What is Allyship?

Allyship is a proactive, ongoing, and incredibly difficult practice of unlearning and re-evaluating, in which a person of privilege works in solidarity and partnership with a marginalized group of people to help take down the systems that challenge that group’s basic rights, equal access, and ability to thrive in our society.

- allyship is not an identity—it is a lifelong process of building relationships based on trust, consistency, and accountability with marginalized individuals and/or groups of people.
- allyship is not an award—our work is not self-seeking or self-gratifying. We don’t get a cookie or a gold star for trying.
- allyship is not for the faint of heart—Did we mention allyship is hard? For many of us, it might be one of the hardest things we do. Allyship is also not for those who aren’t ready. Being “ready” means you’ve done the work of not only educating yourself, but healing (more on that here). You don’t want to show up sick or unprepared for an important day on the job if you can avoid it. Same applies here for the struggle for social justice. Better to take the day, learn more, ask allies you know for help, and take care of your own wounds beforehand.
- allyship works from a place of solidarity NOT identity—when you’re new to allyship and all the concepts around racial justice, white allies may want to speak and operate based on their personal identity, experiences, and day to day interactions. This is a good place to start from. The ultimate goal is for white allies to have a much broader and critical understanding of structures of power and the systems of oppression and how they can be dismantled alongside people of color.
- allyship is not a performance—our very public online and social media lives make it really tempting to “show” just how down we are by calling out the actions of others, trolling, or engaging in conversations on behalf of the marginalized group. Allies don’t represent or speak for the marginalized group. But we can always speak to others in our own group about ways they can challenge their privilege and work toward solidarity.

Who Can Practice Allyship?

Everyone can be an ally. No matter what groups we may belong to or have been born into, we each have certain benefits in this society that make it harder (if not impossible) for groups without those benefits to get equal access and justice.

For example: An able-bodied person can be an ally to a people with disabilities; a man can be an ally to women, a white woman can be an ally to people of color; a straight person can be an ally to LGBTQIA people; an economically privileged person can be an ally to low-income communities; and a cisgender person can be an ally to transgender people. And so on and so on.

Allyship is not about playing misery poker about who has had it worse than who or creating divisions among
help dismantle inequalities alongside those that face unjust systems that prevent them from ever having the safety and opportunities you may have.

People of Color, LGBTQIA, CISGENDER?! I'M SO LOST. I DON'T GET ALL THIS "POLITICALLY CORRECT" LANGUAGE !

Don’t panic. But be sure you take the time to learn what these words mean and how millions of Americans identify themselves and the communities they belong to. These identities and the words that describe them are becoming more and more common in our mainstream culture. Their use has nothing to do with being "politically correct", being "divisive", or making you feel badly because you don’t know the words. It’s as simple as taking the time to learn someone’s name and the way they prefer to be called. You wouldn’t want to be called by a completely different name over and over again, would you? So, the same thing applies here. There’s also a history and continued practice in our country of misnaming, using derogatory or hurtful language, or slurs to describe people who are different from us. Using the words people prefer to describe themselves is a simple and important way to truly get us past those practices. There’s a lot in a name.

Communities have every right to change the words that describe them over time. Those words may be different than the "official" words used on things like census forms or government documents. Always check with the community you are working to support through your allyship about what words they use and what words they feel comfortable with you using to describe who they are. You can also listen and pick up on the words communities use in the media or when speaking to others about their communities and causes. But never take it personally if someone corrects you or says they prefer something else. Don’t let “PC” language be a barrier to learning more, engaging with people different from you, and speaking up about injustice.

Below are a two glossaries to help you get started:

America Healing’s Glossary of Racial Equity
University of Massachusetts Lowell Office of Multicultural Affairs
People have Shamed Me or Shut Me Down When I'm Just Trying My Best To Understand.

Ideally, we would live in a world and a society where we could all have loving conversations about race and other social justice issues. If we did live in such a world we would likely not be in the current mess we're in. It sucks that individuals have felt shut down or shamed. Be sure to reflect on why you felt the way you did and if your own guilt, fear, or privilege got in the way. All feelings are legitimate. But don't shut down. Instead, continue to work on your own understanding.

Remember, this is not a personal attack against you but against a system that creates “haves” and “have nots”. The reality is that many individuals and communities are justifiably angry and pained by consistent oppression that has meant loss of precious life by violence, poverty, political and social neglect, and barriers to full belonging in our society. There is also deep frustration that so many have been blind to or have outright denied the struggles of people of color. If someone kept telling you you were crazy and your problems were imaginary, wouldn't you be just a wee bit mad? Now multiply that over generations and generations of being told over and over that you were less valuable, your life less important, your pain imaginary, your struggle insane.

It's unfair to ask these communities and their members to “calm down” or to go off on the sidelines so we can all return to our business as usual. Business as usual in our country has been hate. And hate always fuels hate. So use spaces like this site, or community resources available to help you to unpack your feelings and keep it moving so you can be part of fostering meaningful dialogue and change.

"I must confess that over the past few years I have been greatly disappointed with the white moderate. I have almost reached the regrettable conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Council or the Ku Klux Klan, but the white moderate, who is more devoted to "order" than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice; who constantly says: 'I agree with you in the goal you seek, but I cannot agree with your methods of direct action; who paternalistically believes he can set the timetable for another man's freedom; who lives by a mythical concept of time and who constantly advises the Negro to wait for a 'more convenient season.' Shallow understanding from people of good will is more frustrating than absolute misunderstanding from people of ill will. Lukewarm acceptance is much more bewildering than outright rejection."

— Martin Luther King Jr.

www.changefromwithin.org
Jan 20 What White Allyship Looks Like: An Open Letter

JANUARY 20, 2019

Much of what I have written on the topic of race and racism may have left you feeling hopeless and defeated, with no action items, no way to overcome the racism inherent to your whiteness, no clear way forward. This letter is meant to offer my perspective on that way forward—and offer advice on how you can play a key role in the movement toward racial equity.

First, a Preface

Before we delve into what true allyship looks like, it’s important to get this out of the way:

It is not my (nor any black person’s) obligation or responsibility to give input or advice on race, racism, or allyship. Black people have no obligation to assist white people in their anti-racism efforts, as the oppressed have no moral obligation to educate and advise the oppressor on how to best end that oppression. Any advice or input black people choose to give you with respect to your anti-racism efforts should be viewed as just that, our choice—not an expectation or requirement. It’s safe to say that you probably shouldn’t even ask black people for such advice unless they (like me) have made it clear that they’re open to sharing their perspective. If you’d like to strengthen and refine your allyship but need guidance, remember that
plenty has been written on this subject and resources abound, many of which are provided and maintained by other white people.

Finally, if your reaction to the substance of this letter is defensiveness or anger, I’d direct you to what I and others have written on the role that white feelings and white fragility play in dialogues about race. While my words may be perceived as aggressive or glib, rest assured, they have been chosen deliberately and come from a place of frustration, anger, and pain.

This letter is meant to serve as a resource for allies strictly for purposes of your individualized, interpersonal interactions—more to come on carrying out anti-racism work on an institutional level. Because this letter is meant for white allies who already consider themselves effective and/or know they can do more, I presume a baseline degree of racial competence, informed, in part, by your preexisting intimate (not necessarily romantic) relationships with black and brown people. Your intimate relationships with black people should serve as regular insight into the true harms of racism. If you do not have deep, personal relationships with black people, ask yourself why before you continue to implement anti-racism work that is aimed at others.

What effective White Allyship Looks Like

On this day, dedicated to the life and legacy of Dr. Martin Luther King, Jr., it’s incumbent upon us, in our exploration of white allyship, to examine Dr. King’s stance on the role of well-meaning white people. In his 1963 Letter from a Birmingham Jail, Dr. King writes:
“First, I must confess that over the past few years I have been gravely disappointed with the white moderate. I have almost reached the regrettable conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Counciler or the Ku Klux Klanner, but the white moderate, who is more devoted to “order” than to justice . . . .”

In guarding against what Dr. King believed was racial equality’s greatest obstacle—complacent white people, fearful of disturbing social norms—true racial allies must be disruptive. They must intentionally upend those norms. What’s more, they must not be content with the status quo nor afraid of the backlash they might personally suffer as a result of calling out even the slightest expressions of whiteness as the norm, or worse, as supreme.

White allies have a vital role to play in bringing about true racial equality. The actions white allies must carry out, if racial equality is ever to be
attained, are difficult to execute consistently. But I am confident that, with time and persistence, truly effective allies can grow their numbers and, more importantly, their impact, and perform the work necessary to ensure true racial equity.

It’s Who You Are — And It’ll Get Uncomfortable

From a practical day-to-day perspective, a commitment to constant intensity is vital. Because of the expansive and systemic nature of American racism, anti-racism efforts cannot be treated as simply another “cause” you champion. An ally must be who you are, not simply a thing you sometimes do. If you are truly committed to racial allyship, real changes to your everyday life including vocalization of your anti-racism work (not seeking gratitude, but as a way to educate other white people) is a requirement. As an ally, you must speak out publicly against every expression of whiteness you observe: every benefit society offers you or other white people and every instance in which you observe whiteness covertly or overtly harming non-whites. And you must commit to this practice for the rest of your life—no exceptions.

You must become the person who “always makes everything about race.” I assure you, once you start paying close attention, you’ll begin to realize (if you haven’t already) that, when examined critically, most things are informed by race in one way or another. In becoming known as the white person who always talks about race, your reputation for discussing race issues should precede you to such an extent that those with whom you
interact monitor themselves to make certain that they don’t express even the slightest racially-charged micro-aggression in your presence. (Imagine what race relations in the U.S. will look like as those who share your reputation begin to grow in number and eventually outnumber those who do not.)

In order to expand and maximize your anti-racism efforts, you must publicize your allyship as well as your commitment to becoming a source of knowledge on race issues for other white people (in a way that does not seek gratitude or recognition). You must carry out these public functions of your allyship while also remembering to appreciate, accept, and defer to the opinions and perspectives of the black and brown people in your life.

From an emotional and psychological perspective, one of the most important things to bear in mind as you proceed as an effective racial ally is that true allyship, by definition, will cause what will feel like self-inflicted harm. Actively working to remove yourself and other white people from a position of societal supremacy will be inherently jarring and uncomfortable. It will feel like punishment or even self-imposed discrimination against you, as a member of the very racial group whose power and supremacy you’re attempting to challenge.

Don’t ignore that discomfort. Pay attention to it. Take account of it. It’ll be one of the most accurate (and one of the only) measures of your progress. If your allyship efforts don’t cause personal negative consequences, then you’re not trying hard enough. The expansive role white supremacy plays in this country’s society dictates that white people will experience what will feel like negative repercussions as a result of dismantling that role.
Everyday Ways to Combat White Supremacy

In the context of my own anti-racism efforts, which often involve engaging white allies or would-be allies and providing advice and perspective, I’ve noticed that they often ask for specific examples of interpersonal instances where they might step up and speak out. My most succinct answer is: *whenever and wherever you detect that race is informing an interaction.*

Since I hope to convey as much context and applicability as possible, I’ve put together a (non-exhaustive) list of hypothetical interpersonal examples that come to mind:

- Question your supervisor when you suspect your black colleague’s work is being scrutinized more closely than yours.

- Press your supervisor for the specific reasons you received a promotion instead of your black colleague whom you believe deserved it more than you.

- Ask your co-worker to clarify what he means when he says things like, “Tyler is weird to work with. I just don’t have the same vibe with him as I do with my other co-workers.”

- Call out your co-worker when he says things like, “I was surprised when I saw that the new guy was black. Tyler doesn’t seem like a black name.”

- Ask your company’s human resources department about racial minority recruiting efforts and affirmative action policies. Follow up.
- Ask your white friends why they call certain neighborhoods “up-and-coming” and whether they have ever thought about the implications of such a term.

- Demand an explanation from retail clerks when you observe them closely following and monitoring black patrons.

- Educate your friends as to why the use of “ghetto” as a pejorative adjective (as in, “some of the keys are missing from my ghetto laptop keyboard”) is inappropriate.

- Call out your white friends when they say things like, “I sometimes forget she’s black because she talks so white,” or “Michelle is the whitest black person I’ve ever met,” or “David isn’t like a normal black person,” or “David, that was so white of you.”

- Educate your friends on why reverse-racism isn’t a real thing.

- Demand an explanation from your white friends when they say things like, “she’s pretty for a black girl.”

- Explain why it’s not a compliment to tell a black person things like, “you’re a credit to your race,” or “you’re so articulate.”

In order to maximize your effectiveness as a racial ally, you will have to execute small corrections like these as often as possible—even, or perhaps especially when, black and brown people aren’t around. Hopefully, you’ll get to a point where you don’t have to, but where you want to, where you feel compelled to. Remember, at times, perhaps more often than not, speaking out will be considered socially unacceptable. It will be awkward. There will be consequences. Social, professional, familial, and otherwise.
As you develop your reputation as someone who monitors other white people, seemingly-obsessed with detecting, identifying, and calling out racially-informed exchanges, micro-aggressions or otherwise, other white people will undoubtedly consider you someone who hates and attacks their own race. You’ll know you’re doing this right if your non-ally white friends begin to find you socially odd and unappealing. Moreover, you should ultimately make the deliberate decision to refuse to associate with other white people who—after reasonable attempts at education—choose not to share your commitment to allyship. You must also publicize the reason for your refusal to associate.

In Conclusion: You Can Do This

Again, fighting to dismantle white supremacy is not merely a “cause” to be supported at one’s leisure. White supremacy is too deeply embedded in America’s social fabric to be effectively eradicated by utilizing anything other than extreme and constant means.

Destroying white supremacy’s role within the U.S. will require a dramatic shift in what constitutes acceptable individual behavior. Can you imagine the ways in which white people who continue to favor or even ignore the effects of white supremacy—from covert preferences to overt acts of hate toward black and brown people—will be forced to examine their thoughts and actions, knowing that they are being monitored by other white people? Can you imagine how that self-reflection will become augmented as those who fail to guard against the effects of white supremacy begin to lose relationships with friends and family who are committed to allyship?
When I envision a United States where whiteness receives no meaningful preference and non-whiteness, no harm, it seems unrealistic—almost utopian. For many black and brown people, that’s the stuff of dreams. Sometimes, I have to remind and reassure myself that it’s actually possible.

But it is possible.

If the last few years have shown us anything, it’s that Americans of all backgrounds are capable of rallying together, holding one another accountable, and putting in the hard work required to achieve meaningful progress. Truly effective allyship, by its very nature, grows and expands its reach. Once a critical mass of white people show one another that they are committed to heeding Dr. King’s warning against complacency and maintenance of the status quo, achieving true racial equity will be positioned all the more closely within our grasp.

Thanks for reading,
Evaluating the Ally Role: Contributions, Limitations, and the Activist Position in Counseling and Psychology

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Abstract

Community action is a core mission of activism in counseling and psychology, and the ally role is often viewed as integral to this work. This article provides a review of the benefits as well as the limitations of the ally role in social action in counseling and psychology. Lastly, the authors advocate for a values-based activism role as an alternative to the ally position in order to enhance effectiveness in achieving social change in counseling and psychology.

Keywords: ally, social justice, social action, activism, counseling, psychology

As social justice psychologists, anti-racist activism has been central to our mission to contest social inequities. During our training at a multicultural internship site, we noticed the limitations of naming white trainees as “allies” in anti-racist clinical practice. We discussed the importance of white counselors and psychologists becoming central to multicultural work instead of on the sidelines, as people with cultural identities implicated in and affected by racism. While ally activism has been a focus of study (van Zomeren & Iyer, 2009), we found little research that critically evaluated this position.

As faculty in clinical psychology programs, we continue to be interested in positions that maximize our efforts in anti-oppression education with clinical trainees. Activism is central to the mission of social action in counseling and psychology, yet we believe there are limitations of the ally role in effecting social change. Furthermore, we have found the ally role does not account for the notion of intersectionality. While there are a number of theories on this concept, intersectionality generally...
refers to the notion that an individual embodies multiple social identities, some of which may be oppressed or privileged, that intersect to uniquely shape one's experience (Crenshaw, 1993). Intersectionality has become central to contemporary activism and social justice in psychology (Cole, 2009), wherein one might be a member of an oppressed group and a privileged or ally group at the same time.

In this article, we explore the value of the ally position and provide a critical analysis of this role. An examination of the contributions and shortcomings of the ally position is offered, drawing from the theory of intersectionality. An overview of the literature on social action in counseling and psychology is also provided to contextualize the evaluation of the ally role. Lastly, a discussion is presented on an alternative to the ally role in activism, drawing from the frameworks of collective action and social justice in counseling and psychology research.

The Ally Role

The role of ally was popularized in the civil rights era of the 1960s with white allies in anti-racist activism, male allies in the struggle for women's rights, and straight allies in LGBTQ (lesbian, gay, bisexual, transgender, queer) rights advocacy (Brooks & Edwards, 2009). Since the 1960s, additional allies have been identified to support the civil liberties of people with physical disabilities, serious mental illnesses, elderly, youth, transgender individuals, and other groups facing oppression. These movements have often been led by members of disadvantaged groups, with allies from advantaged groups typically positioned to offer support and resources (Iyer & Leach, 2010).

A number of definitions of the ally have emerged throughout the literature on this topic, emphasizing different aspects of this role. Washington and Evans (1991) focused on the ally as someone who provides assistance as “a member of the dominant group or majority group who works to end oppression in his or her personal or professional life through support of, and as an advocate for, the oppressed population” (p. 195). Broido (2000) also emphasized the power status of the ally who she described as “working to end the system of oppression that gives them greater privilege and power based upon their social group membership” (p. 3). Tatum (1994) identified the goal of the ally "to speak up against systems of oppression, and to challenge other whites to do the same" (p. 474). Yet another model of ally identification involves a sense of political solidarity through the agreement of a need for social change between both group members (Subasic, Reynolds, & Turner, 2008). In general, the role of the ally is to spread awareness among a dominant group and support the activism of members of a marginalized group.

Contributions of the Ally Position

To conduct a critical evaluation of the ally role, we identified a number of contributions of the ally position to counterbalance a discussion of the limitations. The benefits of the ally role that we identified include: privilege awareness, support and resource access, and power sensitivity. In this section, we will integrate evidence from various research studies and theoretical articles on activism to support our theory of the contributions of this position.
Privilege Awareness

With regard to benefits of the ally, it is important to recognize that this role has presented many benefits to social action in counseling and psychology. For one, the ally position encourages individuals who have been free from an experience of oppression in a particular area to critically examine power and privilege in their daily lives. Within the ally role is a valuable emphasis on privilege consciousness. Privilege refers to the unearned advantages afforded to members of dominant groups such as white privilege, heterosexual privilege, male privilege, or age privilege (McIntosh, 1989).

For example, white allies are commonly encouraged to reflect on one's privilege as a member of a dominant racial group (Tatum, 1994). Thus, one benefit of this role is that when individuals define themselves as allies, they acknowledge their dominant group membership and privilege in relation to a marginalized group. Furthermore, this privilege awareness of the ally can become a tool for social change. According to relative deprivation theory (RDT), when individuals in a dominant group make social comparisons to an oppressed group, the member of the dominant group experiences increased awareness of privilege, facilitating collective action among dominant group members (Davis, 1959; Geschwender & Geschwender, 1973). Thus, privilege awareness may be heightened in the role of ally to an oppressed group, motivating social action.

Support and Resource Access

In addition to being aware of their privilege, allies may utilize their privilege, resources, and power to enact change in this role (Broido, 2000). According to resource mobilization theory, collective action occurs through the strategic mobilizing of resources of organizations (McCarthy & Zald, 1977). For instance, allies in civil rights movements have often used resources afforded to them through their advantaged status in order to help a greater cause (Iyer & Leach, 2010).

Within the ally role is the ability to access and mobilize external resources, as well as assist with attaining objectives. Washington and Evans (1991) described the role of the ally as a dominant group member who provides support to an oppressed population, helping to carry out the objectives that are identified by the oppressed group. In this case, the agenda for social change is set by the marginalized group, with allies providing support. Identification as an ally helps to locate the privileged group who can utilize resources to support the group experiencing marginalization.

In many cases, allies are also given the responsibility to provide education and legitimize the movement among skeptical dominant group members (Gordon, 2010). In an example of male allies to women who have been raped, these men utilized their role to educate male peers on consent and rape prevention (Fabiano et al., 2003). Thus, the ally position can encourage activism among a privileged group and the engagement of peers into action.

Power Sensitivity
There is also a benefit to the ally role in developing sensitivity to power as a member of a privileged group in relation to a group facing oppression. This sensitivity to a power differential is represented in other theories in psychology research. For instance, standpoint theory involves the notion that members of a disenfranchised group can perceive power in ways those in dominant positions may not (Gorelick, 1991; Haraway, 1991). As a result, dominant group members may become blind to their power, posing problems to activism. Therefore, one task of the ally is to ensure that they do not take power away from the oppressed group in order to avoid replicating oppressive dynamics.

The peripheral quality of the ally role may therefore be tactical and necessary. Non-reflexive practitioners who are less aware of their privilege may overwhelm the social justice efforts of a community given their lack of power consciousness. Thus, the identification of ally may help counselors to retain a professional boundary and avoid crowding out the group they are attempting to “empower” in this role.

The benefit of power sensitivity of the ally position is supported in an article by white anti-racist activists entitled, “Becoming an anti-racist white ally: How a white affinity group can help” (Michel & Conger, 2009). Michael and Conger described the value of an ally affinity group among white allies, in particular, to create "a space in which we can be honest, ask possibly ignorant questions, and process our deep emotions around race, while also challenging ourselves to do better, to examine and engage our privilege more critically" (p. 58).

The ally identity may allow for formation of these groups to enhance sensitivity to issues of power and explore associated emotions and attitudes. In many ways the ally role has served activists well. In the following section on the limitations of this role, awareness of the various benefits of the ally role can help contextualize a discussion of how social justice counseling and psychology can be best served by activism.

**Limitations of the Ally Position**

In our critical evaluation of the ally position, we identified a number of limitations to the ally role. A key element of our argument is that the ally position may not be the optimal position to achieve social change and may lead to conflicts with social justice values. Hence, we believe that many of the aforementioned benefits of the ally role fall short of being implemented successfully due to inherent constrictions. Limitations of the ally role include the following: lack of integration of intersectionality theory, reification of social constructs and hierarchies, creation of a problematic ingroup-outgroup dynamic, reinforcement of a hero-victim narrative, development of pseudo-allies with hidden agendas, and contribution to role confusion. In this section, we provide examples from research in counseling and psychology to substantiate the present argument as to the limitations of this role.

**Overlooking Intersectionality**
The first limitation we identified in the ally role is the lack of integration of intersectionality. Social categories are constructed and overlapping. One may simultaneously hold membership in both a privileged and underprivileged group, not falling neatly into either a dominant or marginalized role. The ally is by definition a member of a dominant group. Therefore, allies seemingly overlook the complexity of intersecting identities, wherein we may be members of both a dominant and marginalized group depending on which aspect of one's identity is most salient (e.g., race/ethnicity, gender, sexual orientation, etc.).

This problem of overlooking intersectionality is exemplified in the study on youth activism by Gordon (2010). Many of the youth allies in this study were former youth activists who, within a short number of years, transitioned into adult allies. Youth activists in Gordon’s study complained of adult allies tokenizing their ideas, overpowering their voices, and focusing on their own agendas. Positioning adults as allies could potentially allow the youth to utilize the adults strategically, and keep them at bay in order to bring youth voices to the forefront. However, the ally role did not succeed in maintaining power sensitivity to the activism of the youth. Instead, the adults dominated the agenda. The adult allies found themselves easily slipping into ageist behavior as their roles blurred, and they became less aligned with their political objectives. In this example, we see that the ally position may not fully capture the shifts in identity that may lead one to move back and forth between marginalized and privileged statuses in a lifetime, such as an adult ally or youth activist. The adults lost a connection to their activist values in youth empowerment, privilege awareness, and power sensitivity. Consequently, the ally role may not capture the shifting nature of identity and optimize the activist’s commitment to social change.

Another study by Curtin (2011) on activism among older, middle-aged, heterosexual, black and white women, demonstrated this limitation of the ally overlooking intersectionality. These women held positions of power and privilege as heterosexual and middle aged individuals. They also embodied marginalized identities as women, many of whom were black. Thus, identification as an ally may be constrained for each of these women depending on their race, age, or sexual orientation. In addition, Curtin found that social identity as an ally or member of an oppressed group was not predictive of engagement of activism. Instead, activism was predicted by collective identification, experiences of personal discrimination (i.e., sexism or racism), and awareness of structural inequality.

It is important to note that recognition of the dynamic, overlapping aspects of identity may not need to lead to a total disregard of the ally role. Rather, this process may point to the complexity of an ally identity and relationship between the “ally” and “oppressed group.” Nonetheless, these findings generally reinforce our argument that the ally role may not fully encapsulate the complexity of identity highlighted in intersectionality theory. Rather, the ally is positioned as a person with a dominant identity in relation to individuals with subordinate identities, implying that these identities are static. Conversely, we posit that these identities are contextual and fluid, as represented in theories of intersectionality.

**Reifying Social Constructs and Hierarchies**
The second limitation in the ally stance is the tendency to mobilize around an identity category, failing to acknowledge the social construction of categories such as race (e.g., white vs. black). Helms (1992) defined the category of race as socially constructed in order to grant access to power to a dominant group and maintain societal norms and disparities. In addition, Helms indicated that it is important to recognize that, although categories such as race may be socially constructed, they are a social reality. In other words, disparities emerge across identity categories based on social perception and associated prejudice and discrimination, such as in the case of racism. We argue that the ally position may not capture the socially constructed nature of identity categories, which function to maintain structural inequities.

Furthermore, the ally role does not incorporate the nature of social identities and group membership as flexible, context-specific, subjective, and perception-based. The theory of McGarty, Bliuc, Thomas, and Bongiorno (2009) can be applied to support our argument in this regard. McGarty and colleagues indicated that activism is carried out most effectively through shared values in collective action, as opposed to membership to social category groups. This concept is referred to as social-categorization theory. The ally identity falls within this social-categorization approach to activism, which is a less effective means of collective action than activism motivated through shared values.

Defining a group as “marginalized” in position to the ally may also limit the empowerment of that group and reify dominant and subordinate statuses. For instance, Russell (2011) conducted a study of heterosexual allies to the LGBT community. Russell identified the problem of “hierarchical drift,” where heterosexual allies began to assert power in subtle ways over the LGBT individuals in their ally work. We argue that subordinate and dominant statuses are inherent in the ally position, risking replication and reinforcement of power inequities across groups. As a result, we contend that the nature of the ally role risks objectifying and disempowering a disadvantaged group, reifying social hierarchies instead of contesting them.

**Ingroup-Outgroup Dynamic**

As an ally, one is located inside a dominant group that works to end marginalization faced by a non-dominant group. However, this ingroup-outgroup dynamic is limited for a number of reasons. Social psychology researchers have elucidated the ingroup-outgroup positioning in activism that can be applied to the ally role. Tajfel and Turner (1979) purported in their social identity theory that individuals perceive one’s ingroup as separate from the outgroup. Thus, allies establish an ingroup and work towards promoting the cause and elevating the status of a disadvantaged group.

While social identification with the broader social category of a disadvantaged social identity can mobilize social action, researchers have found that specific activist identities among these groups are more strongly predictive of collective action (Kelly & Breinlinger, 1995; Simon et al., 1998). To illustrate this problem, one study found mobilizing around categories of woman, gay, older, and overweight were weak predictors of motivation for collective action (Kelly & Breinlinger, 1995; Simon et al., 1998).
Rather, collective action has been found to be most effective when identification between bystanders and those affected occurs, and a psychological connection takes place between the self and a movement (Louis, 2009; Thomas & Louis, 2014).

Another example of how collective action is limited by the ingroup-outgroup dynamic of ally work is in the case of anti-racist activism. The ally role may limit joint collective action between the dominant outgroup (white allies) and the subordinate ingroup that experiences oppression (people of color). However, it is typically understood in anti-racist activism that it is a responsibility of both white people and people of color to eliminate racism. It has even been argued that it may be the responsibility of the perpetrator of racism to fight it (Brandyberry, 1999). Nevertheless, positioning the white ally in the outgroup position may circumvent their responsibilities in anti-racist activism and allow white allies to anticipate that people of color will do most of this work.

Relatedly, the activism of white Americans in the civil rights movement was not historically conceptualized as an "ally" position, but rather a reaction to this power hierarchy and a rejection of the privileges that come out of it (Curtin, 2011; Duncan & Stewart, 2007). Specifically, this activism was based on politicized identities. Both black and white students became involved in civil rights for ideological reasons and tended to be mobilized through a process of identity development as civil rights activists (Fendrich, 1977).

Another similar limitation of ally work is that support may happen within a marginalized group, not just across an outgroup to an ingroup. An example of this issue is raised by Brooks and Edwards (2009) in their study on LGBTQ allies in the workplace. Based on their work, they amended the definition of allies to include LGBTQ individuals who may also be allies for each other in standing up for someone who is being treated unfairly. This definition is in contrast to the typical one, in which the ally is a member of a dominant group who advocates for an oppressed population. Brooks and Edwards moved away from this ingroup-outgroup definition of the ally, enabling greater flexibility in understanding how activism takes place.

Moreover, membership to a disadvantaged ingroup does not always predict social action alone as some groups do not act in their own best interest (Crosby, 1976; Curtin, 2011). This research has found that an added perception of one’s group as deserving rights and resources was predictive of social action. For example, McGarty (2009) stated,

_There are inevitable sensitivities and limits on members of advantaged social categories who seek to engage in collective action alongside members of disadvantaged social categories. What does it mean to be a male feminist or a white civil rights activist? These are not unproblematic or uncontested identities but our point is that they are possible identities and when salient they can have consequences that need to be understood_ (p. 853).
In this quote, McGarty suggests that while the ally identity may be appropriate in some cases, there are potential limitations to this position in promoting social justice. The ally role may designate the individual as an outsider to oppression, reducing the ally's awareness of being implicated in a system of inequality.

**Hero-Victim Narrative**

We argue that the ally position also constructs a problematic “hero-victim” narrative. The notion of an ally may promote a condescending narrative of allies as “rescuers” to the “helplessly oppressed.” This narrative also reinforces problematic emotions of allies as “rescuers” to the “helplessly oppressed.” While sympathy has been found to be important to collective action, this role positions the ally on the sidelines instead of participating fully in social change (Thomas & Louis, 2014). Furthermore, identification with an advantaged group identity may reify inferior-superior statuses associated with it (McGarty et al., 2009), such as hero to a victim. We argue that the hero-victim narrative generates pity rather than indignation, with the latter being more motivating of action.

The potential for a hero-victim narrative in ally work is present in an article on anti-racist education by a white educator, Aveling (2004),

_Sometimes I catch myself slipping into the ‘good white’ subject position. This is embarrassing but at the same time it is also gratifying because when students catch me out, I know they are thinking critically. In fact, the whole process is far from easy, however, a willingness on my part to admit that the struggle is on-going and to admit (if shamefacedly) that I have far from ‘arrived’ in the anti-racism stakes leaves an opening for students to begin to explore their own histories and value positions (p. 3)._  

One might argue that an ally with self-reflexivity and power sensitivity can be vigilant to activism for secondary gain as a “good white person.” However, this excerpt points to the potential for the white ally role to reinforce this notion that one can arrive at an identity of a "good white person," "good straight person," or "good man," as opposed to connecting with an ongoing struggle for social justice.

Collective action may be less effective when iterations of the hero-victim narrative are constructed by ally work. This key problem that has been referred to in ally activism is the notion of "working with, rather than for the Other" (Giroux, 1993, p. 29). This concept problematizes ally work that is motivated to rescue a marginalized group who is viewed as suffering from injustice in isolation. This notion overlooks the effects of injustice on privileged groups and motivates social action out of sympathy rather than collaboration for a common good.

In one study, for example, perceptions of pervasive inequality motivated the collective action of men in challenging gender discrimination against women (Iyer & Ryan, 2009). Rather than being heroes to
the helpless female, men were more effectively mobilized around the ways in which inequality was toxic to not only women but to men as well. The ally position limits activism by reducing a focus on how oppression harms the ally group. In this example, men are harmed by patriarchy via the pressure to conform to rigid gender norms that limit emotional expression, as well as relational and occupational expectations. These men developed awareness that men are not just agents of oppression but are also negatively affected by gender hierarchies. Spanierman has conducted a body of research on the psychological costs of racism to whites. These costs include guilt, shame, irrational fear of people of color, distortions in thinking about race and racism, and barriers to relationships with people of color (Spanierman & Heppner, 2004; Spanierman, Poteat, Beer, & Armstrong, 2006). It is essential to remember that the harm of oppression encountered by the dominant group is lesser in both severity and daily impact. However, recognition of the broader harm of oppression can deepen investment in change among individuals with privilege.

**Pseudo-Allies and Hidden Agendas**

Another problem we have identified with the ally role is the risk of quasi-allies with hidden agendas to emerge in this role. Relatedly, Evans and colleagues (2009) put forth the term, “pseudo-allies,” which we define here as supporters of a cause who are motivated by secondary gain. One example of this secondary gain was identified by Reason and Broido (2005) who indicated that allies might sometimes expect praise from the marginalized group. We argue that this is a potential negative consequence of identifying as an ally. Identifying as an ally may allow one to benefit from social desirability without experiencing firsthand the risks of oppression.

In addition, a history of pseudo-alliances can lead to wariness among those communities approached by allies. For example, Evans and colleagues (2005) described the case of allies to people with disabilities who have often condescended to, taken advantage of, and exploited people with disabilities for their own personal benefit. In another example, multicultural counseling expert, Derald Wing Sue, gave a public lecture in which he stated that white allies might be the biggest barrier to racial justice because of superiority beliefs and tendency to dominate the agenda (Lee, Jorgensen Smith, & Henry, 2013; Sue, 2008). Thus, pseudo-allies masquerade as supporters to people in non-dominant groups, and instead cause harm by maintaining their own agendas (whether consciously or unconsciously) for power or appreciation.

