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There is No Santa Claus: The Challenge of Teaching The Next Generation of Civil Rights Lawyers in a 'Post-Racial' Society

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THERE IS NO SANTA CLAUS: THE CHALLENGE OF TEACHING THE NEXT GENERATION OF CIVIL RIGHTS LAWYERS IN A “POST-RACIAL” SOCIETY

DEBORAH N. ARCHER*

This Essay takes a fresh look at the scholarship on the practice of cross-cultural and client-centered lawyering. The current scholarship explores methods of training law students to be mindful of the ways that cultural differences can impact legal representation. However, this scholarship has not addressed how to equip students to address issues of racial discrimination in light of the post-racial lens through which many view these problems. Legal educators must examine how law students' beliefs regarding the current relevance of race in America affects their ability to represent clients who believe they are victims of racial discrimination.

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“The enduring hope is that race should not matter; the reality is that too often it does.”¹

I. INTRODUCTION

Consider this story: In my Civil Rights Clinic, I supervised a team of two white students working on an employment discrimination case in which the plaintiff had filed a complaint *pro se* alleging racial discrimination under Title VII of the Civil Rights Act of 1964.² The complaint involved the harassment of the lone black supervisor in a small company. Shortly after the plaintiff’s promotion, he was assigned a new white supervisor. At about the same time, his intimate relationship with a white co-worker became public. Soon thereafter, his new supervisor started to reprimand him for minor infractions that white employees had committed for years with no repercussions. He also alleged that he was given work assignments that were impossible to complete in the time allotted. Ultimately, he believed his supervisor was setting him up for termination because of his race.

How did the students analyze this problem?³ They immediately focused on the fact that no one had ever called the plaintiff a slur and that the supervisor followed all of the procedural rules in writing their client up. During our weekly supervision meetings, the team expressed that they had difficulty building a relationship with their client. They complained that he seemed annoyed by their questions and did not engage in conversation with them. On several occasions, the students proposed race-neutral theories of the case and appeared irritated by their client’s rejection of these alternative approaches. In supervision meetings with me, they confessed their belief that race was not relevant to the case.

When I asked the students about their reluctance to raise claims based on race, they stated that there was a lack of clear evidence of racial animus in the form of racial slurs or racially charged language. They also said that they would be embarrassed to raise such arguments. They felt that the judge would be certain to reject those theories and would think poorly of the students for having made such specious claims. The students believed the conduct was wrong but not necessarily racially motivated, and they did not want to break social or legal etiquette by highlighting race in their case. Absent overt acts of racial animus, these students were unable to perceive the pervasive role race played in their client’s life.

Sadly, racism is alive and well. We are not all living post-racial lives. In areas ranging from housing to education, from health care to criminal justice, race continues to have a profound impact on American lives.³ We have grown accustomed to the traditional narrative of civil rights and discrimination: the openly racist individual calling a black person a racial slur, or government officials designating drinking fountains as “white” or “colored.” In contemporary society, however, racism is less often experienced in such overt ways. As a result, the narrative that racism is no longer significant seems

¹Parents Involved in Cmty. Schools v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 787 (2007) (Kennedy, J., concurring in part and concurring in the judgment).

²Equal Employment Opportunities, 42 U.S.C. §§ 2000e-2000e-17 (2011).

³Mario L. Barnes et al., *A Post-Race Equal Protection?*, 98 GEO. L.J. 967, 982-93 (2010); Trina Jones, *Anti-Discrimination in Peril?* 75 MO. L. REV. 423, 427 (2010).

reasonable to many Americans. In a recent Newsweek poll, just 19% of whites, as compared to 60% of blacks, believed race was a major problem in America.⁴ Indeed, while that poll found that large majorities of both white and black Americans concur that racial stereotyping continues, most white Americans, in contrast to black Americans, believe that blacks have equal access to affordable housing, employment, and the fair administration of justice, despite often overwhelming facts to the contrary.⁵ Legal educators need to change the narrative of racial discrimination to better illustrate racism's pervasive role in American institutions and culture.

