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Antiracism, Reflection, and Professional Identity

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Abstract: *Intent on more systematically developing the emerging professional identities of law students, the professional identity formation movement is recasting how we think about legal education. Notably, however, the movement overlooks the structural racism imbedded in American law and legal education. While current models of professional development value diversity and cross-cultural competence, they do not adequately prepare the next generation of legal professionals to engage in the sustained work of interrupting and overthrowing race and racism in the legal profession and system. This article argues that antiracism is essential to the profession's responsibility to serve justice and therefore key to legal professional identity. Fortunately, developing a legal antiracist identity does not require inventing a new approach. Rather, infusing reflective practice with critical race consciousness provides a sound basis from which to launch a new effort to develop the next generation of antiracist lawyers.*

> What does it mean when the tools of a racist patriarchy are used to examine the fruits of that same patriarchy? It means that only the most narrow parameters of change are possible and allowable.
>
> – Audre Lorde[1]

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1. Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House*, *in* SISTER OUTSIDER: ESSAYS AND SPEECHES 110, 110–11 (rev. ed. 2007).

> Do you mean the same legal practice that was developed during racial apartheid, and that legitimated Jim Crow? And that developed various customs and norms about how courts should operate and how legal arguments should proceed? Is that what you mean by the legal profession that's going to provide the baseline to tell you that your meritocracy is something different than hidden white supremacy ideology?
>
> – Gary Peller[2]

I. INTRODUCTION

Our professional obligations as lawyers and public citizens demand that we disrupt and ultimately end the reproduction of racial inequality.[3] As with any professional endeavor, doing so requires knowledge of how race and racism has and continues to function—the bailiwick of critical legal scholars—skill in putting that knowledge to work—the task of clinical legal education—and values ensuring that the commitment is sustained—what we argue should be a focus of the professional identity formation movement. Unfortunately, our academy's current approach to teaching professional values largely ends with the promotion of diversity and cross-cultural competence, which, while laudable, does not go far enough.

Uprooting racism professionally and structurally requires knowledge, action, and solidarity—consciousness, agency, and an internalized sense of duty. Given the intractable nature of race and racism, such knowledge and consciousness, action and agency, and solidarity and duty—at their highest conjuncture fused in professional identity—must be sustained over generations, across the entire profession, and in alliance with broader social movements committed to ending race and racism once and for all. Antiracism must, in other words, become a core aspect of legal professional identity. This article offers a sketch of how we might begin to do that. Professional identity formation begins in the first year, indeed first day, of law school. Implicit in our argument, therefore, is the more general call for systematic professional identity formation curricula in the first year.

The Carnegie Report and Best Practices for Legal Education are widely

2. Gary Peller, *Legal Education and the Legitimation of Racial Power*, 65 J. LEGAL ED. 405, 411 (2015).

3. As the American Bar Association President recently wrote, "the country, and indeed the world, is watching and depending on American lawyers to stand up to bigotry, hatred, racism, sexism, homophobia, xenophobia and inequality." Judy P. Martinez, *ABA advances the rule of law to assure fairness, justice, and ultimately, our democracy*, ABA J. (Sept. 1, 2019), http://www.abajournal.com/magazine/article/aba-advances-the-rule-of-law-to-assure-fairness-justice-and-ultimately-our-democracy.

credited for prompting law schools to place greater emphasis on developing students' professional identity.[4] Since the report, schools increasingly have turned their attention to this long-neglected domain of legal training by offering courses that address a range of competencies. Adopting various approaches,[5] the core mission of the professional identity formation movement is to interrogate how lawyers should *be*—and not just how they should think and act.[6]

This expanded curricular focus has begun to change the landscape of legal education. The very notion that one must develop or enhance a new identity to succeed as an attorney magnifies the deep and unique personal challenges presented by the law school experience. Central to these challenges is the lawyer's "special responsibility for the quality of justice."[7] Tethered to the difficult—and often crisis-causing—process of identity de- and re-construction in law school, this calling presents an opportunity to assess how best to prepare the next generation of legal professionals. We argue that the movement has given insufficient attention to the fundamental and constitutive role of race and racism in legal practice.

The effects of this deficit have a cumulative impact on students, attorneys, and the legal system. The lack of focus on race and racism leaves individual actors in that system feeling disconnected from their own racial identities or personal commitments to racial justice while the unexplored potential for antiracist professionals leaves the system further insulated from positive change. Further, the lack of attention to race and racism within the professional identity movement results in disparate burdens on law students. While all law students must navigate the chasm between who they were before law school and who they will be as a lawyer, students of color face the additional challenge of adopting a professional identity rooted in a system that "continues to focus on white males as the primary recipients of legal knowledge and classroom attention."[8] According to the ABA's national lawyer population survey, the profession (and the classrooms preparing students to enter it) remains overwhelmingly white—indeed the whitest of

4. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 5 (2007) (known as "The Carnegie Report"); ROY STUCKEY, BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP 7 (2007).

5. *See*, *e.g.*, *Professional Development Database*, UNIV. ST. THOMAS SCH. OF L. HOLLORAN CTR., https://www.stthomas.edu/hollorancenter/resourcesforlegaleducators/professionaldevelopmentdatabase/ (last visited Oct. 15, 2020).

6. *See* David I. C. Thomson, *'Teaching' Formation of Professional Identity*, 27 REGENT U. L. REV. 303 (2015).

7. MODEL RULES OF PROF'L CONDUCT PREAMBLE (AM. BAR ASS'N 2018).

8. Meera E. Deo et al., *Struggles & Support: Diversity in U.S. Law Schools*, 23 NAT'L BLACK L.J. 71, 73–74 (2010).

all professions[9]—with very little change over the last decade.[10] As a consequence of the historical exclusion of people of color from legal education and practice, "the law" is inherently and deeply—indeed insidiously—race-normed as "White."[11] The result is a vast divergence between the law school experience of students of color and students who are white. In one recent study, for example, law students of color at one institution were "far more likely than their White colleagues to perceive [the campus] as a racially hostile environment," and often felt "marked by their racial identity."[12] White students, on the other hand, "overwhelmingly proceed[ed] through law school without ever consciously thinking about their own whiteness."[13]

These disparities reflect one of the most salient aspects of professional identity formation across much of legal academia: the steady, yet implicit, indoctrination of a particular racial norm in the construction of legal professional identity. Like the vast majority of white students proceeding through law school without ever thinking of the role their whiteness and privilege may have played and continue to play in their success, the norm for the professional identity taught by most law schools largely, if not entirely, elides any consideration of the role race and racism plays in reproducing the system in which that identity is intimately bound.[14] Here, the development of legal professional identity mirrors dominant legal professional standards, which, in the words of the authors of the study described above, avoid issues of race on the misguided assumption that justice is or should be race-neutral.[15] As Jonathan Feingold and Doug Souza observe, "[d]ue largely to the legacy of a White (i.e. race-normed) judiciary, facts about race and social context have been overwhelmingly

9. Deborah L. Rohde, *Law is the least diverse profession in the nation. And lawyers aren't doing enough to change that*, WASH. POST (May 27, 2015), https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/.