In addition, a pseudo-alliance may develop in an effort to temporarily assuage one’s privilege guilt, referencing our earlier discussion of pity and sympathy invoked in an ally position. Although guilt can be an important first step in developing an awareness of privilege and becoming incited to take action, operating primarily from a place of guilt can be problematic to activism. When an ally acts primarily out of guilt, minimal involvement in social action may occur, instead of sincere efforts in the struggle for social justice. For instance, Aveling (2004) encourages her white students to move beyond feelings of guilt to critically examine whiteness.
Moreover, weak ally identification can lead to superficial engagement in social action. For pseudo-allies, one may feel that all that is needed to fulfill one's role as an ally is to acknowledge one's privilege. Thus, the ally can engage in surface levels in activism, creating pseudo-allies with hidden agendas that are ineffective at promoting social change. Instead, pseudo-allies seek to assert dominance, assuage guilt, or garner applause under the auspice of ally work.

**Role Confusion**

Lastly, the ally is limited by the role confusion that can develop within this position. Is there a need for the ally label when activism may be a natural end-stage of social identity development? For example, Borgman (2009) described Christian identity development as culminating in taking action against injustice towards LGB populations. Does that make one a devout Christian, an ally, or both? The ally label may contribute to role confusion, obscuring an internal mission to end injustice.

Again, the ally may risk positioning the individual in role as hero, dominant group member, outgroup member, and helper, standing on the sidelines of a given cause. As discussed previously, this position can be ineffective at inciting change, and may obscure the true nature of the individual's role in activism. For example, Yamato (1990) has referred to the need for white allies to "work on racism for your sake, not their sake" (p. 423). It may be that the ally role interferes with conceptualizing engagement in activism as for oneself given one's implication in a social hierarchy that results in unfair advantage and disenfranchisement of members of disadvantaged groups.

Ultimately, the ally role contains a number of benefits, potentially making it a useful position to take on in some cases. However, we feel the ally position is generally limited, requiring consideration of alternative positions. By positioning oneself as ally to a social group, an ally becomes situated outside of a problem. This outsider position may not fully capture the universally toxic effects of oppression and motivate effective engagement in social action. As discussed earlier, it is essential to recognize that the effects of oppression for the dominant group are lesser in toxicity and daily impact. Yet ultimately, social action in counseling and psychology may be better served by a focus on defending one's core values regarding equality and justice. In the next section, we will discuss alternatives to the ally role that most effectively maximize a commitment to social action and instigate effective participation in change.

**A Vision for the Activist Position in Social Justice Counseling and Psychology**

In our examination of the ally role, we see that this position may feel static and ineffective for contemporary activism. Here, we put forth a vision for the activist position in social justice counseling and psychology other than the ally role. Our review of the benefits and limitations of the ally role highlights a number of values that are central to effective social action in counseling and psychology. Values-based activism has been found to mobilize social action across various kinds of oppression (McGarty et al., 2009). The position we discuss in this section is integrative in nature, composed of values that are central to contemporary social action in counseling and psychology. This position
captures the dynamic, intersecting nature of identities and communities and focuses on enacting effective social change.

**Intersectional**

First, theories of intersectionality must be a central component of social justice work in counseling and psychology. Cole (2009) encouraged use of an intersectionality model as a tool for political advocacy in psychology, viewing social categories as constructions as opposed to individual characteristics, and learning about what role inequality plays across the different multiple category memberships that people occupy. Within the intersectionality paradigm is the idea that identities are socially constructed and create social realities that contribute to oppression and privilege. This theory applies to the multiple, overlapping identities of mental health clients that uniquely impact their experiences of privilege, oppression, and mental health. While there are important differences in mental health work pertaining to issues of mental illness stigma, racism, sexism, homophobia, and transphobia, there are also commonalities in how oppression operates across groups. For example, women, LGBTQ populations, people of color, and people with serious mental illness have unique identities and histories, yet they also encounter stigma in similar fashions within the broader culture (i.e., work, family, healthcare disparities). Valuing the model of intersectionality can allow social justice counselors and psychologists to pool their efforts across social identity groups and facilitate broader social action across communities.

**Relational**

Within models of social justice in counseling and psychology is an emphasis on community-oriented values in relationships with clients and the contexts in which they live. For instance, Griffin and Steen (2011) indicated that social justice activism involves engagement in relationships to work towards social change. Support is relational in itself, meaning something different in the context of each client, family, or community. Therefore, one’s role as a pursuer of social justice in counseling or psychology may shift depending on the given setting or modality – whether it be counseling, psychotherapy, education, research, or policy. Understanding the relational nature of social justice work involves defining one’s goals in the context of a relationship to an individual, couple, family, community, or institution, changing shape and role depending on the relationship at hand.

**Power Conscious**

Structural awareness of group inequalities is a primary component of social justice counseling and collective action in psychology. In our presentation of our critical evaluation of the ally position to colleagues, a key reaction is fear that without the ally label, activists would not be made aware of their privilege. This benefit of the ally position is vital to anti-oppression work, and should be sustained and reinforced in other activist positions taken on by social justice counselors and psychologists. This consciousness includes being mindful of one’s power and privilege as a counselor, psychotherapist, researcher, educator, or policymaker. Thus, a central principle of this alternative to the ally role is a position in which the activist avoids reproducing problematic power dynamics. Activists must
maintain awareness of the different experiences of privilege and oppression they encounter within their various social identities and in their interactions with others.

**Politicized Identity**

As discussed previously, collective action researchers emphasize the effectiveness of an activist identity in motivating political efforts (Drury & Reicher, 1999; Klein, Spears, & Reicher, 2007; van Zomeren, Postmes, & Spears, 2008). A politicized identity makes social change a personal goal to one's sense of self. For example, research has found that membership to a feminist group as opposed to mobilizing around the gender category of female is more strongly predictive of collective action given that it specifies a position on gender inequality and suggests specific goals and actions that define the group's objective for social change (Kelly & Breinlinger, 1995). Thus, the ally identity may not be the most effective means to becoming strongly identified with collective action. Instead, the social justice activist takes on a politicized identity, motivating action against inequality among many communities. Social justice activists are not constrained by the roles of hero, sympathizer, or outgroup member, but rather recognize social justice as integral to their identities and important to fighting inequality.

Naming an alternative to the ally raises the issue of language. Many different labels may fit the role of counselors and psychologists pursuing social justice depending on the goal at hand or one's unique preferences. For example, in the context of policy work, defining oneself as a social policy advocate may feel appropriate to the goal of modifying or changing public policy to promote fairness (Toporek, Lewis, & Crethar, 2009). More broadly, defining oneself as a social justice-counselor, -psychologist, -educator, or other related title, may be sufficient in encapsulating one's values and mission as an activist-practitioner. In addition, terms such as social activist or political activist may specify one's objective to take direct action in changing social and political structures (Arredondo & Perez, 2003). Or, one might identify as simply an activist, (political) advocate, solidarity worker, womanist, (intersectional or multicultural) feminist, or community collaborator. These words might specify one's intention to collaboratively join with a community and unite against injustice. Otherwise, one might focus on one's mission and values as opposed to naming one's role. It is likely that our language will continue to shift and reflect the evolution of contemporary theory on social justice in counseling and psychology.

**Table 1. Contributions and Limitations of the Ally Role and Social Justice Counseling Position in Social Action.**

<table>
<thead>
<tr>
<th>Contributions of the Ally Position</th>
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<tr>
<td>Privilege Awareness</td>
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<tr>
<td>Support and Resource Access</td>
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<td>Power Sensitivity</td>
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Limitations of the Ally Position

Overlooking Intersectionality
The ally role overlooks potential membership in both a privileged and underprivileged group, not falling neatly into either an ally or marginalized role.

Reifying Social Constructs & Hierarchies
The ally role may reinforce hierarchies and reify socially constructed dominant and subordinate statuses between group members, limiting empowerment.

Ingroup-Outgroup Dynamic
The ally role locates the activist as either inside or outside of an oppressed group, when support can happen within a disenfranchised group.

Hero-Victim Narrative
The ally role may promote a limiting narrative of allies as “heroes” to marginalized “victims,” reducing a focus on how oppression harms the ally group.

Pseudo-Allies and Hidden Agendas
The ally role may allow pseudo-allies to benefit from social desirability and mask hidden agendas of secondary gain.

Role Confusion
The ally role may contribute to role confusion, instead of aligning oneself with an internal mission to end injustice.

A Vision for the Activist Position in Social Justice Counseling and Psychology

Intersectional
Social justice activists in counseling and psychology focus on multiple social identity memberships that create complex experiences of privilege and oppression.

Relational
Social justice activists in counseling and psychology emphasize a value on relationships.

Power Conscious
Social justice activists in counseling and psychology maintain awareness of power and privilege.

Politicized Identity
Social justice activists in counseling and psychology are motivated to enact political change as a personal goal central to one’s sense of self.

Conclusion
With shifting economic, social, cultural change, social justice activists in counseling and psychology can become more aware of the pervasiveness of privilege and oppression within our own identities, the communities we belong to, and those that we serve. Contemporary movements in social justice raise consciousness of both the social construction and fluidity of identity. The term ally has made many contributions to social action, and may still hold value in communicating one’s position in relation to a certain community. In addition, one might apply limitations of the ally role discussed in this paper as guidelines for conducting better ally work. Ultimately, social justice activists in counseling and psychology can be encouraged to conceptualize terms for their politicized identities that accurately capture their standpoint and effectively motivate their commitment to social action. In this inquiry, we remember the enduring words of the Reverend Martin Luther King, Jr. from his letters.
from Birmingham Jail: “Injustice anywhere is a threat to justice everywhere.” Social justice in counseling and psychology involves awareness of injustice everywhere, with responsibilities to seek justice for all.

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OUR GUIDE TO BEING AN ALLEY

*Women of Color for Progress* was formed to create an inclusive and transparent political system that empowers women of color to excel, lead, represent, and be heard. However, we acknowledge that allies are important in all movements for progress, including our own.

We are excited about partnering and working with allies to further our goals for inclusivity in the political process. We would like to encourage you to please get involved!

Please read below our guidelines and suggestions for folks who **do not** identify as women of color to get involved:

**Don’t lead, follow**

- We encourage you to attend events, meetings and other activities where women of color are leading discussions that impact communities of color and our society at large. Listen and ask questions.
- If you are looking to create a conversation about an issue or issues that have an impact on communities of color, we encourage you to bring women of color to the table and have them take the lead in those conversations.

**Show-Up**
- We encourage you to become members so you can support our mission and collectively work together to break down barriers for women of color.
- We encourage you to take what you have learned and share with your own friends, family and community members. Invite them to join our group!

**Model and Support /Amplify and Endorse**

- We encourage you to take the voices of women of color in our group into consideration, particularly when organizing your own activities in your respective groups and communities. We would be delighted to attend and participate in your community discussions to add another perspective so we can learn from one another.

**Empower**

- We encourage you to mentor, train, and provide resources to women of color to take on leadership positions.

**Some important things to note about allyship and solidarity:**

- Being an ally is not an identity to wear – it’s not a noun, but rather a verb. It is a lifelong process of building relationships based on trust, consistency, and accountability with marginalized individuals or communities.
- Allyship is not self-defined – it is defined by the communities you are standing in solidarity with.
- Being an ally doesn’t mean you are expected to know everything! Ask questions, and stay open to listening and learning.
In the event that a person of color expresses to you that they feel like what you have said/done is biased/racist/racially insensitive, take a step back and listen. We understand the inclination to defend yourself and your integrity. Being called out for insensitivity is not necessarily an indictment on your character, or your goodness as a human, but is meant to highlight the ways we all display our bias.

The Do’s of Allyship

- **Do lend your expertise and services as much as possible.**
- **Do connect your networks** to the work WOC are advancing and vice-versa.
- **Do help women of color fundraise.** Often women of color don’t have access to the same resources as others.
- **Do volunteer** your time to a woman of color running for office.
- **Do patronize businesses** owned by a woman of color & help promote them.
- **Do stand up for a woman of color** who is being discriminated against. As an ally you are (often times) less likely to face negative consequences than if she stood up alone. This could be as simple as speaking up if a woman of color (or any woman in fact) has been interrupted in a meeting; if someone has taken credit away from an idea or the hard work a woman has put in; or if a woman of color is criticized for wearing her hair “natural”.
- **Do call someone out** for telling a sexist and/or racially insensitive joke. The joke might seem harmless, and it would be easier to brush it off, but these little moments, also known as microaggressions, add up to
something big. Just because it isn’t overt doesn’t mean it’s any less damaging. (Quick hack: if someone replies “I was just joking,” ask them to explain what about the joke is actually funny.)

- **Do examine your own prejudices.** It’s important as an ally to face your own prejudices and unconscious biases, otherwise it’s possible act in ways that can be more harming than helpful – even with the best of intentions. Never underestimate the role our culture and society have played in shaping how you view the people around you, which is why we ALL carry prejudices and unconscious biases that we may not even be aware of (even women of color against other women of color). It is on each of us as individuals to look inwards and acknowledge these biases. The most important thing is not to feel guilty, but to be honest with yourself and confront the prejudices straight on. Even if you consider yourself a truly open and progressive person, chances are that you lack a certain lens on an issue because it from your personal experiences. Being an ally isn’t about sharing or fully understanding the experiences of the community you wish to support, but to acknowledge that their struggles are valid and important.

- **Do continue to listen and learn.** The quest to be thoughtful, compassionate, informed, and connected should be lifelong.

The Don’t’s of Allyship

- **Don’t be afraid of the word “privilege”**. Often times it is people with privilege that help push a movement forward and that is invaluable. Certain privileges can help get underrepresented communities access or visibility in spaces they may not have had previously. See your privilege as
a means to support communities, instead of feeling bad about it. It’s what you do with your privilege that counts!

- **Don’t wait for folks/communities/organizations to reach out to you out of the blue.** Be proactive about letting them know who you are and what you can offer them. Figure out when it’s appropriate to get involved, and do it.

- **Don’t retreat into your privilege and abandon the work if you feel uncomfortable.** Be accountable and embrace the discomfort. Oppression is constant, and it’s important to understand that while you may be able to “take a break,” oppressed and marginalized folks don’t ever get that luxury. While it’s understandable that you will not be able to fully understand their experiences, committing to supporting a community means to be there even when it gets a little uncomfortable. It’s ok to feel discomfort – most of us have been there. Acknowledge that you feel this way, try and figure out why, get support from other allies and social justice educators who you respect, and keep going

- **Don’t walk away if you make a mistake.** Listen, learn, pick yourself up, and move on. It’s okay to make mistakes. Even the most educated among us make mistakes. The important thing is how you respond to your mistake – try to really hear what someone is saying if they are explaining your mistake to you, without ego or defensiveness. If you get called out, apologise, learn from that mistake, and commit to changing your behaviour going forward.

- **Don’t think that you know everything about another community or issue or talk more than the folks you are standing in solidarity with.** This is what is commonly called “speak up but not over”. It’s great to use your privilege and voice to educate others, but it’s important to do it in a way
that doesn’t drown out the community members you are trying to support, or take credit for things. Listen as much as possible.

http://outline.com/4yAxJ6
What You Need to Know to Be a Better Ally

CHAR ADAMS  MARCH 10, 2017

In this op-ed, Char Adams, a black female writer who speaks about racial issues, discusses ways to be a better ally to marginalized people.

The morning after Election Day, I walked in to work devastated, afraid, and angry about the results. I would rather have stayed home in bed, but I put on my big-girl pants and went to the office — where I was met with tears from several of my white coworkers.

As the day progressed, I learned that I, one of the few black women in the office, became the go-to source for my colleagues’ comfort in the wake of the election results. In my eyes, it seemed that they assumed I was used to the oppression they anticipated would come with Trump's presidency. Thus, they seemed to think I was the perfect person from whom they could draw strength and advice.

“What can we do?” they asked. “I can’t believe this happened.” They’d go on to tell me about their family members and friends who had voted for Donald Trump, saying, “I had no idea they were like that!” Although angry,
I was incredulous at neither the outcome nor the fact that their white friends had voted for him — 62% of white male voters cast their ballots for Trump and 52% of white women voters did the same, according to CNN exit polls.

I wanted to tell them that, yes, white men and women will be affected by Trump’s presidency. But for people of color, there is a lot more at stake. I wanted to tell them that because of Trump’s promised “law and order administration,” I am even more afraid to simply walk by a police officer — for fear that I might unjustly join the disproportionately high number of black women being imprisoned.

I wanted to tell them that sustaining a career is already difficult enough with my disability — I have a severe stutter — and the fact that Trump’s administration may weaken enforcement of the Americans With Disabilities Act that I depend on each day causes me to fear for my future. Trump’s properties have been sued for violating the ADA several times, according to MSNBC. If he has not respected that law within his own businesses, I shudder to think of what will become of it over the next four years.

I did not tell my distraught white coworkers these things, though. I was too tired the morning after Election Day to take on the role of educator, and the pain of Trump’s win was still too raw. Instead, I fed them a line I did not even believe: “It will all be okay.”

Last year was difficult for the nation. As 2016 progressed, we saw the deep-rooted oppressive nature of our nation rear its head in a violent way. Trump is now president. And as we’ve spent the last few weeks settling into that
reality, my friends, family, and associates have repeatedly asked me the same question my coworkers did: What can we do?

I, as a black, disabled woman, panicked as I watched it all happen. I panicked as I wondered what would happen to my black, 13-year-old sister surrounded by Trump supporters at school in her rural central Pennsylvania hometown. I panicked as I rooted for Bernie Sanders and then Hillary Clinton, hoping either would be victorious. I panicked as I spoke out about why Trump is dangerous and not a joke to be laughed at — and I panicked as the white people around me (supposed allies) continued to write him off.

Throughout the course of his campaign, Trump has made statements targeting Muslims and immigrants, he has vowed to back an anti-LGBTQ bill, he has all but declared war on reproductive rights, he has antagonized African-Americans, and more (much, much more) — all while lying and gaslighting America at every turn.

Trump built his platform on bigotry, intellectual cowardice, and red herrings. His rise to power coincided with a rise in public acts of hate, harassment, and the further normalization of bigotry. In fact, a study from the Southern Poverty Law Center, a civil rights advocacy organization, found that more than 800 incidents, some involving harassment and intimidation against black people, immigrants, and members of the LGBTQ community had occurred in the 10 days following the election.

However, Trump’s rise has proven to be eye-opening for many privileged people, particularly white Americans who had not fully realized the racism embedded in the nation’s foundation. I would love to jump for joy, praising
the fact that white people may start to “get it.” But it is concerning that it has taken a political climate as dire as this for people to see the injustice that has been front and center in the nation for centuries. Still, in the wake of Trump’s election, we have seen white men and women donning safety pins to show their loyalty to those discriminated against and to visually announce their status as allies to the oppressed. We have seen hundreds of thousands of white women across the country protest at the recent Women’s March. Much like my coworkers, many of my white peers have begun to take on the title of “ally.”

We’ve seen activists, journalists, and fed-up citizens of many races, sexual orientations, and religions fighting back against Trump’s harmful rhetoric in the face of forceful bigotry.

Well, white allies. You’re up.

I have tried to hold intelligent conversations and debates with many who claimed they "don't benefit from white privilege." And one thing I've learned, as a black, disabled woman, is this: Oppressors are most receptive to those who share their privilege. Even the most well-meaning white men and women I've encountered could not help but, in a way, dismiss my criticisms of inherently racist social, political, and economic culture as irrelevant to their personal experiences. I'd catch some of my dearest friends rolling their eyes when I'd criticize their favorite white feminists for appropriating black culture, and I've often been asked by some of my white coworkers why "everything has to be about race."
I've learned that my experiences being slighted as a black woman often have no effect on the everyday lives of white men and women except that it empowers and contributes to the white supremacy from which they benefit.

Now I am hoping that we see action from these newfound allies. I am hoping that the experiences of the oppressed will be heard and considered.

Marginalized groups have fought and battled hard for centuries to secure equality in our nation built on white supremacy. Although we have made great strides, we have also been silenced, erased, and degraded. And as our battle intensifies in this Trump era, our white allies have a very important job to do: Advocate for us and engage your peers.

Engaging with your fellow privileged white men and women who may find themselves on the wrong side of history is one of the most important ways white people can be active allies to the oppressed. (This is not to say that intersecting oppressions do not include white people.)

There are myriad ways you can actively stand in solidarity with those discriminated against:

**Educate yourself.**

As the saying goes, knowledge is power. A basic understanding of the intersecting oppressions that the marginalized face in America is key to standing with us. For centuries, intellectuals of many races, religions, and sexual orientations have done great work. For example, legendary novelist Toni Morrison recently wrote about race relations and the dangerous perception of white superiority for *The New Yorker*. And for *Remezcla,*
Veronica Bayetti Flores wrote about the impact the Pulse nightclub shooting had on the queer Latin community. Those are just two of many great works written by members of marginalized groups. Countless books have been written on the pursuit of justice. Read. Absorb. Understand. Rinse and repeat.

**Get involved locally.**

Getting involved doesn't necessarily mean you need to venture too far outside of your own backyard. There are many great justice-seeking organizations. Contact your local chapter of the American Civil Liberties Union (ACLU), Council on American-Islamic Relations (CAIR), Black Lives Matter, etc. These groups need your support. More hands and feet aiding in social justice work only strengthens the cause. Local organizations do the work necessary to influence larger ones. And every person counts in the march toward equality.

**Call out your friends, family, and peers on oppressive comments and behavior.**

Do not let microaggressions go. A microaggression is a verbal, nonverbal, or environmental — usually racial — slight done either intentionally or unintentionally in daily behavior. For example, asking a multiracial person, "What are you?" in regard to their ethnicity is a microaggression — whether you mean well or not. Calling your peers out on oppressive behavior is a necessary way to interrupt the normalization of racism, sexism, xenophobia, and homophobia. Oppressive behavior usually comes by knowingly or even inadvertently asserting your superiority and the inferiority of someone...
different from you. Or, as feminist scholar and activist bell hooks said in her 1984 book, *Feminist Theory*, “Being oppressed means the absence of choices.” When you make it known that offensive comments are just that — offensive — your friend, although they may show resistance, will be forced to think about their behavior. As an ally, it must be made known that your company is a safe space for the oppressed and that you will defend the marginalized at all times. Do not tolerate discrimination in your inner circle, no matter how uncomfortable the ensuing confrontation may be. Those confronted may be stubborn, and likely will, but by condemning every act of discrimination, you make it known that acting in such a way is not okay or normal.

**Constantly evaluate yourself.**

We are all a work in progress. Most Americans hold some form of privilege, whether it be in terms of race, ability, religion, or sexual identity. We all have to evaluate our behavior — and evaluate it often — to make sure we are not being oppressive. Social conditioning has led all of us to hold some type of prejudice (as Gail Price-Wise, former president of the Harvard School of Public Health Alumni Council, has explained), and that means we must work that much harder to eradicate it. Evaluate your language, how you interact with people, and even your mannerisms. In other words, check yourself. Examine your behavior and make the necessary changes to be a promoter of equality.

We have a long, difficult road ahead of us. Each and every American has a responsibility to press toward equality. The fight is an individual one as much as it is collective. We all have a job to do: Live out and promote
justice in our everyday lives. In our homes and our schools. On the streets and behind closed doors, it is our duty to pursue justice. For white self-proclaimed allies who have recently decided to join the movement: Welcome. It’s time to get to work.

Check this out:

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How to maintain a predominantly white workplace

LENIECE FLOWERS BRISSETT JULY 27, 2018

The many advantages of diverse, inclusive, and equitable organizations have been documented everywhere from the halls of Harvard Business School to the offices of McKinsey. There’s no shortage of research on the importance of a diverse workplace.

Follow this 10-step guide, and despite the well-established market advantages of diverse companies, you will guarantee—no matter the sector or industry—that your workplace will remain predominantly white.

**Step 1:** When tackling problems within your company, try a multifaceted approach with realistic timelines and contingency plans. Obsessively quantify and track sales metrics, quarterly finance targets, and growth. Be thorough, aggressive and unrelenting. Enlist the best thought partners and strategy consultants to ensure the effectiveness of tackling this problem. Do this in all aspects of problem solving across teams, functions, and departments—unless the issue is related to diversity. If related to diversity and inclusion, take a one-dimensional, linear, short-term approach. Expect immediate results.

**Step 2:** Sponsor annual conferences, publish white papers, and revise core values that emphasize importance of diversity. Don’t set goals. Don’t create benchmarks. Don’t drive accountability. Talk. Talk. Talk. Insist on “trying”
to diversify your workforce while your workforce diversity numbers stagnate or show a statistically insignificant increase. Most importantly, invest nothing tangible toward converting words into action. Join the more than 800 CEOs who have made a social media pledge that states they are “dedicated to having a diverse team and board,” but keep your workforce diversity numbers private so we can’t see if your promises are aligned with practice.

Step 3: Despite research from McKinsey, Deloitte, and Kapor Center for Social Impact that cites the benefits of a diverse workforce and board—including increased profitability, diversity of thought, a more comprehensive understanding of customers, and reduced groupthink—actively resist these efforts. Push back against formal diversity goals in hiring processes for employees, executives, and board members. Defend the majority white executive team with allusions to meritocracy, and double down on continuing the pattern of white men comprising an overwhelming majority of the highest level executives. For good measure, let board members serve unlimited terms. Rely on current board members to refer future board members (and c-suite executives) from their own homogeneous networks.

Step 4: Wait until your company is undergoing major restructuring, has committed a viral PR faux pas, or is in the throes of a self-inflicted crisis before you hire an executive of color whose main purpose is to buffer your company from bad “optics.” Better yet, only consider leaders of color when there’s a glass cliff and rest the responsibility of turning the declining company around on their shoulders (but don’t give them too much autonomy or actual decision-making power). When their herculean efforts
inevitably fall short, use their failure as a cautionary case to undermine future diversity initiatives, stating you “tried” diversity but it didn’t work.

**Step 5:** In your media, online, and visual presence, ensure no more than one token person of color is featured, if any at all. In *job descriptions*, use *vernacular* like “ninja” and “rockstar” to attract more white men. Host team-building activities, “off sites” and networking events at locations that are exclusively white (with the exception of the help). *Discourage or dismantle BRGs, ERGs, and affinity groups* at the expense of inclusion. Do this to signal that only certain employees are welcome.

**Step 6:** When hiring, make sure *candidates of color undergo a distinct selection process* that no other candidates experience. Include additional requirements—not previously posted on the job description—that *hold candidates of color to different, higher standards*. Let your gut determine “*culture fit*” and who is extended an offer.

**Step 7:** Ignore the changing legal landscape in states like California, Delaware, Oregon, and Massachusetts and in cities like New Orleans, Philadelphia and Pittsburgh that are seeking to close racial (and gender) pay inequity; *compensate people of color less—especially women of color*—for the same work by *basing salary on pay history*. Judge them for negotiating their lowballed salary.

**Step 8:** Don’t provide ongoing feedback. Instead withhold these opportunities for growth until consequential performance reviews. If an employee of color is vocal, characterize their contributions as “aggressive” or
“hostile” in performance reviews. If they are introspective and process information internally, be sure to advise that they “need to lean in more”.

**Step 9:** Concentrate employees of color in administrative and support roles. Make sure they are engaged in “office housework” versus “glamour work” to steer them clear of promotion tracks that would accelerate their pathway to managerial and executive roles. When asked to be transparent about workforce data by racial demographics, flat out refuse or begrudgingly provide simplistic pie charts instead of raw numbers. If those attempts fail, deflect attention from abysmal racial diversity by touting gender diversity i.e. the increase in (white) women hired.

**Step 10:** Last but not least, when diversity efforts produce little to no return on investment, take comfort in scapegoating the talent pipeline. Resume business as usual.

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http://outline.com/hV25FG
I’m critical of nonprofits, but only because I know we can do better. I began volunteering and working at nonprofits after becoming disenchanted by the Great Recession; politicized by gender studies courses; and inspired by former Pres. Barack Obama, whose life story introduced me to the term “community organizer.”

Obama made being a community organizer seem like one of the most meaningful jobs in the world. For the past eight years, I’ve been a part of nonprofits in the Southeast and the Pacific Northwest, often being employed as an organizer. Despite warnings of notoriously low nonprofit
salaries, I entered this field for a chance to live out my Black queer feminist values.

Although I sometimes grow weary of nonprofits, I don’t regret my decision to work at them. This work has taught me important lessons about the world around me and about myself. The relationships I’ve established at nonprofits are priceless, and I feel like I’m better because of them.

At nonprofits, I’ve experienced the beauty of bringing community members together to achieve a common vision. I’ve also been a part of victorious organizing campaigns that convinced me that another world is possible, one where oppression has no place to flourish.

Some of my most cherished moments have been at nonprofits, but unfortunately, I’ve also felt dehumanized and devalued by them. They can be hostile workplaces for People of Color (POC) due to the impacts of the nonprofit industrial complex (NPIC).

The NPIC is a system of relationships between the State, the owning classes, foundations, and nonprofit and social justice organizations that results in the surveillance, control, derailment, and everyday management of political movements, according to INCITE! Women, Gender Non-Conforming, and Trans people of Color* Against Violence.

The NPIC is designed to exploit POC while enriching the pockets of middle-class and wealthy white folks. According to Community Wealth Partners and the Annie Casey Foundation, only 18 percent of nonprofit employees are POC, which is proof of how entrenched in white supremacy the NPIC is.
This industrial complex dilutes grassroots POC movements by funding white-led nonprofits to solve social issues while starving POC organizations of resources. Black liberation movements of the 60s and 70s, such as the Black Panther Party, were severely weakened by the NPIC. It makes nonprofits extremely difficult to navigate for POC and other historically oppressed groups.

Feeling the effects of the NPIC made me question whether I could be in this field for the long haul. I worked at nonprofits where I thought my job was to create social change, but I was actually just a token hire expected to uphold the status quo.

At these organizations, my voice was silenced as a working-class Black queer non-binary woman, while middle-class, cisgender heterosexual white managers decided what our underserved constituents needed.

When advocating for better conditions for myself and co-workers of color, such as livable wages and mandatory anti-oppression training for staff, I’ve been penalized more often than not. It’s been tough to suffer these injustices at places that claim to adhere to social justice.

In the past, when I experienced harm at nonprofits, I questioned whether they were a necessity or an unnecessary evil. I’ve come to believe that despite their flaws, nonprofits play an essential role in our current society, especially ones led by POC and other groups on the margins.

Perhaps one day nonprofits won’t serve a purpose because everyone will have equitable access to what they need to thrive. However, this will require all systems of oppression to be eradicated, which isn’t bound to happen anytime
soon. Thus, now isn’t the time to abandon nonprofits—now is the time to
decolonize them.

To me, decolonizing nonprofits means transforming them from sites of
isolation and trauma for POC employees into spaces where we can find
healing and liberation.

Decolonizing nonprofits means decentering whiteness and honoring
difference within our organizations. It means discovering how our ancestors
took care of their communities before nonprofits existed and learning from
their practices.

Lately, I’ve been thinking of concrete ways to decolonize nonprofits (both
POC-led and white-led) for staff, board members, volunteers, and/or
members. I’ve offered three strategies below to help us all begin decolonizing
our practices. I hope they resonate with you, especially if you too are a
nonprofit worker of color.

1. *Embrace a culture of abundance, not scarcity*

Most of my nonprofit jobs have paid less than a living wage and provided
few to no benefits. Many talented POC have had our labor exploited by
nonprofits.

We’ve been brainwashed to believe that we don’t deserve comfortable lives
since we work for the public good. I don’t believe this; even though
nonprofits aren’t intended to create profit, the labor it takes to run them is
real and deserves to be compensated as such.
Often nonprofits don’t pay well because they don’t know when their funding will dry up, which is a valid concern. However, this phenomenon can also be attributed to a culture of scarcity that persists at nonprofits where board and staff become complacent with not having enough resources. This ultimately hurts employees of color the most.

It may sound naive to advocate for a culture of abundance at nonprofits, but we must believe in our abilities to raise enough money to adequately honor our labor. We must also believe in our right to be justly compensated, especially when we’re POC, queer, trans, and/or disabled workers.

I’m optimistic yet realistic, so I realize that sometimes nonprofits simply can’t pay living wages due to lack of funding. Foundations and governments intentionally create barriers to funding, which is why POC-led organizations are chronically underfunded.

Most grantors want nonprofits to have 501(c)(3) status from the IRS, which requires a costly and lengthy application process. Once a nonprofit gets their 501(c)(3) status, it takes a lot of resources to maintain it that many small nonprofits simply don’t have.

Moreover, according to Grantmakers for Effective Organizations, only 25 percent of foundation grants go towards general operations, which is usually the part of a nonprofit’s budget that pays for staff salaries.

Rather than funding general operations that are essential to keeping a nonprofit’s doors open, foundations often require grant applicants to propose elaborate programs that align with their whitewashed theories of change. These applications require time and resources that most POC
organizations are lacking. They constrain our programming and force us to meet unrealistic benchmarks.

Anti-racist nonprofits should demand that grantors move away from these types of white supremacist-informed grantmaking practices. When they can’t pay living wages, underfunded nonprofits can at least actively work towards this goal. One way to do this is by tapping into the abundance and strengths in their own communities by prioritizing grassroots fundraising.

2. **Less hierarchy, more collective decision-making**

Nonprofit structures aren’t terribly different from corporate structures. Hierarchy exists on a nonprofit’s board and staff, and top-down decisions are often made that leave out staff and community members.

This is detrimental because executive directors (EDs) and board presidents typically don’t come from the historically oppressed communities they serve and may not understand their needs. Nonprofit staff not in leadership positions are more likely to hail from marginalized communities, and our opinions are just as valuable as our managers. We have the right to be a part of major decisions at our workplaces.

**Strict hierarchies don’t make our nonprofits better. Having one or two central leaders make decisions for an entire community organization isn’t what equity or social justice looks like.**

EDs and board presidents aren’t the only ones who should feel ownership of a nonprofit. For the past three years, I’ve studied worker-owned cooperatives because I admire how their model allows each worker one vote, and
everyone’s vote carries the same weight. Worker-owners operate a cooperative as a collective.

