the Sand Creek Massacre*, 39 American Indian Quarterly 364 (2015)

Richard Griswold del Castillo, *Manifest Destiny: The Mexican-American War and the Treaty of Guadalupe Hidalgo*, 5 Sw. J.L. & Trade Am 31 (1998)

DEI Lesson Description

The purpose of this assignment is to compare the ongoing effects of the right to property by discovery and conquest to indigenous communities living in the U.S., and indigenous peoples and Mexicans living in the territory the U.S. claimed from Mexico at the end of the Mexican-American War. This is a lesson that naturally progresses from *Johnson v. M'Intosh*, and brings its legacy into a period of tremendous social, political, and legal upheaval in the U.S.—the Civil War.

In 1851, the Arapaho and Cheyenne tribes (including the Lakota Sioux) signed The Treaty of Fort Laramie with the United States.[725] Increasing immigration to Washington and Oregon depleted hunting grounds and stock, and accelerated indigenous land dispossession through war and population growth.[726] A provision of the Treaty was that U.S. troops were to protect immigrants moving west, as well as the Arapaho and Cheyenne.[727] However, the physical safety of the tribes remained in flux.[728] Beginning in 1855 the U.S. government, in violation of the Treaty, declared war on the tribes.[729] Armed conflicts between the sovereigns escalated and tribal resources lessened in subsequent years.[730]

The discovery of gold in Colorado in 1858 brought increased tensions and the further erosion of tribal safety.[731] Tribes called for a new treaty to meet these challenges, and in 1861 some diplomatic interventions led to a treaty that was later invalidated because of its ceremonial and official defects—it had not been agreed upon by all of the tribes.[732] Relations between the tribes and the U.S. government continued to degrade, even as a delegation went east in 1863 to visit President Abraham Lincoln.[733] In a response to the tribal delegates' query about Lincoln's "White children" (settlers) attacking the tribes, the President postulated that "[White people] are not, as a race, so much disposed to kill one another as our red brethren... If our children [White settlers] should sometimes behave badly, and violate these treaties, it is against our wish. You know it is not always possible for any father to have his children do precisely as he wished them to do.[734]" In the year after this meeting the breakdown in tribal and U.S. relations was so complete that in 1864, while the Civil War raged in the east, militias from the Colorado territories under the command of Colonel John Chivington murdered approximately one hundred and fifty tribal members in the Sand Creek Massacre.[735]

While the Arapaho, Cheyenne, and Sioux were negotiating the Treaty of Fort Laramie, the Thirty First Congress of the United States passed the Act to Settle Private Lands in California (The California Land Act). The passage of the Act in 1851 was the culmination of a series of events leading from the Treaty of Guadalupe Hidalgo in 1848, which marked the end of the Mexican-American War.[736] The Treaty gave American citizenship to Mexicans living on the land now known as California, New Mexico, Arizona, Texas, Colorado, Nevada, and Utah and protected their property interests.[737] The California Land Act shifted the burden to prove

land ownership on Mexican-Americans, including the imposition of deadlines to assert claims to land parcels, which resulted in their loss of land to the U.S. Government and the unstoppable malevolence of westward expansion.[738] The westward march brought with it the extrajudicial enforcement of land dispossession with which indigenous peoples were so familiar.[739] In the decades after the Treaty and Act, Mexican-Americans were lynched and subjected to anti-Mexican race riots on claims that they harmed or posed a threat to White settlers.[740]

Assignment Title: The Ongoing Effects of the Right to Property by Discovery and Conquest

Directions (adapted from the performance criteria for LO 1-0):

1. Review your case brief for *Johnson v. M'Intosh* and your class notes from the class session.

2. Read the *Treaty of Fort Laramie 1851*; *Treaty of Guadalupe Hidalgo 1848*, Articles VIII, IX, and XI; and *The California Land Act of 1851*.

3. [Listen to, review notes on, etc.—see **"Additional Professor Preparation"** below] the professor's lecture [on, that included] *The Treaty of Fort Laramie 185*1, the *Treaty of Guadalupe Hidalgo 1848*, and the *California Land Act of 1851*. Be sure to take notes on the material that supplements your case brief for *Johnson v. M'Intosh* and provides context for the case.

4. For each of these documents, complete a statutory diagram [**see example below**] for the assigned sections that breaks the section down into its respective parts, and also shows your understanding of how the parts work together. As you work through each document, consider how the documents function as a whole to tell the story of indigenous and Mexican displacement and land dispossession.

5. After you have reviewed your notes for *Johnson v. M'Intosh*, listened to the lecture on the supplemental material, taken notes on the lecture, and completed your statutory diagrams, identify how the legislatures and treaty drafters implicitly and explicitly used race, class, gender, and/or sexuality and/or excluded them in the statutory and treaty language. Also identify how their choices harmed indigenous and Mexican communities. You may present your identification for each document by listing the treaties and statute as headings and placing the language/concepts you identify with a brief explanation for your choices under the relevant heading.

6. As we continue on in the semester, be prepared to refer back to your work as you consider how laws and policies concerning property ownership perpetuate ongoing harm in minoritized communities.

Assignment Rubric

Score	LO 1-0 Learning Activity Criteria
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively **Good – B** (80%-89%) Exceeds required criteria	1. Creates diagrams of the relevant statutory and treaty sections for the *Treaty of Fort Laramie 1851*, the *Treaty of Guadalupe Hidalgo 1848* Articles VIII, IX, and XI, and *The California Land Act of 1851* that demonstrate an understanding of the assigned provisions separately, how they function as part of each document, and how all of the documents function as a whole.
Average – C (70%-79%) Meets required criteria **Poor – D** (60-69%) Falls below required criteria	2. Identifies how the legislature and treaty drafters for the *Treaty of Fort Laramie 1851*, the *Treaty of Guadalupe Hidalgo 1848* Articles VIII, IX, and XI, and *The California Land Act* of 1851 include and/or exclude race, class, gender, and/or sexuality implicitly and explicitly in the language of each document.
No Credit – F (less than 60%) Does not meet required criteria	3. Organizes the identification in a manner that demonstrates comprehension of how the language in each document uses and/or excludes race, class, gender, and/or sexuality as a justification for the displacement and dispossession of indigenous and Mexican populations.

Additional Professor Preparation

Because *Johnson v. M'Intosh* is usually taught in the first few classes of the semester, you may want to deliver a lecture on the Fowler and Griswold articles in an asynchronous format *(podcast, narrated PowerPoint, instructional video, etc.)*. This will allow you some flexibility in how you integrate this material into subsequent class sessions. You may also choose to assign the articles to the students in lieu of or in addition to an asynchronous lecture format. Finally, to facilitate preparing your lecture and any class discussions that follow, you may want to complete a macroaggression chart for the treaties and statute, and a microaggression chart for *Johnson v. M'Intosh*.