10. *ABA National Lawyer Population Survey: 10-year Trend in Lawyer Demographics*, ABA (2019), https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-demographics-2009-2019.pdf.

11. *See* Jonathan Feingold & Doug Souza, *Measuring the Racial Unevenness of Law School*, 15 BERKELEY. J. AFR.-AM. L. & POL'Y 71 (2013); CARRIE YANG COSTELLO, THE PROFESSIONAL IDENTITY CRISIS: RACE, CLASS, GENDER, AND SUCCESS AT PROFESSIONAL SCHOOLS 209–15 (1st ed. 2005) (concluding that educational programs at Boalt Hall School of Law and School of Social Welfare at the University of California, Berkeley trained students in a WASP-male point of view).

12. Feingold & Souza, *supra* note 11, at 112–11; *see also* YUNG-YI DIANA PAN, INCIDENTAL RACIALIZATION: PERFORMATIVE ASSIMILATION IN LAW SCHOOL 14–15 (2017).

13. Feingold & Souza, *supra* note 11, at 113.

14. *See infra* Section IV.

15. Feingold & Souza, *supra* note 11, at 97.

marginalized to the category of irrelevant evidence. 'Objective' legal analysis provides little space for the invocation of race."[16]

If the professional identities of our next generation of lawyers include "little space for the invocation of race" when fulfilling our "special responsibility for the quality of justice," then the legal system is doomed to reproduce racial oppression. As race scholar Robin diAngelo notes, "[t]he default of the current system is the reproduction of racial inequality."[17] Rather than improve the quality of justice, future lawyers will only make a mockery of it. Thus, we call for a deeper and more explicit focus on race, racism, and racial identity in the context of professional identity development with the goal of enhancing the antiracist aspects of each lawyer's professional being.[18]

Our exploration begins with a survey of the professional identity formation movement. We then share our experience teaching a seminar on race and racism in American law to illustrate the limits of racial dialogue in the law school classroom. Our experience is the result of the color-blind nature of legal education, which, in turn, makes us dubious of color-blind professional development models. Such models fall short, even for law students who are committed to racial equality and have the substantive basis from which to understand the ways in which the law has prevented or hindered that goal. To expand the scope of racial dialogue and deepen students' commitment to racial equality, we reach back to the concept of "bleached out" professionalism[19] as a point of departure and build on that tradition by foregrounding racial identity development and calling for the infusion of the reflective method with critical race consciousness to develop antiracist professional identity. By utilizing this model, it is our hope that tomorrow's lawyers will fulfill the profession's highest calling of achieving racial equality through the law. To paraphrase Audre Lorde, only with these new tools can we begin to examine the "fruits of the racist patriarchy" in ways that promise broad, deep, and sustainable change.

16. Feingold & Souza, *supra* note 11, at 97.

17. Robin diAngelo, *White people assume niceness is the answer to racial inequality. It's not*, GUARDIAN (Jan. 15, 2019), https://www.theguardian.com/commentisfree/2019/jan/16/racial-inequality-niceness-white-people.

18. We do not argue or imply that the Model Rules of Professional Responsibility or other applicable ethical standards require that each lawyer take specific or particular antiracist actions while in practice. Instead, we believe the unique responsibility of our profession to tend to the quality of justice demands a more conscientious approach to educating and supporting the development of law student professional identity and, in particular, one that incorporates race consciousness and an antiracist identity.

19. *See* David B. Wilkins, *Identities and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV. 1502, 1504 (1998); *see infra* Section 0.

II. THE PROFESSIONAL IDENTITY FORMATION MOVEMENT

Capitalizing on the ABA's 2014 adoption of a related accreditation standard,[20] the professional identity formation movement is a welcome revival of the academy's attention to this long-neglected domain. Thanks to movement stalwarts, the pedagogical project has shifted from a limited conception of "professionalism" to an expansive exploration of "professional identity,"[21] interest has multiplied,[22] and teaching tools have proliferated.[23]

The shift from "professionalism" to "professional identity" is far from semantic. Governed by ethical rules and bound by occupational decorum, professionalism is extrinsically oriented. By contrast, professional identity is internal and interwoven with one's morals, values, and character—i.e., identity. As Professors Benjamin Madison, III, and Larry Gantt observe, "[p]rofessionalism['s] . . . focus historically has been on the outward conduct the legal profession desires its members to exhibit. . . . Professional identity encompasses the manner in which a lawyer internalizes values false."[24]

With this broader charge, an increasing number of law schools are developing professional identity formation curricula. Professors Neil Hamilton and Jerry Organ, co-directors of the Holloran Center at the University of St. Thomas School of Law, a leader in the movement, believe that 22 law schools of the 35 that have attended their workshops "have an active core group of faculty and staff."[25] Importantly, they report that 30 require a 1L curriculum that fosters student professional development, leading Professor Hamilton to conclude that "this rapid growth of 1L professional development curriculum is substantially the most promising opportunity for this social movement."[26]

20. ABA Program of Legal Education, Standard 302 (2019) ("a law school shall establish learning outcomes that shall, as a minimum, include competency in the . . . [e]xercise of proper professional and ethical responsibilities to clients and the legal system; and [o]ther professional skills needed for competent and ethical participation as a member of the legal profession").

21. Thomson, *supra* note 6, at 303; Benjamin V. Madison, III & Larry O. Natt Gantt, II, *The Emperor Has No Clothes, But Does Anyone Really Care? How Law Schools are Failing to Develop Students' Professional Identity and Practical Judgment*, 27 REGENT U. L. REV. 339, 344–45 (2014–2015).

22. *See supra* note 5.

23. ABA, *supra* note 20.

24. Madison & Gantt, *supra* note 21, at 344–45.

25. Neil W. Hamilton, *The Next Steps of a Formation-of-Student-Professional Identity Social Movement: Building Bridges Among the Three Key Stakeholders—Faculty and Staff, Students, and Legal Employers and Clients*, 13 U. ST. THOMAS L.J. 285, 302 (2018).

26. *Id.* at 296.

The movement encompasses a diverse and sophisticated array of curricular approaches. In addition to baseline instruction in professional ethics, schools strive to inculcate such values as diversity,[27] cross-cultural competence,[28] "commitment to others"/"responsibility to others"/respect for others,[29] integrity,[30] pro bono service,[31] basic good judgment,[32] resilience,[33] leadership,[34] commitment to the highest ethical standards,[35] and the development of a personal code of ethics/moral core.[36] Recent scholarship has also examined the connection between professional identity and practical judgment.[37] Alongside these pedagogical goals are teaching methods that include reflective writing, one-on-one meetings, small group discussion, and others.[38] But while race and racism seem to figure into a number of these initiatives,[39] we find no effort that systematizes such inquiry—a significant shortcoming given the fundamental nature of racial *identity* and the foundational, pervasive, and continuing role of race and racism in the American legal system.