In teaching antidiscrimination courses to law students, I have observed that in most areas of their lives, my students respect and acknowledge different cultures and the importance of those distinctions in their personal and professional interactions. I have increasingly noticed, however, that this same respect for diversity is not extended to issues of race and racial discrimination. In recent years, more of my students espouse the belief that merely acknowledging the continued importance of race or the impact of racial discrimination violates the principle of colorblindness they are taught to embrace.⁶ They tell me that unlike some aspects of culture, racial distinctions are largely irrelevant to them as individuals and their role as lawyers – they just do not “see race.” For too many in this generation of law students, the myth of the color-blind narrative is reinforced by the way race is treated in the typical law school curriculum, which rarely exposes law students to discussions about the nature of modern racism. Unfortunately, the students take what they have learned, or have not learned, in the classroom and apply it to their interactions with clients.

But the next generation of social justice advocates will not confront a post-racial world when representing people of color. When I tell my clinic students that not only is race an issue in their case, but that their perspective on race is a detriment to their relationship with their client, I feel a little like a parent finally telling her child that there is no Santa Claus. Many students hold on to their discomfort with highlighting racial issues, allowing their belief in a post-racial society to shape their approach to their clients' legal issues. They seldom question their foundational belief in the irrelevance of race, nor do they consider whether the client shares their outlook.

This is a serious problem for the work of law professors. Law school clinicians have developed tools to address the way that culture, including racial identity, impacts our students' relationships with their clients. Culturally competent and client-centered lawyering tells us that we need to see the world through the eyes of the client.⁷ While this approach has been helpful in addressing most aspects of cultural difference, it has been less effective in equipping students to address issues of racial

⁴ Doug Schoen, *Newsweek/Daily Beast Poll Finds Majorities of Americans Think Country Divided by Race*, THE DAILY BEAST, <http://www.thedailybeast.com/articles/2012/04/07/newsweek-daily-beast-poll-finds-majorities-of-americans-think-country-divided-by-race.html> (last visited Dec. 2, 2013). See also Pew Research Poll for CBS News from 2013 <http://www.pollingreport.com/race.htm> (last visited Dec. 2, 2013) (sixty percent of Whites and thirty-eight percent of Blacks think both races have equal chances of getting ahead).

⁵ EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN THE UNITED STATES* 2 (2010).

⁶ See Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635, 648 (2008); Judith G. Greenberg, *Erasing Race from Legal Education*, 28 U. MICH. J.L. REFORM 51, 68 (1994). Although post-racialism and colorblindness are related concepts, they are in fact distinct. “While the ideology of colorblindness shares many features and objectives with the ideology of post-racialism, . . . post-racialism is yet distinct as a descriptive matter, in that it signals a racially transcendent event that authorizes the retreat from race. Colorblindness, in comparison, offers a largely normative claim for a retreat from race that is aspirational in nature.” Sumi Cho, *Post Racialism*, 94 IOWA L. REV. 1589, 1597 (2009). In addition, some posit that colorblindness is primarily the ideology of neoconservatives, while post-racialism's primary audience is “moderate-to-liberal whites who suffer from ‘racial exhaustion.’” *Id.* at 1599.

⁷ See *infra* Part III.

discrimination. Clinicians must examine how a law student's beliefs regarding the relevance of race impact their representation of clients. How well can law students represent their clients if they have not challenged their own belief that we live in a post-racial society? Indeed,

[t]his tension between material conditions and what one is cultured to see or not see — the dilemma of the emperor's new clothes, we might call it — is a tension faced by any society driven by bitter histories of imposed hierarchy . . . I do wish . . . to counsel against the facile innocence of those three notorious monkeys, Hear No Evil, See No Evil, and Speak No Evil. Theirs is a purity achieved through ignorance. Ours must be a world in which we know each other better.