Nonprofits have a lot to learn from co-ops and their collective decision-making processes. Worker co-ops, which have deep roots in communities of color, prove that democratic workplaces can be a functional thing.

One way that nonprofits can move towards collectivism is by bridging the gap between board and staff and allowing them to hear from each other on a regular basis. Staff besides the ED should be able to inform board decisions since we’re the most familiar with a nonprofit’s day-to-day operations.

If nonprofits feel like they can’t accomplish their work without hierarchy, their leadership should at least represent those who are most impacted by systemic oppression. Nonprofits can’t be at their most effective when they’re not led by communities who access their programs and services.

3. **Practice transformative justice/community accountability**

When harm takes place, nonprofit employees, board members, volunteers, and members should be accountable to the community and to each other. It’s inevitable that harm will occur at nonprofits because interpersonal relationships are never perfect, no matter how hard we work at them.

During the era of #MeToo, we can’t ignore that emotional, physical, and sexual abuse occur at nonprofits. Even we “social justice warriors” are capable of causing harm, and we need to know how to hold our people
accountable without engaging the State. POC especially can’t rely on the State to protect us when we’re being killed by the police in unprecedented numbers.

Decolonizing nonprofits means seeking accountability when violence happens within our organizations in ways that don’t engage our punitive justice system. It means people who experience violence within nonprofits are able to determine what justice looks like for themselves alongside trusted advocates and community members.

Furthermore, it means nonprofit workplaces believing and supporting survivors while simultaneously dismantling the oppressive systems that cause people to harm.

These acts fall under the umbrella of transformative justice/community accountability (TJ/CA), which is defined by Seattle-based queer and trans femme of color organizer Kiyomi Fujikawa as “community-based responses to violence that seek to address immediate needs for justice (e.g. safety, dignity, connection, self-determination, support, healing, accountability, etc) in ways that both address the survivor’s immediate needs (including addressing the behavior of an individual abusive person) and change the root causes of that harm and oppression and ultimately end violence.”

All nonprofits, not just anti-violence organizations, should be doing the work of ending interpersonal violence. It’s our duty to model what community-led justice looks like for the rest of the world. As INCITE! says, “the revolution starts at home,” meaning our movements can’t possibly
change the world if we don’t address the harm happening in our own backyards first.

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Despite my critiques of nonprofits, I’ll probably always be involved in them in some way. I’ve dedicated too much time, creativity, energy, and labor to them to give up now.

To keep myself motivated in this field, I follow the revolutionary work of Black women and trans and queer-led nonprofits, such as Sister Song Women of Color Reproductive Justice Collective (Atlanta), Southerners On New Ground (Atlanta), SPARK Reproductive Justice Now (Atlanta), and Women With A Vision (New Orleans). I have so much to learn about how they thrive in spite of the NPIC, and I’m curious whether they have their own decolonization strategies.

Currently, I’m invested in decolonizing nonprofits in Seattle as a fellow at Rainier Valley Corps, a POC-led capacity building organization; the Operations Manager at Families Of Color Seattle, a WOC-led organization that connects parents of children color to parenting programs and resources; and a worker-owner at Carolyn Peruth Coaching & Consulting, a queer and non-binary POC-owned worker cooperative that, among other services, works with nonprofits to develop and implement anti-racist, intersectional feminist practices.

As you can probably tell, I’m unapologetically vocal about my desire to decolonize nonprofits, and I’m always looking for new comrades. Now that you’ve read my strategies, won’t you decolonize nonprofits with me?
Sign up for RVC’s mailing list and get the latest news. Don’t worry, we won’t email too often. You can also sign up to follow RVC’s blog by email. Enter your email address below and get notice of awesome new posts each Wednesday morning. Unsubscribe anytime.

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RACE, IDENTITY, AND PROFESSIONAL RESPONSIBILITY: WHY LEGAL SERVICES ORGANIZATIONS NEED AFRICAN AMERICAN STAFF ATTORNEYS

Shani M. King*

Given the fundamental importance of the attorney-client relationship in securing favorable outcomes for clients, legal services organizations that serve large populations of African Americans should employ African American staff attorneys because: (1) African American lawyers and clients share a group identity that makes it more likely that a black attorney will be able to gain a black client's trust; (2) black attorneys communicate more effectively with black clients; and (3) the perception of a judicial system that is unfair and racist is likely to encourage black clients to trust black lawyers more than white lawyers, who are more likely to be perceived as part of "the system."

Empirical evidence from the legal and medical fields show that African American clients are more likely to trust and communicate effectively with African American service providers. This Article also explores, however, the reasons why some African Americans may not want a black attorney. One reason is that black clients may feel "better off" with a white lawyer precisely because racism infects the American judicial system. Another reason may be that some African Americans may believe that white lawyers are better lawyers. Finally, in some circumstances, a black client may not want a black lawyer if he perceives the lawyer as "not black enough." Notwithstanding some of these preferences, however, the empirical evidence strongly suggests that more often than not, black clients prefer black lawyers.

Because race consideration in staffing implicates discrimination law, this Article also considers recent Supreme Court precedent that affects the ability of certain organizations to engage in color-conscious actions. According to a plurality of the Court in Parents Involved in

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Community Schools v. Seattle School District No. 1., the school assignment programs at issue conflicted with the premise of Brown, which requires strict adherence to colorblindness. Unfortunately, this approach ignores the continuing power of race and is a stark departure from Justice Blackmun's defense of affirmative action in Bakke. While a definitive conclusion as to when the law allows color-consciousness is difficult in light of the Court's recent decisions, the theme of this Article echoes Justice Blackmun. In essence, this Article argues that we cannot solve the problems that face African Americans by removing race-consciousness from the dialogue about diversity in the legal profession.

INTRODUCTION: RACE AND THE ATTORNEY-CLIENT RELATIONSHIP

I. TRUST AND THE ATTORNEY-CLIENT RELATIONSHIP
   A. Black American Group Identity
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   C. Empirical Evidence from the Legal Arena
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II. COMMUNICATION AND THE ATTORNEY-CLIENT RELATIONSHIP
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III. THE PERCEPTION OF A TWO-TIERED SYSTEM OF JUSTICE
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IV. WHY BLACK AMERICANS MAY NOT WANT A BLACK ATTORNEY
    A. "The Judicial System Is Racist" Situation
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V. DAVID WILKINS, "BLEACHED OUT PROFESSIONALISM," AND "PLAYING THE RACE CARD"

VI. WHEN AND WHERE DOES THE LAW ALLOW COLOR-CONSCIOUSNESS?

CONCLUSION

It was the first time that I was meeting this client, a bright kid in foster care who was living with his grandparents. The lawyer who was transitioning off the case—one of my colleagues who also worked for the non-profit legal services organization that I worked for—told me that this would be a good case for me, in part, because I am black and because she wanted this client to have a black role model to emulate. (My colleague was white.) The client, Oswold, and his grandparents, Jimmy and Lisa, were black. When we arrived at their house for our first home
visit, we sat in the living room. My colleague sat in a chair, my new client and his grandfather sat in a loveseat, and I sat next to my client’s grandmother. While we were discussing some of the frustrations of navigating the school system, my client’s grandmother revved up, slapped me on the leg, and exclaimed, “You know what I’m saying!” I looked at her slightly surprised, but I then quickly smiled. Apparently, she felt comfortable with me. Why? Well, maybe, just maybe, because I am black.

**INTRODUCTION: RACE AND THE ATTORNEY-CLIENT RELATIONSHIP**

The attorney-client relationship is a crucial component of effective service delivery. One of the primary purposes of the attorney-client privilege is to promote “full and frank communication” between an attorney and client by protecting attorney-client conversations from disclosure.1 Given the fundamental importance of the attorney-client relationship in securing favorable outcomes for clients, legal services organizations should facilitate full and frank communication between attorneys and their clients. What this means in practice, at least in part, is that legal services organizations that serve large populations of African American clients should employ staff attorneys who are most likely to engender trust and facilitate communication with their clients. Consequently, these organizations should employ African American2 staff

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2 When I refer to blacks, African Americans, or black Americans, I am referring both to a physical and sociocultural concept of race. Practically speaking, I am referring to those whom others would identify as a black American, and those who would self-identify as black American. The origin of the term race has been traced to nineteenth century colonialism and anthropology. See Neil J. Smelser et al., Introduction, in 1 America Becoming: Racial Trends and Their Consequences 2 [hereinafter America Becoming] (Neil J. Smelser et al. eds., 2001). During the 19th century, the world’s populations were classified often by “skin color—white, black, yellow, brown, and red.” Id. Prior to the 20th century, “[t]he widely accepted definitional basis was biological—skin color, distinctive facial characteristics, height, build, hair texture, and other physical features, as well as temperamental and psychological traits.” Id. Race, conceived of in this narrow way, allowed some races to be classified as biologically superior to others, ultimately being used to “justify racial discrimination, colonial domination, slavery, genocide, and holocaust.” Id. In the 20th century, due to the work of behavioral and social scientists, this narrow conception of race was logically discredited with “evidence on millennia of human migration, contact, and genetic diversification through cross-reproduction.” Id. at 2–3. Consequently, the sociocultural aspects of the concept of race have developed while “continuing to acknowledge the genetic, demographic, and geographic dimensions of human diversity.” Id. at 3. Social scientists now agree “that both race and ethnicity derive from sociocultural categories that are produced, sustained, and reproduced.” Id. Thus, for this discussion, I will use the following conception of race: “‘race’ is a social category based on the identification of (1) a physical marker transmitted through reproduction and (2) individual, group, and cultural attributes associated with that marker.” Id. Another
Legal services organizations that serve large populations of African American clients should employ African American attorneys for three primary reasons: (1) African American lawyers and clients share a group identity that makes it more likely that a black attorney will be able to gain a black client’s trust; (2) black attorneys communicate more effectively with black clients; and (3) the perception of a judicial system that is unfair and racist is likely to encourage black clients to trust black lawyers more than white lawyers, who are more likely to be perceived as part of “the system.”

way to think about race is as a form of ethnicity, but an ethnicity that incorporates distinguishing physical characteristics. See id.

There are some cautionary notes regarding the definition of race that I am using in the following discussion of race. First, taken to its extreme, one could conceivably argue that given my working definition, race is a figment of our imagination. But race is “real” because it is real to individuals and is a well-established part of our institutional life. See id. Second, the terms race and ethnicity are complex social phenomena that are very difficult to describe, define, or measure. See id. at 4. The inherent complexity of these terms makes it difficult to answer questions such as: What physical markers should we be considering? Does, or for that matter, should others’ attribution matter? How about self-selection? Should we consider ancestry? Thus, I emphasize that the working definition of race that I am using for the purposes of this discussion is an “analytic strategy rather than a reflection of some fixed social reality.” Id. Also, while on a fundamental level I acknowledge and appreciate the fact that blacks may consider race a significant part of their identity, I also acknowledge and appreciate that it is not clear what the content of this identity will be. See David B. Wilkins, Identities and Roles: Race, Recognition, and Professional Responsibility, 57 Md. L. Rev. 1509, 1534 (1998) [hereinafter Wilkins, Identities and Roles]. “As theorists from Kimberle Crenshaw to William Julius Wilson trenchantly argue, those of us who are ‘black’ also have a gender, a social class, and a sexual orientation.” Id. at 1533. Thus, I freely recognize that, even if one considers race a primary aspect of his character or persona, those standing at the nexus of several categories may ascribe a different meaning to any one category, such as race. See id. at 1533–34. Of course, my argument assumes that race is indeed significant. I agree with David Wilkins when he argues, “The existence of gender, class, political, and geographic differences among black Americans has yet to sever the ties that create a common, albeit richly diverse, African American culture in the United States.” Id. at 1562.

A reasonable question is whether this definition includes black immigrants from, for example, Jamaica, Ethiopia, or Trinidad. It could, if they would be identified by others as a black American and would self-identify as such. But see Michael A. Omi, The Changing Meaning of Race, in 1 America Becoming, supra, at 246 (discussing recent immigrants who do not identify as black Americans).

My argument here is not that legal services organizations that serve large populations of African American clients should employ exclusively African American staff attorneys, but only that it is important for these organizations to employ some African American staff attorneys to address the needs of their African American clients. Similarly, while not discussed at length in this Article, Grutter’s diversity rationale discussed infra (which can be read to call for the exposure of lawyers and clients to those who are different from themselves, which, in this context, might increase the capacity of legal services organizations to work effectively with diverse populations) is an important consideration. See infra text accompanying notes 259–69.

In this Article I do not discuss at length the question of whether the same is true in other contexts, such as women preferring women attorneys, black women preferring black women attorneys, Jewish people preferring Jewish attorneys, etc. My partial answer to this
While there has been some scholarship in this area, it has focused on people of color generally, or on the concerns that a black client may have when represented by a white lawyer, and how these concerns might be addressed in the context of that white lawyer-black client relationship.

My argument may be distinguished from existing scholarship in two ways. First, I focus exclusively on African Americans. Second, I argue that legal services organizations will be most effective in serving African American clients if they have African Americans on staff. In other question is yes, the same is true for other social groups, provided that the social group at issue is what Professor Owen Fiss has described as a “specially disadvantaged group,” defined not only by social group status, but also by perpetual subordination and a position in which their political power is circumscribed. See Owen M. Fiss, Groups and the Equal Protection Clause, 5 PHIL. & PUB. AFF. 107, 154–55 (1976). While an exhaustive discussion of this question is beyond the scope of this Article (consequently, I do not address the question of what limiting principles might apply to this definition) this Article is part of a larger project that examines the use of race, identity, and the law to promote social change. See id. One scholar has written a thoughtful article on the concept of representation that touches on these issues. See generally Martha L. Minow, From Class Actions to Miss Saigon: The Concept of Representation in the Law, 39 CLEV. ST. L. REV. 269 (1991). Other scholars have touched on the concept of ethnic match, both in and outside of the legal profession. One scholar notes, “As a group, attorneys of color [are] much more likely to perceive . . . the advantages . . . in dealing with their clients, including better communication . . . .” Roland Acevedo et al., Race and Representation: A Study of Legal Aid Attorneys and Their Perceptions of the Significance of Race, 18 BUFF. PUB. INT. L.J. 1, 65 (2000); see also Frederick M. Chen et al., Patients' Beliefs About Racism, Preferences for Physician Race, and Satisfaction with Care, 3 ANNALS FAM. MED. 138, 138 (2005) (“Latinos with stronger beliefs about discrimination in health care were more likely to prefer a Latino physician . . . .”); Glenn Gamst et al., Ethnic Match and Treatment Outcomes for Child and Adolescent Mental Health Center Clients, 82 J. COUNSELING & DEV. 457 (2004) (investigating the effects of client ethnicity and client-counselor ethnic match on treatment outcomes of 1,946 children and adolescent community health center clients and finding that clinical outcomes were maximized when Latino and African American mood disorder clients were ethnically matched). Some scholars have also discussed how gender and class interact with race. See generally PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT (1991); see also Evelyn Brooks Higginbotham, African-American Women's History and the Metalanguage of Race, 17 SIGNS 251, 251 (1992).

See generally Acevedo et al., supra note 4. While the authors in this study recognize that the only way to improve the representation of poor clients of color is to increase the number of attorneys of color (because lawyers of color may be better able to interpret the “narrative” of clients of color), the authors do not discuss the sociocultural characteristics of African Americans that are critical to understanding why legal services organizations should hire African American staff attorneys to represent African American clients. Id.

See Kenneth P. Troccoli, “I Want a Black Lawyer to Represent Me”: Addressing a Black Defendant's Concerns with Being Assigned a White Court-Appointed Lawyer, 20 LAW & INEQ. 1, 17–26 (2002). Troccoli concludes that in order to truly effectuate a defendant’s right to counsel, “the appointed lawyer and the other actors in the criminal justice system should become more race-conscious and not only communicate better about race, but also acknowledge and address the concerns, whether real or perceived, that underlie an African-American defendant’s objections to being appointed a lawyer who happens to be Caucasian.” Id. at 51. Thus, Troccoli implies that optimal communication in the context of an attorney-client relationship can be achieved through some measure of cultural competence. Id.
words, cultural competence training in legal services organizations is not enough. In a fundamental way, this Article is about what legal services organizations must do to remain committed to the social justice principles to which they ascribe.

A premise of this Article is that the experience of African Americans cannot be generalized to the experiences of another group; to say that it can ignores the reality of African Americans. Race, especially for African Americans, has a gravity that cannot be understood if taken out of its socio-political-legal and historical context. The experience of African Americans cannot be fully communicated in books, documentaries, law school, or by cultural competence trainers—it is something that must be lived. Therefore, legal services organizations cannot improve their service delivery to clients by simply hiring cultural competence trainers.

My argument proceeds in six parts. Part I discusses African American group identity and the relevance of that identity to the ability of African American lawyers to gain their clients' trust. Part II presents empirical evidence showing that African American service providers communicate better with African American clients than do non-African American service providers. Part III discusses the perception of a two-tiered judicial system in this country and how this perception among African Americans is likely to encourage black clients to trust black lawyers more than white lawyers. In this section, I also discuss why this perception makes it particularly important for legal services organizations to employ African American attorneys if they are to be seen as credible and legitimate by African Americans. Part IV discusses reasons why, in certain circumstances, African American clients may prefer not to have an African American attorney. Part V addresses David Wilkins' work in this area and refutes the argument that the use of one's racial identity when practicing law undermines the principles that underlie the dominant model of American legal ethics. Finally, Part VI discusses when and where the law allows color-consciousness given the recent Supreme Court decision in *Parents Involved in Community Schools v. Seattle School District No. 1*. The final section concludes.

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7 127 S.Ct. 2738 (2007). This case is the consolidation of two cases brought by parents challenging the integration programs in school districts in Jefferson County, Kentucky, and Seattle, Washington.
I. TRUST AND THE ATTORNEY-CLIENT RELATIONSHIP

A. Black American Group Identity

The existence of a black group identity has been implicitly recognized by legal scholars, historians, authors, and theorists—most notably by Frantz Fanon in his seminal work *Black Skin White Masks*. Fanon was formally trained in medicine and psychiatry, but also wrote political essays and plays. In 1952, Fanon presented the world with *Black Skin White Masks* as his first analysis and manifesto of the effects of racism on the black psyche. Throughout this work, Fanon speaks of psychological constructions that bind the black man, i.e., a black consciousness and the psychological health of the black man. In *Black Skin White Masks*, Fanon recognizes that the socio-political-legal and historical environment in which blacks live has created a black group identity.

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8 See, e.g., Fiss, supra note 4, at 148. In his seminal article, “Groups and the Equal Protection Clause,” Professor Fiss recognizes the importance of the concept of black group identity, and argues for an interpretation of the Equal Protection Clause that is based on a fuller (and more accurate) picture of social reality.

9 See, e.g., W. D. Wright, *Black History and Black Identity: A Call for a New Historiography* 1-7 (2002). Wright notes that the historical evidence regarding African identity and the group identity of blacks in America is often downplayed or ignored, which has hampered the ability of historians to study the black experience in America in an accurate way.

10 See generally Richard Wright, *Black Boy: A Record of Childhood & Youth* (Harper & Row 1945) (1937) (telling the story of a black youth coming of age in the Jim Crow south); Ralph Ellison, *Invisible Man* (Signet 1952) (1947) (chronicling the travels of a young black man as he searches for his place in an America that is culturally intolerant).


12 See id. at 16. Fanon was actually not African American, but was Franco-Caribbean as he was born in the Antilles. See David Macey, Frantz Fanon: A Biography 5 (2000). Fanon’s work was based on many of his observations of north and sub-Saharan Africans. See Fanon, supra note 11, at 14. Thus, there is a pan-Africanist/universalist flavor to his work. Fanon’s work, however, has been widely recognized as applicable to the black American experience. See, e.g., Steven R. Morrison, *Will to Power, Will to Reality, and Racial Profiling: How the White Male Dominant Power Structure Creates Itself as Law Abiding Citizen Through the Creation of Black as Criminal*, 2 Nw. J. L. & Soc. Pol’y 63, 68 (2007) (“Frantz Fanon’s view of relations between the European colonizer and the African colonized [is] as applicable today in America as ever . . . .”).

13 See Macey, supra note 12, at 134.


15 See Fanon, supra note 11, at 141–209 (explaining the relationship between “The Negro and Psychopathology”). While I acknowledge that Fanon’s book and analysis is groundbreaking, I do not agree with Fanon’s simplistic and unsympathetic portrait of the black woman’s complicity in colonization.

16 See id. Fanon makes explicit the cultural construction of racial subjectivity and avoids essentializing racial identity. I aim to do the same to the extent that I discuss racial identity in this Article.
Fanon presents the results of his psychoanalysis of the black psyche with chapter titles such as: “The Negro and Language,” “The Woman of Color and the White Man,” “The Man of Color and the White Woman,” “The So-Called Dependency Complex of Colonized Peoples,” “The Fact of Blackness,” “The Negro and Psychopathology,” and “The Negro and Recognition.” Fanon’s titles suggest that he implicitly supports the notion of a black group identity, i.e., a connection between black people that can be described in general terms. Fanon does not try to define what it means to be black, or list “essential” characteristics one needs to be black, but does recognize that most black people are connected.

17 See id. at 134–35; see also Bergner, supra note 14, at 75. Bergner recognizes that Black Skin, White Masks effects “a paradigm shift that reconfigures psychoanalysis to account for . . . black [group] identity [that] is shaped by the oppressive sociopolitical structure of colonial culture.” Id. at 76.

18 FANON, supra note 11, at 15.

19 Id. at 135.

20 Anjali Prabhu, Narration in Frantz Fanon’s peau noire masques blancs: Some Reconsiderations, 37 RES. AFR. LTR. 189, 196 (2006) (quoting FANON, supra note 11, at 116) (brackets in original). In explaining this passage, Professor Prabhu notes that it illustrates the black man is “not at liberty to construct his own reality.” Id. Professor Prabhu adds the bracketed words to emphasize that the reality of the black man has not really been “cut away,” but rather

The first three chapters deal with the modern Negro. I take the black man of today and I try to establish his attitudes in the white world. The last two chapters are devoted to an attempt at a psychopathological and philosophical explanation of the state of being a Negro.

Throughout Black Skin White Masks, Fanon speaks in terms of a single black psyche or a single black collective consciousness and explicitly uses the term “Negro consciousness,” recognizing that there is an identity that comes with being black.19 Fanon notes that the essence of this identity is the failure of society to acknowledge the black man’s individuality or emotional reality:

I move slowly in the world, accustomed now to seek no longer for upheaval. I progress by crawling. And already I am being dissected under white eyes, the only real eyes. I am fixed. Having adjusted their microtomes, they objectively cut away slices of [structure the contours of] my reality. I am laid bare [betrayed]. I feel, I see in those white faces that it is not a new man who has come in, but a new kind of man, a new genus. Why, it’s a Negro [nigger]!20
Similarly, Professor Prabhu, an expert in postcolonial studies, has observed that the black identity is one in which "the black man's body is given to him through the harsh gaze of the white man through a cultural lens informed by stereotypes inherited from colonialism." Professor Prabhu supports this observation by referencing language from Black Skin White Masks:

And then the occasion arose when I [we] had to meet the white man's eyes. An unfamiliar weight burdened me [us]. The real world challenged my [our] claims. In the white world the man of color encounters difficulties in the development of his bodily schema. Consciousness of the body is solely a negating activity. It is a third-person consciousness. The body is surrounded by an atmosphere of certain uncertainty.

Fanon also observes that part of being black is being in a society in which language is used as a tool to keep the black man in his place:

A white man addressing a Negro behaves exactly like an adult with a child and starts smirking, whispering, patronizing, cozening. It is not one white man I have watched, but hundreds; and I have not limited my investigation to any one class but, if I may claim an essentially objective position, I have made a point of observing such behavior in physicians, policemen, employers.

A society that attempts to keep blacks in their place through language reflects a dominant culture that automatically classifies and de-civilizes black Americans. Fanon also suggests that the black psyche includes growing up in a society in which negative attitudes about blacks persist:

Over three or four years I questioned some 500 members of the white race . . . . [In the midst of associational

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21 Fanon illustrates the "white man's perspective" when he writes, "Talking to Negroes in this way gets down to their level, it puts them at ease, it is an effort to make them understand us, it reassures them . . . ." Id. at 32.

22 See id. at 32.
tests, I inserted the word *Negro* among some twenty others. Almost 60 per cent of the replies took this form:

*Negro* brought forth biology, penis, strong, athletic, potent, boxer, Joe Louis, Jesse Owens, Senegalese troops, savage, animal, devil, sin.

... It is interesting to note that one in fifty reacted to the word *Negro* with *Nazi* or SS; when one knows the emotional meaning of the SS image, one recognizes that the difference from the other answers is negligible. Let me add that some Europeans helped me by giving the test to their acquaintances: In such cases the proportion went up notably. From this result one must acknowledge the effect of my being a Negro: Unconsciously there was a certain reticence.\(^2\)

In *Black Skin White Masks*, Fanon suggests that blacks are taught what it means to be black at a very early age.\(^2\) Even before black Americans begin to fully interact with the world, they have seen magazines, heard nursery rhymes, and seen history texts with representations of blacks in society, which create in their minds a unique group identity as a “black person.”\(^2\) This identity reflects that “the Wolf, the Devil, the Evil Spirit, the Bad Man, [and], the Savage are always symbolized by Negroes.”\(^2\) At its core, this identity reflects black Americans striving to be recognized as fully human.\(^2\) Black Americans are “connected” in

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\(^{26}\) *See Fanon, supra* note 11, at 148.

\(^{27}\) *Id.*

\(^{28}\) *Id.* at 146.

\(^{29}\) When I use the term “fully human” or “absolute humanity,” I am referring to the quest to be recognized absolutely and unequivocally as a human being, and not in the relative sense. In contrast, someone might be human in the relative sense, “to the extent that they share a common religious, ethnic, cultural or other similarly substantial identity attribute.” *See Omar Barghouti, Relative Humanity: The Fundamental Obstacle to a One State Solution, ZMAG*, Dec. 16, 2003, http://www.zmag.org/content/showarticle.cfm?ItemID=4696 (last visited Nov.
that they recognize that there are negative representations and stereotypical images of black Americans floating around. At the same time, black Americans are connected in a deeper way as they are a people fighting for recognition of their own absolute humanity; a humanity that stands in stark contrast to these negative representations.\(^{30}\)

Like Fanon, W.E.B. Du Bois understood that blacks have an identity that is based, in part, on the fact that they are African American.\(^{31}\) From Du Bois’ perspective, how blacks are treated in this country, and their individual and collective striving to “throw off the shackles” of a society in which they are often figuratively invisible, are fundamental parts of being black in America.\(^{32}\) In his ground-breaking treatise, *The Souls of Black Folk*, Du Bois recounted one of the first times that he became aware that he was seen as less than human:

> And yet, being a problem is a strange experience, — peculiar even for one who has never been anything else, save perhaps in babyhood and in Europe. It is in the early days of rollicking boyhood that the revelation first bursts upon one, all in a day, as it were. I remember well when the shadow swept across me. I was a little thing, away up in the hills of New England, where the dark Housatonic winds between Hoosac and Taghkanic to the sea. In a wee wooden schoolhouse, something put it into the boys’ and girls’ heads to buy gorgeous visiting-cards — ten cents a package — and exchange. The exchange was merry, till one girl, a tall newcomer, refused my card, — refused it peremptorily, with a glance. Then it dawned upon me with a certain suddenness that I was different from the others; or like, mayhap, in heart

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29, 2008). In the latter case, one might be “entitled to only a subset of the otherwise inalienable rights that are due to ‘full’ humans.” *Id.*

30 Professor Charles Lawrence discusses the effect of stereotypes or modern racism on African Americans in his ground-breaking exploration of modern racism, in which he notes that “[i]n a society that no longer condones overt racist attitudes and behavior, many of these attitudes will be repressed and prevented from reaching awareness in an undisguised form” in a way that fails to extend to blacks the status of full humanity. Charles R. Lawrence III, *The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317, 356 (1987) (citation omitted). See generally COLORED CONTRADICTIONS: AN ANTHOLOGY OF CONTEMPORARY AFRICAN AMERICAN PLAYS (Harry J. Elam, Jr. & Robert Alexander eds., 1996) (containing an anthology of plays written by African American playwrights that demonstrate the shared black experience, which is defined, in part, by living in a society in which stereotypical representations of African Americans are omnipresent).

31 See generally W.E.B. DU BOIS, THE SOULS OF BLACK FOLK (Candace Ward ed., DOVER PUBLICATIONS 1994) (1903) (discussing how the collective identity of black Americans comes both from the struggles their forefathers faced in Africa and the current struggles of black people in America).

32 See *id.*
and life and longing, but shut out from their world by a vast veil. 33

In appreciating the striving in the souls of African Americans in a society that fails to support the humanity of African Americans, Du Bois recognizes that there is a group identity that all black people have by virtue of the socio-political-legal and historical environment in which they live. Du Bois' biographer, Manning Marable, observes:

Few books make history, and fewer still become foundational texts for the movements and struggles of an entire people. . . . [T]his stunning critique of how "race" is lived through the normal aspects of daily life is central to what would become known as "whiteness studies" a century later. 34

Black Americans currently live in a society in which racism is a part of their every day reality. 35 "In the course of centuries of struggle

33 Id. at 1–2. Thomas Holt has commented on Du Bois’ observations of the African American experience. See Thomas C. Holt, The Political Uses of Alienation: W.E.B. Du Bois on Politics, Race, and Culture, 1903-1940, 42 Am. Q. 301, 304 (1990) (The question of "how one achieves mature self-consciousness and an integrity or wholeness of self in an alienating environment . . . would become the dominant focus . . . of Du Bois' life and work.") (citation omitted).

34 MANNING MARABLE, LIVING BLACK HISTORY: HOW REIMAGINING THE AFRICAN-AMERICAN PAST CAN REMAKE AMERICA'S RACIAL FUTURE 96 (2006); see also Sandra L. Barnes, A Sociological Examination of W.E.B. Du Bois' The Souls of Black Folk, N. STaR, Spring 2003, at 1, 1 (noting that “Du Bois' observations and findings are timeless”); Kendra Hamilton, A Timeless Legacy: Celebrating 100 Years of W.E.B. Du Bois’ The Souls of Black Folk — A Salute to Black History Month, BLACK ISSUES IN HIGHER EDUC., Feb. 13, 2003, at 1, available at http://findarticles.com/p/articles/mi_m0DXXK/is_26_19/ai_98171169/pg_1 (last visited Nov. 29, 2008). Scholars have also acknowledged the timelessness of Fanon’s work. See Morrison, supra note 12, at 63, 68 (“Frantz Fanon’s view of relations between the European colonizer and the African colonized [is] . . . as applicable today in America as ever . . .”).; see also Prabhu, supra note 20, at 189 (“Frantz Fanon’s writings remain one of the most influential oeuvres from which postcolonial criticism draws. His work is referred to in discussions on, among other things, violence, nationalism, inequality, racism, capitalism, elitism, sexuality, and ethnicity in both the postcolonial nation state and various metropolitan contexts.

35 See, e.g., Richard Delgado, Critical Legal Studies and the Realities of Race—Does the Fundamental Contradiction Have a Corollary?, 23 HARV. C.R.-C.L. L. REV. 407, 407 (1988). Professor Richard Delgado often writes about the role that race and racism play in everyday life. According to Professor Delgado, one "structural feature of human experience," that separates people of color from white people, is the daily experience of subtle racism, something that white people rarely see, but people of color experience often. Id. at 407. Delgado suggests that people of color “live in a world that is dominated by race,” and when they get together, often their conversations involve swapping stories of how racism has reared its ugly head on that particular day. Id. at 407–08. Similarly, Professor Twila Perry opines:

Although slavery ended over one hundred years ago, Black people in this country remain inescapably aware of the relationship between the oppression of the individual and the subordinated status of the group. Despite the elimination of de jure segregation, many Blacks still perceive racism as an enduring part of the American
against enslavement, cultural alienation, and the spiritual cannibalism of white racism," black Americans have acquired a cohesive identity. In other words, black Americans have a complex reality that has a particular socio-political-legal and historical context, and helps define how many black Americans see the world.

Professor Dawson, one of the nations leading experts on race, suggests that the forced segregation of the races following the Reconstruction era—enforced through “Jim Crow legislation, electoral disenfranchisement of blacks, the protection of white racial terrorists,” lynching, and “scientific” and “historical” justifications for racism—has led to the development of black institutions including “political organizations, fraternal organizations, businesses, and . . . the black church.” It is this “differential association,” including the family and other community institutions, which has contributed to the formation of a separate landscape. Racism pervades every aspect of Black people’s lives. Thus, Blacks of every social, economic, and educational class understand that their difficulty in hailing taxi cabs in our cities is more than just accidental.


UCLA Law Professor Devon Carbado, upon his arrival to the United States, quickly became aware of this reality: “I was not eager, upon my arrival to the United States, to assert a black American identity . . . . But I became a black American anyway . . . . [This identity] was ascribed to me.” Devon W. Carbado, *(E)racing the Fourth Amendment*, 100 MICH. L. REV. 945, 948 (2002). This reality has been described, in part, by critical race theorists as a “master narrative” of race. These theorists suggest that the only way to understand society is to understand the role that race and racism play in everyday life, including in the media and legal discourse. See Charles R. Lawrence, III, *The Message of the Verdict: A Three‐Act Morality Play Starring Clarence Thomas, Willie Smith, and Mike Tyson*, in *Race, Gender, and Power in America: The Legacy of the Hill‐Thomas Hearings* 105, 107–17 (Anita Faye Hill & Emma Coleman Jordan eds., 1995); see also Lisa Lowe, *Heterogeneity, Hybridity, Multiplicity: Marking Asian American Differences*, 1 DIASPORA 24, 26 (1991) (discussing the role of “master narratives” in the context of Asian American cultural identity); Margaret M. Russell, *Beyond “Sellouts” and “Race Cards”: Black Attorneys and the Straightjacket of Legal Practice*, 95 MICH. L. REV. 766, 773 (1997); David B. Wilkins, *Straightjacketing Professionalism: A Comment on Russell*, 95 MICH. L. REV. 795, 796 (1997) [hereinafter Wilkins, Straightjacketing Professionalism]. In discussing the role of media discourses in sharpening tensions between black Americans and Korean Americans in the wake of the acquittal of the police officers in the first “Rodney King” trial, Lisa Ikemoto observes: “I use ‘master narrative’ to describe white supremacy’s prescriptive, conflict-constructing power, which deploys exclusionary concepts of race and privilege in ways that maintain intergroup conflict.” See Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of Black American/Korean American Conflict: How We Constructed “Los Angeles”*, 66 S. CAL. L. REV. 1581, 1582 (1993) (citation omitted); see also Wilkins, Identities and Roles, supra note 2, at 1520.

black culture and separate values among black Americans. In short, "[t]he forced separation of the races in the South and the development of independent black institutions [has] served to reinforce the overwhelming salience of group status and interests for individual African Americans."  