Table 4 Microaggression Case/Resource Map
Case Citation: *Johnson v. M'Intosh*, 21 U.S. 543 (1823)
LO 1-0: Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts

Johnson v. M'Intosh	**Microassault**	**Microinsult**	**Micro-invalidation**	**Micro-inequity**	**Stereotype Threat**
Relevant case language					
Explanation					

Table 5 Macroaggression Case/Resource Map
LO 1-0: Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts

Treaty/Statute	**Relevant Language**	**Explanation**
The Treaty of Fort Laramie 1851		
Treaty of Guadalupe Hidalgo 1848		
California Land Act of 1851		

Microlearning Activity: Statutory/Treaty Diagram & Peer Discussion

Directions:

1. Choose **one** of the following: the Treaty of Fort Laramie 1851; the Treaty of Guadalupe Hidalgo, The California Land Act of 1851.
2. For the document of your choice, complete the Statutory/Treaty Diagram below.
3. After you have completed the diagram, answer the following question: **How does the treaty or statute that you have chosen help to tell the story of property ownership in the United States?** Your answer should be 250-500 words. Begin your answer with "The Treaty of X or California Land Act of 1851 helps to tell the story of property ownership in the United States..."
4. By [the end of class for Week X, or X date] please post the summary from your diagram and answer to the question in

#3 to the "Discussion Board" link "The Right to Property by Discovery and Conquest" on our course page located on the Learning Management System.

5. Respond to at least two different classmates' posts. When responding to posts, choose 1-2 points in the post to engage with the writer's ideas. Before responding to a post that has a response, please prioritize those posts without responses. Do not neglect to respond to the replies to your posts.

Please make sure that your posts uphold our highest community standards that show respect for each other, acknowledge our various social positions (race, class, gender, sexuality), and respect for community members' social positions.

Statutory/Treaty Diagram

Student Name:

Document Title:

Please state the specific language from the document where applicable along with your explanations as follows:

What is the purpose of the statute or treaty?

What conduct does the statute or treaty permit or encourage?

What conduct does the statute or treaty prohibit or discourage?

What protections are afforded to those covered by the statutory or treaty provisions?

What are the penalties for failure to follow the treaty or statutory terms?

Are any of the provisions ambiguous? Explain.

Do you think that any of the provisions are unfair? Explain.

In your own words, summarize the guiding provisions of the statutory or treaty language.

CHAPTER 12:
Constitutional Law DEI Course Planning Template

Table 1 Syllabus Mapping

Week(s) and/or Class Day Covered	Unit Topic	Learning Outcomes Engaged	Possible Learning Activities
Week X, Day X	**The Federal Judicial Power**		
	Judicial Review		
	Restraints on Judicial Authority *(Interpretive Limits, Congressional Limits)*		
	The Political Question Doctrine		
	The Case or Controversy Requirement *(Advisory Opinions, Ripeness, Mootness, Standing)*		
	National/Federal Legislative Power		
	The Necessary and Proper Clause		
	The Commerce Power		
	The Taxing and Spending Power		
	The War Power and Treaty Power		
	Congressional Powers Under the Post Civil War Amendments		
	The Federal Executive Power		
	Inherent Presidential Power		
	The Constitutional Problems of the Administrative State		
	The Separation of Powers and Foreign Policy		
	Presidential Power and the War on (Foreign) Terrorism		

Week(s) and/or Class Day Covered	Unit Topic	Learning Outcomes Engaged	Possible Learning Activities
	Presidential Power Over Immigration		
	Checks on the President *(Suing and Prosecuting the President, Impeachment)*		
	Limits on State Regulatory and Taxing Power		
	Preemption of State and Local Laws		
	The Dormant Commerce Clause		
	The Privileges and Immunities Clause of Article IV, section 2		
	The Structure of the Constitution's Protection of Civil Rights and Civil Liberties		
	The Application of the Bill of Rights to the States		
	The Application of the Bill of Rights and the Constitution		
	Economic Liberties		
	Economic Substantive Due Process		
	The Contracts Clause		
	The Takings Clause		
	Equal Protection		
	The Rational Basis Test		
	Classifications Based on Race and National Origin		
	Gender Classifications		
	Discrimination Against Non-United States Citizens		
	Discrimination Against Nonmarital Children		
	Other Types of Discrimination: Only Rational Basis Review		
	Fundamental Rights Under Due Process and Equal Protection		

Week(s) and/or Class Day Covered	Unit Topic	Learning Outcomes Engaged	Possible Learning Activities
	Framework for Analyzing Fundamental Rights		
	Constitutional Protection for Family Autonomy		
	Constitutional Protection for Reproductive Autonomy		
	Constitutional Protection for Medical Care Decisions		
	Constitutional Protection for Sexual Orientation and Sexual Activity		
	Constitutional Protection for Control Over Information		
	Constitutional Protection for Travel		
	The Right to Vote		
	Constitutional Protection for Access to Courts		
	Constitutional Protection for a Right to Education		
	Procedural Due Process		
	First Amendment: Freedom of Expression		
	Free Speech Methodology		
	Types of Unprotected and Less Protected Speech		
	What Places Are Available for Speech?		
	Freedom of Association		
	Freedom of the Press		
	First Amendment: Religion		
	The Free Exercise Clause		
	The Establishment Clause		

** Unit topics compiled from Robert C. Power, Strategies and Techniques for Teaching Constitutional Law (2012), and the table of contents for Erwin Chemerinsky, Constitutional Law (6th ed. 2019); and Russell L. Weaver, Steven Friedland & Richard Rosen, Constitutional Law: Cases, Materials, and Problems (5th ed. 2021), available at Wolters Kluwer Legal Education.*

Table 2 Common Cases in Constitutional Law Courses by Topic

**Please see Table 1 for a general map of case coverage in Constitutional Law Courses. For a comprehensive list of cases, please review the table of contents for Erwin Chemerinsky, Constitutional Law (6th ed. 2019); and Russell L. Weaver, Steven Friedland & Richard Rosen, Constitutional Law: Cases, Materials, and Problems (5th ed. 2021), available at Wolters Kluwer Legal Education.*

