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Eliminating Racial Assault of Black Bodies in Law School through CRT Based Professionalism

Jarienn A. James

ABSTRACT

The failure of the legal academy to create professional law school environments embracing the tenets of Critical Race Theory (CRT) sustains racial assault on Black Bodies. Embracing the tenets of CRT can help to improve law school environments, because CRT examines systemic racism and causes individuals to rethink policies and procedures with an antiracist mindset. Further, law school is the most common foundation for all legal training. If the right environment is established in law schools, it can lead to a positive cultural change within the legal profession.

This essay urges the legal academy to create efficient rules to help eliminate race-based unprofessional attacks in the law school environment. For the purposes of this essay, racial assault refers to “Race-based unprofessionalism” or “Race-based unprofessional attacks”—synonymous terms introduced and defined in this essay as—targeted acts toward Black attorneys by non-Black attorneys that white colleagues would not be subjected to in the law school environment. These acts are best reflected in moments where Black attorneys say, “This never would have happened to a white attorney.”

“Professionalism as a Social Construct” by Leah Goodridge, highlighted how professionalism is used to control Black attorneys in practice. Building on Goodridge’s work, this Essay focuses on the issue of unprofessionalism toward Black attorneys in legal academia. If the right environment is established in law schools, it can lead to a positive cultural change within the legal profession.

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TABLE OF CONTENTS

INTRODUCTION.....	152
I. RACE BASED UNPROFESSIONALISM: A PERSONAL EXPERIENCE	154
II. THE PRESENT REFLECTS THE PAST	157
III. THE TENETS OF CRT AND THE PROFESSIONAL LAW SCHOOL ENVIRONMENT.....	162
IV. CURRENT ABA RULES ON CRT AND THEIR INADEQUACY.....	164
A. Standard to Provide Education on Bias, Cross-cultural Competency, and Racism.....	164
B. Requirements for the Mandatory Professional Responsibility Course	166
C. ABA Models Rules of Professional Conduct	167
V. THE DREAM: CORE QUALITIES OF A PROFESSIONAL LAW SCHOOL ENVIRONMENT GROUNDED IN CRT	168
CONCLUSION.....	172

INTRODUCTION

The legal academy's failure to create professional law school environments embracing the tenets of Critical Race Theory (CRT) sustains the racial assault on Black Bodies.¹ The legal academy has a duty to provide professional law school environments because the law school is the most common foundation for all legal training.² For the purposes of this essay, racial assault refers to “race-based unprofessionalism” or “race-based unprofessional attacks”—synonymous terms introduced and defined in this essay as—targeted acts toward Black attorneys by non-Black attorneys that white colleagues would not be subjected to in the law school environment. These acts occur solely because of the Black attorney's race and low ranking in the American caste system.³ More

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1. For the purposes of this paper, Black Bodies are the Black attorneys (professors and administrators) working in law schools. Racial assault refers only to acts done by non-Black attorneys to Black attorneys working in law schools. I understand that some of the experiences of Black faculty and administrators are akin to colleagues who are Indigenous and people of color, but I feel more comfortable speaking about the Black experience without minimizing the experiences of my fellow peers. Further, I do not speak to the Black law student experience as I believe it would be better for a current student to share that perspective. Alternatively, I do not address the unprofessional acts by students to Black professors as I believe such experiences should be shared by professors. Finally, I am cognizant of the divisive tactic used since slavery where one Black person is held in high esteem over others to eliminate the suggestion of racism. See Angela P. Harris & Carmen G. González, *Introduction, to PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA* 12–14 (Gabrielle Gutiérrez y Muhs et al. eds., 2012).
 2. The traditional track for legal training is to attain a Juris Doctor (J.D) from a law school accredited by the American Bar Association (ABA). However, in states like California and Vermont, a person can read to become licensed to practice the law by completing four years of study with a state judge or attorney. See *Education*, STATE BAR OF CAL., <https://www.calbar.ca.gov/Admissions/Requirements/Education><https://www.calbar.ca.gov/Admissions/Requirements/Education> [<https://perma.cc/5A2M-G8DP>]; see also *Admission to the Vermont Bar*, VT. JUDICIARY, <https://www.vermontjudiciary.org/attorneys/admission-vermont-bar> [<https://perma.cc/K2BK-3CNU>].
 3. White people are no longer the sole source of Black dehumanization in the United State of America. Supremacists are not just people in the Ku Klux Klan with white hoods and flaming sticks. They are sophisticated people, white and non-Black in strategic positions of power and influence taking measured steps to assert their supremacy in the American caste system. This paper seeks to challenge racist mentalities in the inherently racist law school space for the creation of a professional and inclusive law school culture. See Michael M. Grynbaum, John Koblin & Benjamin Mullin, *Don Lemon Ousted From CNN in Move That Left Him 'Stunned'*, N.Y. TIMES, (Apr. 24, 2023), <https://www.nytimes.com/2023/04/24/business/media/don-lemon-cnn.html> [<https://perma.cc/3YMD-MB54>]; Tommy Christopher, *'Infuriating!' CNN's Don Lemon Gets*

specifically, it is the caste system that decides who gets the “power,” the “respect”, and the “assumption of competence” in legal academia.⁴ These acts are best reflected in moments where Black attorneys say, “This never would have happened to a white attorney.” CRT examines systemic racism and causes individuals to rethink policies and procedures with an antiracist mindset. Therefore, embracing the tenets of CRT can help to improve law school environments and protect Black Bodies from race-based unprofessionalism.

Further, Leah Goodridge’s foundational Essay “Professionalism as a Racial Construct” highlighted how professionalism is used to control Black attorneys in practice through selective offense, and by imposing a high threshold to withstand bias and discrimination.⁵ Building on Goodridge’s work, this Essay focuses on the issue of unprofessionalism toward Black attorneys in legal academia. If the right environment is established in law schools, it can lead to a positive cultural change within the legal profession.

Part I of this Essay highlights current attorneys’ experiences in academia. Part II then shows a generational connection between the experiences of

Pissed When GOP Candidate Tries to ‘Splain’ Black History to Him in Epic Smackdown, MEDIAITE (Apr. 19, 2023, 9:14 AM), <https://www.mediaite.com/news/infuriating-cnns-don-lemon-gets-pissed-when-gop-candidate-tries-to-splain-black-history-to-him-in-epic-smackdown> [<https://perma.cc/ZW99-HYSP>].

Caste can be seen as a universal form of human division that could be applied to many hierarchies in the world, but throughout human history, three caste systems have stood out. ISABEL WILKERSON, *CASTE: THE ORIGINS OF OUR DISCONTENTS* 17–18 (2020). “The tragically, accelerated, chilling, and officially vanquished caste system of Nazi Germany. The lingering, millennia-long caste system of India. And the shape-shifting, unspoken, race-based caste pyramid in the United States. Each version relied on stigmatizing those deemed inferior to justify the dehumanization necessary to keep the lowest-ranked people at the bottom and to rationalize the protocols of enforcement.” *Id.* at 17.

Also, it is important to acknowledge that there are some white and higher-ranking races in the caste system who are race-conscious and actively working towards equality. See MARTIN LUTHER KING, JR., *WHERE DO WE GO FROM HERE* 11 (Beacon Press 1986) (1968) (“It would be grossly unfair to omit recognition of a minority of whites who genuinely want authentic equality. Their commitment is real, sincere, and is expressed in a thousand deeds. But they are balanced at the other end of the pole by the unregenerate segregationists who have declared that democracy is not worth having if it involves equality.”).