III. COLOR-BLIND LEGAL EDUCATION AND THE LIMITS OF RACIAL DIALOGUE

This shortcoming was drawn into sharp relief for us by the events

27. Neil Hamilton & Jeff Maleska, *Helping Students Develop Affirmative Evidence of Cross-Cultural Competency*, 19 SCHOLAR 187 (2017); Neil W. Hamilton & Jerome M. Organ, *Thirty Reflection Questions to Help Each Student Find Meaningful Employment and Develop an Integrated Professional Identity (Professional Formation)*, 83 TENN. L. REV. 843 (2016); *see also* Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33 (2001); Ascanio Piomelli, *Cross-Cultural Lawyering by the Book: The Latest Clinical Texts and a Sketch of a Future Agenda*, 4 HASTINGS RACE & POVERTY L.J. 131 (2006); Andrew King-Ries, *Just What the Doctor Ordered: The Need for Cross-Cultural Education in Law School*, 5 TENN. J.L. & POL'Y 27 (2009).

28. *Id*.

29. Neil W. Hamilton et al., *Professional Formation/Professionalism's Foundation: Engaging Each Student's and Lawyer's Tradition on the Question "What Are My Responsibilities to Others?"*, 12 U. ST. THOMAS L.J. 271 (2016); Hamilton & Organ, *supra* note 27, at 876.

30. Hamilton & Organ, *supra* note 27, at 847.

31. *Id.*

32. *Id.* at 888.

33. Michalyn Steele, *Cultivating Professional Identity and Resilience Through the Study of Federal Indian Law*, 2018 BYU L. REV. 1429 (2019).

34. Hamilton & Organ, *supra* note 27, at 855.

35. *Id.*

36. *Id.* at 869.

37. *See*, *e.g.*, Madison & Gantt, *supra* note 21, at 377–79.

38. Hamilton & Organ, *supra* note 27, at 843.

39. *See infra* Sections III–VII.

surrounding the 2016 presidential election and its aftermath. As we have written elsewhere,[40] the events of that fall forced a collective reassessment of our approach to legal education and a new awareness that, to effectively function in what seemed like a new era, "we and our students needed to understand the undercurrents and urgencies of the moment."[41] That reassessment led to a new co-taught course bringing together the legal treatment of Native Americans, African Americans, and immigrants in hopes of developing a comprehensive and cross-cutting understanding of race, racism, and American law. We certainly took many important lessons from teaching—or, more aptly, trying to teach—that course. But perhaps most importantly, we realized that neither we nor our students were sufficiently prepared to handle the challenges of those topics as legal professionals.

We began the course with the dual objectives of, first, providing a substantive academic inquiry into the history of race and racism in federal Indian law, criminal law, and immigration law while, second, pushing our students to apply or consider those substantive challenges when tackling practical lawyering issues as part of their final assessments.[42] Although we engaged in an extended and often fruitful dialogue toward the first objective, we fell short of connecting that dialogue to the day-to-day tasks of practicing law that were demanded of our assessments and likely to be faced by our students as attorneys. In one representative example, a group of students considering how to advise a hypothetical public university facing a challenge and protest over a tuition waiver program for Native Americans provided a solid and comprehensive overview of both the background of the benefits afforded Native Americans by virtue of their status under federal law and the nature of free speech rights on college campuses. But they were unable to craft advice that went beyond these well-established legal frameworks. Thus, although each student in the class understood the history and context of race, racism, and American law that led to the complex challenges underlying these basic legal problems, they were unable to come up with legal strategies that connected to and challenged those deeper issues. That struggle led many in the class to feel hopeless about the potential of their future legal careers to improve the "quality of justice."

Similarly, we regularly encountered difficulty in our class with the personal interactions necessary to access the deeper role of race and racism in our legal system. We struggled to engage the class at both the academic

40. Eduardo R.C. Capulong, Andrew King-Ries & Monte Mills, *Race, Racism, and American Law: A Seminar from the Indigenous, Black, and Immigrant Legal Perspectives*, 21 ST. MARY'S L.J. 1 (2019).

41. *Id.* at 3.

42. *See id.* at 24–25, Appx. (describing assessments and including them in the appendix).

and personal levels simultaneously.[43] When we did near the heat of personal connections to, or identities formed by, race or racism, the discussion regularly devolved into a far less productive endeavor, with students disengaging and even walking out of class.[44] Once again, these incidents demonstrated to us that, despite our years of experience in law school, practicing law, and working in legal education, we had not been prepared for the challenge of engaging other legal professionals around these issues.

To be clear, our students have been taught how to recognize cultural differences and more effectively interact with clients and colleagues across those divides. At our institution,[45] we have adopted as an outcome for each of our students the "fundamental lawyering skill" of "[c]ross-cultural competence."[46] In addition, we seek to ensure that our graduates recognize, as a matter of professionalism, the value of "[d]iversity and equality of opportunity in the practice of law," among other values, including the "capacity for self-reflection as key to continuous learning, self-improvement, and self-development."[47] But, in our experience, the commitment to cultural competence and diversity did not prepare our students to effectively engage in productive racial dialogue.

Although disheartened by these shortcomings, we soon realized that we are not alone in those deficiencies. In fact, upon reflection, we recognized that the shallow depth of the current focus on diversity and cross-cultural competence was both ubiquitous within the legal academy and conveniently avoided presenting law students with the harder questions about their future professional roles within a legal system founded on race and racism. Like the law's shift to a neoliberal treatment of race,[48] these lessons rely on the recognition of perceived racial identities but only to the extent necessary to better communicate with or represent "others" within the existing system. While culturally competent students who value diversity and equality are critically important and will likely ensure an improved quality of justice for their individual clients, they won't necessarily be equipped to go further.

Indeed, these values can even undermine an antiracist agenda, as others have pointed out. Diversity has been used to undermine racially focused

43. *See* Capulong, King-Ries & Mills, *supra* note 40, at 30–31.

44. *Id.* at 34–35.

45. Professor Capulong taught at the University of Montana until the Spring of 2019.

46. *Our Mission, Goals, and Graduates*, ALEXANDER BLEWETT III SCH. OF L., UNIV. MONT., https://www.umt.edu/law/files/admissions/student-learning-outcomes.pdf (last visited Oct. 15, 2020).

47. *Id.*

48. *See* Justin Desautels-Stein, *Race as a Legal Construct*, 2 COLUM. J. RACE & L. 1, 30–34, 41–50 (2012).

affirmative action,[49] and viewpoint diversity has produced a perverse array of racist prescriptions.[50] In similar fashion, cross-cultural competence, which is premised on individual difference, "targets change at the level of . . . personal beliefs" and hence "does not reach far enough in addressing systemic and institutionalized oppressions."[51] Laura Abrams and Jene Moio lament this limited framework in the context of social work education, observing that the cross-cultural framework even "may unintentionally reinforce a color-blind paradigm" by "leveling . . . oppressions" and teaching students to ignore racial differences.[52] Professors Abrams and Moio point to some evidence of the latter in a study of social work students, which found that exposure to a cultural diversity class "actually increased respondents' belief in a 'just world,' meaning a fundamentally fair and equal society, despite the intent of the class to expose students to the realities of structural disadvantages such as racism and sexism."[53] A similar study found "a great deal of complacency among students about the existence of racism in American society."[54]

In similar fashion, given the overwhelming whiteness of legal education and the legal profession, the very notion of requiring cross-cultural competence as a learning outcome simply reinforces the standard—but implicit—conception of a legal professional as "white."[55] As Russell Pearce has noted, "white lawyers understandably have a tendency to treat whiteness as a neutral norm or baseline, and not a racial identity, and tend to view racial issues as belonging primarily to people of color, whether lawyers or clients."[56] The result is that diversity and cross-cultural competence are often geared toward the predominantly white identities of law students and law

49. *See*, *e.g.*, Regents of Univ. of California v. Bakke, 438 U.S. 265, 315 (1978) ("The diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element. Petitioner's special admissions program, focused *solely* on ethnic diversity, would hinder rather than further attainment of genuine diversity.").