Table 3 Constitutional Law Sources for Learning Activities

Litigation	Judicial	Legislative/Rule-Making/ Other
Complaint	*Judicial*	*Treaties*
Answer	*Opinions*	*Constitutions*
Requests for Production		*Federal Statutes/Codes*
Requests for Admission		*State Statutes/Codes*
Interrogatories		*Agency Rules/Regulations*
Affidavits		
Motions		
Briefs		
Voire Dire Examination Questions		
Direct and Cross-Examination Questions for Witnesses		
Proposed Jury Instructions		
Proposed Orders		

**This list is not exhaustive*

Sample DEI Assignment Plan for Constitutional Law

LO 1-2: *Deconstructs how race, class, gender, and sexuality influence how lawyers and courts frame legal issues*

LO 1-3: *Deconstructs how race, class, gender, and/or sexuality influence legal analytical and reasoning processes*

Skill Level: Intermediate

Resources/Materials:
Loving v. Virginia, 388 U.S. 1 (1967)

Loving v. Virginia (1967) in Feminist Judgments: Rewritten Opinions of the United States Supreme Court (Kathryn M. Stanchi, Linda L. Berger & Bridget J. Crawford, eds. 2016)

Obergefell v. Hodges, 576 U.S. 644 (2015)

Obergefell v. Hodges (2015) in Feminist Judgments: Rewritten Opinions of the United States Supreme Court (Kathryn M. Stanchi, Linda L. Berger & Bridget J. Crawford, eds. 2016)

DEI Lesson Description

The right to choose a spouse in marriage has been a highly contested right for people of African descent (*Loving v. Virginia*) and for same sex couples (*Obergefell v. Hodges*). As *Loving* and *Obergefell* meander through our collective memory, their litigation raises issues about how courts perceive and categorize minoritized litigants who fight for civil rights — even when the Court affirms those rights. The ways that the Supreme Court chose to frame and contextualize the issues in each case reveals the measure of rights courts are willing to give and actually bestow by their decisions. Examining the original opinions in each case alongside opinions rewritten from the multicultural feminist perspectives of The U.S. Feminist Judgments Project encourages students to consider their historical, social, and legal impact.

Assignment Title: Rewriting Justice in *Loving* and *Obergefell*

Directions (adapted from the performance criteria for LO 1-2 and LO 1-3):

1. Review your case briefs and class notes for *Loving v. Virginia*, 388 U.S. 1 (1967) and *Obergefell v. Hodges*, 576 U.S. 644 (2015). Pay close attention to how the Court frames the issues in each case and the builds the analytical frameworks in each to resolve the legal issues.

2. Please read the rewritten opinions for *Loving* and *Obergefell* from The U.S. Feminist Judgments Project. Pay close attention to how the feminist justices frame the issues in each case and build the analytical frameworks in each to resolve the legal issues

3. Compare and contrast how the justices in the original and rewritten opinions frame the issues and build analytical frameworks. In doing so, discuss how the framings and frameworks in each reflect, expose, and/or remake white cultural and gender norms that act as impediments to the service of justice.

4. You may present your comparisons to me in writing, as a podcast, or through a digital video medium (YouTube, Tiki's Tok, etc.). A complete comparison will thoroughly discuss similarities and differences between the original and rewritten opinions with specificity. Your discussion should also include an explanation of what gaps the rewritten opinion fills in the original.

Assignment Rubric

Score	LO 1-2 & 1-3 Learning Activity Criteria
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively	1. Drafts a comparison of the issue framing in the original and rewritten opinions for *Loving* and *Obergefell* that explores the limits of the court's justice and its unrealized possibilities for marriage equality.
Good – B (80%-89%) Exceeds required criteria	2. Drafts a comparison of the framework building in the original and rewritten opinions for *Loving* and *Obergefell* that explores the limits of the court's justice and its unrealized possibilities for marriage equality.
Average – C (70%-79%) Meets required criteria	
Poor – D (60-69%) Falls below required criteria	3. Drafts a comparison of the courts issue framing and framework building in the original and rewritten opinions for *Loving* and *Obergefell* that discusses the racialized gendered lenses through which the justices draft the opinions.
No Credit – F (less than 60%) Does not meet required criteria	

Additional Professor Preparation

To facilitate your discussion of the original and rewritten opinions, you may want to complete microaggression and macroaggression charts for the original opinions.

Table 4 Microaggression Case/Resource Map
LO 1-2: *Deconstructs how race, class, gender, and sexuality influence how lawyers and courts frame legal issues*
LO 1-3: *Deconstructs how race, class, gender, and/or sexuality influence legal analytical and reasoning processes*

Loving v. Virginia	**Microassault**	**Microinsult**	**Micro-invalidation**	**Micro-inequity**	**Stereotype Threat**
Relevant case language					
Explanation					

Obergefell v. Hodges	**Microassault**	**Microinsult**	**Micro-invalidation**	**Micro-inequity**	**Stereotype Threat**
Relevant case language					
Explanation					

Table 5 Macroaggression Case/Resource Map
LO 1-2: *Deconstructs how race, class, gender, and sexuality influence how lawyers and courts frame legal issues*
LO 1-3: *Deconstructs how race, class, gender, and/or sexuality influence legal analytical and reasoning processes*

Case Name	**Relevant Language**	**Explanation**
Loving v. Virginia		
Obergefell v. Hodges		

Microlearning Activity: Rewriting Constitutional Law

Directions:

1. Review your syllabus, case briefs, and class notes for the cases that we have covered in class to this point.
2. From these cases, pick the one for which you would like to rewrite the opinion.

3. Respond the prompt: **I would like to rewrite the opinion for X case because**. . . . Your response should be 250 words or less and should include two reasons why you want to rewrite the opinion.
4. By [X day after the class has discussed the rewritten opinions for *Loving* and *Obergefell*] post your response to the "Discussion Board" link "Rewriting Constitutional Law" on our course page located on the Learning Management System.
5. Respond to at least two different classmates' posts. When responding to posts, choose 1-2 points in the post to engage with the writer's ideas. Before responding to a post that has a response, please prioritize those posts without responses. Do not neglect to respond to the replies to your posts.

Please make sure that your posts uphold our highest community standards that show respect for each other, acknowledge our various social positions (race, class, gender, sexuality), and respect for community members' social positions.