4. “The hierarchy of caste is not about feelings or morality. It is about power—which groups have it, and which do not. It is about resources—which caste is seen as worthy of them and which are not, who gets to acquire and control them and who does not. It is about respect, authority, and assumptions of competence—who is accorded these and who is not.” WILKERSON, *supra* note 3, at 17–18.
5. Leah Goodridge, *Professionalism as a Racial Construct*, 69 *UCLA L. REV. DISCOURSE (L. MEETS WORLD)* 38, 40–42, 47 (2022). “Selective offense is the normalization of racist, misogynistic, ableist or otherwise discriminatory behavior while the denunciation of said behavior is seen as disruptive.” *Id.* at 47.

current and past attorneys in academia. Part III explores tenets of CRT in a professional law school environment. Part IV identifies the inadequacies of current CRT and professionalism rules guiding the legal profession. And Part V proposes practical steps, to create CRT Based professional law school environments to help eliminate race-based unprofessional attacks.

I. RACE BASED UNPROFESSIONALISM: A PERSONAL EXPERIENCE

A few years ago, I was excited to join a new school and be a part of a committee seeking to address a systemic problem in many law schools. However, as with many initiatives, there were varying views on the best method to proceed. Eventually, it was my turn to share thoughts. While speaking, a white colleague suddenly yelled “I don’t understand what you are saying!” I was surprised at the level of contempt. Karen⁶ yelled with such hatred that it shook my entire being. Perhaps I really did not explain myself properly. Maybe it was my accent, and I needed to speak slower. While I tried to process the attack, I received a text message from a Black colleague that read: “I guess someone is mad that you have a seat at the table.” In that moment, I recognized there was no justification to be made. Karen was not trying to nullify my point. Karen was trying to nullify me. I suffered a race-based unprofessional attack—“this never would have happened to a white attorney.”

I was ashamed that we belonged to the same profession and that I momentarily wondered if I did something wrong. I thought an attorney with far more experience would know how to conduct herself in a meeting. Nevertheless, I responded to Karen with a mix of Jesus and Tabitha Brown.⁷ I suggested that we reset the room and proceed with the meeting. Karen explained she was merely frustrated. The meeting continued for a bit, but then Karen turned her anger to another Black colleague. After recognizing my calm response did not work, my colleague decided he would end the tirade and yelled back at Karen. There was no room for a response.

At the end of the meeting, other colleagues, both white and people of color, apologized for her behavior. I realized that instead of coming into a new space and only having to confirm my competency, I first needed to prove my humanity.

6. See Henry Goldblatt, *A Brief History of ‘Karen’*, N.Y. TIMES (Aug. 3, 2020), <https://www.nytimes.com/2020/07/31/style/karen-name-meme-history.html> [https://perma.cc/DDK4-JEFD].

7. See *Honey Come on in the Room*, TABITHA BROWN, <https://www.iamtabithabrown.com> [https://perma.cc/UMR6-HFLC] (referencing the work of Tabitha Brown an award-winning host, actress, vegan food personality, mother and wife who is often admired for her kindness, positivity, and gentleness).

Incidentally, months later, a white colleague who was not present but heard about the meeting, mentioned that it was wrong for the other Black colleague to yell at a woman in that manner. There was no indignation for the race-based unprofessional attack, only his resistance to it.

Karen yelled at me as if I was a dog who ate her favorite shoe. Maybe the dog would have received a calmer response as experts urge pet owners not to yell at dogs because it stresses them. A Black person being treated like or worse than an animal is nothing new. Black dehumanization is nothing new.⁸ A Black mother is shot for knocking on the door and a Black boy is killed for walking home in a hoodie.⁹ Derek Chauvin comfortably pressed his knee in George Floyd's neck for

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8. See *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 410 (1857) (enslaved party), *superseded by constitutional amendment*, U.S. CONST. amend. XIV (finding that the words “all men are created equal” in the Declaration of Independence did not apply to Black people). The court argued:

The general words above [referring to “all men are created equal”] would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood. But it is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration; for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles they asserted . . .

- Id.* See also Gregory S. Parks, “When They See Us” the Great White Awakening to Black Humanity, 21 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 1, 19 (2021) (footnotes omitted) (“In certain segments of the Black community, there is the notion that Whites recognize the ‘humanity’ in dogs more readily than they do Blacks. This is at least related to—may be driven by or resulting from—the fact that Whites have more meaningful engagement with pets, dogs in particular, than Blacks.”); Neal A. Lester, *The Disturbing “Monkey Business” of U.S. Black-White Race Relations*, S. POVERTY L. CTR. (Feb. 24, 2017), <https://www.learningforjustice.org/magazine/the-disturbing-monkey-business-of-us-blackwhite-race-relations> [<https://perma.cc/Q7CM-46F6>]; CDPL Staff, ‘A Worthless Good-for-Nothing Mammal’: Painting Black Defendants as Animals, RACIST ROOTS, <https://racistroots.org/section-4/a-worthless-good-for-nothing-mammal-painting-black-defendants-as-animals/> [<https://perma.cc/L55S-NAWC>]; Jaclyn Diaz, *Ex-Chicago Cop Who Killed Laquan McDonald Will Be Released From Prison Early*, NPR (Jan. 14, 2022, 7:11 PM), <https://www.npr.org/2022/01/14/1073257506/jason-van-dyke-who-killed-laquan-mcdonald-to-be-released-from-prison> [<https://perma.cc/MD9V-8TZX>].
9. Doha Madani, *Susan Lorincz, White Florida Woman Who Fatally Shot Black Neighbor, Found Guilty of Manslaughter*, NBC NEWS (Aug. 16, 2024, 1:48 PM), <https://www.nbcnews.com/news/us-news/florida-woman-fatally-shot-neighbor-rcna166629> [<https://perma.cc/8ZWB-TWCQ>]; *Trayvon Martin Shooting Fast Facts*, CNN (Feb. 14, 2024 3:03 PM), <https://www.cnn.com/2013/06/05/us/trayvon-martin-shooting-fast-facts/index.html> [<https://perma.cc/RVA4-CNDT>].

9 minutes and 29 seconds because he did not see him as a human.¹⁰ Jason Van Dyke shot Laquan McDonald 16 times when hunters aim to kill with one shot.¹¹

This author is not alone in experiencing race-based attacks. A law professor shared with me that her white colleague called her a “diversity hire” and then told her she was undeserving because she was not Black enough. Another law professor shared that she attended a law school event where one colleague asked her if she was a student and the other refused to engage with her. This professor is one of only two Black professors at her law school. Another law professor, who is fed up with the bombardment of race-based professional attacks against her, admitted she teaches her classes and returns to her home office to avoid interacting with her colleagues. She has since transferred to another school. Black academics are implementing coping strategies each day because of the daily assault on their bodies.

Moreover, race-based attacks are not limited to the social aspect of professionalism. Integrity seems to be a missing element of professionalism in legal academia. The basic definitions of integrity include honesty, strong moral principles, and fairness. For example, another Black law professor was forced to take on an extra credit load the year before she received tenure, without additional compensation or course relief, while a white professor with the same circumstances was granted a future course relief.¹² Despite popular commentary, all lawyers are not liars. Integrity is not only a key characteristic of the profession—it is a requirement.¹³

As such, a lawyer should demonstrate respect for the legal system and for those who serve in it, including judges, other lawyers or legal academics, and public officials.¹⁴ Succinctly, professionalism is synonymous with showing respect to others in the legal profession.