Race "is still a major shaper of African American lives" because it is "a major social, economic, and political force in American society." One can turn to evidence of residential segregation to illustrate this point. Scholars argue that residential segregation is still a reality for most African Americans, which, in part, determines (1) the quality of schooling available to blacks, (2) the amount the property of the black middle and working classes appreciates compared to their white counterparts, (3) the amount of wealth blacks have compared to their white counterparts, and (4) the extent to which poverty is concentrated in black neighborhoods. 

In speaking to the salience of race in American society, and echoing the work of Fanon and Du Bois, contemporary students of black politics argue that "the entire class structure of black America is distorted by the legacy of racism," and that "the black middleclass is economically vulnerable because of its extreme reliance on public and quasi-public sector employment." According to Professor Dawson, "middle-class blacks own less wealth per family than poor whites." Dawson underscores this point by noting that "[t]he median and the mean levels of household wealth are less for black families that earn over $50,000 a year than for white families that earn under $10,000 a year." 

40 See Dawson, supra note 38, at 60 (citing Houston A. Baker, Jr., Blues, Ideology, and Afro-American Literature 64-112 (1984), and Henry L. Gates, Jr., Criticism in the Jungle, in Black Literature and Literary Theory 1, 64-75 (Henry L. Gates, Jr. ed., 1984)).


42 Dawson, supra note 38, at 60.

43 Id. at 7.

44 ld.

45 See id.

46 ld. (citing Thomas D. Boston, Race, Class, and Conservatism (1988)).

47 ld.

48 ld.

49 Id.; see also Melvin L. Oliver & Thomas M. Shapiro, Race and Wealth, 17 Rev. Black Pol. Econ. 5, 11-12 (1989) (noting that the mean and median levels of net worth and net financial assets of blacks earning between $30,000 and $44,999 is less than the mean and median levels of net worth and net financial assets of whites earning between $7,500 and $14,999).
Dawson is careful to acknowledge that individuals have multiple social identities, such as race, class, gender, and religion, and that scholars and activists have long debated which identity is the most important factor in determining the social status of African Americans. Thus, Dawson accounts for these social identities in his analysis of the importance of race to African Americans. Dawson observes that both historically and currently, black racial identity has overwhelmed other salient identities and concludes that individual identity and the resulting preferences of African Americans are often significantly shaped by "race in a society structured by a racial hierarchy." In short, racial identity is uniquely salient for many African Americans.

B. Black American Group Identity and Trust

Lawyers are often entrusted with protecting others. Some lawyers, especially those working for non-profit legal services organizations, represent black Americans in their cases against institutions that have been, and are currently perceived as being, discriminatory towards black Americans, such as government agencies and the criminal justice system. In their cases against these institutions, clients often allege or believe racism or discrimination played a role in their treatment. Similarly, they often believe that their race will factor into how they will be treated throughout the process of obtaining relief and will factor into what relief may be available to them. Under these circumstances, many

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50 See Dawson, supra note 38, at 46; see also Richard L. Allen et al., A Schema-Based Approach to Modeling an African-American Racial Belief System, 83 AM. POL. SCI. REV. 421 (1989) (noting that religion is an important force in shaping African American identity).

51 Dawson, supra note 38, at 47.

52 The widespread perception among blacks that the criminal justice system is stacked against them is well-known and discussed later in this Article. See infra Part III.A. Consider a report that concluded that unequal treatment of blacks characterizes every step of the criminal justice process, and that there is a "widely-held belief among black and Hispanic Americans that the criminal justice system is deserving of neither trust nor support." See Leadership Conference on Civil Rights & Leadership Conference Educ. Fund, Justice on Trial: Racial Disparities in the American Criminal Justice System 1, http://www.civilrights.org/publications/reports/cj/justice.pdf (discussing the discriminatory treatment black Americans have faced in the criminal justice system and noting that examples of such treatment are racial profiling, disproportionate levels of prosecution, and racially disparate sentencing); see also J. Douglas Allen-Taylor, BUSD Settles Discrimination Lawsuit, Berkeley Daily Planet, Mar. 18, 2005, http://www.berkeleydailyplanet.com/article.cfm?archiveDate=03-18-05&storyID=20960 (last visited Nov. 29, 2008) (discussing the settlement of a lawsuit that alleged a school district discriminated against black American and Latino students by expelling the students without due process); Rebekah Denn, Blacks Are Disciplined at Far Higher Rates than Other Students, Seattle Post-Intelligencer Reporter, Mar. 15, 2002, available at http://seattlepi.nwsource.com/disciplinegap/61940_newdiscipline12.shtml (last visited Nov. 29, 2008); Christian Morrow, Middle-School Discipline Fails African-American Kids, Pittsburg Courier, Feb. 28, 2006, available at http://news.newamericamedia.org/news/view_article.html?article_id=e4aba556a37a947cc8018f945fe378ef (last visited Nov. 29, 2008).
blacks would likely want their case in the hands of someone who sees the world as they do, someone who can personally identify with their historical and current struggle in this country as black Americans, and someone who may be less likely to judge them because they are black. In short, many blacks would want their case in the hands of an African American attorney.

Black group identity includes a particular sensitivity to issues of racism and oppression, making it more likely that black clients will initially assume that a black lawyer is intrinsically "on their side" and is down to "fight for them." In addition, black clients are more likely to believe that a black lawyer is less likely to judge them based on the color of their skin, the way that they walk, or the way that they talk.

Many black Americans have heard stories passed down from generation to generation, by a grandfather, uncle, or parent, about the racism their forefathers faced. These stories have been used as a means to strengthen blacks' resistance to such racism. This common experience, both communicated and lived, makes it more likely that black lawyers will be able to gain the trust of their black clients. In other words, this experience makes it more likely that black clients will assume that black lawyers understand their culture in both deep and superficial ways and see the world as they do, are part of the same historical and current struggle, and will be less likely to judge their character traits that are uniquely black.

This is not to say that there are not certain black Americans who may prefer lawyers who are not black. My contention, though, is that these black Americans are in the minority. See discussion infra Part IV.

See, e.g., Sharron M. Singleton-Bowie, The Effect of Mental Health Practitioners' Racial Sensitivity on African Americans' Perception of Service, in Multicultural Issues in Social Work 491, 492 (Patricia L. Ewalt et al., eds., 1996); discussion supra Part I.D.

See Jacqueline Jordan Irvine, Beyond Role Models: An Examination of Cultural Influences on the Pedagogical Perspectives of Black Teachers, 66 Peabody J. Educ. 51, 51 (1989). Professor Irvine suggests that the decline in success of black American students or, more specifically, their "increasing alienation and school failure . . . is . . . directly related to the decline" of black American teachers, who "bring to the classroom unique, culturally based pedagogical approaches that are often compatible with the learning needs of their minority students." Id. at 51. She suggests that black teachers are "cultural translators and intercessors for black students" and that "[b]lack teachers are more likely to understand Black students' personal style of presentation as well as their language." Id. Professor Irvine also notes that black teachers "frequently exhibit a teaching style that attends to cultural differences in perceptions of authority . . ." Id. While there is scant research done on the importance of black American lawyers serving black clients, many of Professor Irvine's conclusions are transferable to the context of the attorney-client relationship. In both contexts, the issue is fundamentally one of communication and trust, whether it is the lawyer understanding the client's cultural manifestations in the same way that a teacher must understand a student if there is to be effective communication, or a client trusting that a lawyer will not judge him because of his cultural traits in the same way that a student must feel "safe" if she is to have the most effective learning experience.
The culture of black Americans is often "misunderstood, ignored, denigrated or discounted," resulting in cultural alienation and miscommunication.\textsuperscript{56} Black people's "style of walking, glances, dress, and haircuts,"\textsuperscript{57} has historically engendered fear in those who find it foreign, unfamiliar, or uncivilized. Attorneys who see these styles as part of their culture, or understand where these styles come from, are less likely to find them foreign, unfamiliar, or uncivilized.\textsuperscript{59} Attorneys who see these cultural traits as part of their culture (a culture that has developed both in response to and independent of the dominant culture in this country) will be able to identify with these traits—and will be less likely to judge their clients who possess these traits.

Similarly, black culture includes verbal and non-verbal communication, which contains rhythm, pacing, and inflection of speech, as well as assumptions about what should be "spoken and left unspoken."\textsuperscript{60} Historically, the non-verbal communication of black people, as well as the rhythm, pacing, and inflection of speech used by some black people, has been a basis for stereotyping black people as uncivilized or uneducated, instead of being recognized for what it is—part of a culture that has developed both in response to and independent of a dominant culture that has historically oppressed black people and tried to define black people on its own terms.\textsuperscript{61}

As with other elements of black culture, the commu-

\textsuperscript{56} Id. at 56. In her acclaimed book on hip-hop music, Professor Perry engages in an analysis of this music genre, which she describes as black American music, and observes, "Hip hop has, at various times, served as fodder for conservative and racially biased agendas, but it nonetheless continues to maintain a core of artistic integrity and has grown enormously as an art form over the years it has been under attack." IMANI PERRY, PROPHETS OF THE HOOD: POLITICS & POETICS IN HIP HOP 3 (2004). Perry argues that rap music, a popular genre of music for African Americans, which can be traced back to West Africa, is commonly misunderstood and denigrated notwithstanding its artistic integrity and value as an art form.

\textsuperscript{57} See Irvine, supra note 55, at 56.

\textsuperscript{58} Id.


\textsuperscript{60} Irvine, supra note 55, at 56–57.

\textsuperscript{61} See id. In his review of Gynnar Myrdal's American Dilemma: The Negro Problem in Modern Democracy, (1944), Ralph Ellison notes that black American culture has been formed
nunication of black people is not monolithic, but instead, reflects who they are as individuals, from the protagonist described in Richard Wright's *Black Boy* to the protagonist in Ralph Ellison's *Invisible Man*, from a black student at the State University of New York College at Oneonta to a brilliant law student who will follow in the footsteps of Charles Hamilton Houston or Thurgood Marshall. At the same time, the communication of black people, whether a head nod or a unique display of body language, reflects a certain culture that is associated with being African American. African American lawyers who understand the context in which African American cultural manifestations exist and are less likely to judge them are in a unique position to gain the trust that is necessary for an effective attorney-client relationship.

The importance of an ethnic match between practitioner and client has been recognized in previous scholarship. It has also been recognized in practice; a recently published *Child Welfare Law Office Guide-

*both as the consequence of a rejection of the dominant culture and independent of the dominant culture:* "Much of Negro culture might be negative, but there is also much of great value, or richness, which, because it has been secreted by living and has made their lives more meaningful, Negroes will not willingly disregard." Rhett S. Jones, *Community and Commentators: Black Theatre and Its Critics*, 14 BLACK AM. L. REV. 69, 72 (1980) (quoting RALPH ELLISON, An American Dilemma: A Review, in SHADOW & ACT 303, 316 (1964)).

62 See generally WRIGHT, supra note 10 (telling the story of a black youth coming of age in the Jim Crow south).

63 See generally ELLISON, supra note 10 (chronicling the travels of a young black man as he searches for his place in an America that is culturally intolerant).

64 See Brown v. Oneonta, 195 F.3d 111, 116 (2d Cir. 1999).

65 See generally Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329 (1991). Professor Matsuda explains that traces of everyone's life are woven into their manner of speech. See id. at 1329. She makes the point that people are inseparable from their accents. See id. Professor Matsuda's analysis supports the argument that who people are, including their race and culture, is reflected in their speech patterns. Scholars have also discussed the specific means of communication of African Americans. See generally MICHAEL L. HECHT ET AL., AFRICAN AMERICAN COMMUNICATION: EXPLORING IDENTITY AND CULTURE (2003) ("AFRICAN AMERICAN COMMUNICATION"). In AFRICAN AMERICAN COMMUNICATION, the authors introduce their book as follows:

What is African American Communication? Perhaps the answer to this question is best illustrated by sociolinguist Richard Wright, who routinely asks his class the following rhetorical question: "If communication can be defined as the universe of forms, processes, and structures that govern how we relate to the world, then aren't there forms, processes, and structures that are particular to African Americans?" Indeed, there is a universe that facilitates how African Americans relate to the world, and it is referenced by African American cultural personhood. Id. at 1.

66 See HECHT ET AL., supra note 65, at 1 (explaining that African Americans have a shared set of cultural realities).

67 See, e.g., Stanley Sue, *In Search of Cultural Competence in Psychotherapy and Counseling*, 53 AM. PSYCHOLOGIST 440, 443 (1998) (finding a significant relationship between ethnic match and treatment outcomes). While the psychotherapist-client relationship is distinct from the attorney-client relationship, the issues of rapport and alliance are similarly important to the attorney-client relationship, and thus, the findings of this article are applicable here.
book, produced by the National Association of Counsel for Children as a “Best Practice Guide” for attorneys representing children in abuse, neglect, and dependency cases, emphasizes the importance of ethnic match in legal representation:

A client’s perception of a staff member may be directly affected by one’s external cultural markers. For example, a client may be reluctant to work with someone of a different race or ethnicity because of a previous negative experience. This reluctance may manifest itself through the client’s behavior (i.e., being chronically late or missing appointments). A client may directly express discomfort, but will most likely present non-verbal cues. One’s ability to identify and adequately address these issues will be critical to the success of engaging and working with clients.68

As this excerpt implies, we cannot afford for race-consciousness to be seen as an arbitrary, irrational evil, irrespective of who is taking race into consideration and regardless of the context in which it is being used.69 People who view race-consciousness as arbitrary and irrational fail to appreciate the various contexts of race.70 Race is a central basis for understanding the significance of various social relations.

The significance of race must be considered when legal services organizations think about the racial and ethnic compositions of their legal staffs. In short, when considering the racial and ethnic compositions of their organizations and their African American clients, legal services organizations should take into account the group identity of blacks which is a product of the black socio-political-legal and historical experience in this country. This group identity makes it more likely that a black client will assume that a black lawyer understands her culture in both deep and superficial ways, is part of the same historical and current struggle, and will be less likely to judge her character traits that are uniquely black. In sum, as further illustrated by the empirical evidence below, the existence of a black group identity makes it more likely that a black attorney will be able to gain a black client’s trust.


69 See Peller, supra note 36, at 759.

70 See id. at 759–60.
C. Empirical Evidence from the Legal Arena

In a survey regarding desired character traits for their attorney, clients cited trustworthiness as the most important. In a seminal article in this area, "'I Want a Black Lawyer to Represent Me': Addressing a Black Defendant's Concerns with Being Assigned a White Court-Appointed Lawyer," Kenneth P. Troccoli addresses the preference that black defendants in the criminal justice system often have for black lawyers—a preference that is often based on trust and mutual understanding.

Troccoli begins the article by offering three reasons why black defendants may have concerns about having a white court-appointed lawyer. These concerns address the issues of "racism, attorney effectiveness, and the practical difficulties in educating the white lawyer on the impact race has on the defendant's case." First, Troccoli suggests that black defendants may not be comfortable with white lawyers because of their belief that their white court-appointed lawyer is racist. Second, Troccoli suggests that white lawyers cannot fully understand or appreciate what it means to be black in America (and thereby miss a large part of the client's story and problem). Lastly, Troccoli suggests that even if white lawyers could be as effective as their black counterparts, getting white lawyers "up-to-speed" would require more time and effort than the typical black defendants has.

Troccoli relies primarily on a survey of all staff and managing attorneys within the Civil Division of the Legal Aid Society for the City of New York published in 2000. The survey involved both personal interviews and a written survey. When the personal interviews were conducted, every attempt was made to match the race and the gender of the attorney and interviewer. The survey consisted of sixty-four questions in six categories, one of which was "Issues of Race and the Clients."

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72 See Troccoli, supra note 6, at 36.
73 Id. at 5. Troccoli discusses reasons that black defendants might have problems with white court-appointed lawyers for reasons other than their race (e.g., the client may perceive the attorney as part of "the system"). Id. at 17–26. While these may be relevant to the attorney-client relationship, they are outside the scope of this Article and I do not address them at length here.
74 See id. at 17.
75 See id. at 25.
76 See id.
77 Troccoli relies on the survey discussed in Acevedo's article. Id. at 3 n.5; see also Acevedo et al., supra note 4, at 4.
78 See Acevedo et al., supra note 4, at 24.
79 See id. at 25.
The results indicate that white lawyers and black lawyers have very different ideas regarding the significance of race to the attorney-client relationship. From the perspective of the black attorneys (and attorneys of color generally), clients typically prefer an attorney who is of the same race. To the question: "Do you believe your clients take the race of their attorney into consideration?," most of the attorneys of color answered "yes," while most of the white attorneys answered "no." In her written response to this question, a Latina attorney wrote, "I believe that clients feel more comfortable with individuals 'like them.'" A Latino attorney wrote, "I sense a certain degree of apprehension and confusion when the attorney of record lacks the necessary sensitivity with minority clients. Those clients see the attorney . . . as just one more peg in the white machinery of government." Finally, an African American attorney noted "that clients often make assumptions about the ability of their lawyer to identify with their concerns based on whether or not their attorney is of the same race."

Similarly, a former clinical professor at the University of Michigan, Clark Cunningham, who is white, recounts a poignant story of a black defendant's skepticism of—and inability to trust—his white lawyers. While at Michigan in the 1990s, Cunningham supervised two white male students who were appointed to represent a black male named Dujon Johnson. According to Cunningham, state troopers stopped Johnson at a gas station and accused him of running a red light. Johnson immediately questioned whether the stop and search was lawful. Notwithstanding his protestations, Johnson was given two citations (neither having to do with running a red light): one for driving with a suspended license and one for disorderly conduct.

The report filed by the state troopers indicated that Johnson stated that the charges were false and that the officers were only charging him because of the color of his skin. In the initial interview with the Michigan law students, however, Johnson did not mention that he thought that

80 See id. at 33-46.
81 See id. at 33-34.
82 Id. at 34 (footnote omitted).
83 Id. (footnote omitted).
84 Id. (footnote omitted).
86 Id. at 221.
87 Id.
88 Id.
90 See Silver, supra note 85, at 221.
the troopers had stopped him because he was black.91 Subsequently, in a two-page statement of facts written by the students after the initial interview with Johnson, the students failed to mention that racism could have played a part in this case.92

On the first day of trial, the prosecutor moved to dismiss the case and the judge granted the motion.93 Much to Cunningham's surprise, the dismissal brought Johnson very little relief.94 Instead, "Johnson felt the actions of the students and Cunningham imposed upon him the same injury that had been imposed upon him by the troopers, i.e., they had all acted to deprive him of his right to control his life, his right to equal respect, and his right to be treated like an adult."95 Johnson had never felt respected by his lawyers and had never fully been able to trust them, resulting in him never telling them the entire story, i.e., that he thought that race had played a role, or the deciding role in his arrest. Or, in Johnson's words (speaking to Cunningham after the verdict):

You're the kind of person who usually does the most harm. You have a guardian mentality, assume that you know the answer. You presume you know the needs and the answers. Oversensitivity. Patronizing. All the power is vested in you. I think you may go too far, assuming that you would know the answer.96

In "People from the Footnotes," Professor Jacobs notes that Cunningham failed to understand why Johnson did not tell the law students that he believed the police officers had stopped him because he was black.97 It does not appear that Cunningham even considered that their client may not have trusted them. When Cunningham asked Johnson why he had not explicitly raised the issue of race, Johnson said:

I did not tell you that it was a racial issue, although I knew from the beginning that it was (my arrest) racially motivated. I would have confided this, but who would have believed me anyway? I felt that on the basis of law itself that I did not have to interject the aspect of racial bias. I knew, legally, that Kiser's [trooper] actions were wrong. And I felt I had taken the higher moral and legal ground.98

91 See id. at 226.
92 See id.
93 See id. at 224.
94 See Jacobs, supra note 89, at 364.
95 Id. (footnote omitted).
96 Silver, supra note 85, at 225 (footnote omitted).
97 See Jacobs, supra note 89, at 386.
98 Id. at 386–87 (footnote omitted, emphasis added).
While Johnson's difficulty in trusting his white lawyers seems to have surprised Cunningham, Johnson's response is not surprising when considered in light of social science data which suggests that white counselors, as compared to black counselors, have a more difficult time gaining the trust of their black clients. A review of social science data on ethnic match in the clinical relationship indicates that ethnic differences between client and counselor (e.g., a white counselor and black client), have been related to premature termination of the counseling relationship. Similarly, in other studies, researchers have found that white counselors may have difficulty gaining the trust of black students. These studies also indicate that white counselors may have a hard time convincing black students that they will be able to help solve their problems, or even to get them to return for a follow-up visit.

In the context of the lawyer-client relationship, Professor Cunningham eventually found that being of a different race than his client made it a challenge to gain his client's trust. This discovery is in line with social science data which indicates that white counselors, as compared to black counselors, may have a more difficult time gaining the trust of their black clients. As I discuss in the next section, empirical evidence from the medical field also supports the notion that one's group identity, specifically black American identity, makes it more likely that black lawyers will create an environment where their black clients can trust them. These clients, in turn, may be more likely to trust a black lawyer than a lawyer who is not black.


100 See Colleen Halliday-Boykins et al., Caregiver-Therapist Ethnic Similarity Predicts Youth Outcomes from an Empirically Based Treatment, 73 J. CONSULTING & CLIN. PSYCHOL. 808, 814 (2005); see also Francis Terrell & Sandra Terrell, Race of Counselor, Client Sex, Cultural Mistrust Level, and Premature Termination from Counseling Among Black Clients, 31 J. COUNSELING PSYCHOL. 371, 373-74 (1984). While there are studies that show that ethnic/racial match is important, there are also studies that conclude the opposite. For example, in one study, the authors conducted a meta-analysis of ten published and unpublished studies between 1991 and 2001 and found no statistically significant effect of racial/ethnic match on various variables related to the doctor patient relationship. See Sung-Man Shin et al., A Meta-Analytic Review of Racial-Ethnic Matching for African American and Caucasian American Clients and Clinicians, 52 J. COUNSELING PSYCHOL. 45, 47, 52 (2005). While this study concludes that other factors, such as similar attitudes and values, may be more important than ethnic match, the overwhelming majority of studies found that ethnic match is indeed important. See id. at 52. Furthermore, the authors in this study conclude that things such as "similar attitudes and beliefs" may be more important than ethnic match, but I suggest that similar attitudes and beliefs, i.e., a black group identity, may, in many cases, be synonymous with ethnic match. See id. at 52.


102 See id.
D. Empirical Evidence from the Medical Field

Studies from the medical field support the notion that African American service providers are more likely to gain the trust of their African American clients because the providers and clients share a group identity. One such study examines the level of awareness of racial oppression of mental health practitioners in Washington, D.C., and explores how this awareness affects clients' perceptions of service delivery. The study measures three variables: (1) the sensitivity of case managers to the "existence of racially oppressive attitudes, beliefs, and behaviors in the mental health services system," (2) the effect that level of sensitivity to racial oppression had on service delivery to African American clients, and (3) how case managers' level of sensitivity to racial oppression affected clients' perceptions of quality of life. The authors found that race, gender, and degree type (e.g., a degree in social work) influence racial oppression sensitivity, with race being the most significant. The study also found that "moderately and highly sensitive case managers are, perhaps, more attentive to the emotional and material needs of their African American clients." The study concluded that "[c]ase managers who are sensitive to the dilemma faced by African Americans in general . . . are perhaps more likely to create an empathetic

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103 See Singleton-Bowie, supra note 54, at 500-02 (concluding that the life experiences of African American mental health practitioners may make them better able to create an empathetic and supportive environment for their African American patients); see also COMMITTEE ON UNDERSTANDING & ELIMINATING RACIAL & ETHNIC DISPARITIES IN HEALTHCARE, INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMIES, UNEQUAL TREATMENT: CONFRONTING RACIAL AND ETHNIC DISPARITIES IN HEALTHCARE 13 (Brian D. Smedley et al. eds., 2003) [hereinafter UNEQUAL TREATMENT] (explaining how a primary care provider that bridges cultural gaps may make her African American patients less weary of the health care system); Chen et al., supra note 4, at 138 (finding that African Americans who have strong beliefs about racial discrimination prefer African American physicians and are more likely to be satisfied with their care when this preference is met); Gamst et al., supra note 4, at 457 (investigating the effects of client ethnicity and client-counselor ethnic match on treatment outcomes of 1,946 children and adolescent community health center clients and finding that clinical outcomes were maximized when Latino and African American mood disorder clients were ethnically matched).

104 See Singleton-Bowie, supra note 54, at 493.

105 Id.

106 See id. at 500.

107 Id. at 501. Strikingly, according to the study, insensitivity to racial oppression resulted in high rates of psychiatric institutionalization among African Americans. See id. “Even more important,” the study noted, “it has been demonstrated that this insensitivity can lead to misdiagnosis and maltreatment of a most vulnerable population.” Id. Singleton-Bowie also found that the overall low sensitivity to racial oppression contrasted with the high percentage of case managers of color. See id. Singleton-Bowie suggests that “this dichotomy may indicate a tendency of workers to incorporate the values and the behavior of the larger society in direct opposition to their own life experiences and personal views.” Id. at 500; see also Gamst et al., supra note 4, at 462 (discussing a study of 1,946 children and adolescent community health center clients, which found that clinical outcomes were maximized when Latino and African American mood disorder clients were ethnically matched).
and supportive relationship with their African American clients while at the same time removing barriers to services and resources."\textsuperscript{108} This study suggests that African American service providers are more likely to create a relationship with their African American clients that facilitates service delivery due to a higher level of racial awareness and sensitivity on the part of the service providers. This study suggests that African American service providers are uniquely able to create a working relationship in which their client is able to trust them.

While only a few studies have tried to analyze the connection between patients' beliefs about racism in the health care system and their experiences in the health care system, the findings of one such study suggest that African American clients who believe that there is discrimination in the health care system prefer African American service providers. Dr. Fredrick Chen and his colleagues conducted one of these studies by using telephone survey data to explore the potential connection between patients' beliefs about racism within the health care system and their preferences for a physician of the same race.\textsuperscript{109}

Dr. Chen's study found that African Americans who believe there is discrimination in the health care system tend to prefer an African American physician.\textsuperscript{110} While this study found that only 22% of African Americans preferred to have an African American physician, it also found that among those who preferred an African American physician, those who had one, as compared to those who did not have one, were more likely to rate their physician as excellent.\textsuperscript{111}

One of the most well-known reports in this area is The Comprehensive Report of the Institute of Medicine (IOM), which was commissioned by Congress in 2002 to study disparities in health care.\textsuperscript{112} This report also paints a picture of a society in which African Americans may be more likely to trust—and prefer—service providers who know what it is like to be a black American. In relevant part, two of the major findings of this report were:

Racial and ethnic disparities in healthcare occur in the context of broader historic and contemporary social and economic inequality, and evidence of persistent racial

\textsuperscript{108} Singleton-Bowie, \textit{supra} note 54, at 501.

\textsuperscript{109} See Chen et al., \textit{supra} note 4, at 1.

\textsuperscript{110} See \textit{id.} The perception of racial discrimination in the justice system among African Americans is discussed throughout this Article and need not be repeated at length here. But it is worth noting that this perception makes the findings of Dr. Chen's study particularly salient.

\textsuperscript{111} See \textit{id.} While the authors did find that African Americans overall did not appear to prefer African American physicians, this finding is distinguishable from the legal context for a number of reasons, including the fact that there is a widely held perception that the judicial system in this country has historically been and is currently racist. \textit{See infra} Part III.A.

\textsuperscript{112} See \textit{Unequal Treatment}, \textit{supra} note 103, at 3.
and ethnic discrimination in many sectors of American life.\textsuperscript{113}

\ldots

Bias, stereotyping, prejudice, and clinical uncertainty on the part of healthcare providers may contribute to racial and ethnic disparities in healthcare.\textsuperscript{114}

Based, in part, on the above findings, the IOM report highlights the importance of increasing the proportion of underrepresented groups, such as African Americans, in the health care system.\textsuperscript{115} The findings of the IOM report and its recommendations support the notion that African American service providers are less likely to find African American clients' style of walking, dress, communication or culture unfamiliar or uncivilized. More fundamentally, the IOM report supports the notion that a black client will be more likely to trust—and prefer—an African American service provider, as the black client will likely assume that a black service provider will understand her culture in both deep and superficial ways, is part of the same historical and current struggle, and is less likely to judge her character traits that are uniquely black.

Thus, empirical evidence from the medical field also supports the notion that the socio-political-legal and historical environment of black Americans has resulted in a black group identity, and that African American lawyers may better be able to gain the trust of their African American clients.

\section*{II. Communication and the Attorney-Client Relationship}

The second reason that legal services organizations should employ African American attorneys is that African American attorneys communicate more effectively with African American clients.\textsuperscript{116}

\begin{flushleft}
\textsuperscript{113} Id. at 19.  \\
\textsuperscript{114} Id.  \\
\textsuperscript{115} See id. at 14.  \\
\textsuperscript{116} While there are exceptions to every rule, the empirical evidence (much of which is cited here) supports this conclusion. In a 2006 meeting of leading children's rights lawyers at the University of Nevada Las Vegas Law School, a Working Group considered the role of race, ethnicity, and class in the attorney-client relationship, concluding:

This Working Group considered the role of race, ethnicity, and class (hereinafter "REC") in the attorney-client relationship. Participants recognize that, in American society, children in the child welfare and juvenile justice systems are disproportionately poor and of color while the lawyers for those children and decision makers are overwhelmingly white and middle class. \textit{This racial disparity affect attorney client communication, perpetuate stereotypes, foster distrust of the legal system and contribute to bad outcomes for the affected children and families}. Issues related to the REC, which often are ignored both in the attorney client relationship and more
A. Empirical Evidence from the Legal Arena

Kenneth P. Troccoli's article addresses the issue of communication between an attorney and a client.\textsuperscript{117} In relevant part, Troccoli provides:

Those who share a common identity group factor such as race, should feel better able to communicate their needs and their feelings to others of the same race. Their shared identity would facilitate understanding and allow for more productive counseling. What little scholarship there is in this area seems to support this theory.\textsuperscript{118}

Again, Troccoli primarily relies on a survey of all of the staff and managing attorneys within the Civil Division of the Legal Aid Society for the City of New York published in 2000.\textsuperscript{119}

As noted earlier, the results indicate that white and black lawyers often report very different perceptions of the significance of race to the attorney-client relationship.\textsuperscript{120} While a number of questions from the survey have been discussed above,\textsuperscript{121} there are few that are related to attorney-client communication and have not been mentioned. For example, Question 44 from the survey was: "Do you believe your race has an effect on how you represent your clients?"\textsuperscript{122} A majority of the white attorneys responded to this question by answering that their race has no effect on how they represent their clients.\textsuperscript{123} However, the majority of the attorneys of color believed that their race has a positive effect on how they represent their clients, indicating that they feel that sharing a racial identity with their clients "foster[s] more meaningful communication."\textsuperscript{124}

Question 49 asked the survey respondents if "[c]lients are more open with attorneys of the same race as them."\textsuperscript{125} The answers to this generally in the administration of justice, must be identified, confronted, and resolved.

Report of the Working Group on the Role of Race, Ethnicity, and Class, 6 Nev. L.J. 634, 634 (2006) (emphasis added). The Working Group was composed of leading scholars and participants in the children's rights field. See id. These participants rightly recognized the importance of considering ethnic match in the context of the attorney-client relationship. It is, in part, because of minorities' distrust of the legal system that the Working Group concluded that issues related to the importance of race in the attorney-client relationship must be resolved. See id.

\textsuperscript{117} See Troccoli, supra note 6, at 6.
\textsuperscript{118} Id. at 22 (citing Acevedo et al., supra note 4, at 18).
\textsuperscript{119} Troccoli relies on the survey discussed in Acevedo's article cited supra note 4. Id. at 3 n.5; see also Acevedo et al., supra note 4, at 4.
\textsuperscript{120} See Acevedo et al., supra note 4, at 33–46.
\textsuperscript{121} See supra Part I.C.
\textsuperscript{122} See Acevedo et al., supra note 4, at 37.
\textsuperscript{123} See id.
\textsuperscript{124} Id.
\textsuperscript{125} Id. at 40.
question were striking. A majority of the attorneys of color agreed with the statement.\textsuperscript{126} In this case, however, only a minority of white attorneys disagreed with this statement, "indicating that even those who earlier did not acknowledge race as an issue now seem to believe that people of color are more open with attorneys of color."\textsuperscript{127}

B. Empirical Evidence from the Medical Field

Some of the most telling empirical evidence supporting the notion that African American service providers, as compared to non-African American service providers, communicate better with African American clients, comes from the medical field. A study led by physicians at Johns Hopkins found that when both the physician and the patient are African American, the patients have better medical care experiences, speak slower, are more comfortable, and are more relaxed with their physician.\textsuperscript{128} In addition, the study found that when African American patients are matched with African American physicians, the physician visits are more participatory.\textsuperscript{129}

This study involved the analysis of audio-taped conversations of the medical appointments of 252 patients (142 African Americans and 110 whites) at 16 primary care clinics in Baltimore and Washington, D.C.\textsuperscript{130} The patients were receiving care from 31 physicians (18 African Americans and 13 whites). The audiotapes were analyzed for length of visit, speech patterns and overall patient satisfaction.\textsuperscript{131} The results showed race-concordant visits were on average two minutes longer and had a more positive emotional tone and higher satisfaction rating than race-discordant visits.\textsuperscript{132}

Dr. Lisa Cooper, the lead author of the study and associate professor of medicine and health policy and management at Johns Hopkins, spoke of the results of the study:

\begin{quote}
[P]eople tend to speak slower when they are more comfortable and relaxed, which could account for the longer visit times in race-concordant visits. Even when the verbal content of the visits was the same, perceptions of the visit were more positive in race-concordant visits, suggesting that patient and physician attitudes and expecta-
\end{quote}

\textsuperscript{126} See id.
\textsuperscript{127} Id.
\textsuperscript{128} See Lisa A. Cooper et al., Patient-Centered Communication, Ratings of Care, and Concordance of Patient and Physician Race, 139 ANN.INTERN. MED. 907, 907 (2003).
\textsuperscript{129} Id.
\textsuperscript{130} See id.
\textsuperscript{131} See id. at 908–09.
\textsuperscript{132} See id. at 910.
tions, rather than the actual words used to communicate, may have affected patients' experiences . . . .