CHAPTER 13:
Legal Analysis & Writing DEI Course Planning Template

Table 1 Syllabus Mapping

Week(s) and/or Class Day Covered	Unit Topic	Learning Outcomes Engaged	Possible Learning Activities
Week X, Day X	Transitioning to Legal Writing		
	The U.S. Legal System *(the three branches of government; the relationship between the state and federal governments; tribal legal systems and the third sovereign)*		
	Mandatory v. Persuasive Authority		
	Reading and Analyzing Statutes		
	Reading and Analyzing Cases		
	Legal Research & Developing Effective Research Strategies		
	Formal Memos, E-Memos, and Advice Letters		
	Drafting the Heading and Statement of Facts		
	Drafting the Issue Statement and Brief Answer		
	Drafting the Discussion Section		
	Drafting the Formal Conclusion		
	Revising, Editing, and Proofreading the Memo		
	E-Memos		
	Drafting Advice Letters		

Week(s) and/or Class Day Covered	Unit Topic	Learning Outcomes Engaged	Possible Learning Activities
	Motion Briefs		
	Deciding on a Theory of the Case		
	Drafting the Caption and Introduction		
	Drafting the Statement of Facts		
	Ordering the Issues and Arguments		
	Drafting the Issue Statements		
	Drafting the Argument Headings		
	Drafting the Arguments		
	Drafting the Prayer for Relief and Signing the Brief		
	Appellate Briefs		
	Practicing Before the Appellate Court		
	Preparing to Write the Brief *(reviewing the record for error; preparing an abstract of the record; preparing the record on appeal; researching the issues on appeal)*		
	Planning the Brief *(analyzing the facts and the law; developing a theory of the case; selecting an organizational scheme)*		
	Beginning the Appellate Brief (the cover, tables, and jurisdictional statement)		
	Drafting the Statement and Issues Presented for Review		
	Drafting the Statement of the Case Statement of Facts		
	Drafting the Summary of the Argument		
	Drafting the Argumentative Headings		
	Drafting the Arguments		
	Completing the Brief		
	Oral Advocacy *(preparing for oral argument; courtroom procedures and etiquette; making the argument; delivering the argument; making your argument persuasive; handling problems)*		

** The unit topics are compiled from Amy Vorenberg, Strategies and Techniques for Teaching Legal Analysis and Writing (2012), and the table of contents in Laurel Currie Oates, Anne Enquist & Jeremy Francis, The Legal Writing Handbook: Analysis, Research, and Writing (8th ed. 2021), available at Wolter Kluwer Legal Education.*

Table 2 Common Cases by Topic

** The common cases for a legal writing course vary according to the topic of the case file and materials that form the basis for objective and persuasive writing assignments.*

Table 3 Legal Writing Sources for Learning Activities*

** Legal Writing courses taught in the core curriculum generally do not cover transactional drafting. Therefore, transactional documents are omitted from this table.*

Sources
Entry of Appearance
Complaint
Answer
Client Letters
Letters to Opposing Counsel
Requests for Production
Requests for Admission
Interrogatories
Affidavits
Subpoenas
Deposition Questions
Office Memoranda
Motions
Briefs
Trial Notebooks
Jury Exhibit Notebooks
Voire Dire Examination Questions
Direct and Cross-Examination Questions for Witnesses
Proposed Jury Instructions
Proposed Orders

** This list is not exhaustive*

Sample DEI Assignment Plan for Legal Analysis & Writing

LO 1-0: *Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts*

Skill Level: Easy

Resources/Materials:
President Bush Speaks to the United Nations, November 10, 2001 (transcript of the speech[741])

Memorandum from Patrick F. Philbin, Deputy Assistant Attorney General and John C. Yoo, Deputy Assistant Attorney General to William H. Haynes, II, General Counsel, Department of Defense, *Possible Habeas Jurisdiction Over Aliens Held in Guantanamo Bay, Cuba*, December 28, 2001 *(Philbin & Yoo Habeas Memo)* (available here: https://www.wklegaledu.com/resources/law-school-faculty/law-school-faculty at the "Supplemental Materials" link)

Articles:
Mohamed Nimer, *Muslims in America after 9-11*, 7 J. Islamic L. & Culture 1 (2002)

Evelyn Alsultany, *Arabs and Muslims in the Media after 9/11: Representational Strategies for a "Postrace" Era*, 65 American Quarterly 161 (2013)

DEI Lesson Description

In June 2004 an anonymous source released the first of what are now commonly referred to as The Torture Memos. Collectively, the memos construct the legal roadmap that lead to the torture exacted on detainees at Guantanamo Bay, Cuba, in Afghanistan, and at Abu Ghraib prison in Iraq. The first memo is significant from a legal reasoning, analysis, and writing perspective in that it is the beginning of the analytical framework that allowed the U.S. government to circumvent the Geneva Conventions prohibition on torture. It is equally significant as a memo, which by convention is an "objective" piece of writing, because it gains persuasive authority from its context — the September 11th attacks — and the perceived universe of its perpetrators — all Arabs and Muslims in the U.S. and abroad. This context is eerily reminiscent of the U.S. treatment of Japanese Americans after the attack on Pearl Harbor. While the U.S. did not subject Arabs, Arab-Americans or Muslims to internment, the trajectory that The Torture Memos set for national security and torture was possible because of racial stereotypes attributed to these groups.

The purpose of this assignment is to familiarize students with the parts of a legal memo as they are learning how to draft their own, and simultaneously raise issues about the racial context in which memo drafting occurs. The memo that forms the centerpiece of this assignment discusses the *Possible Habeas Jurisdiction Over Aliens Held in Guantanamo Bay, Cuba*. It was drafted three months and seventeen days after the 9/11 attacks.

Assignment Title: Teaching the Torture Memos As Memos

Directions (adapted from the performance criteria for LO 1-0):

1. Please read *President Bush Speaks to the United Nations*, November 10, 2001; Evelyn Alsultany, *Arabs and Muslims in the Media after 9/11: Representational Strategies for a "Postrace" Era*, 65 American Quarterly 161 (2013); and the *Philbin & Yoo Habeas Memo*.

2. To aid your engagement with the Alsultany article, please complete the Guided Reading Reflection Form below.

3. As you work through the *Philbin & Yoo Habeas Memo* ask yourself the following questions:

- How do the authors frame the issue(s)?
- According to the authors, what is/are the legal issue(s) and what law and facts does it (each) involve?
- What sources/authority do the authors use to create an analytical framework (rule) for the memo?
- Which facts do the authors deem relevant? What are the sources of those facts?
- Is the memo written objectively or persuasively? Explain.
- If the memo is written objectively, what are the characteristics that make it so?
- If the memo is written persuasively, what are the characteristics that make it so?
- Is the memo effective for the purpose for which it was written? Explain.

4. Using the answers to your questions, identify how the memo drafters include and/or exclude race, class, gender, and/or sexuality implicitly and explicitly in framing the legal issues and drafting the analytical framework for the memo. You may organize your answer by making each part of the legal memo (issues, rule synthesis, analysis *(application of the law to the facts)*, etc.) a heading, and placing the language/concepts you identify with a brief explanation for your choices under the relevant heading.