10. See Nicholas Bogel-Burroughs, *Prosecutors Say Derek Chauvin Kneled on George Floyd for 9 Minutes 29 Seconds, Longer Than Initially Reported*, N.Y. TIMES (Mar. 30, 2021), <https://www.nytimes.com/2021/03/30/us/derek-chauvin-george-floyd-kneel-9-minutes-29-seconds.html> [https://perma.cc/BP3R-E6TY].

11. Cheryl Corley, *The Officer Who Killed Laquan McDonald Is Free After Three Years. Activists Are Angry*, NPR (Feb. 3, 2022, 12:16 PM), <https://www.npr.org/2022/02/03/1077574977/jason-van-dyke-chicago-police-released-laquan-mcdonald> [https://perma.cc/4VA9-RCMU].

12. Sanders v. Univ. of Idaho, 552 F. Supp. 3d 991, 1002–03 (D. Idaho 2021).

13. See 7 AM. JUR. 2d *Attorneys at Law* § 30 (2024) (footnotes omitted) (“Essentially, therefore, the purpose of the attorney disciplinary process is not to punish the offender but to protect the public. The principal reason for attorney discipline is to preserve the confidence of the public in the integrity and trustworthiness of lawyers in general.”)

14. MODEL RULES OF PRO. CONDUCT Preamble ¶ 5 (AM. BAR ASS’N 2009).

A condensed definition of professionalism based on an analysis of Justices' Professionalism Report, the two major ABA professionalism reports, and the ABA Model Rules of Professional Conduct, divided professionalism into three broad categories—personal conscience, ethics, and the ethics of aspiration. The ethics of aspiration includes respect for the legal system and participants in the system, integrity, honesty, fairness among other things.¹⁵

Further, professionalism may refer to the “adherence to standards or norms of conduct beyond those required by the ethical rules,’ including civility and respect for others.”¹⁶ Therefore, the common expectations within these definitions are courtesy, respect, fairness, effective communication, and the ability to manage one’s emotions. It is imperative that these characteristics be emphasized within the law school environment.

II. THE PRESENT REFLECTS THE PAST

To improve the present, we must appreciate the past. Law school was created by white men for white men.¹⁷ The American Bar Association (ABA), founded in

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15. Neil W. Hamilton, *Analyzing Common Themes in Legal Scholarship on Professionalism to Address Current Challenges for Legal Education*, 22 PRO. LAW., No. 1, 2013, at 1, 17 (citing ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 59–67 (2007); and Neil Hamilton & Verna Monson, *The Positive Empirical Relationship of Professionalism to Effectiveness in the Practice of Law*, 24 GEO. J. LEGAL ETHICS 137, 141, 143–52 (2011)).

In one 2011 article, Hamilton and Monson look at how judges and the practicing profession have defined “professionalism.” Through an analysis and synthesis of the Conference of Chief Justices’ Professionalism Report, the two major ABA professionalism reports, and the ABA Model Rules of Professional Conduct, they define a tripartite model of professionalism whose core is the personal conscience of each lawyer into which the lawyer internalizes the ethics of duty (the minimum standards of the Rules and the law of lawyering) and the ethics of aspiration (the core principles and ideals that guide the profession). The ethics of aspiration include: continuing growth toward excellence at the technical skills of lawyering, a habit of seeking feedback, reflecting and self-assessing, zealous advocacy, loyalty to the client, confidentiality, public service, respect for the legal system and the participants in the system, independence of professional judgment, peer review, integrity, honesty, fairness, and self-restraint in seeking sustainable profits.

Id. at 19 (endnotes omitted).

16. Sarah J. Schendel, *Due Dates in the Real World: Extensions, Equity, and the Hidden Curriculum*, 35 GEO. J. LEGAL ETHICS 203, 222 (2022).
17. Renee Nicole Allen, *From Academic Freedom to Cancel Culture: Silencing Black Women in the Legal Academy*, 68 UCLA L. REV. 364, 376–77 (2021); see also William C. Kidder, *The Struggle for Access From Sweatt to Grutter: A History of African American, Latino, and American Indian Law School Admissions, 1950–2000*, 19 HARV. BLACKLETTER L.J. 1, 5–6 (2003).

1878, formally restricted membership to white men.¹⁸ This legacy of exclusion informs the dynamics legal professionals work in today. For white professors, white spaces are normal; for Black attorneys in academia, white spaces are like escape rooms.¹⁹

Navigating white spaces has long been a condition of Black existence, but this need not be our accepted reality.²⁰ Black ancestors of the legal academy would be dismayed at the ongoing levels of unprofessionalism experienced by their descendants. They too were unwanted, but they fought for our inclusion. To effectively create professional law school environments embracing the tenets of CRT, it is critical to examine and appreciate the difficult path towards inclusion of Black attorneys in the academy.

George Lewis Ruffin was the first Black law school graduate of Harvard Law School.²¹ He enrolled in 1868, four years after the Emancipation Proclamation was signed.²² He completed the three-year program in just one year and later became the first Black judge in Massachusetts.²³ Despite his brilliance, at the first student assembly, a group of students proposed that “every member of the school is by right a member of the assembly, except for colored students.”²⁴ Ruffin convinced them not to move ahead with the proposal.²⁵

In 1872, Charlotte Ray became the first Black female law school graduate from a U.S. law school.²⁶ She opened her own law firm, but racial prejudice forced her to close the firm, and she later became a public school teacher.²⁷ About twenty-

18. Allen, *supra* note 17, at 376.

19. See *id.* at 373–75 (detailing Professor Allen’s examination of the white norms that govern law schools such as the embedded “culture of [n]iceness” and the “double jeopardy” of “racism and sexism” faced by Black women); see also Bennett Capers, *The Law School as a White Space*, 106 MINN. L. REV. 14 (2021) (detailing Professor Capers’ examination of how law schools are de facto white spaces for students of color and even in historically Black law schools, whiteness prevails in what is taught, how the law is taught, and even the architecture).

20. Allen, *supra* note 17, at 373.

21. Brenna Sanchez, *Ruffin, George Lewis*, ENCYCLOPEDIA.COM, <https://www.encyclopedia.com/african-american-focus/news-wires-white-papers-and-books/ruffin-george-lewis> [<https://perma.cc/B4FA-JWR8>].