50. *See*, *e.g.*, Glenn Greenwald, *The NY Times's Newest Op-Ed Hire, Bari Weiss, Embodies Its Worst Failings – and Its Lack of Viewpoint Diversity*, INTERCEPT (Aug. 31, 2017), https://theintercept.com/2017/08/31/nyts-newest-op-ed-hire-bari-weiss-embodies-its-worst-failings-and-its-lack-of-viewpoint-diversity/.

51. Laura S. Abrams & Jene A. Moio, *Critical Race Theory & the Cultural Competence Dilemma in Social Work Education*, 45 J. SOC. WORK EDUC. 245, 247 (2009).

52. *Id.* at 249–50.

53. *Id.* at 250.

54. *Id.*

55. And, we would add, cis-gendered male. We have focused exclusively on race and need more work and preparation before successfully integrating intersectionality issues into our class or the present argument. *See* Capulong, King-Ries & Mills, *supra* note 40, at 34.

56. Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 FORDHAM L. REV. 2081, 2083 (2005).

professors and may improperly reinforce stereotypes about people of color. More problematic, the development of cross-cultural skills rarely includes the individual, personal, and difficult work of confronting one's own racial identity. Ultimately, neither the development of cross-cultural competence as a professional skill nor the promotion of diversity as a professional value require the development of an antiracist identity as a central component of a lawyer's professional identity.

Lawyers encountering issues of race and racism in their daily tasks regularly confront these limitations. Indeed, the mere accusation of racism often sparks a heated and personal conflict that prevents any deeper investigation of the structural and legal factors at play. Instead, these exchanges regularly revert to tired and superficial tropes in defense of racist behavior, namely that racism is solely an individual matter that, when called out, amounts to a personal attack that can and should be defeated by one's own connections with individuals of color (i.e., having staff, friends, or relatives of color). Indeed, here "professionalism" can even mean demurring from advocacy during pointed, personalized exchanges—as many of our students did—ironically submerging the very professional identities they needed to express.[57] This accomplishes the very opposite of intentional professional identity formation, which "requires regular and repeated formation opportunities."[58]

Because our current approach to teaching lawyers does not equip them to move beyond the surface and emotion of these issues and, in part, may encourage them to ignore highlighting racial differences in the service of diversity or cross-cultural competence, we will likely never achieve racial justice in the law demanded by our professional obligations. Something more is needed. In the following section, we draw on the concept of "bleached out" professionalism as the point of departure for arguing for the infusion of reflective lawyering with critical race consciousness.

57. Another recent, high-profile example of such an interaction occurred during the testimony of President Trump's former attorney, Michael Cohen, before the House Committee on Oversight and Reform, during which Representatives Rashida Tlaib and Mark Meadows engaged in a heated back-and-forth over Meadows' presentation of a woman of color to refute Mr. Cohen's allegations of racism against President Trump. *See*, *e.g.*, Annie Karni, *Tlaib Accuses Meadows of Using 'a Black Woman as a Prop,'* N.Y. TIMES (Feb. 27, 2019) https://www.nytimes.com/2019/02/27/us/politics/meadows-racist-tlaib-racism.html?module=inline; *Hearing with Michael Cohen, Former Attorney to President Donald Trump*: *Hearing Before the Comm. on Oversight and Reform*, 116th Cong., 1st Sess., 34–35, 164–65 (2019).

58. Thomson, *supra* note 21, at 324–25 (discussing Costello's work).

IV. "BLEACHED OUT" PROFESSIONALISM

Law school develops "a very particular brand" of lawyer."[59] Law students are taught ways of thinking and speaking shorn of human context and beholden to authority,[60] acculturated to upper-class behavior,[61] and immersed in myths of color-blindness and individual merit that simultaneously obscure race and exceptionalize racism into an adversarial system of individual rights and liabilities. In addition, law students are taught to identify with the elite of the profession—the corporate sector who represent the 1%, never mind that, in reality, only a small minority of lawyers are members of that elite.[62] The reality is most lawyers are white, able-bodied, heterosexual males.[63] Law students are taught to be detached, adversarial, "neutral," and unreflective.[64] They are trained, to borrow from and extend Professor Duncan Kennedy's polemic: for the reproduction of racial hierarchy.[65]

"Bleached out" professionalism is the practical co-extension of such color-blind education.[66] With whiteness—more precisely white settler

59. Eli Wald & Russell G. Pearce, *Making Good Lawyers*, 9 U. ST. THOMAS L.J. 403, 405 (2011).

60. ELIZABETH MERTZ, THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER" 4 (2007). As Professor Elizabeth Mertz summarizes, "This core legal vision of the world and of human conflict tends to focus on form, authority, and legal-linguistic contexts rather than on content, morality, and social contexts." *Id.*

61. Lucy A. Jewel, *Bourdieu & American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 BUFF. L. REV. 1155, 1197 (2008) ("[L]aw schools replicate the imagery of the law profession as an upper-class culture by teaching students to adopt upper-class 'professional' mannerisms and behaviors. The American legal profession has long been viewed as occupying the cultural and social space of the aristocracy. The prestige of the legal profession is advanced, in part, through the outward display of symbolic goods and manners, which create aurae of taste, distinction, and high culture. The display of symbolic goods (in the form of tasteful, conservative clothing) and the performative aspects of professional manners (speaking with proper restraint and diction) promotes the legal profession as a noble, elite profession."); *see also* DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM (critical ed. 2004).

62. *See* Kennedy, *supra* note 61; *see*, *e.g.*, *Occupational Outlook Handbook: Lawyers*, U.S. BUREAU LAB. STAT., https://www.bls.gov/ooh/legal/lawyers.htm (last visited Oct. 15, 2020) (less than 10 percent of attorneys earn more than $208,000 annually).

63. *Report on Diversity in U.S. Law Firms*, NAT'L ASS'N FOR L. PLACEMENT (Dec. 2019), https://www.nalp.org/uploads/2019_DiversityReport.pdf.

64. *See* Karl Klare, *The Law-School Curriculum in the 1980s: What's Left?*, 32 J. LEGAL EDUC. 336, 336–39 (1982).

65. *See* Kennedy, *supra* note 61.