5. Be prepared to discuss your work as part of our general overview of the memo writing process.

Guided Reading Reflection Form

Your Name: _____

Week #_____

Article Title: _____

Concisely summarize the thesis *(primary argument)*:

Explain the main arguments in the article:

How would you describe the kinds of questions the author is interested in and the manner the author tries to answer those questions?

Describe the type and quality of the evidence on which the argument is based:
(State with specificity your criteria for assessing quality)

How is the work organized *(chronologically, topically, etc.)*? Briefly describe the important elements of the work's organization:

What aspects of the reading resonated with you most deeply?

In what ways has the reading enhanced your understanding of how race, class, gender, and/or sexuality shape how a legal writer (the drafters of the *Philbin & Yoo Habeas Memo*) frames legal issues and builds analytical frameworks (rules)?

Assignment Rubric

Score	LO 1-0 Learning Activity Criteria
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively	1. Produces a completed Guided Reading Reflection Form for the Alsultany article that demonstrates deep engagement with the main ideas, theories, and concepts of the scholarly work.
Good – B (80%-89%) Exceeds required criteria	2. Drafts an assignment response that recognizes the interplay between the scholarly work, *President Bush Speaks to the United Nations*, and the additional context(s) in which the *Philbin & Yoo Habeas Memo* was drafted.
Average – C (70%-79%) Meets required criteria	5. Identifies how the drafters of the *Philbin & Yoo Habeas Memo* include and/or exclude race, class, gender, and/or sexuality implicitly and explicitly in framing the legal issues and building the analytical framework.
Poor – D (60-69%) Falls below required criteria	6. Organizes the identification in a manner that demonstrates comprehension of the parts of a legal memo.
No Credit – F (less than 60%) Does not meet required criteria	

Additional Professor Preparation

To help prepare for the class discussion, you may want to complete microaggression and macroaggression charts for both *President Bush Speaks to the United Nations* and the *Philbin & Yoo Habeas Memo*. You may choose to integrate the Nimer article *Muslims in America After 9/11* into a lecture to facilitate discussion about this assignment, or assign it as a second article for students to read. Also, the microlearning activity below can be easily integrated into class sessions on research, as well as those that cover rule synthesis. You may choose to edit the *Eisenstrager* case (referenced below) for length and clarity or assign only certain parts prior to assigning it to students

Table 4 Microaggression Case/Resource Map
LO 1-0*: Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts*

President Bush Speaks to the Nation	**Microassault**	**Microinsult**	**Micro-invalidation**	**Micro-inequity**	**Stereotype Threat**
Relevant case language					
Explanation					

Philbin & Yoo Habeas Memo	**Microassault**	**Microinsult**	**Micro-invalidation**	**Micro-inequity**	**Stereotype Threat**
Relevant case language					
Explanation					

Table 5 Macroaggression Case/Resource Map
LO 1-0: *Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts*

Resource	**Relevant Language**	**Explanation**
President Bush Speaks to the Nation		
Philbin & Yoo Habeas Memo		

Microlearning Activity: Chasing Down the Cite

Directions:

1. Please retrieve the case *Johnson v. Eisenstrager*, 339 U.S. 763 (1950) from a legal database *(if not provided by the professor)*, which is cited in the *Philbin & Yoo Habeas Memo* on page 1.
2. After you have read through the memo and reviewed your notes, read through the *Eisenstrager* case.
3. Answer the following question: **Do the memo drafters accurately cite the case given its holding? Explain your answer.** Your response should be no more than 250 words.

4. By [X date] post your response to the "Discussion Board" link "Chasing Down the Cite" on our course page located on the Learning Management System.
5. Review your classmate's responses. We will continue our discussion in class during our lessons on developing effective research strategies and building analytical frameworks.

CHAPTER 14:
Tort Law DEI Course Planning Template

Table 1 Syllabus Mapping

Week(s) and/or Class Day Covered	Unit Topic	Learning Outcomes Engaged	Possible Learning Activities
Week X, Day X	**Intentional Torts Against People** (battery; assault; intentional infliction of emotional distress; false imprisonment) **Intentional Torts Against Property** (trespass to land; trespass to chattels; conversion) **Defenses to Intentional Torts** (consent; self-defense; defense of others; defense of real property; defense and recovery of personal property; necessity; justification) **Negligence** (generally) **The Standard of Care** (the reasonable prudent person; the professional; aggravated negligence) **Rules of Law** (establishing standard of care) **Proof of Negligence** (court and jury; *res ipsa loquitur*) **Causation in Fact** **Proximate Cause or Legal Cause** (unforeseeable consequences; intervening causes; public policy) **Joint Tortfeasers** (liability and joinder; satisfaction and release; contribution and indemnity; apportionment of damages)		

Week(s) and/or Class Day Covered	Unit Topic	Learning Outcomes Engaged	Possible Learning Activities
	Duty of Care (privity of contract; failure to act; pure economic loss; negligent infliction of emotional distress; unborn children)		
	Owners and Occupiers of Land (trespassers; licensees; invitees; lessors and lessees)		
	Defenses to Negligence Actions (contributory negligence; comparative fault; express assumption of the risk; implied assumption of the risk; statutes of limitation; statutes of repose)		
	Immunities (judicial, employer, family, charities, state and local governments, United States)		
	Vicarious Liability (*respondeat superior*; independent contractors; joint enterprise; bailments; imputed contributory negligence)		
	Strict Liability		
	Products Liability		
	Wrongful Death and Survival		
	Nuisance		
	Defamation		
	Privacy		
	Misrepresentation		
	Interference with Advantageous Relationships (business; prospective contractual relations; tortious breach of contract; family relations)		
	Damages		

** General unit topics and structure are taken from Arthur Best, Strategies and Techniques for Teaching Torts (2012), and the table of contents from Aaron Twerski, James A. Henderson & W. Bradley Wendel, Torts: Cases and Materials (5th ed. 2021); Richard Epstein and Catherine Sharkey, Cases and Materials on Torts (12th ed. 2020); and Arthur Best, David W. Barnes & Nicholas Kahn-Fogel, Basic Tort Law: Cases, Statutes, and Problems (5th ed. 2018).*