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Brit Merrill & Adrienne Nash, *Women in the Law: Refreshing Our Collective Memory*, 30 UTAH BAR J., Nov./Dec. 2017, at 38, 39. While Black women were entering the legal profession prior to 1872, Charlotte Ray’s admittance still marked a watershed moment. For instance, in 1869, Arabella (Belle Babb) Mansfield was the first woman to be admitted to the Bar in the United States. *Id.* However, she did not attend law school. *Id.* Instead, she studied for the bar exam for nearly two years. *Id.*

27. *Charlotte E. Ray*, BRITANNICA (Apr. 4, 2024), <https://www.britannica.com/biography/>

five years after Charlotte Ray's graduation, Lutie Lytle attended Central Tennessee College, an institution created for the educational advancement of formerly enslaved people.²⁸ When she enrolled, all the faculty were men, and she was the only female student.²⁹

Lutie Lytle would go on to become a professor herself. In 1898, Lytle was appointed to teach Matrimonial Law at her alma mater, Central Tennessee College.³⁰ However, no other Black woman graduated from any Tennessee law school until 1939.³¹ Ollie May Cooper, almost three decades later, was the next Black woman to teach at an accredited law school—and she did so without pay.³² Sixteen years later, H. Elsie Austin, taught at Robert H. Terrell Law School, named after Washington, D.C.'s first Black judge.³³

Meanwhile, William Herbert Johnson, the first Black law school graduate of Syracuse University College of Law in 1903.³⁴ He was valedictorian but prohibited from practicing law. White attorneys refused to hire him as an apprentice—a requirement for bar admission.³⁵ In Johnson's valedictorian speech, he questioned racial exclusion in the legal profession and described Black lawyers as "among the best and ablest lawyers in the country."³⁶

Also, in 1938, the U.S. Supreme Court ordered the University of Missouri School of Law to accept Lloyd Gaines's application or create an equal but separate option.³⁷ Rather than accept Black students on campus, the law school paid to construct another building for Black law students.³⁸ North Carolina followed the University of Missouri's precedent, and the school preferred to pay three times the cost of attendance at the white school than permit Black students to desegregate

Charlotte-E-Ray, [<https://perma.cc/EK93-N83A>].

28. Taja-Nia Y. Henderson, "I Shall Talk to My Own People": *The Intersectional Life and Times of Lutie A. Lytle*, 102 IOWA L. REV. 1983, 1996 (2017).

29. *Id.*

30. *Id.* at 2004.

31. *Id.* at 2014.

32. *Id.*

33. *Id.*

34. Paula C. Johnson, Opinion, *NYS Bar to Admit Syracuse's First Black Law Graduate, Correcting Century-Old Injustice (Commentary)*, SYRACUSE.COM (Oct. 16, 2019, 8:30 AM), <https://www.syracuse.com/opinion/2019/10/nys-bar-to-admit-syracuses-first-black-law-graduate-correcting-century-old-injustice-commentary.html> [<https://perma.cc/T68E-X6EH>]. William Herbert Johnson was admitted posthumously to the New York State Bar on October 18, 2019, at the Onondaga County Courthouse. *Id.*

35. *Id.*

36. *Id.*

37. Andrew Simmonds, *Amah and Eved and the Origin of Legal Rights*, 46 S.D. L. REV. 516, 611 (2001).

38. *Id.*

the white schools.³⁹ Gaines disappeared mysteriously before the National Association for the Advancement of Colored People (NAACP) could further the fight to get him into law school.⁴⁰

Ten years later, in 1948, also fifty years after Lutie Lytle's appointment, Sybil Jones Dedmond became the first Black woman to earn tenure at an American law school.⁴¹ In 1950, Heman Marion Sweatt suffered a similar experience to Lloyd Gaines, except that the Court allowed him to attend the University of Texas Law School.⁴²

In the next few decades, Black lawyers not only graduated from law schools but went on to achieve prestigious roles at integrated law schools, including ivy league law schools. In 1972, Kellis Parker became the first full-time Black law professor at Columbia University.⁴³ In 1983, Louis Westerfield was the first Black tenured professor at the University of Mississippi School of Law and later became Dean at North Carolina Central University.⁴⁴ In 2001, Professor W.H. Knight, Jr. was the first Black dean appointed at the University of Washington School of Law.⁴⁵ In 2012, Penelope Andrews became the first female Dean and President of Albany Law School since its opening in 1851.⁴⁶ Blake D. Morant was the first Black dean for both Wake Forest Law (2007–2014) and George Washington University (2014–2019).⁴⁷ In 2016, Camille Nelson was the first Black dean and first female dean at American University Washington College of

39. See *McKissick v. Carmichael*, 187 F.2d 949, 953 (4th Cir. 1951) (“It is pointed out that North Carolina is spending \$1460 per annum to support each student in its colored law school and only \$416 per student per annum in its white law school . . .”).

40. Simmonds, *supra* note 37.

41. Allen, *supra* note 17, at 379.

42. Capers, *supra* note 19, at 8.

43. *Kellis E. Parker, First Black Columbia Law Professor, Dies at 58*, COLUM. UNIV. NEWS (Oct. 13, 2000), <http://www.columbia.edu/cu/pr/00/10/kellisParker.html> [<https://perma.cc/CA7R-7U9P>].

44. Bill Quigley, *Appreciation: Louis Westerfield, 1949–1996 – Obituary*, DIVERSE (June 22, 2007), <https://www.diverseeducation.com/faculty-staff/article/15083850/appreciation-louis-westerfield-1949-1996-obituary> [<https://perma.cc/2Z86-86M6>].

45. *History*, SCH. OF L., UNIV. OF WASH., <https://www.law.uw.edu/about/history#:~:text=Professor%20W.H.%20Knight%2C%20r.,American%20dean%20of%20UW%20Law> [<https://perma.cc/3HRL-XKX2>].

46. *Penelope Andrews*, N.Y. L. SCH., <https://www.nyls.edu/faculty/penelope-andrews> [<https://perma.cc/FUW6-H4BB>]; *Penelope Andrews to Be 17th President & Dean*, ALBANY L. SCH. (July 6, 2012), <https://www.albanylaw.edu/spotlight/faculty/penelope-andrews-be-17th-president-dean> [<https://perma.cc/SR3A-VKMM>].

47. Mike Fox, *Trailblazing Dean to Speak at MLK Celebration*, U. OF VIRGINIA L. (Jan. 10, 2024), <https://www.law.virginia.edu/news/202401/trailblazing-dean-speak-mlk-celebration>.

Law.⁴⁸ Current Black deans who are firsts at their institutions include Leonard M. Baynes (2014),⁴⁹ Angela Onwuachi-Willig (2018),⁵⁰ Danielle Conway (2019),⁵¹ Eboni Nelson (2020),⁵² A Benjamin Spencer (2020),⁵³ Camille Davidson (2020),⁵⁴ Lolita Buckner Inniss (2021),⁵⁵ Jelani Exum (2021) and (2024),⁵⁶ and Tamara Lawson (2023).⁵⁷

The progression is both inspiring and disheartening. The pride of broken ceilings is followed by the realization that a leadership role does not guarantee protection from race-based unprofessional attacks. You can break the ceiling and still be disrespected because of the academy's failure to create a professional law school environment embracing the tenets of CRT.