Dr. Cooper continued:

Teaching communication skills to physicians is important to improve the patient-physician relationship . . . . However, this study suggests that simply training physicians to make conversation in race-discordant visits mimic that of race-concordant visits may not be enough to improve patients' experiences in visits with a physician of a different race. Increasing ethnic diversity among physicians and engendering trust and comfort between patients and physicians of different races may be the best strategies to improve health care experiences for members of ethnic minority groups.

Similar (and undoubtedly related) to the findings on trust, there is empirical evidence to support the conclusion that black lawyers are better able to communicate with black clients. I now turn to the third reason that legal services organizations that serve large populations of African American clients should have African American attorneys: the perception of a judicial system that is unfair and racist, i.e., the perception of a two-tiered system of justice.

III. THE PERCEPTION OF A TWO-TIERED SYSTEM OF JUSTICE

Since there is a widely held view that the American judicial system was and still is racist, black clients may be less likely to think that a black lawyer is part of that system. The black client will be less likely to worry that a black lawyer will be unable to imagine what it is like to be on the second tier of a two-tier system. In addition, the black client


134 Id. (emphasis added); see also Thomas A. Laveist & Amani Nuru-Jeter, Is Doctor-Patient Race Concordance Associated with Greater Satisfaction with Care?, 43 J. HEALTH & SOC. BEHAVIOR 296, 296 (2002) (examining racial/ethnic differences in patient satisfaction among patients in multiple combinations of doctor-patient race/ethnicity pairs and finding that respondents who were race concordant reported greater satisfaction with their physician); Somnath Saha et al., Patient-Physician Racial Concordance and the Perceived Quality and Use of Health Care, 159 ARCHIVES INTERNAL MED. 997, 997 (1999) (finding that when black patients have black physicians they are more likely to rate their physicians as excellent and concluding that their findings "confirm the importance of racial and cultural factors in the patient-physician relationship and reaffirm the role of black physicians in caring for black patients").

135 See Troccoli, supra note 6, at 17; see also Bobo, supra note 25, at 280–85.
will be less likely to worry that a black lawyer cannot understand the circumstances that the client is in by virtue of being black in a historically racist system. This section is divided into two sub-sections. First, I explore the historical and current widely held perception among African Americans that the American judicial system is racist. Second, I explore why, in light of this widely held perception, legal services organizations will be more credible from their clients' perspective if they reflect the racial and ethnic make-up of their populations. This latter concept has been referred to as "external legitimacy."  

A. The American "Justice" System

In *The Souls of Black Folk*, W.E.B Du Bois discussed the "shared perspective of blacks" regarding the American legal system. Specifically, Du Bois opined that "the Negro is coming more and more to look upon law and justice, not as protecting safeguards, but as sources of humiliation and oppression."  

Du Bois describes a judicial system that was trying to adjust to a world that it was not originally designed for, namely, a world in which the primary purpose was not as an appendage to the system of chattel slavery (in which the main goal was to "keep track of all negroes" and make sure they were returned to their owner in the event of an escape or theft of them as property), but instead was to protect society from individuals who were not abiding by the law of the land. The perception of the American judicial system that Du Bois describes is eerily timeless. In part, Du Bois explains:

For, as I have said, the police system of the South was originally designed to keep track of all Negroes, not simply of criminals; and when the Negroes were freed and the whole South was convinced of the impossibility of free Negro labor, the first and almost universal device was to use the courts as a means of reenslaving the blacks. It was not then a question of crime, but rather one of color, that settled a man's conviction on almost any charge. Thus, Negroes came to look upon courts as instruments of injustice and oppression, and upon those convicted in them as martyrs and victims.

When, now, the real Negro criminal appeared, and instead of petty stealing and vagrancy we began to have

137 Du Bois, supra note 31, at 106.
138 Id. at 108.
highway robbery, burglary, murder, and rape, there was a curious effect on both sides the color-line: the Negroes refused to believe the evidence of white witnesses or the fairness of white juries, so that the greatest deterrent to crime, the public opinion of one's own social caste, was lost, and the criminal was looked upon as crucified rather than hanged. On the other hand, the whites, used to being careless as to the guilt or innocence of accused Negroes, were swept in moments of passion beyond law, reason, and decency.139

While The Souls of Black Folk was written over one hundred years ago, the collective experience of blacks today includes living in a society in which there is the perception of a two-tiered legal system, a system in which blacks are treated as second-class citizens.140 For example, a 2007 Pew Research Center Survey found that while slightly more than half (55 percent) of all black Americans think that the police enforce the law well, only 38 percent are confident that the police will refrain from using excessive force, and only 37 percent of African Americans think that the police treat races equally.141 Blacks' perception of the legal system contrasts sharply with that of whites, as 74 percent of whites believe that the police treat whites and blacks equally.142 Among those who expressed a "great deal" of confidence in the police, the differences between white and black perceptions of the legal system are even more striking. For

139 Id. It is also worth recalling the infamous 1856 Dred Scott decision, in which Justice Tanney pronounced that blacks were akin to white man's property and were "so far inferior, that they had no rights which the white man was bound to respect." Dred Scott v. Sandford, 60 U.S. 393, 407 (1856).

140 See Manning Marable, Injustice Along the Color Line, BLACK ISSUES IN HIGHER EDUC., Feb 17, 2000, at 1, available at http://findarticles.com/p/articles/mi_m0DXK/is_26_16/ai_60498483 (last visited Nov. 29, 2008) ("Dred Scott is unfortunately alive and well in America's racist Criminal Justice System."). See generally THE DARREN DILEMMA: 12 BLACK WRITERS ON JUSTICE, RACE, AND ConFLICTING LOYALTIES (Ellis Cose ed., 1997) [hereinafter THE DARREN DILEMMA]. In The Darden Dilemma, Cose presents twelve essays written by black professionals—including former prosecutors and jurists—on the American justice system, in which many of the authors note that blacks share a perception of the American justice system as one that doles out two-tiered justice. Id. For example, in his essay entitled, Outside Players, syndicated columnist for the Chicago Tribune Clarence Page discusses what he describes as the somewhat “perverse” reaction that some blacks had to the not-guilty verdict in the O. J. Simpson case due to their perception that “it was refreshing to see that a black man had achieved enough wealth to afford 'rich white man's justice.'” Clarence Page, Outside Players, in THE DARREN DILEMMA, supra, at 159; see also Paul Butler, By Any Means Necessary: Using Violence and Subversion to Change Unjust Law, 50 UCLA L. REV. 721, 721 (2003).


142 See id.
example, while 47 percent of whites expressed a great deal of confidence that the police will enforce the law, only 21 percent of blacks feel this way; 42 percent of whites expressed a great deal of confidence that the police will avoid excessive force as compared to 11 percent of blacks; and 42 percent of whites expressed a great deal of confidence that the police will treat the races equally as compared to 14 percent of blacks.143

Many cases over the years have reinforced black mistrust of the American judicial system, including the infamous Charles Stuart case in Boston,144 and the Central Park Jogger145 and Amadou Diallo cases in New York.146 The African American community’s reaction to these cases and the cases themselves are illustrative of the perception that the African American community must contend with a two-tiered system of justice.

In “The Central Park Five, the Scottsboro Boys, and the Myth of the Bestial Black Man,” Temple University law professor N. Jeremi Duru discusses the Central Park Jogger case. In this infamous case, black teenagers were convicted of raping a white woman in New York’s Central Park (a crime that they did not commit and for which their convictions were ultimately overturned), due in large part, to the persistence of racism and racial stereotyping in American society.147 Professor Duru argues that the “myth of the Bestial Black Man,”148 or the “myth, deeply
imbedded in American culture, that black men are animalistic, sexually unrestrained, inherently criminal, and ultimately bent on rape,"149 persists today and is one of the reasons why these teenagers were convicted despite a lack of evidence to support the conviction.150

In this case, five teenagers from Harlem, who participated in a so-called "wilding" spree with more than 30 young people in Central Park, were accused of raping a white woman.151 Four of the teenagers initially confessed, but then immediately retracted their confessions "contending that they had been . . . coerced."152 "There was no physical evidence linking them to the crime."153 In fact, during the trials of the youths, the FBI DNA expert called by the prosecution testified on cross-examination that based on their DNA tests "the semen could not have come from any of the five defendants."154 Furthermore, FBI testimony on cross-examination indicated that only one person had ejaculated inside the victim.155 Although the victim was unable to positively identify any of the youths, and the forensic evidence strongly suggested that none of the youths had taken part in the sexual assault, the prosecution continued to pursue the case against the five teenagers.156

A week after the youths were charged, Donald Trump "took out a full-page ad in each of the city's four daily newspapers", and wrote, "I want to hate these muggers and murderers. They should be forced to suffer and, when they kill, they should be executed . . . . I am looking to punish them . . . . I want them to be afraid."157 In what was ostensibly an attempt to coerce a confession from one of the youths, Linda Fairstein, who worked the case as the head of the Manhattan District Attorney's Sex Crimes Prosecution Unit, "bullied and stalled and blocked the mother and two friends of one suspect, Yusef Salaam, from gaining access to him."158 The unfair treatment continued even though the lead attorney for the prosecution claimed he was missing some of the necessary evidence.159 Ultimately, the youths were convicted.160

149 Id. The "myth of the Bestial Black Man" has its origins in the very first interactions between Africans and Europeans and was the norm during the time of American slavery. Id.
150 See id. at 1346.
152 Schanberg, supra note 151, at 37.
153 Id. at 38.
154 Id.
155 See id.
156 See id. at 39.
157 Id. at 38.
158 Id.
159 See id.
160 See id. at 38–39.
Years later, when a convicted murderer confessed to the assault and rape, the District Attorney’s office re-examined the inconsistencies in the youths’ confessions and the exculpatory DNA evidence.\textsuperscript{161} While some law enforcement officials and members of the press were still convinced that the five youth were involved in the attack, the District Attorney thought differently and moved to have the convictions vacated.\textsuperscript{162} In a striking reversal of course, the office of District Attorney Robert Morgenthau noted the “extraordinary circumstances” of this case and wrote:

[A] comparison of the statements reveals troubling discrepancies . . . . [T]he accounts given by the five defendants differed from one another on the specific details of virtually every major aspect of the crime—who initiated the attack, who knocked the victim down, who undressed her, who struck her, who held her, who raped her, what weapons were used in the course of the assault, and when in the sequence of events the attack took place . . . .

[I]n many other respects the defendants’ statements were not corroborated by, consistent with, or explanatory of objective, independent evidence. And some of what they said was simply contrary to established fact.\textsuperscript{163}

While the nation was consumed with this case, a thirty-eight year-old black woman was forced onto a roof and raped by two white men.\textsuperscript{164} The men then threw her off of the roof to her death.\textsuperscript{165} The \textit{New York Times} published more than 150 articles on the Central Park Jogger case, and the media continued to refer to the black boys as a “pack,” inferring a pack of wolves.\textsuperscript{166} In contrast, there were only three stories in the \textit{New York Times} on the black woman who was raped and killed.\textsuperscript{167} The extensive coverage of the Central Park Jogger case—viewed by many as a baseless prosecution of black men, which was based largely on stereotypical notions of who these men are “supposed” to be—compared with the virtually non-existent coverage of the murder and rape of the black

\textsuperscript{161} See Duru, \textit{supra} note 59, at 1315–17.
\textsuperscript{162} See \textit{id}. at 1317–18.
\textsuperscript{165} See \textit{id}. at 2.
\textsuperscript{166} See \textit{id}.
\textsuperscript{167} See \textit{id}. 
woman, exemplifies the two-tiered justice system that exists in the
United States.\textsuperscript{168}

Another infamous judicial decision that captures what many African
Americans perceive as a two-tiered judicial system in this country is the
case of \textit{Brown v. Oneonta}.\textsuperscript{169} \textit{Oneonta} involved a series of events that
occurred in Oneonta, a small town in upstate New York.\textsuperscript{170} At the time,
Oneonta had approximately 10,000 full-time residents.\textsuperscript{171} In addition,
about 7,500 students resided at the State University of New York
College at Oneonta (SUCO).\textsuperscript{172} Oneonta was a very white town—fewer than
300 blacks lived there and only two percent of SUCO students were
black.\textsuperscript{173} “On September 4, 1992, just before 2:00 a.m., someone broke
into a house just outside Oneonta and attacked a seventy-seven-year-old
white woman.”\textsuperscript{174} The woman told police that she never saw the at-
tacker’s face, but that based on her view of his hand and forearm, he was
black.\textsuperscript{175} She said that he appeared to be young because he crossed the
room quickly.\textsuperscript{176} She also told police that her assailant cut his hand with
a knife during the struggle.\textsuperscript{177} After the assailant fled, a police canine
unit tracked the alleged assailant’s scent toward the SUCO campus, “but
lost the trail after several hundred yards.”\textsuperscript{178}

The police immediately “attempted to locate and question every
black male student at SUCO.”\textsuperscript{179} This “sweep” of all black male stu-
dents at SUCO produced no suspects.\textsuperscript{180} Over the next several days, the
local police (assisted by the New York State Police) conducted a sweep
of the entire town of Oneonta, stopping and questioning blacks on the
streets and inspecting their hands for cuts.\textsuperscript{181} More than two hundred
people were questioned, but the police failed to find the alleged assail-
ant.\textsuperscript{182} Black American boys waiting for the bus were stopped and inter-
rogated.\textsuperscript{183} Blacks were stopped in their cars and interrogated.\textsuperscript{184}

\textsuperscript{168} See id. at 3.
\textsuperscript{169} 195 F.3d 111 (2d Cir. 1999).
\textsuperscript{170} See id. at 116.
\textsuperscript{171} Id.
\textsuperscript{172} Id.
\textsuperscript{173} Id.
\textsuperscript{174} Id.
\textsuperscript{175} Id.
\textsuperscript{176} Id.
\textsuperscript{177} Id.
\textsuperscript{178} Id.
\textsuperscript{179} Id.
\textsuperscript{180} See id.
\textsuperscript{181} See id; see also Bob Herbert, \textit{In America; Breathing While Black}, N.Y. \textsc{times}, Nov. 4,
\textsuperscript{182} \textit{Oneonta}, 195 F.3d at 116.
\textsuperscript{183} See id; see also \textsc{Marable}, supra note 34, at 1.
\textsuperscript{184} See Oneonta, 195 F.3d at 116; see also \textsc{Marable}, supra note 140, at 1.
In early 1993, the SUCO students, along with others who were questioned during the sweep of Oneonta (plaintiffs), filed an action in the Southern District of New York against the City of Oneonta, the State of New York, SUCO, certain SUCO officials, and various police departments and police officers (defendants). The plaintiffs filed suit under 42 U.S.C. § 1983, asserting that the defendants violated their civil rights by singling out blacks in their sweep of Oneonta.

Civil liberties groups were outraged by the sweep of Oneonta. The state’s governor, Mario Cuomo, publicly apologized for the officials’ misconduct. The District Court for the Southern District of New York then dismissed some of the plaintiffs’ claims and granted summary judgment to the defendants on the others. The plaintiffs appealed the judgment of the District Court to the United States Court of Appeals for the Second Circuit. The Second Circuit affirmed the decision of the District Court and found “that police officers in Oneonta, N.Y., did not violate the Constitution when they tried to stop every black man in town in 1992 after a woman said she had been robbed in her home by a young black man.”

The Oneonta decision sent a message to many black Americans that “neither their rights as citizens nor their humanity mattered.” To many black Americans this situation was just more of the same and was representative of the indiscriminate searches of blacks that occur every day in this country. For some black Americans, the Oneonta decision evoked thoughts of Dred Scott and proved that black Americans still

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185 Oneonta, 195 F.3d at 116.
186 Id. Section 1983 allows individuals to sue state actors in federal courts for civil rights violations. Interestingly, Section 1983 is part of what was originally referred to as The Civil Rights Act of 1871, or the “Ku Klux Klan Act,” which was enacted, in part, to provide blacks redress—i.e., access to federal court—for violations of their civil rights by Klansmen and complicit local and state officials, who, at best, did nothing to stop violence against blacks. Scholars and lawyers have written extensively on Section 1983. See Martin A. Schwartz, Fundamentals of Section 1983 Litigation, in 1ST ANNUAL SECTION 1983 CIVIL RIGHTS LITIGATION 41 (Hon. George C. Pratt & Martin A. Schwartz eds., 2005). See generally Gloria Jean Rottell, Paying the Price: Its Time to Hold Municipalities Liable for Punitive Damages Under 42 U.S.C. § 1983, 10 J.L. & POL’Y 189, 189 (2001) (describing various § 1983 actions).
187 See Marable, supra note 140, at 1.
188 See id.
189 See Oneonta, 195 F.3d at 118. While not all of plaintiffs’ claims were either dismissed or lost via summary judgment, the remaining claims were immaterial as the parties stipulated to the discontinuance or dismissal of these claims with an eye towards securing an appealable final judgment. The judgment was then appealed to the Second Circuit. See id.
190 See id. at 111.
191 Herbert, supra note 181, at A29 (quoting but failing to cite a previous New York Times story); see also Oneonta, 195 F.3d at 123.
192 Id.
193 See Marable, supra note 140, at 1.
194 Dred Scott v. Sandford, 60 U.S. 393 (1856).
"had no rights which the white man was bound to respect."195 For many black Americans, this was undoubtedly another illustration of a two-tiered American judicial system in which blacks are on the second tier.

The verdict in the infamous Rodney King case had a similar impact on black Americans. Local and national surveys taken shortly after the 1992 jury verdict that exonerated the white police officers showed that while both whites and blacks disapproved of the verdict, only blacks held a general perception that the criminal justice system is biased against blacks.196 This perception of a double standard of justice offends a fundamental sense of fairness for black Americans.197 As Professor Katheryn Russell-Brown observes:

For African Americans, a communal sense of fairness flows directly from the groups' common history and shared space. The belief in fairness is not only a statement that Blacks have rights, too; it acknowledges that Blacks have and continue to experience a double standard of justice. African Americans take note of their personal experiences within the justice system and the experiences of other African Americans—friends, family members, acquaintances, colleagues, strangers, and Blacks in the news. Black sensitivity to racial injustices within the justice system is heightened by the fact that many Blacks stand within one or two degrees of someone—sibling, parent, child, cousin, or friend—who is in prison or in some way caught in the justice system (e.g., parole or probation). Further, Blacks also consider what role racial bias plays in criminal and non-criminal cases involving Blacks, compared with Whites.198

Since there is such a widely held view among black Americans that the American judicial system was and still is racist,199 black Americans are more likely to trust black lawyers to guide them through what they perceive to be a hostile system. As mentioned above, black Americans

195 Id. at 407; see also Herbert, supra note 181, at A29 (describing the events surrounding the Oneonta decision).
196 See Bobo, supra note 25, at 282–83.
198 Id. (footnote omitted). See generally Angela J. Davis, Arbitrary Justice: The Power of the American Prosecutor (2007) (discussing reforms that will help eliminate the racial disparities in the criminal justice system).
199 Professor Kenneth Nunn argues that African Americans have a moral obligation not to prosecute crimes, as the criminal justice system reflects racial disparities at all levels, is "one of the most racist institutions in the United States," and is "oppressive to African American people." Kenneth B. Nunn, The "Darden Dilemma": Should African Americans Prosecute Crimes?, 68 Fordham L. Rev. 1473, 1478–80 (2000).
may be less likely to worry that a black lawyer is part of that system, less likely to worry that a black lawyer will be unable to imagine what it is like to be on the second tier of a two-tier system, and less likely to worry that a black lawyer cannot understand the circumstances that the client is in as a black American in a historically racist system.

B. External Legitimacy

Because African Americans believe that the American judicial system is racist, the legitimacy of organizations that serve African Americans in the American judicial system is of utmost importance. If these organizations reflect the racial and ethnic make-up of the populations that they serve, African American clients are more likely to consider these organizations credible and legitimate.

Professor Cynthia Estlund refers to this idea (the need for organizations to reflect the population they serve) as "external legitimacy." External legitimacy has been referenced by courts and scholars alike, especially in the context of organizations operating within the criminal justice system. For example, in *Petit v. City of Chicago*, the United States Court of Appeals for the Seventh Circuit was faced with a § 1983 equal protection challenge against the City of Chicago, where the plaintiffs alleged that the city unlawfully discriminated against white police officer applicants by implementing an affirmative action plan for African American and Hispanic officers. Relying on *Grutter v. Bollinger* (the Supreme Court holding that the University of Michigan Law School’s narrowly tailored, race-based admissions program did not violate the Equal Protection Clause), the Seventh Circuit upheld the program as necessary for the effective operation of the police department. The Seventh Circuit reasoned that a more diverse police force in a racially and ethnically diverse city would enhance the public’s perception of the department, which, in turn, would enhance the department’s ability to

200 See Estlund, supra note 136, at 22.


203 *Id.* at 1111.


205 See *Petit*, 352 F.3d at 1118.
police crime.\textsuperscript{206} The Court recognized that the department would be more likely to gain the trust of the community if it had "‘ambassadors’ to the community of the same [race or] ethnicity."\textsuperscript{207} In relevant part, the Court concluded:

It seems to us that there is [a] . . . compelling need for diversity in a large metropolitan police force charged with protecting a racially and ethnically divided major American city like Chicago. Under the Grutter standards, we hold, the City of Chicago has set out a compelling operational need for a diverse police department.\textsuperscript{208}

Scholars have recognized that the "external legitimacy" of the American justice system depends, in part, on African Americans becoming a visible part of this system.\textsuperscript{209} For example, in "Changing the System from Within: An Essay Calling on More African Americans to Consider Being Prosecutors," Roscoe Howard argues that many African Americans believe "a fair trial does not appear attainable" in the current system.\textsuperscript{210} Howard argues that when African Americans "becom[e] part of the system,” it will have more legitimacy in the community, and will be "more responsive to the demands for justice."\textsuperscript{211} Howard explains:

Minority participation provides, at the very least, an appearance of fairness. If individuals face a system that shows no reflection of who they are, their race, their culture or their neighborhood, it is difficult to insist on their respect for the system. I have argued before that diversity in our criminal justice system is needed to provide the trust in the system that is required for its operation. Black and other minority faces at the government’s table in the courtroom should provide some comfort that whatever charging decisions have been made, they have not been made strictly on account of race.

In short, appearance is important because the community must have some comfort that the system—and the organizations within the system—work the same for all.\textsuperscript{212}

\footnotesize
\textsuperscript{206} See id. at 1114–15.
\textsuperscript{207} Id. at 1115 (quoting Reynolds v. City of Chicago, 296 F.3d 524, 529 (7th Cir. 2002)).
\textsuperscript{208} Id. at 1114.
\textsuperscript{209} See Howard, supra note 201, at 165–66; see also Stevenson, supra note 201, at 365–66.
\textsuperscript{210} Howard, supra note 201, at 142.
\textsuperscript{211} Id. But see Nunn, supra note 199, at 1477–78 (arguing that African Americans have a moral obligation not to be prosecutors).
\textsuperscript{212} Howard, supra note 201, at 165–66 (footnote omitted).
While Howard's primary goal is to persuade more African Americans to become prosecutors, he also argues for more diversity throughout the criminal justice system. Professor Bryan Stevenson echoes Howard's concerns in, "Confronting Mass Imprisonment and Restoring Fairness to Collateral Review of Criminal Cases." In this article, Professor Stevenson discusses the long history of racial bias in the administration of criminal justice and observes that, "[t]he perception of unfairness [of the system] is aggravated by a lack of racial diversity among judges and prosecutors." In short, the criminal justice system lacks external legitimacy because it lacks racial diversity. Similarly, legal services organizations that do not employ black attorneys lack external legitimacy. These organizations should hire African American attorneys in order to establish the external legitimacy which is necessary if they are to gain their clients' trust.

IV. WHY BLACK AMERICANS MAY NOT WANT A BLACK ATTORNEY

Some scholars have suggested that even in a two-tiered judicial system, an African American client may not want an African American attorney. Notably, these occasions arise not from a desire to strengthen the attorney-client relationship, but primarily from perceptions about the two-tiered judicial system. These situations (a few of which I discuss below) are exceptions to the rule and do not undermine my conclusion that African American attorneys may provide better representation to African American clients.

A. "The Judicial System Is Racist" Situation

As I discuss throughout the Article, there is a widespread perception among African Americans that the American judicial system is racist. Thus, some people argue that a black client may feel "better off with a white lawyer precisely because racism infects the criminal justice system." The argument is that the judicial system is primarily run, developed, and constructed by whites, and a black lawyer will not be given as much deference and respect within the system as a white lawyer.
Kenneth P. Troccoli observes, "[t]he sad fact is that the system itself, and particular actors within it, do treat African Americans differently than whites. For this reason, a white lawyer may be more effective than his Black counterpart."218 Similarly, David Wilkins observes, "Black clients, who bear the brunt of the legal system's racism, may find it more difficult to secure justice if they hire a black lawyer."219 Professor Margaret Russell explains the struggles black attorneys face when they use race as part of their trial strategy:

Black attorneys who raise such [issues of race] in court often face a heavy burden of justifying either that race really exists as an issue at all, or that they are competent to address the topic of race in a fair and reasoned manner. When Black attorneys articulate racism as a primary factor in a particular case, they may encounter fractious demands that they "prove it," or harsh accusations that they are "playing the race card" or otherwise engaging in unprofessional behavior. . . . Unlike white attorneys, who have the relatively luxurious comfort of invisibility and transparency in raising issues of race in the lawyering process, Black attorneys must always brace themselves to have their racial, professional, and personal identities placed in issue as well.220

Thus, because the American judicial system does not always provide a level playing field for African American attorneys, some black clients may prefer not to have a black attorney.

218 Troccoli, supra note 6, at 37; see also Wilkins, Straightjacketing Professionalism, supra note 37, at 797 ("White clients may also be less likely to engage the services of a black lawyer if they are concerned that he or she will not be taken seriously by other important actors in the system.").

219 Wilkins, Straightjacketing Professionalism, supra note 37, at 797.

220 Russell, supra note 37, at 771–72; see also Troccoli, supra note 6, at 37; Peggy McIntosh, White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women's Studies, in CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR 291, 294 (Richard Delgado & Jean Stefancic eds., 1997) (by way of illustrating the privilege she enjoys because she is Caucasian, the author observes, "If I declare there is a racial issue at hand, or there isn't a racial issue at hand, my race will lend me more credibility for either position than a person of color will have.").
B. "The White Lawyer Is a Better Lawyer" Situation

David Wilkins observes that misguided beliefs about the incompetence of African American attorneys can cause them to be seen as "less than 'real' lawyers." Wilkins further observes that African American lawyers may be treated "at best patronizingly, and at worst, as second class citizens," which may affect black clients' desire to have them as their representatives. A special report of a task force on gender, race, and ethnic bias in the D.C. Circuit (Task Force) found that African Americans (and attorneys of color generally) have to "overcome perceptions of incompetence." The Task Force enlisted social scientists, demographers, attorneys, academics, law students, and community members and conducted public hearings, distributed written questionnaires, conducted interviews, focus groups, breakout sessions, and roundtables. The Task Force's mission was to gather information on the ways in which gender, race, and ethnicity affect the work environment of the D.C. Circuit courts. The Task Force found that perceptions of African American attorney incompetence are widespread:

The professional experiences of African American, Hispanic, and Asian American attorneys, while different in certain aspects, nevertheless had several strong common factors. Principal among these were the need to overcome perceptions of incompetence, the difficulty of establishing oneself in the 'mainstream' legal community, and a sense of exclusion from opportunities provided to serve or interact with the federal judiciary. . . . This perception [of incompetence] took a particular form with African American attorneys, according to both men and women in different focus groups, who said their achievements were often discounted as the product of "affirmative action" rather than their own ability.

There are some black communities where there are only a few black lawyers. Some blacks have internalized negative misconceptions about their own race due to the prevalence of anti-black stereotypes in society. If, for these reasons (or for any other reason), black clients see black lawyers as incompetent, they may prefer lawyers who are not black.

221 Wilkins, Identities and Roles, supra note 2, at 1514.
222 Id.
223 Special Committee on Race and Ethnicity, Report of the Special Committee on Race and Ethnicity to the D.C. Circuit Task Force on Gender, Race, and Ethnic Bias, 64 GEO. WASH. L. REV. 189, 228 (1996).
224 See id. at 204.
225 See id. at 204–06.
226 Id. at 228 (footnote omitted).
C. "The Black Lawyer Is Not Black Enough" Situation

A black client may not want a black lawyer if the lawyer is perceived as being "not black enough." Black clients may have this perception because of the lawyer's "skin color, hair texture, wealth, academic success," social status, or speech. On another level, some black lawyers may have rejected their blackness, in part, due to an education that taught them to reject their culture and their history. If a black lawyer has any traits that are associated by some with whiteness or with what is commonly referred to as "selling out," the lawyer may be seen as someone who is "not black enough" or alternatively, seen as someone who cannot be trusted.

The concept of selling out can be illustrated using the civil rights movement as a reference point. As the civil rights movement has sped up the process of creating opportunities for upward financial mobility for blacks, some blacks have divested themselves of their own culture and "display[ed] a commitment to the values of the dominant culture." Similarly, the black professional of today is sometimes perceived to be "as interested in his or her class or profession as in his or her race." These scenarios may cause blacks to label some black lawyers as sell-outs.

A thorough examination of the social and psychological challenges of being black in America and how that relates to the concept of selling out is beyond the scope of this article. Suffice it to say that black Americans may not choose someone who is perceived as a sell-out to represent them.

Notwithstanding these arguments, empirical evidence suggests that more often than not, black clients prefer black lawyers. I argue that the socio-political-legal and historical environment in which blacks live has created a group identity which makes it easier for black clients to trust and communicate with African American lawyers. Furthermore,
while there are exceptions to this rule, two of the three situations described above (in which a black client may prefer a white lawyer) are perpetuated by the perception of a two-tiered American judicial system. Consequently, although these situations demonstrate greater complexity in clients' responses to the American judicial system, they do not undermine the need for more black attorneys.

V. **David Wilkins, “Bleached Out Professionalism,” and “Playing the Race Card”**

Since I conclude that racial identities have a place in the practice of black lawyers and that non-profit organizations that represent large populations of black Americans need black lawyers, I would be remiss not to discuss the relevance of David Wilkins' response to the normative ideal of "bleached out professionalism."  

In "Identities and Roles: Race, Recognition, and Professional Responsibility," Professor Wilkins responds to proponents of "bleached out professionalism," or the notion that, once one becomes a lawyer, "this 'professional self' ... subsumes all other aspects of a professional’s identity and ... becomes the sole legitimate basis for actions undertaken within the professional role." Wilkins recognizes that some professionals strongly believe that "non-professional" aspects of an individual’s identity, such as race, class, sex, and socio-economic status, are not relevant to their professional responsibilities. Wilkins further explains, "Many Americans equate bleached out professionalism with ... fairness and opportunity," core concepts that are fundamental to the dominant model of American legal ethics. The proponents of bleached out professionalism believe that "the quality of lawyering and of justice an individual receives does not depend on the group identity of the lawyer or judge." Professor Wilkins explains:

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236 *Id.* at 1512.

237 *Id.*

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.\textsuperscript{239}

Wilkins argues that black lawyers' racial identities have a place in the practice of black lawyers that does not undermine—but instead supports—the principles that underlie the dominant model of American legal ethics.\textsuperscript{240} In making this argument, Wilkins focuses primarily on the "use" of race at trial and during legal proceedings, using as examples Gil Garcetti's decision to prosecute O. J. Simpson in Los Angeles County where it was likely that most of the jury would be black and Cochran's strategy in the same case (for which he was accused of "playing the race card").\textsuperscript{241}

There are many differences between using race in this context and in considering race when choosing a lawyer. For example, using race in the trial context may be characterized as offensive or as "tainting" the legal process. Some may argue that using race to influence a judge or jury is an explicit violation of the norms of fairness and opportunity that are core values of our legal system. One could argue that using race in this way runs the risk of "manipulating" otherwise unassuming judges and jurors. On the other hand, if one considers race when choosing a legal representative, it may seem less viscerally offensive, as the action may not be seen as "directly" affecting the legal process. It may be seen as a matter of personal choice, rather than as a "pull the wool over your eyes" method of legal maneuvering. However, the two may be seen as one and the same. In fact, many argued that Cochran's race was one of the reasons that he was added to Simpson's legal team, i.e., due to a predicted advantage that the presence of a black attorney would give Simpson with the jury.\textsuperscript{242} I do not attempt to tackle these questions here. I need not do so to echo Wilkins' argument in the context of the attorney-client relationship. I believe, as does Wilkins, that racial identity has a place in the practice of black lawyers that supports the principles that underlie the dominant model of American legal ethics. In short,

\textsuperscript{239} Id. at 1514-15 (footnote omitted).
\textsuperscript{240} See id. at 1515-16.
\textsuperscript{241} See id. at 1515.
\textsuperscript{242} See id.
"bleached out professionalism" is not the appropriate normative ideal for African American lawyers.