To put it another way, it is a dangerous, if comprehensible, temptation to imagine inclusiveness by imagining away any obstacles. It is in this way that the moral high ground of good intentions knows its limits. We must be careful not to allow our intentions to verge into outright projection by substituting a fantasy of global seamlessness that is blinding rather than just color-blind.⁸

This Essay argues that America's embrace of the post-racial fiction undermines the ability of lawyers and law students to represent clients impacted by modern forms of racial discrimination. Part I of this Essay describes the standard post-racial narrative. This section also explores how the post-racial lens has been adopted into legal culture and strengthened by the typical law school curriculum. Reinforcement of the post-racial ideal leads to a disconnection between law students' beliefs and clients' realities. Relying on experiences in my civil rights clinic, Part II discusses the impact that the prevailing color-blind narrative can have on the representation provided to victims of racial discrimination. This section also explores the importance of cross-cultural competence and how it encourages students to be mindful of the ways that cultural differences can impact legal representation. I question, though, whether the focus on individual cultural differences between lawyer and client is sufficient to address the challenges of lawyering in an allegedly post-racial society. Finally, Part III begins a discussion of how legal educators can use "immersion lawyering" to better prepare this generation of social justice lawyers.

II. THE POST-RACIAL NARRATIVE

Just a few years after the abolition of slavery, the United States Supreme Court prepared to proclaim this country post-racial. In the *Civil Rights Cases*,⁹ eighteen years after the passage of the Thirteenth Amendment, the Court declared:

When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected.¹⁰

Since the *Civil Rights Cases*, the Supreme Court has embraced the goal of a color-blind society, repeating the refrain that our nation and our Constitution recognize no race or color. Surely, a society where race does not impact life outcomes is a worthy goal. Yet we have repeated that mantra so frequently that many are convinced that the time has arrived; that we have finally been exonerated for our racially

⁸ PATRICIA J. WILLIAMS, *SEEING A COLORBLIND FUTURE: THE PARADOX OF RACE* (1997).

⁹ *Civil Rights Cases*, 109 U.S. 3 (1883).

¹⁰ *Id.* at 25.

discriminatory past and are all playing on a level field.¹¹ Indeed, with the election of President Obama, many commentators have claimed that America is finally “post-racial” and “post-civil rights.”¹² In a world where a black man with an African name can achieve America’s highest office, the argument goes, civil rights laws are no longer needed to promote equal opportunity. Racial discrimination exists only at the margins — our society is fundamentally fair when it comes to issues of race. The result is that many people are reluctant to raise issues of racial discrimination and find it distasteful when others do.

A. Societal Narrative

“There’s not a black America and white America and Latino America and Asian America; there’s the United States of America.”¹³

Today, calling someone a racist is almost as bad as calling him or her a terrorist. As John Powell has asserted,

[t]o call someone racist today is seen as incendiary and a form of character assassination. The good American not only refuses to engage in conscious racially motivated behavior, he also refuses to see race or call it out.¹⁴

Our social norms discount the pervasiveness of race in American institutions,¹⁵ and we have a general reluctance to identify any social problems as a product of racial discrimination.¹⁶ We look to our racial progress as evidence that racism is an issue of the past, not the present.¹⁷ This post-racial philosophy asserts that race-conscious thinking is no longer necessary because we have finally “transcended [the] racial divisions of past generations.”¹⁸

Although post-racialism has appeared many times in our history,¹⁹ it picked up steam with the election of President Barack Obama,²⁰ and has since become embedded in the fabric of American culture. Indeed, President Obama’s election has given post-racialism moral and legal legitimacy.²¹ On an individual level, those who believe we are post-racial argue that “civil society should eschew race as a central organizing principle of social action.”²² Post-racialism “reflects a belief that due to significant

¹¹ See Michael Selmi, *Understanding Discrimination in a “Post-Racial” World*, 32 CARDOZO L. REV. 833 (2011).

¹² Roy L. Brooks, *Making the Case for Atonement in Post-Racial America*, 14 J. GENDER RACE & JUST. 665 (2011) (stating that commentators have characterized America as post-racial after the election of the first African American president); Ian F. Haney Lopez, *Is the “Post” in Post-Racial the “Blind” in Colorblind?*, 32 CARDOZO L. REV. 807 (2011) (noting that after Obama’s election, commentators marvel that we now live in a post-racial America).