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48. *Former Deans*, AM. UNIV., WASH. D.C., <https://www.wcl.american.edu/impact/history/former-deans> [<https://perma.cc/QEH4-W2AC>].
 49. *Dean's Leadership Team*, U. OF HOUSTON L. CTR., <https://www.law.uh.edu/about/administration/> [<https://perma.cc/TX5P-ERB5>].
 50. Sara Rimer, *Angela Onwuachi-Willig Among Five Black Women Law Deans Honored for Efforts to Bring Antiracist Reform to Legal Education*, BU TODAY (Jan. 12, 2021), <https://www.bu.edu/articles/2021/angela-onwuachi-willig-honored-for-efforts-to-bring-antiracist-reform-to-legal-educations> [<https://perma.cc/C3AT-H4UQ>].
 51. *Dickinson Law Welcomes First Female, African-American Dean*, CENT. PENN BUS. J. (Feb. 18, 2019), <https://www.cpbj.com/dickinson-law-welcomes-first-female-african-american-dean> [<https://perma.cc/7J4V-24TX>].
 52. Jeanne Leblanc, *State NAACP Honors UConn Law Dean Eboni S. Nelson*, UCONN TODAY, (Oct. 20, 2021), <https://today.uconn.edu/2021/10/state-naacp-honors-uconn-law-dean-eboni-s-nelson/> [<https://perma.cc/N2S7-FRSL>].
 53. Eric Williamson, *Professor A. Benjamin Spencer Named Dean of William & Mary Law*, UNIV. OF VA., SCH. OF L. (May 18, 2020), <https://www.law.virginia.edu/news/202005/professor-benjamin-spencer-named-dean-william-mary-law> [<https://perma.cc/EGP6-BCGF>].
 54. Leah Sutton, *SIU's First Black, Female Dean of Law on Why Diversity Matters*, DAILY EGYPTIAN (Mar. 3, 2021), <https://dailyegyptian.com/106237/features/siu-first-black-female-dean-of-law-on-why-diversity-matters> [<https://perma.cc/MF78-CZGW>].
 55. *Lolita Buckner Inniss*, COLO. L.: UNIV. OF COLO. BOULDER, <https://lawweb.colorado.edu/profiles/profile.jsp?id=1033> [<https://perma.cc/M2QC-Y7MB>]; Ali Budner, *Colorado Law's First Black Dean on the Legal System, Representation and Critical Thinking*, COLO. PUB. RADIO NEWS (Sept. 21, 2021, 5:33 PM), <https://www.cpr.org/2021/09/21/colorado-law-first-black-dean-lolita-buckner-inniss> [<https://perma.cc/GD8N-A4Z>].
 56. Sheila Pursglove, *A Pioneering Role: New Detroit Mercy Law Dean Inspired by Social Justice Work of Her Students*, LEGAL NEWS (June 14, 2021), <https://legalnews.com/detroit/1500346> [<https://perma.cc/Z4LH-BV4U>]; *Jelani Jefferson Exum Named Next Dean of St. John's University School of Law*, ST. JOHN'S UNIVERSITY (Jan. 8, 2024), <https://www.stjohns.edu/news-media/news/2024-01-08/jelani-jefferson-exum-named-next-dean-st-johns-university-school-law> [<https://perma.cc/7YWL-4H7F>].
 57. *Toni Rembe Dean Investiture Ceremony*, SCH. OF L., UNIV. OF WASH. (Mar. 3, 2023), <https://www.law.uw.edu/news-events/events/investiture> [<https://perma.cc/4S64-FTPZ>].

III. THE TENETS OF CRT AND THE PROFESSIONAL LAW SCHOOL ENVIRONMENT

As mentioned above, lawyers are required to demonstrate respect for the legal system and those who serve in it.⁵⁸ There is no professionalism without respect.⁵⁹ There is no respect without recognition of humanity. There is no recognition of humanity without a commitment to being antiracist. An antiracist supports policies that reduce racial inequity by treating racial groups as equals rather than groups that need developing.⁶⁰ To “be an antiracist [where we relate as equals in spite of our human differences] is a radical choice in the face of this history, requiring a radical reorientation of our consciousness.”⁶¹ It is the recognition that respect is a faceless virtue. To be antiracist and develop antiracist policies, one must engage with CRT.

CRT is the studying and transformation of the relationship between race, racism, and power.⁶² The basic tenets of CRT are: (1) Racism is not acknowledged and is therefore hard to cure; (2) The majority group tolerates racial justice advancement when it benefits them (interest convergence); and (3) Race is a

58. MODEL RULES OF PRO. CONDUCT, Preamble ¶ 5 (AM. BAR ASS’N 2009).

59. The origins of professionalism are inherently racist:

The modern professions arose from the guilds of the Middle Ages and Renaissance. Guilds began as organizations of workers centered on a skill or craft. In so doing, they challenged the medieval order of hierarchical power by legitimizing the principle of self-organization and self-government.

The masters of a guild were equals who had the obligation of regulating apprentices and journeymen. A major power of the guilds was the ability to set standards for guild members. The guilds then decided who became members according to these standards.

Michael J. Polelle, *Who’s on First, and What’s a Professional?*, 33 U.S.F. L. REV. 205, 210 (1999). The standards were created by white men to govern other white men. Shahamat Uddin, *Racism Runs Deep in Professionalism Culture*, TULANE HULLABALOO (Jan. 23, 2020), <https://tulanehullabaloo.com/51652/intersections/business-professionalism-is-racist/> [<https://perma.cc/3FLN-JCB3>]. Therefore, it is unsurprising that the standards of professionalism advance the careers of white, straight, married men. The founders’ ideology of a “good person” was a “white gentleman lawyer.” Thomas L. Shaffer, *Inaugural Howard Lichtenstein Lecture in Legal Ethics: Lawyer Professionalism as a Moral Argument*, 26 GONZ. L. REV. 393, 398 (1991). It was easier to be collegial and respectful when everyone looked the same. However, the profession is no longer a guild of a white men. Every person in the legal profession deserves the respect that was given to the white gentleman. The expansion of the profession did not remove the requirement of respect for one another. This fact can only be accepted with an antiracist mindset.

60. IBRAM X. KENDI, *HOW TO BE AN ANTIRACIST* 24 (2019).

61. *Id.* at 23.

62. RICHARD DELGADO & JEAN STEFANIC, *CRITICAL RACE THEORY* 3 (3d ed. 2017).

social construct—there is no biological or genetic reality.⁶³ The first two tenets are relevant to this discussion.

Racism is often not acknowledged on a law school campus because race-based unprofessional acts are described as a personality flaw, academic freedom, ignorance, the victim's lack of humor, or as described in the author's personal experience, frustration.⁶⁴ It is unforgivable for these attacks to be taken lightly because Black people were killed in America for the slightest perceived unprofessional acts.⁶⁵ The legal profession must unmask and confront these excuses. Attorneys must come to the point of self-realization; and when they fail to do so, the rules should expose their unprofessionalism based in racism.

Further, cultural changes are slow because of interest convergence.⁶⁶ Until racist mindsets in racist spaces are convinced that racial justice benefits them,

63. *Id.* at 8–9.

64. Goodridge *supra* note 5, 47–48 (“Even the most clear-cut inappropriate behavior could be likened to humor or quirk. Not deemed harmful, it is instead attributed to the personality of the person perpetuating the harm. The distinction between personality and behavior is crucial because many believe a person can correct another’s behavior—but not their personality.”); see also Renee Nicole Allen, *Get Out: Structural Racism and Academic Terror*, 29 WM & MARY J. RACE, GENDER, & SOC. JUST. 599, 638 (2023) (footnotes omitted) (“While the circumstances are far too many to name, we see academic terror in the classroom when . . . law professors deny the existence of systemic racism . . .”).