Table 2 Common Cases in Tort Law Courses by Topic

Unit Topic	Common Cases & Restatements
Intentional Torts Against People (battery; assault; intentional infliction of emotional distress; false imprisonment)	**Battery:** *Cole v. Turner*[742], *Fisher v. Carrousel Motor*[743]; **Assault:** *I de S et ux v. W de S*[744]; *Western Union Telegraph v. Hill*[745]; **Intentional Infliction of Emotional Distress:** *State Rubbish Collectors Ass'n v. Siliznoff*[746], *Slocum v. Food Fair Stores of Florida*[747]; **False Imprisonment:** *Parvi v. City of Kingston*[748], *Whittaker v. Sandford*[749]
Intentional Torts Against Property (trespass to land; trespass to chattels; conversion)	**Trespass to Land:** *Dougherty v. Stepp*[750]; **Trespass to Chattels:** *CompuServ Inc. v. Cyber Promotions, Inc.*[751]; **Conversion:** *Pearson v. Dodd*[752]
Defenses to Intentional Torts (consent; self-defense; defense of others; defense of real property; defense and recovery of personal property; necessity; justification)	**Consent:** *O'Brien v. Cunard S.S. Co.*[753], *Mohr v. Williams*[754]; **Self-Defense:** *Poliak v. Adcock*[755]; **Defense of Real Property:** Katko v. *Briney*[756]; **Defense and Recovery of Personal Property:** *Bonkowski v. Arlan's Department Store*[757]; **Necessity:** *Vincent v. Lake Erie Transp. Co.*[758]; **Justification:** *Sindle v. New York City Transit Authority*[759]
Negligence (generally)	Restatement (Second) of Torts sections 290-293 (1965) *Lubitz v. Wells*[760]; *Chicago, B. & Q. R. Co. v. Krayenbuhl*[761]; *Davison v. Snohomish County*[762]
The Standard of Care (the reasonable prudent person; the professional; aggravated negligence)	Restatement (Second) of Torts sections 285(d), 295A (1965); Restatement (Third) of Torts: Liability for Physical Harm section 13 (2010) **Reasonable Person:** *Vaughan v. Menlove*[763], *Roberts v. State of Louisiana*[764], *Robinson v. Lindsay*[765]; **Professional:** *Heath v. Swift Wings, Inc.*[766], *Scott v. Bradford*[767]; **Aggravated Negligence:** *Archibald v. Kemble*[768]
Rules of Law (establishing standard of care)	Restatement (Second) of Torts sections 285(a)-(c), 288A (1965) Pokora v. Wabash Ry. Co.[769], Osborne v. McMasters[770]; Stachniewicz v. Mar-Cam Corp.[771]

Unit Topic	Common Cases & Restatements
Proof of Negligence (court and jury; *res ipsa loquitur*)	Restatement (Second) of Torts section 328D (1965) Restatement (Third) of Torts: Liability for Physical Harm section 17 (2010). **Court and Jury:** Ortega v. Kmart Corp.[772]; **Res Ipsa Loquitur:** Byrne v. Boadle[773]
Causation in Fact	Restatement (Second) of Torts sections 432, 433B (1965) Restatement (Third) of Torts: Liability for Physical Harm section 27-28 (2010) *Perkins v. Texas and New Orleans R. Co.*[774]; *Daubert v. Merrell Dow Pharmaceuticals, Inc.*[775]; *Hill v. Edmonds*[776]; *Summers v. Tice*[777]
Proximate Cause or Legal Cause (unforeseeable consequences; intervening causes; public policy)	Restatement (Second) of Torts section 431 (1965) Restatement (Third) of Torts: Liability for Physical Harm section 29, 34 (2010) **Unforeseeable Consequences:** *Bartolone v. Jeckovich*[778], *Palsgraf v. Long Island R.R. Co.*[779]; **Intervening Causes:** *Derdiarian v. Felix Contracting Corp.*[780]; **Public Policy:** Grover v. Eli Lilly & Co.[781]
Joint Tortfeasers (liability and joinder; satisfaction and release; contribution and indemnity; apportionment of damages)	Restatement (Third) of Torts: Apportionment of Liability sections 22, 26 (2000). **Liability and Joinder:** *Bierczynski v. Rogers*[782] **Satisfaction and Release:** *Elbaor v. Smith*[783]; **Contribution and Indemnity:** *Slocum v. Donohue*[784] **Apportionment of Damages:** *Bruckman v. Pena*[785]
Duty of Care (privity of contract; failure to act; pure economic loss; negligent infliction of emotional distress; unborn children)	**Privity of Contract:** *Winterbottom v. Wright*[786]; **Failure to Act:** *Tarasoff v. Regents of University of California*[787]; **Pure Economic Loss:** *Aikens v. Debow*[788]; **Negligent Infliction of Emotional Distress:** *Daley v. LaCroix*[789]; **Unborn Children:** *Endresz v. Friedberg*[790]
Owners and Occupiers of Land (trespassers; licensees; invitees; lessors and lessees)	**Trespassers:** *Sheehan v. St. Paul & Duluth Ry. Co.*[791]; **Licensees:** *Barmore v. Elmore*[792]; **Invitees:** *Campbell v. Weathers*[793]; **Lessors and Lessees:** *Borders v. Roseberry*[794]

Unit Topic	Common Cases & Restatements
Defenses to Negligence Actions (contributory negligence; comparative fault; express assumption of the risk; implied assumption of the risk; statutes of limitation; statutes of repose)	**Contributory Negligence:** *Butterfield v. Forrester*[795] **Comparative Fault:** *McIntyre v. Balentine*[796] **Express Assumption of the Risk:** *Seigneur v. National Fitness Institute, Inc.*[797] **Implied Assumption of the Risk:** *Kerns v. Hoppe*[798]; **Statutes of Limitation:** *Genrich v. OIHC Insurance Company*[799]; **Statutes of Repose:** *Orlak v. Loyola University Health System*[800]
Immunities (judicial, employer, family, charities, state and local governments, United States)	Restatement (Second) of Torts section 895C (1979) **Judicial: Employer:** *Sisk v. Tar Heel Capital Corp.*[801]; **Families:** *Zellmer v. Zellmer*[802]; **Charities:** *Abernathy v. Sisters of St. Mary's*[803]; **State and Local Governments:** *DeLong v. Erie County*[804]; **United States:** *Deuser v. Vecera*[805]
Vicarious Liability (*respondeat superior*; independent contractors; joint enterprise; bailments; imputed contributory negligence)	Restatement (Second) of Torts section 423 (1965) **Respondeat Superior:** *O'Shea v. Welch*[806]; **Independent Contractors:** *Bell v. VPSI, Inc.*[807]; **Joint Enterprise:** *Popejoy v. Steinle*[808]; **Bailments:** *Ziva Jewelry, Inc. v. Car Wash Headquarters, Inc.*[809]; **Imputed Contributory Negligence:** *Seaborne-Worsley v. Mintiens*[810]
Strict Liability	Restatement (Third) of Torts: Liability for Physical Harm section 20 (2010) *Rylands v. Fletcher*[811]; *Golden v. Amory*[812]
Products Liability	Restatement (Second) of Torts section 402A (1964) Restatement (Third) of Torts: Products Liability sections 1-3 (1997) *MacPherson v. Buick Motor Co.*[813]; *Malcolm v. Evenflo Co., Inc.*[814]; *Anderson v. Owens- Corning Fiberglass Corp.*[815]
Wrongful Death and Survival	*Selders v. Armentrout*[816]; *Murphy v. Martin Oil Co.*[817]
Nuisance	Restatement (Second) of Torts sections 821B-F, 822, 826-831 (1979) *Philadelphia Electric Company v. Hercules, Inc.*[818]; *Morgan v. High Penn Oil Co.*[819]