66. Professor Pearce calls the relationship between whiteness and professionalism symbiotic. Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 FORDHAM L. REV. 2081, 2083 (2005).

colonialism—as the norm, i.e., the assumed, unstated, invisible measure of neutrality and objectivity, comes a profession being constructed to uphold it.[67]

As Professor David Wilkins put it:

> [B]leached out professionalism has been closely linked to particular normative and empirical claims that are themselves importantly bleached. Specifically, the idea that lawyers should not consider their racial identities when acting in their professional role is closely linked to the understanding that the legal rules and procedures that lawyers interpret and implement are also unaffected by issues of race. The claim that "our constitution"—and indeed justice itself—"is color-blind" is taken by many to be a bedrock principle of our legal order. Lawyers who either explicitly or implicitly call attention to racial issues are frequently viewed as undermining this ideal.[68]

Professor Russell Pearce calls it "white lawyering."[69] Exhorting white lawyers to recognize their race and assume equal responsibility for racial issues, Professor Pearce draws on the work of Robin Ely and David Thomas to argue for an "integration and learning perspective that openly acknowledges and manages racial identity."[70] But even that call, made in the early days of the professional identity development movement, did not integrate the concepts of race-conscious lawyering with the core professional responsibilities of being an attorney. And, despite these and similar critiques of legal education and its implicit indoctrination of purportedly race-neutral but actually race-normed standards, little has changed, even within the context of recent reforms. To center race in the formation of professional identity, we first bring to the fore the development of racial identity. "[T]he nature of professional formation is," after all, "interwoven with personal

67. *See* Margalynne J. Armstrong & Stephanie Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C.L. REV. 635 (2008) (arguing that whiteness operates as the normative foundation of most discussions of race).

68. Wilkins, *supra* note 19, at 1514–15.

69. Pearce, *supra* note 66.

70. *Id.* at 2083 (Professor Wilkins refines this approach for black lawyers by suggesting that they consider three related "semi-autonomous" realms—conventional professionalism; the obligation to represent the black community; and personal morality—to develop a professional identity equal to the real and aspirational dimensions of race and racism in practice); Wilkins, *supra* note 19, at 1506–08.

formation."[71]

V. RACIAL IDENTITY DEVELOPMENT

During the Civil Rights Movement, Black sociologists and educators—led by W.E. Cross in 1971—began to theorize the creation of and proposed various models for the development of so-called Black identity.[72] These models sought to explain Black identity transformation from conformity with white cultural norms to development of a positive African-American frame of reference.[73] More specifically, the Black Identity Development (BID) models sought to examine and explain how African-Americans experienced race and racism in the United States.[74] As Bailey Jackson, developer of the one of the most influential BID models, stated, "the effect of racism and the process of reacting to racism became the predominant lens through which BID was conceived and examined."[75] The BID model was developed as a theoretical framework to establish the "existence and nature of stages of Black Identity Development" and to identify the "levels/stages of consciousness that Black people tend to follow in the development of their Racial/Black Identity."[76]

Cross's original BID model posited five stages: pre-encounter, encounter, immersion-emersion, internalization, and internalization-commitment.[77] Jackson's most current BID model articulates five stages of Black Identity Development: Naïve, Acceptance, Resistance, Redefinition, and Internalization.[78] Importantly, according to Sue and Sue, at the ultimate stage of such development, individuals exhibit a commitment to social justice

71. Thomson, *supra* note 21, at 322.

72. DERALD WING SUE & DAVID SUE, COUNSELING THE CULTURALLY DIVERSE: THEORY & PRACTICE 236–37 (5th ed. 2008).

73. SUE & SUE, *supra* note 72, at 237.

74. Bailey W. Jackson III, *Black Identity Development: Influences of Culture and Social Oppression*, in NEW PERSPECTIVES ON RACIAL IDENTITY DEVELOPMENT: INTEGRATING EMERGING FRAMEWORKS 33, 36 (Charmaine L. Wijeyesinghe & Bailey W. Jackson III eds., 2nd ed. 2012).

75. *Id.* at 37 (Jackson has recently expanded his model to incorporate the impact of Black culture on Black identity development to address concerns about intersectionality).

76. *Id.*

77. *Id*. at 38–39; *see also* SUE & SUE, *supra* note 72, at 237. Cross termed his theory as a model of psychological nigrescence or the process of becoming Black. He later refined his model in 1991. *Id*. at 237–38.

78. Jackson, *supra* note 74, at 39. Jackson's BID stages are similar to the stages of Cross's Nigrescence Model: Pre-Encounter, Encounter, Immersion-Emersion, Internalization, Internalization Commitment. *Id.*

and societal change.[79]

Following the lead of the Black Identity Development models, in recent decades, researchers created identity development models specific to the experiences of Asian, Latinx, and Native Americans.[80] Other researchers further modified the Black Identity Development models to apply to Whites. In the 1980s, for example, Psychology Professor Janet Helms created one of the most influential White Racial Identity models.[81] Helms identified six phases of White Identity: Contact, Disintegration, Reintegration, Pseudo-independence, Immersion/Emersion, and Autonomy.[82] Helms' model assumes the centrality of racism in American society and posits that healthy White identity requires abandonment of racism and creation of a nonracist identity.[83] While Helms' model has been widely cited and influential, it has also spawned much criticism in psychological literature.[84]

In an effort to improve Helms' model based on that criticism, Professors Sue and Sue have proposed a seven-phase White Racial Identity Development model: Naïveté, Conformity, Dissonance, Resistance and Immersion, Introspection, Integrative Awareness, and Commitment to Antiracist Action.[85] In creating this model, Sue and Sue made multiple assumptions. First, they assumed the integral nature of racism in American society, culture, and institutions.[86] Second, as members of a racist society, Whites absorb the racist attitudes, beliefs, and behaviors of society as a whole.[87] Third, White perception of their identity follows observable patterns.[88] Fourth, what phase a White individual is in on the White Racial Identity Model "affects the process and outcome" of any interracial interaction.[89] Finally, Sue and Sue write that "the most desirable outcome is one in which the White person not only accepts his or her Whiteness but also

79. SUE & SUE, *supra* note 72, at 237; *see also* Jackson, *supra* note 74, at 39 (discussing stage 5 of Cross).

80. SUE & SUE, *supra* note 72, at 242; *see also* Placida V. Gallegos & Bernardo M. Ferdman, *Latina and Latino Ethnoracial Identity Orientations*, in NEW PERSPECTIVES, *supra* note 74, at 51–80 (Latino/Latina); Perry G. Horse, *Twenty-First Century Native American Consciousness: A Thematic Model of Indian Identity*, in NEW PERSPECTIVES, *supra* note 74, at 108–20 (Native American); Jean Kim, *Asian American Racial Identity Development Model*, in NEW PERSPECTIVES, *supra* note 74, at 138–60 (Asian-American).

81. SUE & SUE, *supra* note 72, at 269.

82. *Id.* at 269–73.

83. *Id.* at 269.

84. *Id.* at 273–74.