In my view, Wilkins' assessment that proponents of bleached out professionalism "exaggerate the danger of allowing lawyers to incorporate their identity into their professional roles" is accurate. It is also true that considering race in a way that enhances the attorney-client relationship supports the "colorblind norm of zealous advocacy." Similarly, Wilkins argues that if black lawyers "honor their legitimate role obligations," as opposed to becoming "racial patriots," "race-conscious lawyering strategies support, rather than undermine" the goals of our American legal system. This argument applies to the attorney-client relationship. As long as black American lawyers honor their professional and ethical roles as lawyers, and do not subvert these roles—and their accompanying norms and rules—to their racial identity, race-conscious lawyering can be "zealous advocacy" that supports, rather than undermines, the goals of our American legal system.

The ABA Model Rules of Professional Conduct provide space for lawyers to accommodate interpretive guidelines such as race into their practice. For example, ABA Model Rule 1.3 provides "[a] lawyer shall act with reasonable diligence and promptness in representing a client," and ABA Model Rule 1.4 provides that a lawyer shall "keep the client reasonably informed about the status of the matter." The language and plain meaning of these rules would seem to allow African American lawyers to utilize their racial identity to enhance communication with their clients or to otherwise develop a level of trust with their clients, provided that the end goal is to provide zealous representation. An African American lawyer not using all of the tools at his disposal to represent his client diligently and competently (assuming that it is possible to not "use" one's racial identity) would be akin to a lawyer knowing which questions she needs to ask to get important information about her client and refusing to ask these questions. Or, it would be akin to a lawyer knowing that having a child's mother in the room will make the child more comfortable (and thus improve the representation) and still refuse to accommodate this request.

243 Id. at 1571.
244 Id. at 1516; see also Russell, supra note 37, at 791, n.67.
245 Wilkins, Identities and Roles, supra note 2, at 1584.
246 See id. at 1587. Wilkins offers four "safeguards" for consumers that lawyers must follow if race-conscious lawyering is to been seen as enhancing, rather than undermining, the legal process. See id. at 1590–91. I have only paraphrased Wilkins' argument here.
247 See id. at 1567.
249 R. 1.4(a)(3).
The anecdote in the beginning of the Article illustrates my point. Did I violate the rules of ethics by using my “race-based communication” to effectively communicate with my new clients? Did I violate the rules of ethics when I looked into my client’s grandmother’s eyes and let her know that “I knew what she meant,” and therefore, that she could feel comfortable talking to me? Or, did I give special meaning to Rule 1.1, which provides that “a lawyer shall provide competent representation to a client?”

VI. WHEN AND WHERE DOES THE LAW ALLOW COLOR-CONSCIOUSNESS?

For many legal services organizations, an obligation to hire African American attorneys would implicate Title VII of the Civil Rights Act of 1964 (Title VII). Under Title VII, organizations can engage in preferential hiring in some circumstances to improve the economic and social conditions of minorities and women. Title VII provides:

It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin . . . .

In passing Title VII, “Congress recognized that employers were discriminating against employees and potential employees based on characteristics such as race and sex,” that such practices were harmful to individuals and the economy, and that sometimes organizations should be able to engage in preferential hiring to improve the economic and social condition of traditionally underserved populations. Through the bona fide occupational qualification exception (BFOQ), Congress permitted covered employers to discriminate intentionally in narrowly defined circumstances. Race, however, cannot be a BFOQ.

250 R. 1.1.
254 Frank, supra note 252, at 475.
255 See id.
256 See id. at 476.
257 See id.
258 See id. Gender is the most commonly asserted bona fide occupational qualification exception (BFOQ), along with age in the ADA context. See id. National origin is almost never proffered as a BFOQ. See id. at 476–77; see also George Rutherglen, Discrimination
However, in its parallel constitutional affirmative action jurisprudence, the Supreme Court found in *Grutter* that the attainment of racial diversity in a public university body can, under certain circumstances, be sufficiently compelling to survive strict scrutiny under the Equal Protection Clause.\(^{259}\) Although *Grutter*'s "diversity rationale" was implemented in the context of race-influenced admissions decisions at a public university, Justice O'Connor's opinion speaks to a potentially expansive diversity rationale that may be applicable to the workplace (in both the public and private sectors) and thus applicable to legal services organizations.\(^{260}\) It appears this application of *Grutter* will likely be used as courts continue to recognize the permeability of the line between Title VII and constitutional affirmative action jurisprudence.\(^{261}\) Tellingly, in *Grutter*, the Court found that the benefits of affirmative action are "not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints."\(^{262}\)

The Court's language in *Grutter* suggests that its "diversity rationale" is applicable in the employment context.\(^{263}\) While the Supreme Court has yet to evaluate an affirmative action plan which was instituted pursuant to a diversity rationale under Title VII, there is reason to believe that such a plan would pass judicial scrutiny.\(^{264}\) Courts have applied *Grutter* in circumstances that are akin to the circumstances faced by many legal services organizations that serve large populations of African


\(^{260}\) See id. at 330–33; see also Michael L. Foreman et al., *The Continuing Relevance of Race-Conscious Remedies and Programs in Integrating the Nation's Workforce*, 22 Hofstra Lab. & Emp. L.J. 81, 101–03 (2004).

\(^{261}\) See *Grutter*, 539 U.S. at 330–33 (explaining how promoting diversity through a narrowly tailored race-conscious admission program aids in preparing students to compete in an increasingly diverse workforce); see also Foreman et al., supra note 260, at 82.

\(^{262}\) *Grutter*, 539 U.S. at 330 (citations omitted).


\(^{264}\) See Foreman et al., supra note 260, at 101–02; see also White, supra note 263, at 270.
American clients.265 Similarly, in the case of legal services organizations that desire to engage in preferential hiring for African American attorneys, Grutter's diversity rationale could be used in the Title VII context to expand the analysis under the Weber/Johnson line of cases.266 Currently this line of cases allows for affirmative action plans under Title VII, provided that they are instituted with the purpose of eliminating a conspicuous or manifest racial imbalance within an organization.267 While Grutter's civic rationale for diversity (i.e., student diversity promotes "'cross-racial' understanding, helps to break down racial stereotypes, and enables students to better understand others of different races"268) does not apply directly to the employment context, Grutter's discussion of the importance of diversity in the private workplace is compelling.269

Diversity is an important consideration for legal services organizations looking to employ staff attorneys who are most likely to engender trust and to facilitate communication with their clients. As recognized by the Seventh Circuit in Petit,270 employers believe external legitimacy is a particularly important business purpose. As discussed above, external legitimacy is particularly important for legal services organizations that work in a legal system that is perceived as racist against blacks.271 While such a rationale for diversity would seem to run contrary to the

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265 In Petit, for example, the Court of Appeals for the Seventh Circuit found racial diversity to be a compelling interest for a police force charged with protecting a racially and ethnically diverse Chicago. See Petit v. City of Chicago, 352 F.3d 1111, 1114 (7th Cir. 2003).

266 See Parents Involved in Community Schools v. Seattle School District No. 1, 127 S. Ct. 2738 (2007). As I discuss throughout this section, this, of course, would be a novel application of Grutter.

267 See Charles A. Sullivan, Circling Back to the Obvious: The Convergence of Traditional and Reverse Discrimination in Title VII Proof, 46 WM. & MARY L. REV. 1031, 1051–52 (2004). This is true even if the employer did not contribute to the imbalance. See id. at 1048. The Court has further explained that such a plan is lawful only when "[it does] not unduly trammel the interests of majority group members," indicating that such a situation might arise if an affirmative action plan presented an absolute bar to white employment advancement, or was permanent. Id. at 1052 (quoting United Steelworkers of Am. v. Weber, 443 U.S. 193, 208 (1979)). In tailoring its jurisprudence narrowly, the Court has acknowledged that Title VII protects members of all races, including whites. See e.g., McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273, 279–80 (1976) (acknowledging Title VII's applicability to whites).


269 See Duru, supra note 263, at 413–14.

270 See Petit, 352 F.3d. at 1111.

271 See Howard, supra note 201, at 165 ("Minority participation provides, at the very least, an appearance of fairness."); see also Ifill, supra note 201, at 101 ("[T]he absence of minority judges on state trial courts contributes to an atmosphere of racial exclusion which, at the very least, marginalizes African American lawyers, litigants and courtroom personnel in many jurisdictions."); Stevenson, supra note 201, at 366 ("The perception of unfairness [of the criminal justice system] is aggravated by a lack of racial diversity among judges and prosecutors, which itself exacerbates courts' tolerance of unremediated illegal discrimination."). Brian Leach argues that "the mere presence of African Americans in positions of leadership within the U.S. military helps to dispel perceptions of institutional bias" and that "minority police
Court’s long-standing refusal under Title VII to permit companies to compose their workforce based on customer preferences, this rationale embodies the purpose of Title VII. In fact, "[i]t does not offend Title VII’s heritage; it relies upon it. It would seem that external legitimacy could further Title VII’s purposes and could gain traction under Title VII jurisprudence in the event of a Grutter-inspired expansion." Any such expansion, of course, would have to wrestle with the implications of a Supreme Court case (originally two cases, but consolidated into one) that was decided in 2006, Parents Involved in Community Schools v. Seattle School District No. 1. As discussed below, the Parents decision limits the ability of certain organizations to engage in color-conscious actions. In Parents, the Court issued competing opinions invoking the mantle of Brown v. Board of Education and restricted the means by which school districts can racially integrate their student bodies. At this point, it is unclear if these cases will affect the ability of legal services organizations to preferentially hire African American attorneys.

In a 5–4 decision, the Parents Court ruled that the use of race in student-assignment policies by the Seattle and Louisville School Districts violated the rights of the white petitioners whose children were denied admission to the school of their choice. Chief Justice Roberts declared that such plans were "directed only to racial balance, pure and simple." The Court did not find it necessary to directly address its previous holding in Grutter, as the Court found that the notion of diversity asserted by the schools in these cases was a more "limited notion of diversity" than was involved in Grutter. In addition, the majority found that the plans in Parents relied on race in a "nonindividualized, mechanical" way.

The Court’s conservative members argued that the school assignment programs at issue were in conflict with the premise of Brown,
which in their view requires an adherence to colorblindness.\textsuperscript{283} The majority’s view is that even benign racial classifications should be struck down, as the use of race in classification is always invidious.\textsuperscript{284} Or in the words of Chief Justice Roberts, “The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”\textsuperscript{285}

The Roberts opinion and Justice Thomas’ concurrence (which together would have effectively outlawed the explicit consideration of race when addressing de facto segregation in schools) represented a plurality of the Court.\textsuperscript{286} While Justice Breyer provided an impassioned dissent—“It is not often in the law that so few have so quickly changed so much”\textsuperscript{287}—Justice Kennedy provided the fifth vote to overturn the assignment programs at issue. Nonetheless, Justice Kennedy distanced himself from the majority and joined the dissent in ruling that the use of race is permissible in certain circumstances, provided that the programs are narrowly tailored.\textsuperscript{288}

In his concurring opinion, Justice Kennedy gave some suggestions on how school districts can constitutionally use race-conscious measures to achieve diversity.\textsuperscript{289} In rejecting the plurality’s complete embrace of a colorblind constitution, Justice Kennedy criticized the Chief Justice’s “all-too-unyielding insistence that race cannot be a factor in instances when, in my view, it may be taken into account.”\textsuperscript{290}

Civil rights advocates have rightly decried this opinion as an abandonment of the “aspiration of integration and equal life chances manifest in Brown,”\textsuperscript{291} but Justice Kennedy’s concurrence shows that race-consciousness has not been completely laid to rest by the Court. While an in-depth discussion of the implications of this decision for affirmative action programs in hiring is beyond the scope of this Article, any such programs will likely hinge, in part, on Justice Kennedy’s concurrence. A concurrence in which Justice Kennedy recognizes that (1) “[t]he enduring hope is that race should not matter; the reality is that too often it

\textsuperscript{283} See id. at 2768; see also Jess Bravin & Daniel Golden, Court Limits How Districts Integrate Schools—Race-Based Policy Ban Augurs Broad Changes; Clash Over Brown Case, \textit{WALL ST. J.}, June 29, 2007, at A1.

\textsuperscript{284} See Parents, 127 S. Ct. at 2774; see also Bravin & Golden, supra note 283, at A1.

\textsuperscript{285} Parents, 127 S. Ct. at 2768.

\textsuperscript{286} See id. at 2746.

\textsuperscript{287} These words were not included in Justice Breyer’s written opinion, but rather, are statements that the Justice made from the bench during the \textit{Parents} oral argument. Greenhouse, supra note 280, at A1.

\textsuperscript{288} See id. at 2792 (Kennedy, J., concurring).

\textsuperscript{289} See id. at 2788–97.

\textsuperscript{290} Id. at 2791.

does,” 292 (2) the plurality is “too dismissive of the legitimate interest government has in ensuring that all people have equal opportunity regardless of their race”, 293 and (3) in the real world, colorblindness “cannot be a universal constitutional principle.” 294 In short, Grutter is still good law and its “diversity rationale” seems to be intact.

CONCLUSION

The Supreme Court’s decision in Parents is relevant to my argument for a reason other than a strictly legal one. The Parents decision will affect how my argument is received. In response to Parents, the American Civil Rights Union 295 issued a press release, stating that the “ruling narrowly upheld the colorblind principle that all Americans regardless of race are equal under the law. But there’s clearly more work to be done until at least . . . [five] members of the Supreme Court acknowledge that just as our Constitution is colorblind, our public schools should be as well.” 296 Similarly, Ward Connerly of the American Civil Rights Institute declared,

The Supreme Court today made a glorious decision that directly fits with our plans to eliminate race in all facets of American public life . . . . This Supreme Court decision shows that the era of race preferences is quickly coming to an end. The Court is finally starting to catch up with what the American people have known for years: Race has no place in American public life. 297

The Parents decision provided a victory to the ideology of colorblindness. Consequently, calls to get beyond race now have the cover of the Supreme Court. 298 Justice Harlan’s famous pronouncement in Plessy

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292 Parents, 127 S. Ct. at 2791 (Kennedy, J., concurring).
293 Id.
294 Id. at 2792.
295 Despite its name, the American Civil Rights Union (ACRU) is not in any way affiliated with the American Civil Liberties Union (ACLU). The ACRU is a non-profit organization that differentiates itself from the ACLU, an organization that it criticizes for selectively supporting the Bill of Rights. See Center for Corporate Policy, http://www.corporatepolicy.org/issues/ACRU.htm (last visited Oct. 3, 2008).
"Our Constitution is color-blind, and neither knows nor tolerates classes among citizens"—Plessy v. Ferguson, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting). This ideology has now moved beyond the ideal, to become the reality, of American society. Since some people genuinely believe that the best way to get beyond racism is to get beyond race, my argument may be seen as part of the problem.

For Thurgood Marshall, as counsel for the NAACP legal defense fund, colorblindness represented the dismantling of de jure segregation. However, "[i]n the wake of the civil-rights movement's limited but significant triumphs, the relationship between colorblindness and racial reform changed markedly." As legal victories did not directly translate into the eradication of inequality, progressives increasingly pushed for "affirmative race-conscious remedies." Ironically, in this environment, the ideology of colorblindness could now safely be used by those who were resistant to racial progress, as it now had the "cover" of having been previously advocated by those in the civil rights movement.

In the 1970s, the Supreme Court's belief in equality made it impossible to adhere to the ideology of colorblindness. However, in the 1980s "the [C]ourt presented race as a phenomenon called into existence just when someone employed a racial term." Unfortunately, "[t]hat approach ignores the continuing power of race as a society-altering category." Thus, in response to the advocates of colorblindness who would identify color consciousness as part of the problem, it is important to recognize that there is still racial hierarchy in this country. The elimination of affirmative action programs in the employment context should depend on the remediation of racial hierarchy.

299 Plessy v. Ferguson, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).
300 The ideal of colorblindness has been traced to Justice Harlan's dissent in Plessy v. Ferguson, but this ideology may have existed in the 1840s before Plessy was decided, when black children in Massachusetts challenged so-called separate but equal schools. See Andrew Kull, The Color-Blind Constitution 40-52 (1992) (discussing Roberts v. City of Boston, 59 Mass. (5 Cush.) 198 (1849)).
301 See López, supra note 298.
302 Id.
303 Id.
304 See id.
305 See id.
306 Id.
307 Id.
308 See id. In 1998, the American Anthropological Association counseled the federal government to phase out the use of the term "race" in the collection of data because the concept has no scientific justification in human biology. See American Anthropological Association, Statement on "Race" (May 17, 1998), http://www.aaanet.org/stmts/racepp.htm (last visited Nov. 29, 2008). The problem with this recommendation is that social concepts of race are still linked to forms of discrimination.
be conditioned on the elimination of racial hierarchy. A careful distinction should be made between the moral superiority of colorblindness as policy and the lure of colorblindness as an ideal for American society. As Professor Ian F. Haney López provides:

Contemporary colorblindness is a set of understandings—buttressed by law and the courts, and reinforcing racial patterns of white dominance—that define how people comprehend, rationalize, and act on race. As applied, however much some people genuinely believe that the best way to get beyond racism is to get beyond race, colorblindness continues to retard racial progress. It does so for a simple reason: It focuses on the surface, on the bare fact of racial classification, rather than looking down into the nature of social practices. It gets racism and racial remediation exactly backward, and insulates new forms of race baiting . . . .

Colorblindness badly errs when it excuses racially correlated inequality in our society as unproblematic so long as no one uses a racial epithet. It also egregiously fails when it tars every explicit reference to race. To break the interlocking patterns of racial hierarchy, there is no other way but to focus on, talk about, and put into effect constructive policies explicitly engaged with race.

My ode then to Justice Roberts, and to those proponents of colorblindness as a policy prescription in today's society, is Justice Blackmun's statement "in defending affirmative action in [Regents of the University of California v.] Bakke: 'In order to get beyond racism, we must first take account of race. There is no other way.'" My underlying theme of this Article is that the problems of blacks cannot be solved by removing race-consciousness from the dialogue about diversity in the legal profession. In short, legal services organizations that represent large populations of black Americans should be race

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309 See López, supra note 298.
310 See id.
311 Id.
312 Id. (quoting Justice Blackmun in Regents of the Univ. of Cal. v. Bakke, 438 U.S. 265, 407 (1978) (Blackmun, J., concurring)); see also Bobo, supra note 25, at 284–85. Bobo suggests that talking about race and racism may be a difficult endeavor in a society in which there is such a divergence of opinion as to the importance of race. Bobo, supra note 25, at 284–85. In part, Bobo suggests that [s]ustained and constructive discourse about matters of race will surely remain difficult insofar as Blacks are (1) more likely than Whites to see discrimination in particular domains and situations; (2) more likely to see discrimination as institutional rather than episodic; (3) more likely to see discrimination as a central factor in larger patterns of racial inequality; and (4) more likely to regard racial discrimination as personally important and emotionally involving. Id.
conscious and hire more black lawyers. This country's socio-political-
legal and historical environment has made blacks uniquely able to com-
municate with and gain the trust and confidence of their black American
clients.

My goal in writing this Article is not only to make a normative
statement as to whether legal services organizations should engage in
preferential hiring. My intention is also to contribute to the intellectual
discourse as to whether black lawyers bring unique benefits to black cli-
ents. While we may be uncomfortable talking about race, we cannot let
shame silence us as a society. We owe each other at least this much.
This Article examines the challenges of intra-race legal representation for lawyers of color, law students of color, and those teaching law students of color by analyzing how the dynamics of the lawyer’s and client’s racial sameness impact legal representation. This Article brings together three strands of lawyering theory – the role of race in lawyering, critical race theory, and the role of the lawyer in intra-race legal representation. In doing so, this Article explores a number of provocative questions: Does being the same race as their clients make lawyers better legal representatives? Should lawyers of color embrace or resist race’s influence on intra-race legal representation? How do lawyers balance their desire to remain representative of their race with their responsibility to their clients? This Article also scrutinizes the role of the lawyer of color in intra-race legal representation by examining questions that are under-reviewed, such as: Do lawyers of color engage in the same explicit and implicit biases against their clients of color that lawyers of color similarly suffer? Do racial stereotypes tempt the lawyer to be more sympathetic towards, and understanding of, their same-race clients, or does it cause the lawyer to view the same-race client as an ‘other’? For lawyers of color and clients of color who seek same-race legal representation, this Article explores a difficult question—Is the lawyer of color representative enough of the race to be a representative for the client, particularly when the lawyer of color and the client of color live in different socio-economic environments? Given the resurgent examination of the role of race in interactions between persons of color and persons of power, this Article presents a timely opportunity to examine and question the role of race and the impact of divergent socio-economic status in intra-race legal representation.
I enter the room and see them gazing at me. I notice the slight surprise, the pride, the relief. I am an African-American attorney working in community development in predominantly African-American communities. I am here to be their lawyer, but I am often perplexed trying to define that role. I, like many lawyers of color, struggle with the dynamics of our roles as lawyers to members of our racial community.

As attorneys of color, when we walk into community and client meetings and see the faces of color before us, we hear the murmers. We see and hear from them the gratitude for the personification of their sacrifice—the long hours working the hardest jobs for the lowest pay; the years of enduring discrimination to give us, their children, and their unborn grandchildren, chances for better lives. The precious, hard-earned coins
dropped into collection plates to support their kids and neighbors’ kids at historically black colleges and universities, often the only colleges that would admit them. Their lost hope renewed when they see those of us who “made it.”

We often see in their eyes our reflection, though many of us struggle with the question of what it is that we see. Do our clients of color see an ‘other’ when they gaze upon us or do they see a reflection of themselves, one of their own? Do they expect more of us because we are of the same race?

We are torn by their expectations, verbal and unspoken, as well as our own. We want to be for them what we think they need. We want to fix the problems they face, in part because they endured them to enable our opportunities. We have the legal training to help them. We received this training, in part, because they fought for our right to obtain it. So, when we represent them, what do we owe? How do we retain our legal objectivity under the weight of such responsibility?

In identifying and examining the dynamics that attorneys and clients of color must contend with in intra-race legal representation, this Article not only serves as an important tool for reflection and insight for attorneys of color managing these dynamics, it will also be instructive for those teaching current and aspiring attorneys of color to help prepare them to navigate these issues in practice. Non-lawyers of color can also benefit from exposure to these issues as colleagues and opposing counsel to attorneys of color.

In 1996, Nancy Polikoff wrote a powerful article, *Am I My Client? The Role Confusion of a Lawyer Activist*. In this article, Polikoff examined the conflicts she felt as a lesbian activist attorney representing clients who shared her demographics, goals, and personal challenges. Her article examined her role confusion from her work as a lesbian activist seeking to maintain her position as an insider to this demographic while also trying to remain an objective legal representative of other lesbian activists. In her article, Polikoff describes her connection to the lesbian activist community and her solidarity with their civil disobedience to fight injustices against that community. However, she struggles with how to continue her activism while simultaneously acting as an attorney to that community. Her activism for her cause requires a civil disobedience against the law that is in stark contrast to the objective analysis and often peaceful compliance required of her as an attorney. This tension reflects what she calls her role confusion between whether she can remain an ‘insider’ to the lesbian activist community or whether the non-activist requirements of her as an attorney will cause her to be an ‘outsider’ to that group. The raw honesty of her prose moved me the first time I read it ten years ago, and it contin-

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ues to inform my thoughts on the role confusion I experience as an African-American attorney working in African-American communities.

Part I of this Article introduces the concept of intra-race legal representation and provides some background for the author’s examination of this issue. Part II uses the author’s experience as a framework for the attorney of color and similarly provides a framework for the client of color through the prism of the ‘race client’ – the attorney’s race as a client of the attorney of color. This section of the Article further examines how same-race attorneys and clients pursue racial solidarity through intra-race legal representation and seek to identify with each other through their racial-sameness. Part III presents competing arguments on the role of race in inter-race legal representation, contrasting arguments for race-neutral lawyering and racially-conscious lawyering. Part IV examines whether race similarly impacts intra-race legal representation and closes with an analysis of the risks and perilous challenges lawyers and clients of color must navigate in intra-race legal representation. The Article concludes with a personal reflection of a question each attorney of color must contemplate in same-race lawyering: Am I my client?

I. INTRA-RACE LEGAL REPRESENTATION

Intra-race legal representation occurs when lawyers represent clients who share the same racial demographics as the lawyer. There are unique dynamics to intra-race legal representation that give rise to this Article. Race is a charged term even though it is considered a social construct, rather than a biological construct. Psychologists consider race “the category to which others assign individuals on the basis of physical characteristics, such as skin color or hair type, and the generalizations and stereotypes made as a result.” Race, particularly for people of color, affects many aspects of life. For attorneys of color, race becomes an inextricable part of who we are, how we view the world, and how the world views us. Attorneys of color overwhelmingly descend from groups who historically have suffered racial oppression. As a result, individuals from these groups

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3. Id.
4. Shani King, Race, Identity, and Professional Responsibility: Why Legal Services Organizations Need African American Staff Attorneys, 18 Cornell J.L. & Pub. Pol’y 1, 6 (“Race, especially for African Americans has a gravity that cannot be understood if taken out of its socio-political-legal and historical context.”).
5. See Russell Pearce, Jewish Lawyering in a Multicultural Society: A Midrash on Levinson, 14 Cardozo L. Rev. 1613, 1632 (1993) (quoting Clayton P. Alderfer & David A. Thomas, The Significance of Race and Ethnicity for Understanding Organizational Behavior, Int’l Rev. Indus. & Organizational Psychol. 1, 6–7 (Cary L. Cooper & Ivan T. Robertson eds., 1988)) (“[I]ndividuals are shaped by at least three sets of forces: their own unique personalities, the groups with whom they personally identify to a significant degree, and the groups with whom others associate them—whether or not they wish that association.”).
bonded together in resistance against this oppression.\textsuperscript{6} This bond continues to impact the personal and professional interactions between people of color, including between attorneys of color and clients of the same race.\textsuperscript{7}

For many attorneys of color, this shared racial history is stained with oppression and discrimination that continues to impact our racial communities and, thus, our interactions with it.\textsuperscript{8} Our shared history can create a deep sense of obligation for attorneys of color to our racial communities. We must balance this sense of obligation with the ethical obligations we have sworn to uphold in a profession that encourages us to be color-blind in our legal representation. Lawyers of color must struggle with how to remain integral parts of our racial communities while practicing in a profession that is dominated by individuals who neither look like us nor generally share our life experiences. This shared history and these struggles impact how I navigate my role as a woman of color, an attorney of color, and an attorney regardless of my color. To provide perspective on these experiences, I will share some of my background and experiences and the experiences of my clients to use as a framework to examine the attorney and client of color.

II. The Attorney and Client of Color

A. Who Am I?

I stand in the shadows and on the shoulders of giants. I am the African-American, female child of two college graduates, and the grandchild of two college graduates with graduate degrees. As such, I am no stranger to education and opportunity. I am also no stranger to privilege. Mine is not a story of a person of color rising through a low-income background of hardship to accomplishment. I was raised in an upper-middle class suburb of Atlanta, knowing neither hunger nor helplessness. I am the first lawyer in my family, but I received my undergraduate degree, my law degree, and my master of laws degree on merit scholarships. Upon graduation from law school, I practiced law at one of the country’s largest law

\textsuperscript{6} King, supra note 4, at 10–11 (“Black Americans are ‘connected’ in that they recognize that there are negative representations and stereotypical images of black Americans floating around. At the same time, black Americans are connected in a deeper way as they are a people fighting for recognition of their own absolute humanity; a humanity that stands in stark contrast to these negative representations.”).

\textsuperscript{7} Pearce, supra note 5, at 1633–34.

\textsuperscript{8} See, e.g., Devah Pager & Hana Shepherd, The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets, 34 Ann. Rev. Soc. 181, 182-83 (2008) (stating that more than one-third of Blacks and nearly 20% of Hispanics and Asians reported that they had personally been passed over for a job or promotion because of their race or ethnicity; stating that research shows that those who perceive high levels of discrimination are more likely to experience depression, anxiety, and other negative health outcomes; stating that perceived discrimination may lead to diminished effort or performance in education or the labor market).
firms, making unseemly sums of money for one so young, and I currently teach law, making unseemly sums of money for one so happy in her profession. I am, on almost every professional level, a success story.

During my early life, I never questioned my acceptance or place in the African-American community9 and took great comfort in this. The differences in members of my community have always paled in comparison to our shared historic struggles of slavery, racism, and discrimination and the battles against the internal pathologies we continue to face as a community.10 Because of our shared history and experiences, and my comfort in belonging, I felt this solidarity with my race as we collectively fought to support and protect each other to break from the vestiges of slavery. I never anticipated that this sense of racial solidarity would be at risk. I watched as others in my community were cast as outsiders, but I rationalized that the extremity of their behavior explained why members of my community felt the dis-ownership was necessary.11 But I never felt any differences between my community and me that were significant enough to make me an outsider. I attended a primarily African-American elementary school, high school, college, and law school. During these early years of my life, I did not have as full an appreciation for how our divergent experiences could splinter my cherished racial solidarity. It was not until I attended law school at Howard University, a historic and predominantly African-American university, that my perspective began to change.

Howard University School of Law holds a special place in the history of African-Americans because it is the former home of John Mercer Lang-

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9. See Regina Austin, “The Black Community,” Its Lawbreakers, and a Politics of Identification, 65 S. Cal. L. Rev. 1769, 1769 (1992) (describing “the black community,” as once “a place where people both lived and worked” and now “more of an idea, or an ideal, than a reality.”).

10. See, e.g., Bruce Drake, Incarceration Gap Widens Between Whites and Blacks, Pew Research Ctr., http://www.pewresearch.org/fact-tank/2013/09/06/incarceration-gap-between-whites-and-blacks/ (stating that Black men were more than six times as likely as White men to be incarcerated in federal and state prisons, and local jails in 2010); Economic News Release, U.S. Dept. of Labor, http://www.bls.gov/ release/.t02.htm (showing an 8% June 2016 unemployment rate for African-American men over the age of 20, twice that of White men over the age of 20); Health of Black or African American non-Hispanic Population, Ctr. for Disease Control and Prevention: Nat’l Ctr. for Health Statistics, http://www.cdc.gov/ nchs/fastats/black-health.htm (showing that almost 60% of African-American women over the age of twenty are obese); Eileen Patten & Jens Manuel Krogstad, Black Child Poverty Rate Holds Steady, Even as Other Groups See Declines, Pew Research Ctr., http://www.pewresearch.org///07/14/black-child-poverty-rate-holds-steady-even-as-other-groups-see-declines/ (showing that almost 40% of Black children lived in poverty and were almost four times as likely as White or Asian children to be living in poverty in 2013, and significantly more likely than Hispanic children).

ston,12 and Thurgood Marshall,13 amongst many others. While my decision to attend Howard was primarily a financial one,14 I expected to feel at home amongst other African-American law students. I expected that, amongst other law students of color, I would feel a kinship in striving toward the common goal of practicing law. Soon after my arrival at Howard, some students informed me that I did not “belong” there, primarily, I was told, because of my economic status. While in law school, I lived in a small, comfortable apartment in a building that was within walking distance from the law school; I had a car that, while not new, was safe; I was not required to work because what extra funds I needed, my parents could provide. Because of my economic position growing up and while in law school, I was told that I did not have the “typical black person’s experience.” I was informed that I was one of the “haves” while they were the self-designated “have-nots.” I was not one of them. Suddenly, in an environment where I assumed acceptance and camaraderie, fellow members of my race sought to cast me as an outsider.

Not surprisingly, I fought back against this idea of a universal or even typical “black person’s experience” or that all persons of the same race should have the same experience to belong. I objected to the idea that the absence of this singular experience delegitimizes one’s membership in that racial community. I resisted my classmates’ assumptions that their struggles made their place in our community more secure. At the time, I wondered what it was about their experiences that led them to feel the need to dictate that their experience was the only pure experience. Had my family and I not economically suffered or sacrificed enough to ‘belong’? While shared sacrifice often contributes to a sense of belonging, was it necessary for acceptance in a community suffering from oppression? If so, who determines how much sacrifice is sufficient? Whose experience establishes the metric for acceptance?

This divergence continued as I began practicing at a large law firm. The vast majority of my colleagues and clients were White and affluent. As many attorneys of color working in similar environments, I was functioning in a world of people with whom I had professional, educational, and income similarities, but no racial connection.15 I was left to navigate this

12. Active in the abolitionist movement before the Civil War, John Mercer Langston was a central figure in the struggle for gaining voting rights and other opportunities for freed slaves. He helped establish Howard University and was the inaugural dean of Howard University School of Law. See generally Black Leaders of the Nineteenth Century (Leon Litwick & August Meier eds., 1988).


14. Howard offered me a full-tuition, merit-based scholarship, plus a living stipend.

15. Pearce, supra note 5, at 1634 (“In contrast, in an organization or society where women or people of color are often found in low status positions and less frequently in high status
work environment and profession in which my race is an unalterable characteristic of my person, though it is expected to be an irrelevant aspect of my legal analysis and professional responsibility. It raised questions: How do we, as attorneys of color, balance our race-neutral professional obligations with a need to maintain our racial solidarity? How must we conduct ourselves to be accepted by our colleagues and our clients without being cast as an outsider to our race?