¹³ Barack Obama, Illinois Senate Candidate, Keynote Address at the Democratic National Convention (July 27, 2004) (transcript available at <http://www.washingtonpost.com/wp-dyn/articles/A19751-2004Jul27.html>).

¹⁴ John A. Powell, *Post-Racialism or Targeted Universalism?*, 86 DENV. U. L. REV. 785, 788 (2009).

¹⁵ See Selmi, *supra* note 11, at 834.

¹⁶ See *id.* at 835.

¹⁷ Barnes, et al., *supra* note 3, at 968.

¹⁸ See Cho, *supra* note 6, at 1601.

¹⁹ See, e.g., WILLIAM JULIUS WILSON, *THE DECLINING SIGNIFICANCE OF RACE: BLACKS AND CHANGING AMERICAN INSTITUTIONS* (1978) (positing that class had superseded race as a deciding factor in determining opportunities for Black Americans); DINESH D’SOUZA, *THE END OF RACISM* (1995).

²⁰ See Selmi, *supra* note 11, at 835; Jones, *supra* note 3, at 433. Interestingly, President Obama lost the white male vote, and the 2008 election resulted in no non-incumbent African Americans being elected to Congress. Selmi, *supra* note 11, at 834.

²¹ See Girardeau A. Spann, *Disparate Impact*, GEO. L.J. 1133, 1162 (2010); see also Powell, *supra* note 14, at 789 (asserting that to post-racialists, Obama is proof that we are post-racial).

²² Cho, *supra* note 6, at 1594.

racial progress that has been made, the state need not engage in race-based decision-making or adopt race-based remedies.”²³ This perspective dismisses the relevance of race and the role of racism in the disparities we continue to see in American society.

In a post-racial world, racism is perpetrated by a few bad actors. Overt racial animus is seen as an aberration from our normal race neutrality.²⁴ For post-racialists, these rare acts of “true racism” are the exceptions that prove the rule. Only the most explicit, barefaced acts of racial discrimination are acknowledged; subtle forms of discrimination go unchecked.²⁵

Ultimately, post-racialism is the belief that we have achieved colorblindness — indeed, America has twice elected an African American president — and we should not notice or act upon racial differences.²⁶ Yet, there are serious and continuing disparities between racial minorities and whites in the United States.²⁷ It is not that post-racialists do not see the inequalities; it is that they look for non-racial explanations for the disparities they see.²⁸ Even in assessing the discriminatory and racialized comments that have been directed at President Obama while he has been in office, many are quick to take comfort in race-neutral explanations for this conduct.

The myth of post-racialism is problematic because of the continued importance of race in our society. This orientation to disparities shapes people’s response to claims of racism: because *de jure* racial discrimination is largely a relic of the past, post-racialists believe there is essentially a level playing field between Whites and racial minorities.²⁹ One consequence of this orientation is that we ignore the present effects of our racist past and the consequences of having built our society along racial divides.³⁰ Indeed, post-racial narratives “sever contemporary racial reality from historical events that shaped it and suggest that the consequences of systemic racial oppression ended long ago.”³¹ Post-racialism distorts our view of history as well as our reality.

Post-racialism also prevents and hampers honest discussions about race, blocking our progress towards true equality.³² Furthermore, by eliminating race as a feasible explanation for injustice, post-racialism undermines the ability to utilize race-conscious remedies critical to achieving racial equality, while perpetuating the belief that white people are the real victims of racial discrimination.³³ This is a story we have seen play out in recent cases addressing race-conscious remedies, including *Fisher v. University of Texas*,³⁴ *Ricci v. DeStefano*,³⁵ and *Parents Involved in Community Schools v. Seattle School District No.*

²³ *Id.*

²⁴ Spann, *supra* note 21, at 1137.

²⁵ See Selmi, *supra* note 11, at 854.

²⁶ Barnes, et al., *supra* note 3, at 977; Jones, *supra* note 3, at 433; BONILLA-SILVA, *supra* note 5, at 1.