65. See EQUAL JUST. INITIATIVE, LYNCHING IN AMERICA: CONFRONTING THE LEGACY OF RACIAL TERROR 31 (3d ed. 2017), <https://eji.org/wp-content/uploads/2005/11/lynching-in-america-3d-ed-110121.pdf> [<https://perma.cc/383R-W478>] (“Hundreds of African Americans accused of no serious crime were nonetheless lynched for myriad ‘offenses,’ including speaking disrespectfully, refusing to step off the sidewalk, using profane language, using an improper title for a white person, suing a white man, arguing with a white man, bumping into a white woman, insulting a white person, and other social grievances.”); see also (1900) *Ida B. Wells*, “*Lynch Law In America*”, BLACKPAST (July 13, 2010), <https://www.blackpast.org/african-american-history/speeches-african-american-history/1900-ida-b-wells-lynch-law-america> [<https://perma.cc/69TU-MEV4>] (“If [a Black man] showed a spirit of courageous manhood he was hanged for his pains, and the killing was justified by the declaration that he was a ‘saucy [n word].’ Colored women have been murdered because they refused to tell the mobs where relatives could be found . . . Boys of fourteen years have been lynched by white representatives of American civilization. In fact, for all kinds of offenses—and, for no offenses—from murders to misdemeanors, men and women are put to death without judge or jury . . .”); Adeel Hassan, *Emmett Till’s Enduring Legacy*, N.Y. TIMES (Apr. 27, 2023), <https://www.nytimes.com/article/who-was-emmett-till.html> [<https://perma.cc/6RJ6-2BBG>]; *History of Lynching in America*, NAACP, <https://naacp.org/find-resources/history-explained/history-lynching-america> [<https://perma.cc/JB7Z-L5JZ>]. Jesse McIlherron got into a quarrel with three white young men who insulted him. *Id.* He killed two of them. He was tortured with heated bars of iron. *Id.* He never lost nerve and derided attempts of the mob to break his spirit until his last breath. *Id.*

66. Lorenzo Bowman, Tonette Rocco & Elizabeth Peterson, *The Exclusion of Race From Mandated Continuing Legal Education Requirements: A Critical Race Theory Analysis*, 8 SEATTLE J. SOC.

the status quo will remain the same.⁶⁷ Likewise, unless the majority group understands that the elimination of race-based unprofessional attacks benefits the profession, there can be no true cultural change.

Moreover, inclusion creates a responsibility of belonging. The legal profession opened doors for people who were not white men, and it has a responsibility to ensure each attorney receives the message of belonging. Every time a law school admits a new student, it tells that student, “The legal profession wants someone with your potential.” However, it seems after acceptance to law school, graduation, passing the Bar exam, and admission to the Bar the profession tells them, “You will still never be one of us; we do not have to respect you or any of your accomplishments.” The highest levels of respect and civility should be displayed each day among faculty and administrators. It is critical to the profession that the people molding the next generation of attorneys operate with the utmost level of professionalism.

IV. CURRENT ABA RULES ON CRT AND THEIR INADEQUACY

A. Standard to Provide Education on Bias, Cross-cultural Competency, and Racism

Recently, the American Bar Association (ABA) passed a resolution requiring law schools to provide education on bias, cross-cultural competency, and racism.⁶⁸ Interpretation 303-6 of the rule explains that the course

JUST. 229, 234 (2009) (endnotes omitted) (“The status quo is further reinforced by the interest convergence of White elites (materially, through manipulation of the labor pool) and working-class Whites (psychically, by giving them a reason to feel superior to People of Color) who work together by subtle (even subconscious) consensus to maintain the status quo. Therefore, large segments of society have little to no incentive to eradicate racism.”); *see also* KING, *supra* note 3, at 12 (“The great majority of Americans are suspended between these opposing attitudes. They are uneasy with injustice but unwilling yet to pay a significant price to eradicate it.”).

67. Bryan Walker & Sarah A. Soule, *Changing Company Culture Requires a Movement, Not a Mandate*, HARV. BUS. REV. (June 20, 2017), <https://hbr.org/2017/06/changing-company-culture-requires-a-movement-not-a-mandate> [<https://perma.cc/3QVB-FQMX>] (“[M]ovement research suggests that they actually start with emotion—a diffuse dissatisfaction with the status quo and a broad sense that the current institutions and power structures of the society will not address the problem. This brewing discontent turns into a movement when a voice arises that provides a positive vision and a path forward that’s within the power of the crowd.”).

68. STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. Standard 303 (AM. BAR ASS’N 2024–2025). Also, while the rule does not specifically mention CRT, it does not address topics that would be covered in a CRT course. *Id.*

should introduce students to the “value and responsibilities of the legal profession.”⁶⁹ Such values include “cross-cultural competency . . . equal access and eliminat[ing] bias, discrimination, and racism”⁷⁰ This rule does not require the creation of a course, but law schools “must demonstrate that all law students are required to participate in a substantial activity designed to reinforce the skill of cultural competency and their obligation as future lawyers to work to eliminate racism in the legal profession.”⁷¹

This is a major step by the ABA, but its impact is limited because it solely focuses on students. The law school community includes students along with faculty and staff, yet there is no requirement for faculty and staff to participate in such “substantial activity.” Law schools must ensure that those preparing students for the “responsible participation as members of the legal profession” are also being taught or reminded annually of civility, respect, and the values of the legal profession.⁷² Thus, these standards should extend to faculty and staff.

Alternatively, attorneys in academia can attend events or Continuing Legal Education (CLE) programs on cultural competency. However, they can register for many courses and never take one that addresses bias or racism, let alone civility and respect. Even where CLEs on bias are required courses, the courses do not go far enough. In New York, the Diversity, Inclusion and Elimination of Bias (DEI) leaves attorneys to selectively participate in DEI programming.⁷³ For example, an attorney can take a CLE program on bias and ignore another program delving into sensitivity to cultural differences. Also, the DEI description fails to mention race, racism, or racism and the law.⁷⁴ Therefore, it is imperative for the ABA to take additional steps to ensure faculty and staff are included in its proposed trainings and to standardize the required materials for these trainings.

69. *Id.* at interpretation 303-6.

70. *Id.*

71. *Id.* at interpretation 303-7.

72. “A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.” STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. Standard 301(a) (AM. BAR ASS’N 2024–2025).

73. N.Y. COMP. CODES R. & REGS. tit. 22, § 1500.2(g) (2021) (“Diversity, Inclusion and Elimination of Bias courses, programs and activities must relate to the practice of law and may include, among other things, implicit and explicit bias, equal access to justice, serving a diverse population, diversity and inclusion initiatives in the legal profession, and sensitivity to cultural and other differences when interacting with members of the public, judges, jurors, litigants, attorneys and court personnel.”).

74. *Id.*

Additionally, everyone—from students to assistant faculty, school librarians, and law professors—should be required to attend community meetings to actively engage in conversations attempting to resolve racial issues within the law school environment. These sessions should reflect on efforts made to improve the environment and identify critical next steps for further improvement. If done correctly, these meetings can be critical components of community building.

B. Requirements for the Mandatory Professional Responsibility Course

Law schools are required to offer one course “of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members.”⁷⁵ An interpretation of this rule explains that professional identity focuses “on the special obligation lawyers have to their clients and society.”⁷⁶ There is no emphasis on the responsibilities of lawyers toward each other.

It continues that “[t]he development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice.”⁷⁷ Yet, there is no explanation of the values, guiding principles, and well-being practices toward a successful legal practice. Therefore, there are no substantive guidelines on what one should consult to develop a professional identity. It leaves the professional identity to be shaped, or ruined, by the individual professor.

Further, professional misconduct rules address criminal, deceitful, dishonest, and discriminatory actions related to the practice of law.⁷⁸ The “practice of law” is defined as the application of legal principles and judgment about the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law.⁷⁹ However, not all necessary conversations for the proper management of a law school relate to the practice of the law. There are many strategic law school meetings, such as how to help a student struggling

75. STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. Standard 303(a)(1) (AM. BAR ASS’N 2024–2025).

76. *Id.* at interpretation 303-5.