Unit Topic	Common Cases & Restatements
Defamation	Restatement (Second) of Torts sections 558-559, 568 (1977) *Belli v. Orlando Daily Newspapers, Inc.*[820]; *Killian v. Doubleday & Co., Inc.*[821]; *Carafano v. Metrosplash.com, Inc.*[822]; *New York Times v. Sullivan*[823]
Privacy	Restatement (Second) of Torts section 652B-E (1977) *Sanderson v. American Broadcasting Companies, Inc., et al.*[824]; *Hustler Magazine v. Falwell*[825]; *Snyder v. Phelps*[826]
Misrepresentation	*Swinton v. Whitinsville Savings Bank*[827]; *Richard v. A, Waldman & Sons, Inc.*[828]; *Ultramares Corp. v. Touche*[829]; *Vulcan Metals Co. v. Simmons Mfg. Co.*[830]
Interference with Advantageous Relationships (business; prospective contractual relations; tortious breach of contract; family relations)	**Business:** *Ratcliffe v. Evans*[831]; *Testing Systems, Inc. v. Magnaflux Corp.*[832]; **Contractual:** *Lumley v. Gye*[833]; **Tortious Breach of Contract:** *Neibuhr v. Gage*[834]; **Family Relations:** *Nash v. Baker*[835]
Damages	**Personal Injuries:** *Anderson v. Sears, Roebuck & Co.*[836]; **Physical Harm to Property:** *In re September 11th Litigation*[837]; **Punitive Damages:** *Cheatham v. Pohle*[838]

** General unit topics and structure are taken from Arthur Best, Strategies and Techniques for Teaching Torts (2012), and the table of contents from Aaron Twerski, James A. Henderson & W. Bradley Wendel, Torts: Cases and Materials (5th ed. 2021); Richard Epstein and Catherine Sharkey, Cases and Materials on Torts (12th ed. 2020); and Arthur Best, David W. Barnes & Nicholas Kahn-Fogel, Basic Tort Law: Cases, Statutes, and Problems (5th ed. 2018).*

Table 3 Tort Law Sources for Learning Activities

Sources
Retainer Agreements
Entry of Appearance
Complaint
Answer
Client Letters
Letters to Opposing Counsel
Requests for Production

Sources
Interrogatories
Affidavits
Subpoenas
Deposition Questions
Office Memoranda
Demand Letters
Motions
Briefs
Trial Notebooks
Jury Exhibit Notebooks
Voire Dire Examination Questions
Direct and Cross Examination Questions for Witnesses
Proposed Jury Instructions
Proposed Orders
Coverage Opinions
Settlement Documents
Mediation & Arbitration Agreements

** This list is not exhaustive*

Sample DEI Assignment Plan for Tort Law

LO 1-0: *Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts*

Skill Level: Easy

Resources/Materials:
Pleadings:
(available here: https://www.wklegaledu.com/resources/law-school-faculty/law-school-faculty at the "Supplemental Materials" link)

Motion for Release of Grand Jury Transcripts/Recordings/Reports and for Declaration of Rights Pursuant to KRS 418.104 (Taylor Case Grand Juror Motion), September 28, 2020

Taylor Estate Complaint, April 27, 2020

Articles:

Christina Mancini, Daniel P. Mears, Eric A. Stewart, et al., *Whites' Perceptions about Black Criminality: A Closer Look at the Contact Hypothesis*, 61 Crime and Delinquency 996 (2015)

Nick J. Sciullo, *The Ghosts of White Supremacy: Trayvon Martin, Michael Brown, and the Specters of Black Criminality*, 117 W. Va. L. Rev. 1397 (2014)

Teri A. McMurtry-Chubb, *#SayHerName #BlackWomensLives Matter: State Violence in Policing the Black Female Body*, 67 Mercer L. Rev. 651 (2015)

Caitlin Taylor, *What Happens if We Abolish or Defund the Police*?, Explorer Cafe 100 (2020)[839]

DEI Lesson Description

In the early morning hours of March 13, 2020 Breonna Taylor lay next to her boyfriend, Kenneth Walker, at their Louisville Kentucky residence for what would be the last time.[840] As three intruders converged upon their home, Ms. Taylor and Mr. Walker were unaware of what was happening.[841] Neither had any idea that the intruders were police, because they were not dressed in uniforms and did not announce themselves.[842] Gunfire erupted and eight rounds struck Breonna resulting in her death.[843]

On September 21, 2020, a grand jury was convened in the case to determine whether to indict Officer Brett Hankison, Sargent Jon Mattingly, and Detective Myles Cosgrove, the three police officers who entered Taylor and Walker's home.[844] The grand jury issued a sole indictment against Brett Hankinson for wanton endangerment.[845] In a press conference following the grand jury decision the Attorney General, Daniel Cameron stated that "the grand jury agreed that Mattingly and Cosgrove were justified in the return of deadly fire after having been fired upon by Kenneth Walker."[846] To date, there is no evidence that Mr. Walker fired his gun at the officers. The Taylor estate maintains that "there was nothing to indicate that Breonna Taylor and Kenneth would flee or pose an unreasonable danger if the officers knocked and identified themselves as police; and individuals, under several circumstances, have a lawful right to use deadly force in order to defend against those who enter their home."[847]

The purpose of this assignment is for students to examine how the Attorney General's account of the events that led to Breonna Taylor's death and the averments in the Taylor Estate's wrongful death lawsuit implicitly and explicitly rely on (and alternately debunk) assumptions about Black criminality and White innocence and superiority. When read alongside the wrongful death complaint, Daniel Cameron's narrative about the officer's actions surfaces the assumptions on which the officers acted. The Taylor Estate's wrongful death lawsuit mentions Ms. Taylor and Mr. Walker's race only once (and the officers' race not at all), but in that silence it calls the officers to justify their actions, which they can only do by revealing their racial assumptions about themselves, Breonna, and Kenneth.[848]

Assignment Title: The Loudness of the Silences

Directions (adapted from the performance criteria for LO 1-0):

1. Review your case briefs and class notes from the unit on Wrongful Death and Survival [also, battery, negligence, and gross negligence].