A few years after leaving my law firm job, I accepted a low-paying teaching fellowship at Georgetown University Law Center. I bought a house in the Trinidad neighborhood, a gentrifying, predominantly African-American neighborhood in Washington, D.C. I expected, as I did when matriculating into Howard’s law school, a racial solidarity in my own racial community. However, soon after moving into the neighborhood, the impact of different socio-economic backgrounds became evident as my neighbors and I had opposing reactions to the pathologies of poverty in my new neighborhood. When one of my neighbors attempted to break into my home, my reaction was to call the police; my neighbors’ reactions were to criticize me for potentially sending someone from the neighborhood to jail. When I caught a neighborhood teenager smoking marijuana in the alley behind my house, my reaction was to challenge him to understand the legal and health consequences of that behavior. His reaction was genuine confusion and indignation that he was being criticized because, as a high-school graduate working a full-time job without an arrest record, he was, he argued, a success in that neighborhood. When a large number of young men in the neighborhood were arrested for participating in a drug ring, my reaction was relief and gratitude that a source of crime was, at least temporarily, eliminated. A young neighbor’s reaction was sadness at the loss of his friends who, he insisted, “were good guys.” With each event, the only commonality we had in our reactions was surprise at the other’s. Although I intellectually knew that my racial community was not monolithic, these experiences established my evolving understanding, though not yet acceptance, of the diverging definitions of those considered “insiders” and those cast as “outsiders” within a single community.

While living in the Trinidad neighborhood of Washington, D.C., I worked for a number of years helping low- and moderate-income tenants in multi-family apartment buildings purchase their buildings when the owners put those buildings up for sale. When tenants received notice that they could purchase their apartment buildings, they hired attorneys, such

16. The D.C. Tenant Opportunity to Purchase Act, D.C. Code §§ 42-3401–42-3405.13 (2001) (requiring landlords to provide tenants with the opportunity to purchase residential rental units and buildings when landlords put their property up for sale. This statutorily controlled
as myself, to help them navigate this legal transaction. As part of this process, I worked primarily in low- and moderate-income neighborhoods in mostly African-American communities. I enjoyed working in these communities because I helped residents—who were often financially unstable—to become homeowners, which could then lead to financial security. It offered renters in low- and moderate-income neighborhoods, who were often oppressed and disenfranchised, the ability to exercise some level of control over their housing and, thus, the direction of their lives. I was able to offer my skills and experience to the African-American community, who I viewed as my race client: a community to whom I felt such a powerful sense of obligation that my obligation to it rose to that of a client.

This experience again raised some questions—my clients here, as my clients at the law firm, expected professional and objective legal counsel regardless of my race. However, does representing clients of color change the role race should play in legal representation? If so, in a country so mired in race, how does one remove the influence of race from legal analysis and representation, particularly as an attorney of color? Do we, as attorneys of color, have a greater responsibility to ensure that our representation is race-neutral or a greater responsibility to ensure that neither our colleagues, nor our same-race clients, nor we, forget the impact of race? Further, how do attorneys of color navigate the legal representation of members of our communities when there are such divergent views of who is an insider? What role should our race play in our efforts to be a lawyer for members of a community who may not even view us as one of their own?

B. The Race Client

For many attorneys of color, our race is an integral part of our identity. While some are raised to view themselves as separate and apart from their race, many of us are raised with an intense sense of connection to our racial community. Our intense sense of connection gives rise to a personal process begins with a notice of the landlord’s intent to sell and the tenants’ opportunity to purchase.


18. Julie D. Lawton, Who Is My Client? Client Centered Lawyering with Multiple Clients, 22 Clinical L. Rev. 145, 176–80 (2015); see also infra Section II.B.

19. David B. Wilkins, Identities and Roles: Race, Recognition, and Professional Responsibility, 57 Md. L. Rev. 1502, 1532–33 (1998) ("Racial identity—and in particular African American racial identity—constitutes this kind of powerful social force. Race exerts a major influence over every significant aspect of the lives of black Americans . . . . The essential point is that in today’s America, race matters in ways that inevitably structure identity.").

20. Id. ("[Race] literally colors the way that we are perceived by the world at the same time that it shapes our self-perceptions. As a result, blacks are inextricably bound together, both
sonal urgency to support and serve members of our race as individuals and to protect our racial collective. For many of us, this personal duty creates what I describe as a “race client.”\textsuperscript{21} I have previously described a race client as follows:

As a lawyer governed by a professional code of ethics, I have a professional obligation to my clients. However, because of my ardent belief in the opportunities provided by homeownership and my personal sense of obligation to my African-American community, I also have a deep sense of obligation and personal duty to these causes as well. I remain a fervent advocate for affordable homeownership—so much so that affordable homeownership became the legal policy cause for which I advocate. Because I feel a personal duty to empower members of my race as individuals and as a group, the cause of supporting and protecting members of my racial community as individuals and as a collective became my race client. I have, in essence, 3 clients—my individual corporate client, my cause client and my race client.\textsuperscript{22}

Same-race legal representation can be an attempt by the lawyer and the client to reinforce an undeniable bond—a historic, common struggle against racial discrimination and oppression. Many attorneys of color fight against this historic oppression by serving their race client.\textsuperscript{23} As further explained in the next section, an attorney of color’s service to the race client can be accomplished by representing individual clients of the same race or representing corporate clients whose membership, ownership, or purpose imbue the corporation with the same racial identity as the attorney of color.

1. Representing the Race by Representing the Racial Corporation

During my practice representing tenants in Washington, D.C., my clients were tenants associations, as opposed to individual tenants.\textsuperscript{24} I worked with individual tenants seeking to become first-time homeowners, but they accomplished that goal by forming a tenants association, which

\textsuperscript{21} Lawton, \textit{supra} note 18.

\textsuperscript{22} Lawton, \textit{supra} note 18, at 146.

\textsuperscript{23} Id.

\textsuperscript{24} Susan Bennett, \textit{Little Engines That Could: Community Clients, Their Lawyers, and Training in the Arts of Democracy}, 2002\textsuperscript{\textit{Wm. L. Rev.}} 469, 473 (2002) (“Technically, when you represent an entity, you are representing a representation: the aspirations of a created community, expressed through a mission statement necessarily made flesh through its elected or appointed articulators.”).
was my client. The tenants association was the entity through which the
tenants negotiated the purchase of their apartment building, obtained
loans, and received my counsel. Although these corporate entities were
ostensibly race-neutral entities, these types of corporations were typically
formed almost exclusively by residents of the same race to help them ac-
complish goals specific to the protection, support, or furtherance of mem-
bers of that race. In this regard, the corporations were not race-neutral in
their ownership or purpose. Rather, they were entities with a corporate
race. For many attorneys of color, these racial corporations are the vehi-
cles through which we serve our racial communities. Community devel-
opment corporations formed by residents of color to redevelop their
neighborhoods or non-profits formed by members of a racial community
to protest the treatment of its members are but two examples. Attorneys of
color are able to serve our race clients to effect social change by represent-
ing these corporations. Through these racial corporations, individual
members are able to leverage their collective power to achieve change in
communities that might otherwise suffer. In same-race legal representa-
tion, these racial corporations also create an avenue for trust. For attorneys
of color, these racial corporations are not only the entities through which
the individual members of our race accomplish their dreams of social
change, but they are also the vehicles through which attorneys of color
accomplish goals of supporting and protecting our racial communities.

2. Representing the Race by Representing the Individual

Attorneys of color most often represent a race client by representing a
same-race individual client or working with the individual members of the
racial corporation. The racial corporation may be the client, but the indi-
vidual members of those corporations are the ones with whom the attor-
ney interacts. Regardless of the actual form of the client, it is either the
individual member of the corporation or the individual client who dem-
onstrates the racial connection and solidarity that many of us seek in same-
race legal representations. It is the individuals that pull us aside, tell us of
their pride, and give us their trust.

These individuals trust us with their dreams of social or financial
change. They want attorneys of color to be different from other lawyers
whose racial bias often left them disappointed and distrustful of “outsid-

also Lawton, supra note 18, at 159–60 (discussing a corporation’s racial identity).

1, 21 (1984) (“The primary motor of social change is social struggle, not legal struggle. . . . The
lawyer’s role is more the oiler of the social change machine than its motor; the motor of the
machine remains masses of people.”).

27. See Robert J. Smith & Justin D. Levinson, The Impact of Implicit Bias on the Exercise of
Prosecutorial Discretion, 39 SEATTLE U. L. REV. 795 (2012) (examining implicit bias in
prosecutorial decisions and arguing that such bias skews prosecutorial decisions); cf. Jean
ers.” Our clients look to us to represent them well because of our professional responsibility, but also, I suspect, because of our racial commonality. However, should race play a role in client-attorney interaction?

III. The Role of Race in Inter-Race Legal Representation

A. Color-Blind Legal Representation

One argument is for a lawyer to be color-blind in legal representation and analysis. The American Bar Association’s Model Rules of Professional Conduct (“Model Rules”) prohibit a lawyer’s racially discriminatory behavior and require a lawyer to offer candid advice to a client. They are purportedly race-neutral and “are explicitly cast in universalist terms that purport to apply to all lawyers in all contexts.” Thus, “non-professional identity” characteristics, such as race, are omitted. The Model Rules allow the lawyer’s advice to include other considerations such as “social and political factors.” They also recognize that “moral and ethical considerations impinge upon most legal questions” and that a lawyer’s racial iden-

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28. Model Rules of Prof’l Conduct r.8.4. (Am. Bar Ass’n 2016) (“It is professional misconduct for a lawyer 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.”).

29. Id. r.2.1 (“In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.”).

30. Wilkins, supra note 19, at 1504.

31. Id.

32. Model Rules of Prof’l Conduct r.2.1. (Am. Bar Ass’n 2016).

33. Id. r.2.1. cmt. 2 (“It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.”).
tity often impacts a lawyer’s morality and ethics. However, aside from race as an ancillary consideration to these factors, the Model Rules do not expressly permit a lawyer to allow race to impact the lawyer’s representation of a client.

2. Other Arguments for Race Neutrality in Legal Representation

The arguments for race neutrality are based on the idea that the rule of law is an impartial application of impartial rules. The theory is that a judge or jury will apply the same set of rules to an objective review of the facts without regard to the parties’ respective races or other personal characteristics. In this paradigm of race neutral lawyering, the legal system would adjudicate cases based solely on the similarity of the facts of the case, with no consideration of the races of the litigants or of any implicit racial dynamics that might impact a case’s outcome.

In support of color-blindness in the law, Chief Justice John Roberts argued, “[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” Admittedly, this idea that race would impact a case only when the impact is intentional is appealing to a lawyer’s sense of fairness and neutrality. It creates the impression that eliminating intentional and blatant racial discrimination will enable participants in the legal system to stop discriminating on the basis of race. Based on this theory of race neutrality, eradicating the impact of race is achievable if we simply choose to “stop discriminating on the basis of race,” which, theoretically, means rejecting the consideration of race.

For some, eliminating the consideration of race is not only achievable, but also preferable. Years ago, William Van Alstyne, a law professor at Duke University, wrote:

Rather, one gets beyond racism by getting beyond it now: by a complete, resolute, and credible commitment never to tolerate . . . in the life or practices of one’s government—the differential treatment of other human beings by race. Indeed, that is the great lesson for government itself to teach; in all we do in life, whatever we do in life, to treat any person less well than another or to favor any more than another for being black or

34. Wilkins, supra note 19, at 1508 (“[T]he obligation thesis—that is, of course, the proposition that racial identity is relevant to moral obligation.”).


36. Id.


38. Id.
white or brown or red, is wrong. Let that be our fundamental law . . . 39

In his oft-quoted article about Jewish identity in lawyering, Sanford Levinson, an accomplished legal scholar, also argued for race-neutral lawyering as ideal, stating:

The triumph of what might be termed the standard version of the professional project would, I believe, be the creation, by virtue of professional education, of almost purely fungible members of the respective professional community. Such apparent aspects of the self as one’s race, gender, religion, or ethnic background would become irrelevant to defining one’s capacities as a lawyer.40

Another author, Professor Russell Pearce, also describes race-neutral lawyering as “the ideal of the rule of law, with its aspiration for a legal system based on neutrality, impartiality, and the treating of like cases alike and different cases differently.”41

While race neutrality in the legal justice system and client-lawyer interaction may be appealing to those subscribing to the concept of Justice is Blind,42 others argue that lawyers should acknowledge the impact of race and work within those confines. The following section sets forth arguments for race consciousness in lawyering.

B. Racially Conscious Legal Representation

In contrast to the idea of race-neutral lawyering, some authors encourage lawyers to understand that race, whether in inter-race lawyering or, as this Article examines, in intra-race lawyering, influences the lawyer’s and the client’s interaction with each other and to incorporate that understanding in their lawyering.43 Vanessa A. Edkins, a psychology professor,
published a study suggesting that the client’s race influences the lawyer’s negotiations for a plea bargain for criminal offenses. Writing with two other professors, Professor Alexis Anderson notes that racial similarities and differences affect how lawyers and clients perceive each other. When lawyers see “sameness” in their client, whether that sameness is based on race, economic background, or life experiences, lawyers are inherently more likely to value, trust, and work with those clients more than those clients lawyers view as different. This inherent preference for sameness can then impact a lawyer’s intentions to be race neutral is his or her lawyering.

Instead of race-neutral lawyering, Professor Bill Ong Hing exhorts lawyers to recognize the race and other demographic traits of clients. He argues that cross-cultural lawyering can be effective, but “only with full consciousness, sensitivity, and constant work.” Similarly, Professor Deborah Archer exhorts lawyers to become skilled cross-cultural lawyers by not only recognizing the client as a racial being, but also examining the lawyer’s own views about race. These views, she argues, can influence the lawyer’s legal analysis, review of the facts, and assumptions of responsibility. Professor David Wilkins has gone so far as to argue that not only does race play a role in lawyering, but also that African-American lawyers have a right to consider their moral responsibilities to members of the African-American community in their role as lawyers.

Other authors also perceive a disconnect in lawyering when lawyers ignore the role of race and argue it is particularly problematic when the

45. Alexis Anderson, Lynn Barenberg & Carwina Weng, Challenges of “Sameness”: Pitfalls and Benefits to Assumed Connections in Lawyering, 18 CLINICAL L. REV. 339, 341 (2012) (“Unconsciously, we categorize people into groups—in-groups whose members share characteristics with ourselves, and out-groups whose members appear different from ourselves. This categorization affects how we perceive other people . . . .”).
46. Id.
47. Bill Ong Hing, Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses, 45 STAN. L. REV. 1807, 1808 (1992) (“In teaching about good community lawyering, I stress that lawyers need to be conscious of the class, race, ethnicity, gender, sexual orientation, possible physical disability, and age of the attorney, the client, their allies, their enemies, and other institutional players.”).
48. Id. at 1824.
49. Archer, supra note 43, at 69–70 (“Moreover, a skilled cross-cultural lawyer must not only acknowledge her client’s race, but also the way her own attitude about race and racism may impact her interactions with her client, her examination of the legal and factual issues presented in the case, the course of action selected, and the attribution of blame.”).
50. Id.
51. Wilkins, supra note 19, at 1521.
race of the lawyer and the client is different. In examining this issue, Professor Michelle Jacobs recognized the challenges lawyers have in communicating with clients when the race of the client is different from the race of the lawyer. She argues that cultural differences in communication might interfere with the ability of the two to communicate. Jacobs noted: “[I]f the inhibiting factor is the race of the lawyer, and/or the lawyer’s expectations regarding the client and the clients’ culture, knowledge of the facilitators will not provide the lawyer with the tools to break through the barrier.” She maintains that challenges in lawyer-client communication actually occur because lawyers assume an ability to reach the client regardless of cultural differences, and the inability to do so is generally assumed to be because of the client’s insufficiencies and not because the lawyer lacks cultural sensitivity.

Professor Carwina Weng similarly contends that there is a need for cultural sensitivity in lawyering, because racial differences can affect how the lawyer and client interact. In a recent article, she recounts a story in which she represented a woman that had a restraining order out against her husband. The client told Weng that Weng could not understand the client’s life because the client “bounced from shelter to shelter with a small bag of clothes” whereas Weng had “a loving husband and drove a new car.” Weng surmised that the client equated Weng with the “other privileged and powerful service providers in her life, who were investigating and seemingly judging her life and behavior.” Weng suggests that she was able to be a culturally sensitive lawyer by making an adjustment in her lawyering. In this instance, she adjusts by “acknowledging explicitly the class and personal differences” between herself and her client and by ver-

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52. Ong Hing, supra note 47, at 1809–10 (“This class difference is likely to be apparent even if I were from a poor background myself, because my poor background would likely be different from that of Ms. Pierce’s and, in reality, my education has changed me, especially in the eyes of Ms. Pierce. I must be conscious of my manner of speech and the setting in which the interview is conducted. In attempting to develop a rapport with Ms. Pierce, I must be aware of the subject matter of any small talk. The difference in our racial and ethnic backgrounds may also make it more or less likely for her to open up to me. Our gender difference is a variable in our rapport as well. However, by knowing more about her race and culture and by being cognizant of our differences, I may avoid making inappropriate assumptions and establishing false expectations and thereby improve my ability to communicate with her.”).


54. Id.
55. Id.
56. Id.
57. Id. at 376.
58. Id.
59. Id.
60. Id.
bally reinforcing the client’s authority in the case.61 Professor Susan Bryant similarly argues, “a competent cross-cultural lawyer acknowledges racism, power, privilege and stereotyped thinking as influencing her interactions with clients and case planning, and works to lessen the effect of these . . . influences.”62

Others have also argued that a refusal to recognize the impact of race makes a lawyer less effective.63 Russell Pearce concludes that efforts to “bleach-out” issues of race have a significant negative impact on a lawyer’s practice, particularly that of White lawyers.64 Similarly, Paul Tremblay notes, “all counseling is cross-cultural”.65 Professor Shani King goes further, arguing that cross-cultural competence is an insufficient bridge in intra-race lawyering and that instead, organizations must hire same-race lawyers for clients of color to bridge the cultural divide.66

Other professions also recognize the impact of race and culture on professional interactions.67 The American Psychological Association encourages psychologists to recognize how their culturally based attitudes and beliefs can negatively impact their professional interactions.68 The medical profession recognizes the impact of racial and cultural differences on the doctor-client relationship and has called for a more diverse medical workforce in an attempt to address these issues.69 The American Dental Education Association argues that culturally sensitive patient care enables dental “providers to respond to the sensibilities of patients whose cultures and values may be very different from their own.”70

These legal scholars and other professionals provide compelling arguments for race-conscious lawyering. Another argument for the legal profession’s recognition of the impact of race on lawyer-client relationships is

61. Id.
63. E.g., Russell G. Pearce, White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law, 73 FORDHAM L. REV. 2081, 2089 (2005) (“Despite the persistence of racial identity group influences, white lawyers tend to deny the influence of their racial identity group on their work as lawyers. When professionalism’s ideological commitment to color blindness reinforces this tendency, the resulting symbiosis undermines the capacity of white lawyers to represent clients to the best of their ability.”).
64. Id. at 2091.
66. King, supra note 4, at 5–6 (“Second, I argue that legal services organizations will be most effective in serving African-American clients if they have African-Americans on staff. In other words, cultural competence training in legal services organizations is not enough.”).
67. See infra notes 69–71 and accompanying text.
68. Am. Psychol. Ass’n, supra note 2, at 382–85.
how differently African-Americans and White Americans view the impact of race on the implementation of the law. For example, in an interview conducted in 2013, George Washington University Political Science Professor John Sides noted that African-Americans were “extraordinarily skeptical” of the fairness of the criminal justice system, while Whites perceived the criminal justice system as “color-blind.” Professor Sides notes a number of reasons for the disparity in views about the criminal justice system, including the vicarious experiences of many African-Americans with acquaintances who had negative experiences with the law.

The foregoing arguments are persuasive. Reflecting on the study by Professor Sides, it is illogical to presume that such divergence of views about the impact of race does not exist within the legal profession. Race impacts a lawyer’s representation of a client, just as race impacts a client’s interaction with the law and the lawyer. The impact of vicarious experiences is persuasive as well. It is reasonable to expect that experiences of lawyers’ acquaintances with clients of color similarly impact how lawyers view their clients of color. For example, when lawyers hear stories of their colleagues’ negative interactions with clients of color, comments by colleagues about judges’ differential treatment of white defendants and defendants of color, and vicarious experiences of colleagues’ interactions with the sheer number of people of color as defendants in criminal courts, how do these experiences not impact how a lawyer views his or her own clients of color? These experiences all likely influence a lawyer’s views of race and the law and, thus, the lawyer’s interaction with, and legal representation of, clients of color.

Professor Pearce similarly agrees that race-neutral lawyering is a fallacy. He argues that a lawyer’s group identity will influence how the lawyer interprets the world, the lawyer’s work, and how the lawyer interacts and relates to others, including clients. He thus concludes, “facially group neutral standards of conduct are not neutral” because these standards “will inevitably have group identification content, most probably the perspective of dominant identity groups.” As other scholars have noted, the assumption of race neutrality in legal representation would require a shift—


72. Id.

73. Pearce, supra note 5, at 1634.

74. Id.

75. Id. (“[I]ntergroup theory asserts that group identity influences the way we as lawyers and judges look at the world and at our work, and how we relate to other people within the legal system. Therefore, facially group neutral standards of conduct are not neutral. They will inevitably have group identification content, most probably the perspective of dominant identity groups.”).
IV. THE ROLE OF RACE IN INTRA-RACE LEGAL REPRESENTATION

A. Does Racial Sameness Matter for Effective Legal Representation?

Members of the same race identify with each other more than members of other races. There is an argument that such a shared cultural heritage improves the lawyer-client connection and communication. Does this, in turn, make a same-race lawyer a better lawyer for that client? Attorney Kenneth Troccoli relates a story about an African-American client represented by a White public defender, who tells the public defender that the client prefers an African-American lawyer. The public defender responds that he is an experienced criminal lawyer and intends to vigorously represent the client regardless of racial similarity or differences. The client persists, arguing that his experiences have shown rampant racism in the treatment of African-American men in the criminal justice system, which an African-American attorney would more clearly recognize. The client, adamant about the impact of race on the attorney-client representation, “explains that an African-American lawyer will be better able to understand and appreciate the circumstances that resulted in the bringing of . . . charges and that he, the client, can trust a Black lawyer more than a white one.” Does the most effective legal representation necessitate same-race lawyering?

76. Acevedo et al., supra note 35, at 15–19. On some level, I am intrigued by this idea of uniform treatment of individuals of different races—this idea that we, as a society, will see the individual, not the cover; that we will always evaluate each race, culture or religion the same as we do our own. However, my choice—my need—to protect and support my racial community is not unique. This self-protection over the course of history continues. As long as we are more inclined to protect our “own,” we are more likely to protect others we view as being like ourselves to the disadvantage of others we do not view as like us. But see Renato Rosaldo, Culture and Truth: The Remaking of Social Analysis 103 (1993) (“Even when they appear most subjective, thought and feeling are always culturally shaped and influenced by one’s biography, social situation, and historical context.”).

77. Anderson et al., supra note 45, at 341 (“[A]toms automatically, we might exaggerate differences among groups and favor our in-group over any out-group. Our preference for our own in-group leads us to value, trust, and work with members of our in-group more than we do members of an out-group. Hence the seduction of sameness.”).

78. Bryant, supra note 62, at 41 (“As we recognize these individual differences, we also know that sharing a common cultural heritage with a client tends to improve our predictions and interpretations and to reduce the likelihood of misunderstandings.”).


80. Id.

81. Id.

82. Id.
Is a lawyer with the best experience the best lawyer for a client, even if that lawyer has no demographic similarity to, or personal understanding of, the group? Or, does a recognition that race impacts the attorney-client relationship mean that a lawyer with less experience, but who is reflective of the group’s demographics, is a better lawyer for a client? Many years ago, Charles Hamilton Houston, former Dean of Howard University School of Law, noted that the “primary social justification” for the African-American lawyer in this country is “the social service he can render the race as an interpreter and proponent of its rights and aspirations.”

Does our shared race alone make African-American lawyers the best legal representatives for African-Americans?

A few years ago, in examining these questions, lawyers with the New York Legal Aid Society’s Civil Division, studied other New York Legal Aid Society lawyers’ expressed beliefs on the impact of race on attorney-client legal representation. White attorneys and attorneys of color had differing views on these issues. A majority of the attorneys of color believed that clients are more open with attorneys of the same race as the client. However, White attorneys overwhelmingly thought that same-race lawyering did not impact effective legal representation. White attorneys argued that the skill, commitment and willingness to listen were more instrumental in effective representation; qualities, one attorney noted, not tied to race.

Open debate continues on this issue. Former Federal District Judge Harold Baer, Jr. supported the premise that same-race attorneys are needed for the most effective lawyering. In the judiciary, however, he was virtually alone in this argument. This debate became public in a recent string of cases decided by Judge Baer. In *Martin v. Blessing*, Sirius Satellite Radio, Inc. and XM Satellite Holding, Inc. sought to merge into a larger company to be called Sirius XM Radio, Inc. Subscribers of the companies argued that the merger was an antitrust violation and, after some litigations...
One of the requirements for certifying the class was that the class needed adequate class counsel, as determined by factors set forth in the Federal Rules of Civil Procedure. The rule allowed the lower court, in addition to other determinants, to “consider any other matter pertinent to counsel’s ability to fairly and adequately represent the interests of the class.” Judge Baer, the lower court judge, required that the law firms appointed as class counsel “ensure that the lawyers staffed on the case fairly reflect the class composition in terms of relevant race and gender metrics.”

This was not Judge Baer’s first judicial ruling requiring class counsel to be reflective of the gender and racial dynamics of the class. In a previous case involving J.P. Morgan Chase, Judge Baer also required diversity in the racial and gender demographics of the law firms representing the class. Class counsel, he reasoned, was more of a “judicially appointed fiduciary” and less of a private attorney hired by the litigants and, thus, the counsel should be more representative of the class—in this case, at least one “minority” lawyer and one woman lawyer with requisite experience. Judge Baer’s opinions make clear that he believed that race matters with regard to effective legal representation.

93. Id.
94. Id.
96. Martin, 134 S. Ct. at 402.
97. In re J.P. Morgan Chase Cash Balance Litigation, 242 F.R.D. 265 (S.D.N.Y. 2007); see also Spagnola v. Chubb Corp., 264 F.R.D. 76, 96 n.23 (S.D.N.Y. 2010) (noting that the proposed class counsel did not submit any information such as “firm resume, attorney biographies, or otherwise” to satisfy this requirement, and requiring counsel to submit “evidence of diversity, in terms of race and gender, of any class counsel” (citing In re J.P. Morgan, 242 F.R.D. at 277)).
98. In re J.P. Morgan, 242 F.R.D. at 277. (“The proposed class includes thousands of Plan participants, both male and female, arguably from diverse racial and ethnic backgrounds. Therefore, I believe it is important to all concerned that there is evidence of diversity, in terms of race and gender, of any class counsel I appoint. A review of the firm biographies provides some information on this score. Here, it appears that gender and racial diversity exists, to a limited extent, with respect to the principal attorneys involved in the case. Co-lead counsel has met this Court’s diversity requirement—i.e., that at least one minority lawyer and one woman lawyer with requisite experience at the firm be assigned to this matter.”).
99. Id. (“Appointment of class counsel is an extraordinary practice with respect to dictating and limiting the class members’ control over the attorney-client relationship and thus requires a heightened level of scrutiny to ensure that the interests of the class members are adequately represented and protected. Judge Jack Weinstein of the Eastern District has aptly compared the role of class counsel to that of ‘a judicially appointed fiduciary, not that of a privately retained counsel.’” (quoting Schwab v. Philip Morris USA, Inc., 449 F. Supp. 2d 992, 1106–07 (E.D.N.Y. 2006))).
100. See Hurwitz, supra note 88, at 328 (“It is unclear why Judge Baer believes that the counsel’s racial and gender diversity would facilitate his or her ability to represent the class, but perhaps it is because Judge Baer believes that a minority or female counsel would be better able
The lawyers in Martin v. Blessing sought a writ of certiorari to the U.S. Supreme Court, which was denied. However, Judge Baer’s insistence on gender and racial diversity spurred a written opinion supporting the denial of certiorari, although opposing Judge Baer’s reasoning. In his response to the writ of certiorari, Justice Alito vehemently rejected the argument that race matters in how effectively a lawyer can represent a client.\textsuperscript{101} To the contrary, Justice Alito cast Judge Baer’s practices of requiring racial diversity as unconstitutional racial and gender discrimination.\textsuperscript{102}

The New York Legal Aid Society’s lawyers, Judge Baer’s opinions, and Justice Alito’s responses to those opinions are just some examples illustrating a question that many lawyers of color struggle with: Does being the same race as one’s client improve a lawyer’s effectiveness?\textsuperscript{103} Professor Mortazavi supports this proposition.\textsuperscript{104} In response to Justice Alito’s position, Professor Mortazavi argues that “[l]awyers are more likely to serve clients fairly and adequately when there is some overlap between the race and gender of the class and of the representative legal team.”\textsuperscript{105} She reasons that a shared race between the lawyer and client impacts their communication and spurs a lawyer’s empathy and loyalty.\textsuperscript{106} Loyalty, she proposes, “requires trust, a relationship, and candor,”\textsuperscript{107} traits she argues are more present when the lawyer and client are of the same race. She promotes the idea of considering demographic similarities in determining whether a lawyer “is more likely to adequately and fairly consider” the interests of the clients.\textsuperscript{108}

to empathize or communicate with class members who share his or her racial background or gender. But why should that be so?

\textsuperscript{101.} Martin, 134 S. Ct. at 403 (“It seems quite farfetched to argue that class counsel cannot fairly and adequately represent a class unless the race and gender of counsel mirror the demographics of the class.”).

\textsuperscript{102.} Id. (“Based on the materials now before us, I am hard-pressed to see any ground on which Judge Baer’s practice can be defended. This Court has often stressed that ‘[r]acial discrimination has no place in the courtroom, whether the proceeding is civil or criminal.’ Court-approved discrimination based on gender is similarly objectionable, and therefore it is doubtful that the practice in question could survive a constitutional challenge.” (citation omitted)).

\textsuperscript{103.} King, supra note 4 (arguing that legal services organizations that serve large populations of African-American clients should employ African-American attorneys).


\textsuperscript{105.} Id. at 21 (“As an initial matter, clients may trust their lawyers more and therefore be more forthcoming and candid about relevant facts and concerns. Moreover, such lawyers have cultural knowledge that allows them to communicate effectively with clients and anticipate concerns and roadblocks. Lawyers that share demographic qualities with their clients are also more likely to have empathy for their clients and substantive loyalty to their interests.”).

\textsuperscript{106.} Id.

\textsuperscript{107.} Id. at 23.

\textsuperscript{108.} Id. at 23–24.
After reviewing the various arguments, the notion that race does not impact an attorney’s representation of a client of color is unpersuasive. While same-race lawyering might not be mandatory for the most effective representation, the existence of race-neutral lawyering remains elusive. Race-neutral lawyering may be an ideal goal to some, but arguing that race is currently irrelevant to a professional interaction suggests a level of racial objectivity that our county has yet to achieve. Lawyers should recognize that race matters, but so does adhering to the professional requirements of zealous representation, regardless of racial identity. As Professor Wilkins noted:

[L]awyers are more than ordinary citizens; they have been given a monopoly by the state to occupy a position of trust both with respect to the interests of their clients and the public purposes of the legal framework. This status is a part of the moral identity of black lawyers.

Building on the conclusion that racial sameness impacts intra-race legal representation but does not necessitate same-race lawyering for effective representation, this Article will next examine the expectations of lawyers and clients of color in intra-legal representations. Then, it will evaluate the attorney of color’s role confusion in intra-race legal representation. It will conclude with an examination of the risks and resultant unhappy truths of intra-race legal representation.

B. Lawyer’s Expectations

Any lawyer approaches legal representation with some expectation of how the representation will unfold. For attorneys of color, intra-race legal representation can be fraught with expectations. When same-race lawyers and clients meet, the history of our race is there. Some hope to ignore it and others embrace it, but it remains. This Article will identify and examine the dynamics that the attorney of color often expects from these moments of intra-race legal representation.

1. Lawyer’s Heightened Expectations of Self

Attorneys of color may have heightened expectations of self when representing members of their own race. The sacrifices of our ancestors can weigh on attorneys of color, spurring us to greater levels of excellence.

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109. Cf. Pearce, supra note 5, at 1635 (“First, as a general matter, explicit conflict between group identity and the professional role is relatively limited. Most lawyers, whatever their group identification, generally accept professional norms—including the goal of rule of law—even where they might conflict with group identification.”); Wilkins, supra note 19, at 1538 (“[T]he sad fact that the United States is far from achieving the ideal of ‘colorblind’ justice does not demonstrate that the American legal system is so racist that black attorneys and other participants in the legal system should consider themselves excused from legitimate role obligations.”).

110. Wilkins, supra note 19, at 1539–40.
For African-American attorneys, it is hard to ignore that we are but a few generations from slavery and even fewer from the ravages of the Jim Crow era. The recent police killings of unarmed African-American men are a potent reminder of how close we are to some of the most trying periods in our nation’s racial history. These reminders can prompt lawyers of color to pursue a higher level of excellence to protect fellow members of our race without consciously providing lesser service to nonmembers.

Many attorneys of color feel a responsibility to help others of our race, as many of us have been given so much, and we are often humbled by the opportunity to serve. While there is debate as to whether our race alone makes us a better lawyer for them, our same-race clients’ beliefs in us spur us to be better lawyers. However, this self-imposed heightened responsibility can also create a crisis of confidence. The desire to excel in light of such history can undermine the lawyer’s confidence in her ability to succeed. Karen Thompson, a lawyer with the Innocence Project, describes representing a client of the same race as making the attorney of color feel at once both fearless and incompetent because this trust, while an empowering endorsement from one’s own community, can be terrifying in its responsibility. Lawyers of color must manage our expectations to prevent them from overwhelming us and impacting our legal judgment. Our clients, regardless of our expectations of self, deserve a lawyer who can detangle their personal challenges from their lawyering.

2. Conflict Between Racial Solidarity and Professional Obligations

For many attorneys of color, when we meet with same-race clients, we often seek, and sometimes obtain, a needed racial solidarity. I never

111. White Only: Jim Crow in America, SMITHSONIAN NAT’L MUSEUM AM. HIST., http://si.edu/history/1-segregated/white-only-1.html (last visited Sept. 14, 2016) (describing legislation known as Jim Crow laws, which permitted segregation in schools, housing, jobs, the right to vote, and public gathering places).