85. *Id.* at 277–82.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

defines it in a nondefensive and nonracist manner."[90]

In addition to creating more specific identity development models, some scholars posit that "minority groups share similar patterns of adjustment to cultural oppression."[91] These researchers—such as Derald Wing Sue and David Sue and John Hoffman and Joy Hoffman—established a more general Racial/Cultural Identity Development Model.[92] According to Sue and Sue, the model is a "conceptual framework" that "defines five stages of development that oppressed people experience as they struggle to understand themselves in terms of their own culture, the dominant culture, and the oppressive relationship between the two cultures."[93] The five stages of the R/CID model are: Conformity, Dissonance, Resistance and Immersion, Introspection, and Integrative Awareness.[94] Significantly, Sue and Sue also apply their model to White identity development.[95]

Based on these general concepts of racial identity formation and awareness, research has also shown that the level of White racial identity awareness is predictive of racism.[96] Applying these models to the work of psychologists and counselors, for example, Sue and Sue determined that an understanding of racial identity development in a cross-cultural encounter affected the process and outcome of an interracial relationship. Simply put, counselors need to understand their own racial identity and experiences *and* those of their clients. The implication is that a lack of understanding of either their own racial identity development—or that of their clients—negatively impacts the outcome of the counseling relationship. As Sue and Sue state, "[u]ntil mental health providers work through [the intense feelings generated by discussions of race and racism], which are often associated with their own biases and preconceived notions, they will continue to be ineffective in working with a culturally diverse population."[97]

Ultimately, despite the challenge of generalizing models of racial or cultural identity formation and the inherent risk of stereotyping and tokenizing each individual's own identity, the consistency across these models is instructive. *At each of the ultimate or penultimate stages of racial identity development, researchers and theorists have identified an antiracist or social justice commitment as an important part of everyone's identity*. Based on this research, doing the hard work of developing one's own racial

90. SUE & SUE, *supra* note 72, at 277-82
91. *Id.* at 242.
92. *Id.*
93. *Id*. at 242.
94. *Id.*
95. *Id.*
96. *Id.* at 265.
97. *Id.* at 33.

or cultural identity to reach those final stages then results in a more sustained and inherent commitment—borne out by the relationships of counselors and clients—to an antiracist approach.

The same is true of the legal profession. Indeed, the recognition that lawyer-client relationships can be negatively impacted by racial differences seems to underlie the academy's focus on diversity and cross-cultural competence.[98] But those efforts rarely if ever include the individual, personal, and difficult work of assessing, determining, and confronting one's own racial identity. Our premise is that this work—the individual, personal, and difficult process of confronting one's own racial identity and how it's been shaped by a racist system and, with that, the development of an antiracist identity, are central to being a lawyer. To prepare and enable our students to do that, however, legal educators must provide not only engaging substantive education on race and racism, but also model reflective practice that can bring together the personal and the professional.

VI. REFLECTIVE LAWYERING

In 2014, Professor Timothy Casey penned his influential article, "Reflective Practice in Legal Education: The Stages of Reflection."[99] In the article, Professor Casey proposes a method for incorporating reflection into legal education to improve the development of professional judgment. As he notes, "In a basic sense, reflective practice forces the professional to increase awareness of the factors that affect judgment."[100] Professor Casey observes that a "higher level of awareness and consciousness of the decision-making process will lead to better and more ethical practice."[101]

Professor Casey also demonstrates a systematic use of reflection to progress to higher levels of professional judgment, using stages that not coincidentally track cognitive development theory. According to Casey, cognitive development, moral development, and reflective judgment have

98. *See*, *e.g.*, Aastha Madaan, *Cultural Competency and the Practice of Law in the 21st Century*, ABA PROB. & PROP. MAG. (Mar. 1, 2017), https://www.americanbar.org/groups/real_property_trust_estate/publications/probate-property-magazine/2016/march_april_2016/2016_aba_rpte_pp_v30_2_article_madaan_cultural_competency_and_the_practice_of_law_in_the_21st_century/ (". . .the potential client base for estate planning attorneys is becoming increasingly diverse because of new laws and Supreme Court decisions, an increase in immigration and international investments, and an evolving society, among other factors. This means that for estate planning attorneys to stay relevant and continue serving new clients effectively, cultural competency will be key.").

99. Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 CLINICAL L. REV. 213 (2014).

100. *Id.* at 321.

101. *Id.*

three components:

> First, as students develop, they move from dualistic and absolute notions of reality to more relativistic and contextual understandings of reality. Second, the student develops the capacity to move from concrete experience to abstract principles. Third, the student's focus shifts from a self-centered and self-interested perspective to a view that includes the interests of others, and ultimately has universal application.[102]

His stages of reflection are competence, difference and choice, internal context, external context, societal context, and metacognition. The first stage of competence requires the student to "compare her performance to the standard of professional competence."[103] The second stage asks students to identify "different, equally successful ways to accomplish the lawyering performance."[104] The goal for this stage is for students to recognize that because there are multiple valid ways to complete a lawyering task, the method they use reflects a choice—conscious or unconscious—on the student's part.[105]

The third stage asks students to reflect on why they made the choices that they identified in the second stage.[106] In the third stage, Professor Casey asks students to focus on the impact of "internal context" on their lawyering choices. Casey defines "internal context" as the "preferences, experiences, biases and characteristics owned by each of us that shape the decisions we make."[107] Professor Casey defines "characteristics" as including "immutable physical attributes, such as race or gender or physical stature, as well as personality traits, such as introversion or attention to detail."[108] The goal for the third stage is greater self-awareness.[109]

The fourth stage involves the consideration of "external context." During this stage, students are asked to reflect on the "preferences, experiences, biases and characteristics" of the other actors involved, including clients, opposing counsel, judges, and others.[110] The goal here is for the student to move from "an absolutist to a contextual understanding of

102. Casey, *supra* note 99, at 321.
103. *Id.* at 334.
104. *Id.* at 338.
105. *Id.* at 338–39.
106. *Id.* at 339.
107. *Id.*
108. *Id.* at 339–40.
109. *Id.* at 340.
110. *Id.* at 341.

the lawyering process" and to move from a concern about how the student feels or perceives to "an awareness of how others perceive her in a professional context."[111]

Professor Casey's fifth stage considers societal context. In this stage, students are asked to consider "systemic power dynamics, political and social realities, and economic forces that affect their decision-making."[112] According to Professor Casey, "the success of the representation depends on the lawyer's awareness of these different contexts."[113]

The final stage is metacognition. During this stage, students are asked to consider how their thinking about the lawyering process has changed as a result of their reflections during the earlier stages.[114]

According to Professor Casey, "an effective lawyer must achieve high levels of cognitive development in the areas of moral reasoning and reflective judgment."[115] He considers these abilities to be critical aspects of professional judgment although he recognizes that they are difficult to achieve. His stages of reflection are designed to provide "transparency" to the difficult process of reflection and help prepare students to access and rely on the judgment necessary to be successful legal professionals.[116] For many legal educators, reflection has become a critical part of teaching students to "think like a lawyer" and developing their professional identity.

VII. ANTIRACIST REFLECTION: TOWARD AN APPROACH FOR DEVELOPING ANTIRACIST PROFESSIONAL IDENTITY

Reflective practice is the starting point for the development of antiracist professional identity.[117] An opportunity to contemplate both internal (personal) and external (structural) considerations, it mirrors the deep and insidious personal and structural aspects of racism and provides a platform for analyzing and addressing them in the day-to-day construction of professional being. Reflective practice seeks to render bare the connection among racial identity structural racism, and professional purpose.