77. *Id.*

78. MODEL RULES OF PRO. CONDUCT *rr.* 3.4, 5.4, 8.4 (AM. BAR ASS’N 2009).

79. Task Force on the Model Definition of the Prac. of L., *Definition of the Practice of Law Draft (09/18/02)*, AM. BAR ASS’N (Sept. 18, 2002), https://www.americanbar.org/groups/professional_responsibility/task_force_model_definition_practice_law/model_definition_definition/ [<https://perma.cc/K8ZJ-P458>].

academically or otherwise, the best way to approach a potential donor, discussing a professor's course load, etc., that do not involve of the practice of law. Thus, the rule fails to capture many attorney interactions *within* law schools. Also, the rules should specifically recognize race-based unprofessional acts such as gaslighting, microaggressions, and racist remarks.⁸⁰

C. ABA Models Rules of Professional Conduct

Further, the ABA's Model Rules only address communication in the client-lawyer relationship⁸¹—there are no model rules of communication for lawyer-to-lawyer interactions. Rule 1.4 addresses communications between the lawyer and client while Rule 4.2 addresses interactions with lawyers and a person represented by counsel.⁸² The Model ABA Rules do not describe how lawyers should respectfully communicate with each other. Therefore, the ABA rules must be amended to adequately reflect the duty of professionalism between lawyers, including between lawyers in academic settings.

Finally, under 8.4(g) of the ABA rules, it is professional misconduct to engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.⁸³ While this rule is also limited to the practice of law (as mentioned above there are many strategic law school discussions that do not involve the practice of law and therefore this rule should be expanded) it also focuses on the individual's act and attempts to give redress after the harm. However, a CRT-based systemic approach would examine the foundation of the institution. It would acknowledge that racism exists in law schools and identify the source(s).

A professional law school environment can only be maintained by professionals following rules of professionalism. If there are no rules, inadequate rules, or rules without enforcement there is no professional environment. The duty to provide a professional law school environment is breached when law schools fail to hire antiracist faculty, and the ABA fails to create substantive professionalism rules grounded in antiracism. The combined failures of the law

80. *Id.*

81. MODEL RULES OF PRO. CONDUCT rr. 1.4, 4.2, 7.1, 7.2 (AM. BAR ASS'N 2009).

82. *Id.*

83. Goodridge, *supra* note 5, 46–47 (concerning Goodridge's discussion on the irony of this rule since it requires the victims to exhaust all remedies before filing a complaint under the rule).

school and the ABA are the primary causes of injury to Black faculty and staff. Therefore, a systemic overhaul is needed for true advancement.

V. THE DREAM: CORE QUALITIES OF A PROFESSIONAL LAW SCHOOL ENVIRONMENT GROUNDED IN CRT

I dream of a professional law school environment grounded in the tenets of CRT. Faculty and administrators would operate with integrity and civility, emulating the highest levels of professionalism—what we expect students to do with their peers and clients. Black attorneys in law schools would not live in constant fear of race-based unprofessional attacks or endure racial assault by their peers. Attorneys would respect their Black colleagues, seeing them as their equals while understanding the inequities they conquered to be their equals.⁸⁴ There would be no caste system on the law school campus. Black attorneys would have a strong sense of belonging and their humanity recognized by their colleagues. There would be a collective community consciousness that one must act professionally toward another on the law school campus. Crass freedom of speech would not be valued more than the respect of colleagues. There would be an intentional vigor to actively remove racist barriers and dismantle the racist structures of law schools.

There can be no dismantling without recognition of humanity and respect for Black peers because professionalism is a necessary steppingstone for the ultimate elimination of racist law schools. We cannot listen to each other if we do not respect each other.

Therefore, based on the above, law schools need a cultural change. Until the connection between race and unprofessional attacks is acknowledged and

84. EQUAL JUSTI. INITIATIVE, *supra* note 65; see also FAREED NASSOR HAYAT, *Dignity or Death: The Black Male Assertion of the Fourth Amendment*, 83 OHIO ST. L.J. 857, 871–900 (2022); see also Press Release, U.S. Dep’t of Just., Idaho White Supremacist Who Assaulted a Black Man Pleads Guilty to Hate Crime and False Statement Charge (Sept. 21, 2022), <https://www.justice.gov/opa/pr/idaho-white-supremacist-who-assaulted-black-man-pleads-guilty-hate-crime-and-false-statement> [<https://perma.cc/DN4Y-23LC>] (where a Black man was attacked and kicked in bar by white supremacists for being Black); Nicol Turner Lee, *#LivingWhileBlack—a New Normal or History Repeating Itself?*, BROOKINGS INST. (May 17, 2018), <https://www.brookings.edu/blog/fixgov/2018/05/17/livingwhileblack-a-new-normal-or-history-repeating-itself> [<https://perma.cc/VZ9N-HB76>]; ‘A Dog Can Be Trained to Be Anti-Black’, MARSHALL PROJECT (June 23, 2021, 6:00 AM), <https://www.themarshallproject.org/2021/06/23/a-dog-can-be-trained-to-be-anti-black> [<https://perma.cc/4AQQ-RESS>]; Jack Hitt, *Police Dog Bites Black Man*, NEW YORKER (Mar. 18, 2015), <https://www.newyorker.com/news/news-desk/police-dog-bites-black-man> [<https://perma.cc/MQ86-QXN4>].

addressed, the ABA and law schools must implement strategic standards to build awareness and accountability for meaningful change.

First, the hiring process must reflect an intention to hire antiracist faculty and staff. Most professors on the traditional track complete a Faculty Appointments Register (FAR) indicating their teaching interests and where they would like to teach. However, the FAR does not collect information on a person's race-based unprofessional acts.⁸⁵ The FAR should include the following questions:

1. Have you ever been called unprofessional or accused of acting unprofessionally?
2. Did you think the accusation was warranted?
3. Have you ever been accused of performing a racist act? If yes,
4. Have you ever been accused of being unprofessional and racist for the same incident?
5. Did you think the accusation was warranted?
6. What was your response?
7. Please provide the details of the incident.
8. What steps have you taken (if any) since this incident?
9. What type of relationship do you now have with your accuser?
10. Is there anything else that you would like to share?

These questions should also be asked in interviews for lateral hires and for staff. It should also be standard protocol to require references to address such questions and for the hiring committee to check with the Chief Diversity Officer or Ombudsman of the school or the person's previous organization. The committee should be able to verify all relevant documents were added to a mandatory file of racist complaints. The hiring committee should have access to the complaint, the accused's response, and the resolution, or an official report summarizing all three aspects. There should be an official ABA standard for organizations to share with law school hiring committees a file with any racist complaints against an applicant and for the applicant to be given a chance to address the complaints in their interview. These questions will help law schools ensure they are hiring individuals who are taking active steps to be antiracist. The goal is to create an environment where people can speak openly about their racist acts and the steps taken to improve. It is not to cancel or punish someone

85. *FAR Information*, ASS'N OF AM. L. SCHS., <https://www.aals.org/recruitment/candidates/far-information> [<https://perma.cc/N483-G2FL>].

indefinitely. It is to ensure we build a culture of people who are actively working to be antiracist.

Second, the ABA should amend Standard 303(c)⁸⁶ with the following words in italics: “A law school shall provide education to law students, *faculty and staff* on bias, cross cultural competency, and racism *annually*.”⁸⁷ The rule requires training for students at the start of the program of legal education and once again before graduation. However, an exception should be made for faculty and staff to complete the training annually, to be more practical. It is imperative that the faculty and staff set the correct example for students by putting in the work to intentionally address race-based unprofessionalism on campus.