113. Karen Thompson, Creating Context Through Representation: When the Lawyer Looks like the Client, INNOCENCE PROJECT (May 4, 2015, 5:20 PM) http://innocenceproject.org/-through-representation-when-the-lawyer-looks-like-the-client/ (describing how both she and her clients can briefly succumb to an ingrained societal belief that because African Americans are inferior they are therefore less capable of performing certain skilled professions).

114. Lynda D. Field et al., No Hay Rosas sin Espinas: Conceptualizing Latina-Latina Supervision from a Multicultural Developmental Supervisory Model, 4 TRAINING & EDUC. PROF. PSYCHOL., 47, 49 (2010) (“Role shock is characterized by ‘the imposter phenomenon’ in which the supervisor does not identify as a supervisor, experiences a crisis of confidence and competence, and is sensitive to perceived criticism.”).

115. Id.; Thompson, supra note 113.

116. Wilkins, supra note 19, at 1535 (“For many blacks, membership in the black community is an important source of human flourishing”); see also Field et al., supra note 114 (examin-
discouraged my clients from looking to me to be a better lawyer for them because of my race. I never encouraged them to instead trust more in my skills and experience than in our shared race. I let those expressions of trust linger unchecked. I was their lawyer and in that role, I needed them to trust me. Our sense of solidarity facilitated trust.

In these moments of trust with our clients, attorneys of color can temporarily forget about the differences that separate us from our community. These moments remind us that we are a part of something greater. In meetings with our same-race clients, there is a familiarity in our conversations because of our shared history and racial experiences.

For attorneys of color who seek racial solidarity from intra-race legal representation, a conflict will emerge: the attorney of color’s sworn ethical obligation to the client will inevitably conflict with the sense of racial solidarity that the attorney of color seeks. The client’s wishes will not always coincide with the attorney’s ethical obligation and that can, in turn, conflict with the sense of racial solidarity the attorney of color may have felt with the same-race client. However, the lawyer’s legal objectivity must remain. The need to preserve racial solidarity cannot lessen the objectivity the lawyer requires for representation. The client, regardless of the client’s race, comes to the lawyer for guidance and good lawyering. The same-race client may have heightened levels of trust and greater expectations. Those expectations and our sense of responsibility to our race may tempt us to lose objectivity, but we serve our clients best when we give them the best lawyering we can—sensitive to the racial commonality, yes, but not blinded by it.

C. Client’s Expectations

In intra-race legal representations, what are some of our clients’ expectations?

1. Client’s Heightened Expectations of Lawyer

In my last article, I recounted an experience from a number of years ago when I met with a group of tenants about the prospect of representing them in their efforts to purchase their mid-rise apartment building. Entering with a White female colleague into a room filled with African-
American women, an elderly African-American female resident shouted, “I want the black lawyer!” She knew no more about me than she did my White counterpart, yet she immediately decided that she wanted me as her lawyer based on nothing more than my race. What is it that she saw in our racial connection that made her conclude that I was her preferred choice? Maybe she wanted to support my practice by ensuring that her business would go to an attorney of color, but given the importance of the legal transaction for which her group sought assistance, I find this conclusion unlikely. In her utterance, the elderly tenant expressed an assumption that I was a better lawyer for her as opposed to my White counterpart for no other apparent reason than our racial commonality. Ultimately, we did not represent her group. Therefore, I am left to surmise her contemplations. I assume she expected better representation from me because of our racial commonality, or expected me to interact with her differently than a non-African-American attorney would. She wanted me to be her representative based on our shared race, but our shared race does not in itself indicate shared values or shared goals. I could have been, like so many others, one of the attorneys seeking to take advantage of what is often seen as a vulnerable group. However, because of our racial commonality, she assumed I am trustworthy and expected me to be worthy of that trust.

Our same-race clients are the fellow members of our communities who often expect us to be different than non-members because we are of the same race. Many clients of color tell us how proud they are of our accomplishments and how glad they are to see those of us who “made it.” Some talk about missed opportunities and unfortunate choices that kept them from achieving their professional goals. Clients will pull us aside during and after meetings to share how much better they feel about the legal issue on which we are assisting now that they have one of their “own” on their side. Phrases such as, “you’re one of us so I know I can trust you,” or “I know you got us,” remind us of their willingness, their need, to believe that having a same-race lawyer on their team makes them more secure.

This heightened level of trust is beyond the basic trust that we as lawyers receive from our non-clients of color – there is the additional weight of the history and continued oppression, segregation, and discrimination that pulls on attorneys of color. This expectation that we can help

119. Id.

120. King, supra note 4, at 16 (“Black group identity includes a particular sensitivity to issues of racism and oppression, making it more likely that black clients will initially assume that a black lawyer is intrinsically ‘on their side’ and is down to ‘fight for them.’”).

121. Id. at 15–16 (“Under these circumstances, many blacks would likely want their case in the hands of someone who sees the world as they do, someone who can personally identify with their historical and current struggle in this country as black Americans, and someone who may be less likely to judge them because they are black. In short, many blacks would want their case in the hands of an African-American.”).
more is intertwined with this expectation that we should help more. And that can be overwhelming, particularly for newer attorneys who are also learning how to navigate their new role in the profession. Each attorney of color should work to understand the role they want to assume in their respective racial communities and retain that as a guide to navigate these experiences.

2. Racial Betrayal

Intra-race legal representation can also be difficult in that attorneys of color are expected to conduct ourselves in a manner that does not appear as a “racial betrayal” or, as Professor Russell described, being viewed as “sellouts who have abandoned their communities.”122 Same-race clients often initially look at us as one of their own. Their comments and behavior suggest that they see in us someone who could feel their pain and solve their problems for them because of the assumption that of course we understand their pain because we are of the same race. The unspoken threat (and fear) is the expectation that we will protect “our own” against non-members lest we be viewed as betraying our racial community. Take the story of Michael Greene, an African-American lawyer in Charlotte, North Carolina, and presumably an insider to members of our race until late 2015, when he represented White police officer Randall “Wes” Kerrick on charges of voluntary manslaughter for shooting an unarmed black man ten times.123 After Greene’s defense and the jury’s inability to agree on a verdict, the judge declared a hung jury.124 The N.C. Attorney’s office subsequently announced they would not seek a new trial and, in September 2015, the charges against Greene’s client, Officer Kerrick, were officially dropped.125 During trial, some alleged that Greene’s defense of Kerrick did not focus on the actions of Greene’s client—a police officer shooting an unarmed man—but, instead, turned into creating a stereotype of the victim to justify the killing.126 Fellow African-Americans expressed concern that Greene’s defense tactics intentionally caricaturized the victim as “the big, hulking, angry, scary, black man” to rationalize his client’s shooting behavior.127 But instead of questioning Greene’s choices as a lawyer, the critics questioned his loyalty to his race.128 “I question his black

122. Margaret M. Russell, Beyond “Sellout” and “Race Cards”: Black Attorneys and the Straitjacket of Legal Practice, 95 Mich. L. Rev. 766, 771–72 (1997). This article also provides a similar analysis of the criticisms of African-American attorney Christopher Darden as a result of his prosecution of O.J. Simpson.


124. Id.

125. Id.

126. Id.

127. Id.

128. Id.
experience in America, his ability to connect with it,” one person stated.129 “I just think he is a black man who does not want to be black,” said another.130 “It made me question his upbringing, where he grew up, how he lived.”131 Suddenly, fellow members of his community who, prior to this representation, may have thought of him with pride as one of their own, began to splinter from him—cast him off. In the course of a single representation, Greene became an outsider.

While Greene argues that he was simply representing his client,132 other members of his community view his behavior as racially traitorous. The racial solidarity with his community that may have existed prior to his representation of Officer Kerrick quickly dissipated. Fellow African-Americans cast him as an outsider because he had, in their eyes, demonstrated that he did not share the attributes they view as necessary to remain an insider, in this case: loyalty to the race.

As an attorney, Greene had an obligation to zealously represent his client,133 but how does that representation coexist with the obligations that members of our community feel he owes? Within a group, particularly one as diverse as a racial community, differences will occur.134 How a lawyer navigates those differences can be a perilous journey of self-awareness and, at times, a willingness to let go of the comforts of group identity.

D. The Attorney of Color’s Role Confusion

1. Representative of the Race

In intra-race legal representation, how do lawyers and clients determine whether that lawyer or client is truly one of their own? If racial sameness does play a role in choosing legal representation, harkening back to what those students at Howard Law suggested, is there a basis for determining whether a chosen person is a true representative of the race? For each lawyer of color, we often ask ourselves – are we representative enough to be representative of the race?

During the Civil Rights Movement, African-Americans, and those external to the civil rights struggle, sought to have African-American leaders who were “representative” of their race.135 At a time when the major-

129. Id.
130. Id.
131. Id.
132. See id. (“The evidence is what the evidence is,’ he says. ‘These are the facts of the case. These were Jonathan Ferrell’s actions, not stereotypes about him as a black male.’” (quoting Michael Greene)).
133. MODEL RULES OF PROF'L CONDUCT r. 1.3 (1983).
134. See Anderson et al., supra note 45, at 389 (“To meet the challenges inherent in sameness, we must first acknowledge that we, and our clients, have multiple identities, some of which will raise issues of sameness and some, issues of difference.”).
135. KENNETH WALTER MACK, REPRESENTING THE RACE: THE CREATION OF THE CIVIL RIGHTS LAWYER 5 (2012) (“Both blacks and whites were unsure of exactly what they
ity of African-Americans had similar backgrounds and experiences, having a person who was representative of the race might have been easier to find. But, now, when we as a people have such varied life experiences and backgrounds, finding a person who is representative of our race is as difficult as defining what that would be. Like those students at Howard Law attempting to define their experience as a “typically black person’s experience,” it is a task with perilous metrics because no singular experience exists to define as representative. Does being representative of the race require demonstrated racial solidarity, such as publicly supporting a cause important to the race, regardless of whether the individual lawyer personally and privately supports the cause?

Ultimately, attorneys of color must accept that “representative enough” is a fiction and a false dichotomy between two illusions — “representative enough” and not. It is difficult to balance the responsibilities one feels to one’s race, particularly when trying to balance professional obligations with racial obligations, and the goals of professional achievement.
There is no uniformity to being representative enough in our communities. The struggle to represent and be representative enough can interfere with the objectivity so many lawyers of color need to fulfill their professional obligations. In *Representing the Race*, Kenneth Mack references John Mercer Langston and what Langston had in common with others of his race.\(^{140}\) Am I, as Mack discusses in his introduction, representative enough to be their representative?\(^{141}\) Am I representative enough for my African-American clients? The unsatisfying conclusion for the attorney of color is that there is no clear metric to determine whether a lawyer of color is representative enough and there is no single answer.

2. Risks in Intra-Race Legal Representation

a. The Risk of Race Manipulation of the Client

For attorneys of color and clients of color, there is often an initial mutual assumption of trust. Trust between a lawyer and a client is the cornerstone of effective counsel.\(^{142}\) When there is mutual trust, clients are best able to make informed legal decisions and lawyers are most effective.\(^{143}\) Clients may expect that attorneys of color are more trustworthy because they are of the same race, and attorneys of color may expect that clients of color will trust attorneys of color more for that same reason.\(^{144}\)

Members within the same race trust each other more and are more likely to work together.\(^{145}\) Shared experiences and shared personal characteristics facilitate a connection between people. Traumatic shared exper-

\(^{140}\) Mack, supra note 135, at 13–15.

\(^{141}\) Anderson et al., supra note 45, at 339 ("Untested assumptions, whatever their source, can impair lawyering judgments. In our collective experience, we have found that assumptions rooted in sameness are particularly seductive and bring unique challenges to our work.").


\(^{143}\) Id. at 21 ("Moreover, counsel is likely to have to make a number of crucial decisions throughout the proceedings on a range of subjects that may require consultation with the defendant. These decisions can best be made, and counsel’s duties most effectively discharged, if the attorney and the defendant have a relationship characterized by trust and confidence.").

\(^{144}\) King, supra note 4, at 4 ("(1) African American lawyers and clients share a group identity that makes it more likely that a lack attorney will be able to gain a black client’s trust; (2) black attorneys communicate more effectively with black clients; (3) the perception of a judicial system that is unfair and racist is likely to encourage black clients to trust black lawyers more than white lawyers, who are more likely to be perceived as part of ‘the system.’").

\(^{145}\) Anderson et al., supra note 45, at 341 ("Our preference for our own in-group leads us to value, trust, and work with members of our in-group more than we do members of an out-group.").
iences, such as racism,\textsuperscript{146} can also create a connection.\textsuperscript{147} Racism is a pervasive ill that affects individuals and groups, continues for generations, and insidiously infects multiple aspects of victims’ psyches.\textsuperscript{148} The shared history and personal experiences of members within a group offer an opportunity to empathize; in this case, it is an opportunity for empathy between a lawyer and a client.

Lawyers use multiple tactics to engender trust and stimulate client disclosure.\textsuperscript{149} Lawyers endeavor to create connections with their clients to engender trust and encourage their clients to trust them.\textsuperscript{150} Lawyers must remember that clients, particularly low- and moderate-income clients, often seek out lawyers in times of difficulty and need. This need creates a vulnerability that can inhibit the client’s willingness to trust and, thus, the client’s willingness to share information in a manner that will enable the attorney to effectively represent the client.\textsuperscript{151} Although some clients are forthcoming about their legal issues, other clients are resistant to sharing the details of their legal issues or their complicity in creating their legal issues.\textsuperscript{152}

In other settings, such as when clients are general counsels who have similar backgrounds to the lawyer, the lawyer might facilitate trust through demonstrations of competence; for example, by discussing previous transactions, previous employment, or the lawyer’s educational background. In intra-race lawyering, as Professor Mortazavi noted, the shared race often facilitates an initial trust.\textsuperscript{153} Recognizing that clients of color may initially trust attorneys of color, not \textit{in spite of} our race but \textit{because} of it, attorneys of color are left with a question: if being the same race creates, in our same-race clients, a sense of connection, implicit trust, and allows them to assume similar values,\textsuperscript{154} do attorneys of color use our shared race to manipulate a connection with our clients?

\textsuperscript{146} Suzette Speight, \textit{Internalized Racism: One More Piece of the Puzzle}, 35 \textit{Counseling Psychologist}, 126, 127 (2007) (“Racism is a process, a condition, a relationship that violates its victims physically, socially, spiritually, materially, and psychologically.”).

\textsuperscript{147} Anderson et al., supra note 45, at 340–41.

\textsuperscript{148} Speight, supra note 146, at 126–27 (“Because racism is pervasive, operating at the interpersonal and institutional levels simultaneously, its effects are cumulative, spanning generations, individuals, time, and place—encompassing much more than discrete acts. Consequently, psychological injury that is due to racism is not limited to that caused directly by one perpetrator, at one time, in one place.”).

\textsuperscript{149} Alicia Alvarez & Paul R. Tremblay, \textit{Introduction to Transactional Lawyering Practice} 58–65 (2013) (discussing the use of listening techniques and other inhibitors and facilitators to client-lawyer communication).

\textsuperscript{150} \textit{Id.}

\textsuperscript{151} \textit{Id.}

\textsuperscript{152} \textit{Id.}

\textsuperscript{153} Mortazavi, supra note 104, at 21.

\textsuperscript{154} Anderson et al., supra note 45 (“Similar characteristics create feelings of connection, trust, and assumptions of similar values.”).
For attorneys of color, there is a risk that we use our racial connection to enable our clients’ trust. Attorneys of color may intentionally utter familiar phrases or change the cadence of our speech to that typically used only within our racial community. Further, we may rely on our shared history to create a sense of familiarity. Upon reflection, to create connections with my low- and moderate-income clients of color, am I more likely to share stories of spending my summers in the South Carolina countryside eating fruit off of the tree and hanging laundry outside on clotheslines? Do I more frequently talk about how my grandfather was the first in his family to attend college, but strategically exclude that this very same grandfather’s brother received his PhD and was a Dean at a major university? Do we, as attorneys of color, pick and choose portions of our stories that foster a sense of racial connection with the client with whom we seek to connect? The answer is “yes.”

These choices are trust facilitators – a means to form an initial bond to create a basis for service of a client’s legal needs. One can argue that lawyers of all races use various techniques to engender trust with their clients. There is, however, something duplicitous in using a client’s implicit trust in same-race dynamics to effectively manipulate the client into trusting the lawyer. This is a risk of which the attorney of color must take note, as that manipulation, in itself, can be a breach of the very trust we, as same-race lawyers, seek to establish.

b. The Risk of Over-Identification

Another challenge is the risk of over-identifying with the client, clouding the lawyer’s objectivity. For attorneys of color representing same-race clients, it is tempting for both parties to assume shared injuries from assumptions of shared racial experiences. Nevertheless, there is a risk of over-identifying with fellow members of the same race that might endanger the objectivity a lawyer needs to be an effective counselor. The lawyer of color risks making assumptions about the client’s needs, preferences, and reactions based on the lawyer’s over-identification with the client. For example, the lawyer’s assumptions about how his African-American male client reacted to an unwarranted police search can unwittingly be based on the lawyer’s experience as an African-American man subjected to unwarranted police searches.

This over-identification risks the lawyer’s objectivity and the client’s decision-making autonomy. In these instances, attorneys of color must separate ourselves from our racial assumptions to make room for the client’s independent thought and unimpeded decisions. Sadly, this risks lessening the very racial solidarity that the attorney of color originally may

155. Anderson et al., supra note 45, at 347 (“In the context of a professional relationship, if we overidentify with a client, we run the risk of making inappropriate assumptions, and our professional judgment and professional boundaries can become clouded.”).
have sought in the intra-race legal representation. However, if the lawyer understands the importance of recognizing the differences with a client, despite overt similarities, lawyers can avoid “[substituting] their own judgment for the client’s as a result of over-identification or transference.”

The other over-identification risk is the risk of an assumed familiarity. Our shared histories, our shared struggles, and our common experiences with discrimination create an assumption of sameness and facilitate extensions of trust. For those of us within a group, such as persons of color, we often assume a familiarity with the cultural norms of that group solely from our membership in that group and from participating as a member of that group. Many attorneys of color would never think to attend training on how to interact with members of our own demographic; we assume, by virtue of our membership in that demographic, that we know the cultural norms and understand many of those norms’ nuances. However, it is important to recognize our differences, which within a race can still be stark, as well as the uniqueness of each individual and her history and circumstance. Race alone does not create a sustainable bridge. The initial connection we make in intra-race legal representation may be based on race, but that is not enough for the connection to endure.

c. The Risk of Power Imbalance

If you can control a man’s thinking you do not have to worry about his action. When you determine what a man shall think you do not have to concern yourself about what he will do. If you make a man feel that he is inferior, you do not have to compel him to accept an inferior status, for he will seek it himself. If you make a man think that he is justly an outcast, you do not have to order him to the back door. He will go without being told; and if there is no back door, his very nature will demand one.

156. Bryant, supra note 62, at 42.

157. Anderson et al., supra note 45, at 340–41 (“Additionally, on a more personal level, individuals are drawn to connect with other people because of shared experiences and personal characteristics. These connections often help people establish rapport, trust, and engagement. Surely these same benefits would apply in the lawyer-client relationship, where a lawyer’s ability to find common links with her client would facilitate the lawyering process.”).

158. Rosaldo, supra note 76, at 26 (“Human beings cannot help but learn the culture or cultures of the communities within which they grow up. . . . Cultures are learned, not genetically encoded.”).

159. Anderson et al., supra note 45, at 372–73 (“Understanding multiple identities, intra-group differences, and the fact that each of us within any one of our group affiliations is uniquely situated, is critical to understanding the complexities of connection and divide.”).

A lawyer must be wary when creating trust with a client, for with trust comes power.\textsuperscript{161} If clients of color trust attorneys of color more because of their shared race, that higher level of trust creates the risk of a greater power imbalance in intra-race legal representation. For example, although the client might attend the negotiations, they will often defer to the attorney’s expertise during the negotiation.\textsuperscript{162} Attorneys of color must exercise greater caution in respecting the power balance. Many attorneys of color are painfully aware of the dangers of uncontrolled exercise of power given our racial histories. As such, it is important to be sensitive to the power we, as attorneys of color, have in the lives of our same-race clients and the responsibilities we have to maintain a healthy power balance with our clients.\textsuperscript{163}

d. The Risk of Intra-Race Bias

There are many studies evaluating the roles that explicit and implicit bias play in how we interact with each other when respondents are of different races.\textsuperscript{164} There is less evaluation of how implicit bias affects respondents of the same race. Explicit bias “reflects the attitudes or beliefs that one endorses at a conscious level” while implicit bias is much more subtle, reflecting implicit attitudes and stereotypes individuals may not consciously recognize.\textsuperscript{165}

Individuals tend to hold positive attitudes about themselves and transfer those positive feelings to others who share the same attributes.\textsuperscript{166} Conversely, the positive feelings about members of one’s own group create ingroup bias, or less favorable feelings, about members of another

\textsuperscript{161}. Weng, \textit{supra} note 45, at 380 (“Even though client-centered lawyering focuses on respecting and empowering the client, it does not address the dynamics of power and subordination (historical, actual or perceived) in the attorney-client interaction.”).

\textsuperscript{162}. Paul R. Tremblay, \textit{Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy}, 43 Hastings L. J. 947, 952 (1992) (“Lawyers see clients as persons to be helped, as powerless persons who need to have problems solved through the intervention of the lawyer and her skills. Even if the result of such intervention were good for the client’s material existence, that gain might come at the expense of the client’s sense of control over her life, her self-esteem, her power.”).


\textsuperscript{165}. \textit{Id.} at 1 (“Unlike explicit bias (which reflects the attitudes or beliefs that one endorses at a conscious level), implicit bias is the bias in judgment and/or behavior that results from subtle cognitive processes (e.g., implicit attitudes and implicit stereotypes) that often operate at a level below conscious awareness and without intentional control.”).

\textsuperscript{166}. \textit{Id.} at 4 (“People tend to possess consistent and strongly positive attitudes toward themselves, and this positive attitude about the self can transfer very easily to other things, people, and groups that share attributes with the self . . . .”).
Part of the challenge regarding intra-race legal representation is when lawyers of color do not view their clients of color as members of the lawyer’s self-defined ‘group’. This separation might be based on differences in the lawyer’s and client’s economic status, education status, or social status. If the lawyer views the client as an “other” and fears being associated in that “other” group, there is a risk that the lawyer could exhibit bias against the client, to reinforce the lawyer’s inclusion in the lawyer’s group, or more caustically, to demonstrate the lawyer’s exclusion from the client’s group.168

In intra-race legal representation, this can translate to “representative acquiescence”169 where the attorney exhibits bias to the client in an attempt to distance the lawyer from the ugly stereotypes plaguing the lawyer’s race. As Professor Margaret M. Russell stated, “[t]rue representation often finds that they are identified, categorized, and evaluated first as members of their racial group, and only secondarily – if at all – as lawyers.”170 When walking through a courtroom or negotiating a plea bargain, does that lawyer’s need to avoid association with racial stereotypes create a need to establish that the lawyer is not like “them?”171

As a repeat player in a predominantly white, male profession, it is not unexpected that an attorney of color may feel compelled to talk or dress in a manner to demonstrate to external parties the attorney’s separation from the client. I contend that we, as lawyers of color, cannot state absolutely that we are still not affected by the stereotypes cast upon our racial communities, especially when we represent members of our race and especially when a client exhibits traits of racial stereotypes.172 We must recognize that we are not immune from exhibiting the same implicit bias against our own clients that we, as attorneys of color, have experienced.

167. Miles Hewstone et al., Intergroup Bias, 53 ANN. REV. PSYCHOL. 575, 576 (2002) (“Intergroup bias refers generally to the systematic tendency to evaluate one’s own membership group (the in-group) or its members more favorably than a nonmembership group (the out-group) or its members.”).

168. Weng, supra note 45, at 394 (“Based on one’s own characteristics, a person sorts others into ‘in-groups’ sharing characteristics with the perceiver and ‘out-groups’ that do not. The separation of others into in-groups and out-groups further influences the way in which the perceiver views others.”).

169. Lisa T. Alexander, Stakeholder Participation in New Governance: Lessons from Chicago’s Public Housing Reform Experiment, 16 GEO. J. ON POVERTY L. & POL’Y 117, 141–42 (2012) (“[B]oth individual and organizational stakeholder representatives may also unwittingly act opportunistically. Chicago’s original public housing residents . . . have been vilified . . . as lazy, undeserving and prone to manipulating public resources. . . In order to counteract such narratives and improve their social status in the network, public housing resident representatives may unintentionally acquiesce in decisions that further the interests of the wealthier or more empowered stakeholders . . . ”).

170. Russell, supra note 122, at 767.

171. See Polikoff, supra note 1, 449–50.

3. Unhappy Truths

a. Being Accepted versus Being Acceptable

Listen − Being a Mexican-American is tough. “Anglos” jump all over you if you don’t speak English perfectly. Mexicans jump all over you if you don’t speak Spanish perfectly. We gotta be twice as perfect as anybody else. . . . Our family has been here for centuries and yet they treat us as if we just swam across the Rio Grande. . . . we gotta prove to the Mexicans how Mexican we are and we gotta prove to the Americans how American we are. We gotta be more Mexican than the Mexicans and more American than the Americans both at the same time. It’s exhausting!173

Attorneys of color are faced with the overwhelming task of: 1) trying to be an objective lawyer, 2) while remaining equally faithful to our clients and our racial representativeness, while 3) also trying to work in, and be an integral part of, a White-dominated profession.174 Professor Wilkins argues that attorneys of color, who are often subjected to discrimination based on their non-professional racial identities, are thus incentivized to be “viewed as lawyers simpliciter” − a lawyer separate from their racial identities− to free them from the pervasive negative stereotypes that accompanies their non-professional identities.175

Earlier generations of African-American professionals arguably had more challenge in proving worthiness while combating stereotypes from slavery.176 In the early years after slavery, African-American intellectuals shared a sense of responsibility for disproving racist assertions that African-Americans lacked the intellectual prowess of other races.177 It was challenging for African American scholars to “represent” for their race when they felt forced to thread the needle between pursuits of their intellect and

173. Selena (Q-Productions 1997).
174. Mack, supra note 135, at 6 (“But to be a successful lawyer, one had to also represent the core identity of what was a white-dominated profession.”); see also Corey S. Shdaimah, Lawyers and the Power of Community: The Story of South Ardmore, 42 J. Marshall L. Rev. 595, 599 (2009) (“[Lawyers] are also tied to the establishment in various ways, which can make their motivation (and advice) suspect. Lawyers need to be seen as “normal” to establishment figures.”).
175. Wilkins, supra note 19, at 1505 (“The universalizing claims made on behalf of the professional self suggest that differences among lawyers that might matter outside the professional sphere are irrelevant when evaluating the professional practices of lawyers. This universalizing tendency is arguably particularly important for new entrants into the legal profession, who are frequently subject to discrimination on the basis of certain aspects of their non-professional identities.”).
177. Id.
advocating for their race. 178 As John Hope Franklin noted so many years ago: “It must have been a most unrewarding experience for the Negro scholar to answer those who said that he was inferior by declaring: ‘I am indeed not inferior.’ For such a dialogue left little or no time for the pursuit of knowledge as one really desired to pursue it.” 179 Some intellectuals, like W.E.B. Dubois, responded to this challenge by moving beyond their preferred profession to become a scholar. 180 Others moved beyond their preferred profession to become advocates of their race. 181

b. Insider to Outsider

Much has been written about the challenges of cross-cultural lawyering and how a lawyer’s own cultural biases will impact how the lawyer interacts with, understands, and counsels the client. 182 Professor Michelle Jacobs notes that lawyers and clients may have difficulty communicating when they are of different races because of the vast cultural differences between them. 183 This cross-cultural bias is easier to understand when the lawyer and the client have different cultures. Attorneys of color with same-race clients but different socio-economic backgrounds exist in a strange world: our common race creates a comfortable starting point to establish trust; however, our different socio-economic background and life experiences mean our shared race is often where the commonality ends. We, as attorneys of color, must accept a strange insight—cross-culture lawyering is not solely for those of different races, cultures or religions. Those of us who are of the same race and culture as our clients may have many of the same differences that inhibit connection and communication.

When attorneys of color consider same-race clients, do we truly see ourselves in them? We are separate—our opportunities, how we view the law, how the judicial system views us as professionals—we are impacted by how we want the client to view us, how we need external parties to view us, and how we view our clients. We, as attorneys of color, must recognize these factors to prevent us from being bound by them.

As a lawyer, I try to determine how best to serve my clients’ interests. And, as with many lawyers, that requires trying to understand the needs of my clients when their needs are generally so different from my own. In my

178. Id. at 305–06 (“He must therefore, be permitted to function as vigorously as his energies and resources allow, in order to elevate himself and those of his group to a position where they will be accepted and respected in the American social order.”).
179. Id. at 299.
181. Franklin, supra note 176, at 299.
182. Bryant, supra note 62 at 40–41 (“Cross-cultural lawyering occurs when lawyers and clients have different ethnic or cultural heritages and when they are socialized by different subsets within ethnic groups.”).
183. See generally Jacobs, supra note 53.
practice, I represent low- and moderate-income individuals when I have never been either of those. I am working to help them purchase their first home when every direct family member from my formerly enslaved great-great-grandmother to, and including myself, has owned a home. We are of one race, but of two worlds. The individual members of the tenants associations with whom I worked, often women of color, frequently spoke of feelings of helplessness. I, however, have rarely felt disempowered—neither as a person of color, nor as a female, two groups that historically have been oppressed and devalued. When I talked with residents about the ability to purchase their apartment buildings and to become first-time homeowners, the residents were so often skeptical. Initially, this surprised me. I recognized the challenges of trying to purchase their apartment buildings, but I was confused by their unwillingness to try. When asked, they would tell me story after story of their efforts to change their lives with little success. With each setback, the residents’ willingness to believe in their ability to change their lives decreased. The feelings of helplessness and powerlessness took hold. I have neither experienced these feelings of powerlessness nor doubted my ability to effect change in my life.

Low- and moderate-income same-race clients and attorneys are of the same race, but often their experiences are very different. It is likely that our legal training and financial stability provide us a greater sense of power and confidence in our ability to navigate life’s challenges. However, our legal training alone is unlikely to account for such a divergent sense of power. Rather, part of the sense of power comes from our differing educational backgrounds, upbringings, and income levels. We must acknowledge that as attorneys, society often does not treat us as helpless. This impacts our reaction to situations that might otherwise disempower us.184 We, as attorneys of color, must appreciate the differences in our experiences and our clients’ experiences that lead us to these very different conclusions about our ability to effect change in our lives.

CONCLUSION: AM I MY CLIENT?

After considering the dynamics, the risks, and the unhappy truths about intra-race legal representations, attorneys of color are left to ponder whether we see ourselves in our clients.

My clients often look to me to help them through their legal issues, assuming that our cultural differences are minimal. My clients tell me that they trust my counsel more because I can better understand their issues. For many years, I shared that sentiment and, to a certain extent, I still cling to it.

184. ROSALDO, supra note 76, at xii ("When people become accustomed to privilege, it appears to be a vested right, a status that is natural and well deserved, a part of the order of things.").
But, my community—my race—is no longer monolithic. The divergence of our lives after slavery and Jim Crow created chasms between us that can be as great as those of different races. I cling to our sameness, for their sacrifices made my successes possible. But, this dishonesty endangers my ability to be an objective lawyer. My clients do not accept my counsel with the same skepticism they do of outsiders. I understand the argument that I should disabuse them of this trust because it is based on a similarity that does not exist. I have been unable to separate myself from my clients in this manner. I do not want that division, for I value the warmth of belonging. With that though, I am left with uncomfortable questions: If I use our shared race to connect with my clients, is that an abusive manipulation? Am I the fox in the very hen house I seek to protect? I am left wondering whether my unwillingness to separate myself makes me as dangerous as those from whom I seek to protect my clients.

Representing my low- and moderate-income clients of color has been difficult at times because, in many ways, I still see shadows of myself in my clients and I still feel such a sense of responsibility to honor their sacrifices and fight the biases that oppressed them. I look at our history and it is wrought with countless stories of fights and pleas for civil rights for African-Americans. Stories abound of protests for desegregation of universities, neighborhoods, and public facilities. As a member of the recipient generation—those of us in the post-Civil Rights Movement generation—I, and others, feel the weight of the debt owed to those whose fights won our natural-born freedom. When I began my legal career practicing at a large law firm, I felt a need to prove my worth. Not solely my worth as a practicing attorney, but actually my worth of the sacrifices made on my behalf, and my worth of the opportunities afforded me. I needed to be one of those who “made it.” I needed to show that the sacrifices made by African-Americans before me were justified. I needed to prove my worth. I still feel the urgency to prove that we, the recipient generation, are worthy of our ancestors’ sacrifices.

I struggle with how to bridge the cross-cultural divide with my clients because we share such history. But with so many of my clients of color, we hail from vastly different experiences. I accept that we, as lawyers, are better able to serve all our clients when we are honest about how race impacts our legal representation. Upon reflection, the fragility of the racial connection I felt to my clients has deepened. Yet my sense of obligation to them never wanes. Despite the truth of our differences, I still see glimpses of myself in my clients. Ultimately, neither racial commonalities, nor shared histories, nor years of working in the same community can bridge the gaps between me, as the lawyer, and my clients.

My clients may want to trust me more because they see racial familiarity when they look upon me, but the differences between us create a gap that is insurmountable. I remain the person they seek for guidance and
counsel. I must remain the objective lawyer. In that moment of seeking my legal assistance, I am the other. It is not I who I see when I look at them. I am not my client.

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185. Shdaimah, supra note 174, at 599 (“Lawyers’ professional role, one that must be assumed in order to be of value to the clients, alienates them from these groups in a way that is often distressing to lawyers who align themselves with their clients politically and philosophically.”).

186. Polikoff, supra note 1, at 470 (Polikoff concludes: “Am I my client? The answer is a resounding, and sometimes agonizing, ‘No.’”).