How can we use the reflective process to develop antiracist professional identity? In this section, we center race and racism at each stage of inquiry

111. Casey, *supra* note 99, at 343–44.
112. *Id.* at 344.
113. *Id.* at 345.
114. *Id*. at 346.
115. *Id.* at 347.
116. *Id.* at 350.
117. S*ee* Madison & Gantt, *supra* note 21, at 390–94 (discussing development of professional identity as prerequisite to exercising practical judgment in law practice).

and raise questions instructors and students might ask. This new approach to reflective practice—Antiracist Reflection—seeks to guide individual inquiry into the role of race and racism within the context of lawyering. Given our focus, we situate our inquiry in the first-year curriculum, in particular the issues a first-year student might encounter in doctrinal, legal research, legal analysis, legal writing, lawyering, and legal methods courses.

Using Antiracist Reflection requires competence that is, first and foremost, grounded in critical race theory. In this sense, competence means not just a commitment to diversity or cross-culturalism but to antiracism. To begin with, the objectification of white norms into the legal fabric means that we must interrogate the racial dimensions of basic legal "competence." For example, the 1L student—indeed a lawyer's—diet is mostly legal analysis and reasoning. Here, competence means proficiency in synthesizing, crafting, analogizing, distinguishing, and applying legal categories. We train students in doctrine so that they can identify legal issues in a given set of facts. But what do the elements of such doctrines leave out? What racial aspects are there, if any? What is considered legally significant or insignificant, and how are such considerations racialized or not? How does legal reasoning operate to obscure or expose race and racism?

By the same token, how is practical competence and professional identity being modeled and how is it racialized or de-racialized? Here, Antiracist Reflection starts at a point diametrically opposite prevailing white normative ideology: instead of identifying professionally with the stereotype of the legal elite—white, upper-class, politically conservative, detached, adversarial, "neutral," color-blind lawyers who see their role narrowly as applying formal legal rules, assigning fault, and claiming damages—the race-conscious lawyer as a threshold matter identifies with the racialized other. Competent race-conscious lawyering requires a recognition of the history, social construction, intersectionality, and fluidity of race and racism (and for that matter the fluidity of identity). Competence also requires sensitivity to how these issues manifest in the present-day. The Trump era of course has seen the demonization of immigrants, Latinx in particular, and hardening of White identity, nationalism, and supremacy. Basic competence demands attention to this context and how it impacts legal practice. Finally, professionalism requires a commitment to the lawyer's role—as advocate, court officer, and public citizen responsible for the quality of justice—as champion of racial justice and equality.

From this perspective, professional identity transforms into an expansive, politically contested space. Freed from the confines of color-blind "neutrality," the universe of potential choices—Professor Casey's second reflective stage, "difference and choice"—enlarges into a broader professional terrain that is both rife with possibility and fraught with

pitfalls. Antiracist Reflection prompts the law student to explore a richer conception of role and a more inclusive consideration of legal relevance while also allowing consideration of the dangers of a reductionist view that essentializes race and racism and robs individuals of agency and possibility. This is a challenging task—but it is one made possible only through the explicit consideration of race and racism in the Antiracist Reflection process. An example of an Antiracist Reflection prompt for this stage would be to ask the student what choices might be available in a legal system that prioritized racial justice or adequately accounted for the historical costs of racial inequity?

Exploration of the internal context, too, begins with a racialized premise: to the extent that Casey's third stage is the stage in which we ask *why* we make certain choices, here, we also ask *how* our racial identity and perspective led us to those choices. Drawing on the various racial identity development models summarized above, how does our own conception of racial identity affect our professional choices? Our individual understanding of race and racism, analysis of a given set of circumstances, and role in addressing them? How does our "insider" or "outsider" status—or the liminal space that students of color find themselves—affect our analysis and judgment? What role might privilege play in such an assessment?

By the same token, these are the same questions we should ask in examining the external context of reflection, Casey's fourth stage. How do others' racial identities, commitments, and roles affect our intervention and practice? How do they enable or constrain our choices? What commonalities do we share in this realm, personally and politically? What differences? How have the differential labor burdens imposed by racism and racial oppression informed the dynamics of the situation? Societally, how do race and racism continue to be perpetuated by law and the legal system? How do they currently manifest? As Professor Casey mentions, consideration of that context seeks "reference to principles that can guide future performances,"[118] and, to the extent those future performances seek to enhance the pursuit of justice, those principles should align with an antiracist approach.

With regard to the consideration of societal context—Casey's fifth stage—in reflective practice and professional identity, that too must be informed by a deeper understanding of the context of race and racism within society and the law. Importantly, considering societal context in Antiracist Reflection requires more than simply identifying and improving opportunities for historically oppressed or underserved communities through efforts at enhancing diversity or building skills in cross-cultural competence. While those principles would certainly improve and guide future

118. Casey, *supra* note 99, at 349.

performances, they will not erase or overcome the defining role that race and racism have played in law, the profession, and the legal system. Therefore, consideration of societal factors in the construction of an antiracist legal professional identity must also take into account these historical and ongoing effects and rely on that consideration to motivate actions that target and counteract them.

But, rather than frame the reflective practice around these factors as an open-ended inquiry (e.g., "How did your understanding of societal and institutional structures affect your performance?"), Antiracist Reflection prompts reflection along the lines of, "How did your performance affect particular societal and institutional structures and practices of racism?" Switching the reflective inquiry to motivate actions in support of antiracism alters the process and establishment of professional identity and does so in the name of moving the justice system beyond its current structural limitations.

Finally, how do we then integrate this deeper understanding metacognitively? How do we translate it into heightened racial consciousness and antiracist commitment? To racial solidarity and, ultimately, sustained action? As Professor Casey describes the final stage of reflection, metacognition, the process of thinking and acting becomes unified and actualized such that professional judgment is considered, acted upon, reflected over, integrated, and considered again as part of an attorney's daily routine. As set out by him, this metacognitive approach to acting as a lawyer allows for the deep work necessary to account for race and racism within these daily routines—work that is necessary on the part of each attorney to rid the profession of the legacy of racism in the law. As noted by the racial identity scholars described above, that work is often ignored or avoided and, without explicit and focused attention to the personal, societal, and deep impacts of race, such ignorance and avoidance will continue.

A couple of points merit highlighting. First, the integration of racial identity development models into the reflective process presents important opportunities to deepen the reflective process. This is true regardless of where the individual may be in their own personal racial identity development. Each of Professor Casey's reflective stages can be deepened by asking racial identity development model questions. Second, consideration of racial identity development models presents additional opportunities for creatively advancing difficult conversations about race. An integrated reflective process can help the law student identify possible avenues to educate about the broader context, to understand the emotional aspect of the conversation, and to build positive relationships with his or her colleagues. Thus, just as Professor Casey's stages of reflection suggest that the metacognitive legal professional is able to incorporate reflective practice

to enhance their legal performance, the antiracist legal professional would be able to incorporate both the reflective practice needed to be a better lawyer but also the deeper consideration of the roles of race and racism in the work and practice of the law and act to interrupt the continuing injustices created by those roles as well.