²⁷ See Lia Epperson, *Equality Dissonance: Jurisprudential Limitations and Legislative Opportunities*, 7 STAN. J. C. R. & C. L. 213, 215 (2011).

²⁸ Jones, *supra* note 3, at 428; BONILLA-SILVA, *supra* note 5, at 208; John A. Powell, *An Agenda for the Post-Civil Rights Era*, 29 U.S. F. L. REV. 889, 901–02 (1995).

²⁹ Powell, *supra* note 28, at 903; See also John McWhorter, *Racism in America Is Over*, FORBES http://www.forbes.com/2008/12/30/end-of-racism-oped-cx_jm_1230mcwhorter.html (last visited Dec 2, 2013.) (discussing Obama’s election as proof that we are now in a post-racial America).

³⁰ See Barnes, et al., *supra* note 3, at 977.

³¹ See Jonathan P. Rossing, *Deconstructing Post-Racialism: Humor as a Critical Cultural Project*, 36(1) J. COMM. INQUIRY 44, 47 (2012).

³² See *id.* at 45; Cho, *supra* note 6, at 1596 (arguing that post-racialism takes racial discourse off the table).

³³ See Rossing, *supra* note 31 at 48 (finding post-racialism enables a “White-as-victim” framework); Cho, *supra* note 6, at 1596 (finding post-racialism “opens the floodgates of white resentment when confronted with previously accepted and unquestioned civil rights inequities” and restores value to whiteness).

³⁴ *Fisher v. Univ. of Tex.*, 133 S.Ct. 2411 (2013).

1.³⁶ A recent study supports the general notion that “whites believe . . . the pendulum has now swung beyond equality in the direction of anti-white discrimination.”³⁷

B. Narrative Learned by the Law Students

In law school, students combine their own experiences with what they learn in class. Unfortunately, the typical law school curriculum fails to adequately address racial issues, reinforcing the prevailing post-racial narrative. When class discussions do turn to more recent cases addressing issues of racial discrimination, such as *Ricci* or *Parents Involved in Community Schools*, the Supreme Court’s opinions espouse a post-racial philosophy, often dismissing the role of racial discrimination.³⁸

Race is not a significant focus of the typical law school curriculum. Unless a student seeks out courses on race, she will likely graduate having only studied racial discrimination in her constitutional law course.³⁹ And those course conversations tend to focus on iconic race discrimination cases including *Brown v. Board of Education*⁴⁰ and *Plessy v. Ferguson*.⁴¹ Students hear stories about blatant acts of discrimination and the iconic struggles against Jim Crow: the fight against segregated lunch counters, buses, and schools, and the struggle to register black voters in the face of poll taxes and literacy tests. These older cases focus on explicit, state-sponsored racial discrimination on a level that is very rarely seen today.

The current legal paradigm for proving racial discrimination—focusing on unambiguous evidence of an intent to discriminate on the basis of race,⁴² has conditioned law students to recognize only blatant acts of discrimination, perpetrated by a “bad actor” who has made his racist intentions clear. But today, we are often dealing with “racism without racists.”⁴³ “The United States moved from a generation defined by images of fire hoses, police dogs, stridently racist public officials, and de jure segregation. As society changed, so too did the nature of discrimination.”⁴⁴ Contemporary racism is more nuanced, yet many students leave law school concerned only with the most overt and blatant instances of discrimination. The images of “discrimination” they see are of white college applicants alleging they were denied an educational opportunity because of race-conscious admissions programs.⁴⁵

³⁵ *Ricci v. DeStefano*, 557 U.S. 557 (2009).

³⁶ *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007).

³⁷ Michael I. Norton and Samuel R. Sommers, *Whites See Racism as a Zero-Sum Game That They Are Now Losing*, 6 (3) PERSP. ON PSYCHOL. SCI. 215, 217 (2011).

³⁸ See *infra* pp. 11–13.

³⁹ Margalynne Armstrong, *Teaching by the Book Race and Races: Cases and Resources for a Diverse America*, 89 CALIF. L. REV. 1625, 1626–27 (2001).