Further, the ABA should add a section (d) to Standard 303 with the following requirement: “All lawyers in academia (faculty and staff) must complete a 1.5 CLE refresher course on the values and responsibilities of the legal profession and its members including integrity and civility.” Workplace harassment trainings are mandatory for each semester. Racial assault can be just as devastating as sexual harassment. Therefore, it is not onerous to require annual trainings on racism and professionalism.

Third, the ABA House of Delegates should pass a resolution that urges bar associations and other licensing and regulatory authorities to offer a separate mandatory credit on race and professionalism.⁸⁸ The two topics should be taught together. Each attorney should be aware of race-based unprofessionalism. As stated earlier, the Diversity, Inclusion, and Elimination of Bias CLE requirement is insufficient.

Fourth, faculty and staff should be required to attend at least one plenary session of the CRT Summer School or similar program every three years.⁸⁹ These

86. STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. Standard 303(c) (AM. BAR ASS'N 2024–2025).

87. *Id.* (emphasis added). Standard 303(c) reads:
A law school shall provide education to law students on bias, cross-cultural competency, and racism:
(1) at the start of the program of legal education, and
(2) at least once again before graduation.

Id.

88. A similar resolution was passed for the Diversity and Inclusion CLE credit in 2016. See Statement, Debra L. Raskin, N.Y.C. Bar Ass'n, Statement of New York City Bar Association President, Debra L. Raskin, in Support of ABA Resolution 107 by the Commission on Diversity and Inclusion (Feb. 8, 2016), <https://www.nycbar.org/wp-content/uploads/2023/05/20073043-DLRremarksinsupportofABAHODresolution107PRESIDENT23162.pdf> [https://perma.cc/ZD6N-4AYT].

89. *CRT Summer School Presents Freedom Summer 2024: No U-Turn on Racial Justice*, AFR. AM. POL'Y F., <https://www.aapf.org/crtsummerschool> [https://perma.cc/C5YX-AN2A].

sessions will help attendees reflect and reverse their actions that contribute to the white supremacist culture and mindsets in law schools.

Fifth, law schools should designate at least one faculty meeting every three years for an internal review of racist practices on campus. CRT examines the law's role in constructing race with the following questions: "How exactly does the law fabricate race? How has the law protected racism(s)? How does the law reproduce racial inequality? How can the law be used to dismantle race, racism(s) and racial inequality?"⁹⁰ Likewise, each school should ask, "How do our policies encourage the fabrication of race, protect racism, reproduce inequality, and what can be done to dismantle race and inequality?" Moreover, the ABA should also review their current standards and recommendations with these questions in mind.

Next, schools should create a space for faculty and staff to anonymously report race-based unprofessional encounters experienced on campus. This prevents victims of racial assault from facing the perpetrator and having to engage in further dialogue. Racial assault reports should be thoroughly reviewed by the Chief Diversity Officer (C.D.O.) or someone with a similar title and that person should create a report on changes that can be made campus wide to prevent such acts from happening again. This report should then be discussed with faculty for additional input followed by the creation of a working group to implement the agreed upon measures. All that is required is implementation of the measures without excuses.⁹¹ Further, at the end of each school year, there should be a report shared with faculty and staff summarizing the complaints and the measures taken to prevent future occurrences.

An anonymous reporting system should not prevent faculty and staff from making official complaints with the names of the perpetrators if they choose to do so. An anonymous system gives the victim an opportunity to make a complaint, informing others that it happened on campus, and gives the administration an opportunity to create meaningful change. The priority for the victim may not be

90. KHIARA M. BRIDGES, *CRITICAL RACE THEORY* 10 (2018).

91. See Allen, *supra* note 64, at 606. Allen warns of statements that lead to nothing or the common excuse of academic freedom. *Id.* Allen urges law schools to carefully consider if the act is protected by academic freedom. *Id.*; see also, KING, *supra* note 3, at 11 ("These are the deepest causes for contemporary abrasions between the races. Loose and easy language about equality, resonant resolutions about brotherhood fall pleasantly on the ear, but for the Negro there is a credibility gap he cannot overlook. He remembers that with each modest advance the white population promptly raises the argument that the Negro has come far enough. Each step forward accents an ever-present tendency to backlash.").

to hold the perpetrator accountable—their priority may be to change the enabling environment. It is the victim's choice.

Critically, some people may never understand or accept their actions are racist or unprofessional.⁹² It is mentally and emotionally draining to explain to someone how actions are racist or unprofessional. Therefore, individuals should be allowed to make anonymous reports. Anonymous reports should not include the name of the perpetrator—only the racist unprofessional act. If the victim mentions the name, the perpetrator has the right to face his or her accuser.

Moreover, every job letter should contain a formal commitment on professionalism in which each employee pledges to operate with the highest standards of professionalism. A pledge is an affirmative act and sets expectations early. All employers expect employees to comply with the rules of the organization. However, a commitment of professionalism on a job letter indicates professionalism is a core value of the organization.

Finally, each school's diversity statement and/or code of conduct should take a strong stance against race-based unprofessionalism—explicitly. The job letter and such statements will help to develop, or in some cases reinforce the antiracist culture of law schools. A strong ethical culture promotes compliance and a company's code of conduct is usually the basis of effective compliance.⁹³

CONCLUSION

You teach a little by what you say.

You teach more by what you do.

*You teach best by who you are.*⁹⁴

A self-assessment on who we are as a legal academy is long overdue. Nevertheless, we should take a moment now to reflect on who we are. An

92. Goodridge, *supra* note 5, at 47–48 (“There are four stages to selective offense. First, people minimize and fail to admonish the harmful behavior. Second, people impute charm or innocence to the harmful behavior. Even the most clear-cut inappropriate behavior could be likened to humor or quirk. Not deemed harmful, it is instead attributed to the personality of the person perpetuating the harm Third, people accept the harmful behavior. Fourth, any challenges to the harmful behavior are seen as a personal character attack rather than rectifying harm.”).

93. See generally U.S. DEP'T. OF JUST. ET AL., FCPA: A RESOURCE GUIDE TO THE U.S. FOREIGN CORRUPT PRACTICES ACT 59 (2d ed., 2020), <https://www.justice.gov/criminal-fraud/file/1292051/download> [<https://perma.cc/Q5FJ-9K3U>] (noting that a company's code of conduct is often the foundation upon which an effective compliance program is built).

94. A. R. Bernard, Reverend, Christian Cultural Ctr. Megachurch, Sermon delivered to CCCM in Brooklyn, New York (May 2023).

understanding of who we are and who we can become will guide us on a path to a better professional environment. If our actions do not reflect who we are, we must work to aggressively fix them. We must hold our colleagues accountable when they engage in race-based unprofessional attacks. We must sound the alarm and work arduously to ensure that we create professional law school environments without race-based attacks.

Race-based unprofessionalism must be eliminated from the legal academy. It is time for the legal academy to create a new system of governance within law schools. True change can only begin by a commitment to antiracism and by embracing the tenets of CRT. Such a foundation will be a strategic step toward the advancement of the profession and the safety of Black attorneys in law school.

Still, it is only a step, for there is much more work to be done. A professional law school environment embracing the tenets of CRT is fertile ground for the elimination of race-based unprofessional attacks and eventually the elimination of racism from within the legal academy. However, there are many more seeds to be planted for the elimination of racism from law schools and ultimately the profession. When each person feels valued and has a sense of belonging, we can then work together to eliminate racist structures. I know we can do it. But will we?