With Antiracist Reflection in mind, we might envision a law school exercise. Take, for example, a lesson on the professional responsibilities associated with lawyer advertising and begin with a hypothetical law firm seeking to tout its diversity and recruit additional lawyers of color. To meet these objectives, the firm is likely to promote the image of happy and successful attorneys of color within the firm. If, however, the firm is representative of the broader legal profession, the older, often predominantly white and likely male partners in that firm are likely to focus on the (likely) few people of color as representative of the firm's diversity bona fides.[119] So, imagine a meeting of the firm's attorneys at which these partners present a new marketing strategy that relies on putting the firm's few attorneys of color front and center as faces of the firm. How would students familiar with the rules applicable to lawyer advertising react to or discuss that proposal? What, if anything, would the standard model of professional identity suggest? How might student views change if their professional identity incorporated familiarity with racial identity development concepts and went beyond the value of diversity and the skill of cross-cultural competence?

Relying on Antiracist Reflection, a law student discussing the firm's advertising strategy could begin by assessing (or reflecting upon) an action in light of basic standards of competence. Here, those standards are the applicable rules of professional responsibility, which, under the model rules, prohibit false or misleading statements about a lawyer's services.[120] Those rules do not provide much guidance regarding a decision to present an attorney of color as representative of the predominantly white law firm and, instead, only govern the explicit message of the advertising, i.e., whether the firm is inappropriately promising a particular outcome. As this stage is described by Professor Casey, the firm's proposed advertising plan would likely "meet the standard of a reasonably competent lawyer" and nothing within the existing conception of legal professional identity would suggest a different course of action.[121]

119. *See* Meredith Hobbs, *Talent or Token? Lawyers Say Diversity Still Can Be Just for Show*, LAW.COM (Mar. 28, 2019), https://www.law.com/dailyreportonline/2019/03/28/ talent-or-token-lawyers-say-diversity-still-can-be-just-for-show/.

120. MODEL RULES OF PROF'L CONDUCT r. 7.1 (AM. BAR ASS'N 2018).

121. That is if the current approach to professional identity development would even consider participation in this discussion an aspect of lawyer professional identity.

From an antiracist professional identity perspective, however, even this initial assessment of basic applicable standards would differ. Significantly, basic competence in this approach would require surfacing the racial issues in the marketing strategy. Rather than relying upon the generally applicable rules assessing a lawyer's competence, the fundamental standard for an antiracist professional instead focuses on whether the action furthers the broader goal of racial justice, i.e., improving the quality of justice available within the legal system. From that perspective, the accuracy of the advertising message regarding the firm's services is less important than the broader notion of justice that it might communicate. So, rather than ask whether a proposed action would comply with the rules of professional conduct, a student being asked to reflect on or assess an action within this framework would consider whether the action accurately assesses the existing quality of justice and promotes its improvement.

For the law firm considering relying on its few attorneys of color to promote its services, this consideration should take into account the dire underrepresentation of people of color within the legal profession, the demographics of the firm's client population, and the prevailing challenges of tokenization and racial representation. Those widespread practices regularly isolate and stereotype people of color solely based on the external perception of their race.[122] But to call those tactics racist is likely to ignite defensive reactions that prevent any subsequent discussion from advancing beyond the individual or personal level.[123] Indeed, such discussion may also involve what can be thought of as the "I can't be racist because I have a(n) [insert person of color descriptor here] friend/family member/partner/ associate attorney/colleague." That response further demonstrates a superficial understanding of the role and meaning of race and racism within our system and obscures and avoids the deeper reflection and consideration of racial identity development that might lead to a dialogue about those issues.[124] Judging the basic competency and responsibility of the proposal along these lines would provide much deeper consideration of the role that race—and, more importantly, antiracism—might play in how the firm advertises its services.

Similarly, the internal, external, and societal contexts involved in a particular student's action would require a deeper reflection as well. For

122. *See*, *e.g.*, Tyler Parry, *A Brief History of the 'Black Friend*,*'* BLACK PERSPECTIVES (July 30, 2018), https://www.aaihs.org/a-brief-history-of-the-black-friend/.

123. *See*, *e.g.*, *An Expert Explains Why Some Trump Supporters Avoid the Word 'Racist*,*'* NPR (July 18, 2019), https://www.npr.org/2019/07/18/742981792/why-do-some-trump-supporters-avoid-the-word-racist-one-expert-explains.

124. *Cf.* diAngelo, *supra* note 17 (suggesting most white people combat claims of racism with evidence of "being nice").

example, a student considering the law firm's advertising might recognize a choice of whether to intervene in the firm's discussion and suggest an alternative advertising strategy, to intervene and agree with the proposed strategy, or choose to stay silent and go along with what others decide. In analyzing the factors that may influence that choice, the student might recognize their own personality traits or preference for social media ads, the power dynamics at play within the workplace and willingness to engage with supervising partners, and even the broader societal forces, such as the role of lawyers in society or social power structures, that may also influence their decision to engage with the advertising decision. While consideration of these factors may arguably allow room for an attorney already committed to an antiracist identity to engage and interrupt the racial power dynamic at play, these stages of reflection do not integrate consideration of the individual's own racial identity development, nor that of others, nor guide reflection toward a more just (and antiracist) course of action.

Therefore, in order to better address structural racism within the legal system, the development of lawyer professional identity must be approached much more consciously with an eye toward guiding legal professionals toward justice. This model would build on the concept of choice and "shift away from concrete format and dualism" toward recognition of a broader array of decision-making. From there, however, the consideration of internal, external, and societal factors should be augmented with the framework provided by racial identity models, most generally represented by the Racial/Cultural Identity (RCID) Model suggested by Sue and Sue and the Hoffmans. Integrating that framework into the consideration of internal contexts would provide law students with a much more meaningful process for reflecting on their own racial identity and the manner in which it might impact or affect the decisions they make as legal professionals. Recognizing and reflecting on one's own racial identity would allow students to explore the inherent role that race plays in the internal processes that lead to everyday decisions, including, for example, one's opinion about the selection of an attorney of color as the face of a predominantly white law firm and legal profession.

Like the role that the RCID Model or a similar consideration of racial identity would play in internal decision making, having a deeper connection to that framework would also help with the external context of decision-making for legal professionals. Recognizing the characteristics of prevalent racial identity development can be helpful for understanding the views and perceptions of others and how those views may or may not be influenced by race. A law student familiar with the RCID Model may be able to engage their colleagues in discussion of the implicitly racial dynamics at play and, through that engagement, better understand and inform their consideration of

those dynamics. Similarly, consideration of the racial identity and racial identity development of others as part of professional identity would also improve the racial identity development of each individual, making the internal context of reflection, decision-making, and professional identity proceed further toward antiracist attitudes and beliefs. Given the central role that racial identity plays in the formation of personal identity, it should also play a central, and explicit, role in professional identity, particularly for legal professionals responsible for the quality of justice from a system that has, for so long, been racially unjust.

VIII. CONCLUSION

It is a cruel irony that while race, racial identity, and racism have played significant roles in the development of our legal system, the dominant power of White supremacy has largely erased deeper consideration of those constitutive factors in the professional identities of today's lawyers. Critical race scholars have long called attention to the substantive and systemic effects of race and racism, but the practical challenge of preparing law students with the tools to engage and dismantle those structures has remained unmet. The prompts and framework offered in this article are intended to center the role of race and racism within the context of professional identity development and, ideally, provide a starting point for preparing future generations of attorneys who will be committed to both recognizing *and* upending the racist and racialized status quo.