2. Please read Christina Mancini, Daniel P. Mears, Eric A. Stewart, et al., *Whites' Perceptions about Black Criminality: A Closer Look at the Contact Hypothesis*, 61 Crime and Delinquency 996 (2015); Nick J. Sciullo, *The Ghosts of White Supremacy: Trayvon Martin, Michael Brown, and the Specters of Black Criminality*, 117 W. Va. L. Rev. 1397 (2014); and Teri A. McMurtry-Chubb, *#SayHerName #BlackWomensLivesMatter: State Violence in Policing the Black Female Body*, 67 Mercer L. Rev. 651 (2015). To facilitate your reading and comprehension, please complete the Guided Reading Reflection Form below for each of the articles.

3. After you read the articles, read the Taylor Case Grand Juror Motion and Taylor Estate Complaint. As you read and reflect, take notes. Given the articles in #2, what do you notice about how the attorneys for Breonna Taylor include and/or exclude race, class, gender and/or sexuality implicitly and explicitly in advancing their arguments in the Taylor Estate Complaint? How does race, class, gender and/or sexuality implicitly and explicitly shape the narrative that Attorney General Daniel Cameron tells about the actions of Officer Brett Hankison, Sargent Jon Mattingly, and Detective Myles Cosgrove on March 13, 2020?

4. Draft a cohesive answer to the questions in #3 in paragraph form. You may organize your answer by listing each pleading as a heading, and then placing the language/concepts you identify with a brief explanation under each heading. Do not neglect to weave the analysis from the articles into your explanations.

5. Be prepared to discuss your work as part of our class discussion.

Guided Reading Reflection Form

Your Name: _____

Week #_____

Article Title: _____

Concisely summarize the thesis (primary argument):

Explain the main arguments in the article:

How would you describe the kinds of questions the author is interested in and the manner the author tries to answer those questions?

Describe the type and quality of the evidence on which the argument is based: *(State with specificity your criteria for assessing quality)*

How is the work organized (chronologically, topically, etc.)? Briefly describe the important elements of the work's organization:

What aspects of the reading resonated with you most deeply?

In what ways has the reading enhanced your understanding of how white supremacy shapes notions of criminality and harm?

Assignment Rubric

Score	LO 1-0 Learning Activity Criteria
Excellent – A (90%-100%) Completes criteria thoroughly and comprehensively	1. Produces completed Guided Reading Reflection forms for each article that demonstrate deep engagement with the main ideas, theories, and concepts in the scholarly work.
Good – B (80%-89%) Exceeds required criteria	2. Drafts an assignment response that recognizes the interplay between the scholarly work and pleadings, specifically as it pertains to the Taylor Estate attorneys legal framework and theory of the case for the causes of action alleged.
Average – C (70%-79%) Meets required criteria	3. Identifies how the Taylor Estate attorneys include and/or exclude race, class, gender, and/or sexuality implicitly and explicitly in advancing the arguments in their complaint.
Poor – D (60-69%) Falls below required criteria	4. Identifies how the Attorney General includes and/or excludes race, class, gender, and/or sexuality implicitly and explicitly in his narrative about the actions of Officer Brett Hankison, Sargent Jon Mattingly, and Detective Myles Cosgrove on March 13, 2020.
No Credit – F (less than 60%) Does not meet required criteria	5. Organizes the identification in a manner that demonstrates comprehension of how each of the pleadings interprets the law and legal issues in the context of race, class, gender, and/or sexuality.

Additional Professor Preparation

You may decide to present the contents of the article *Whites' Perceptions about Black Criminality: A Closer Look at the Contact Hypothesis* as part of a lecture instead of assigning it as a student reading. Although this may cut down on the student reading for this exercise, there are benefits to having students read the article as part of the exercise. Because the article discusses key concepts about racial attitudes and perceptions, student engagement with its contents will allow you opportunities in other class sessions and/or learning activities for other units to integrate this

knowledge. Moreover, this knowledge is the perfect jumping off point for learning activities derived from LO 2-0 - LO 2-3 (the Classroom Level Learning Outcomes).

To facilitate your preparation for this exercise, you may want to complete macroaggression charts for both the Grand Juror Motion (particularly the Attorney General's remarks) and the Taylor Estate Complaint. Doing so will help you to map out how the drafters resist and/or support white supremacist assumptions in the silences and in the explicit language of the Attorney General's narrative.

Table 4 Macroaggression Case/Resource Map
LO 1-0: *Recognizes how race, class, gender, and sexuality shape understanding and interpretation of practical legal texts, scholarly legal texts, and other types of texts*

Resource	Relevant Language	Explanation
Grand Juror Motion		
Taylor Estate Complaint		

Microlearning Activity: Defund or Abolish the Police?

Directions:

1. Please review Dr. Caitlin Taylor's presentation in "What Happens if We Abolish or Defund the Police?", Explorer Cafe 100 (2020).[849]
2. Pick one of the following questions to answer: (a) What are the key advantages and disadvantages of defunding the police? OR (b) What are the key advantages and disadvantages of abolition?
3. Your response should be 250-500 words and should contain at least two advantages and two disadvantages.
4. By [X day after the class or before the class has completed the "The Loudness of Silences" exercise] post your response to the "Discussion Board" link "Defund or Abolish the Police?" on our course page located on the Learning Management System.

5. Respond to at least two different classmates' posts. When responding to the posts, choose 1-2 points in the post to engage with the writer's ideas. Before responding to a post that has a response, please prioritize those posts without responses. Do not neglect to respond to the replies to your posts.

Please make sure that your posts uphold our highest community standards that show respect for each other, acknowledge our various social positions (race, class, gender, and sexuality), and respect for community members' social positions.

Notes

Introduction

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Chapter 1

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Chapter 2

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27. Peltz Complaint, Exhibit 1, Fall 2005: Prof. Rick Peltz - Constitutional Law - Affirmative Action Rant.

28. Peltz Complaint, ¶¶ 30-40; Peltz First Amended Complaint, ¶¶ 34-44, June 9, 2008.
29. Peltz Complaint, Exhibit 1, Fall 2005: Prof. Rick Peltz - Constitutional Law - Affirmative Action Rant.
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Chapter 5

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