⁴⁰ *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

⁴¹ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

⁴² E.g., *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264–66, 270–71 (1977); *Wash. v. Davis*, 426 U.S. 229, 238–42 (1976). See Derek W. Black, *Cultural Norms and Race Discrimination Standards: A Case Study in How the Two Diverge*, 43 CONN. L. REV. 503, 546 (2011).

⁴³ EDUARDO BONILLA-SILVA, *supra* note 5, at 4.

⁴⁴ Jones, *supra* note 3, at 429.

⁴⁵ See Cheryl I. Harris & Kimberly West-Faulcon, *Reading Ricci: Whitening Discrimination, Racing Test Fairness*, 58 UCLA L. REV. 73, 80 (2010) (arguing that “the paradigmatic victim of race discrimination is now white”); Angela Onwuachi-Willig, *When Different Means the Same: Applying a Different Standard of Proof to White Plaintiffs under the McDonnell Douglas Prima Facie Test*, 50 CASE W. RES. L. REV. 53, 53 (1999) (“The idea that Whites, in particular white males, are the new victims of discrimination is steadily gaining acceptance among white Americans”).

And taking direction from the United States Supreme Court, students use colorblindness as an analytical tool when approaching legal problems.⁴⁶ The Supreme Court speaks with authority to these students and has established a set of parameters for racial and cultural discourse.⁴⁷ The Court both reflects society's current attitudes and beliefs regarding race and reinforces them.⁴⁸ The result is that students are not easily persuaded that race is relevant. Like the Court, law students tend to approach claims of racial discrimination with skepticism. Absent direct evidence of discrimination, the students do not think it is necessary to explore motivation and search for other "evidence" of racial discrimination.

A legal education that prioritizes a rigid understanding of racial discrimination as the intentional and malicious acts of individual bad actors, combined with a culture that embraces a post-racial narrative, can encourage law students to embrace the conclusion that redistributive efforts, through antidiscrimination laws and affirmative action programs, have resulted in a more egregious offense: discrimination against whites.⁴⁹ In this view, emphasizing race or alleging racial discrimination is distasteful, and something that racial minorities often do simply for unfair gain. Students may embrace their own personal lack of racism and view raising issues of race as driving a dividing wedge between us as a unified citizenry.

Similarly, many of the Supreme Court's recent decisions involving the use of race in higher education, school integration, and hiring demonstrate the Court's embrace of post-racialism⁵⁰ and its trivialization of race and racism.⁵¹ In *Parents Involved in Community Schools v. Seattle School District No. 1*,⁵² the Court addressed the constitutionality of the use of race in reducing racial segregation in elementary and secondary education. In writing for the majority, Chief Justice John Roberts proclaimed, "the way to achieve a system of determining admissions to schools on a nonracial basis is to stop assigning students on a racial basis. The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."⁵³

Recent Supreme Court opinions also eschew contextual analysis, rejecting considerations of race regardless of the purpose, motivation, or context.⁵⁴ For example, in *Adarand Constructors v. Peña*,⁵⁵ Justice Scalia wrote:

To pursue the concept of racial entitlement—even for the most admirable and benign purposes—is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of the government, we are just one race here. It is American.⁵⁶

⁴⁶ Jones, *supra* note 3, at 431 (arguing that colorblindness is both an ideology and analytical tool in evaluating discrimination claims).

⁴⁷ See Robert L. Hayman & Nancy Levit, *The Tales of White Folks: Doctrine, Narrative, and the Reconstruction of Racial Reality*, 84 CALIF. 2. REV. 377, 378 (1996).

⁴⁸ *Id.*

⁴⁹ Girardeau A. Spann, *Disparate Impact*, 98 GEO. L.J. 1133, 1163 (2010).

⁵⁰ Barnes, et al., *supra* note 3, at 972; Helen Norton, *The Supreme Court's Post-Racial Turn Towards a Zero-Sum Understanding of Equality*, 52 WM & MARY L. REV. 197, 198 (2010).

⁵¹ Powell, *supra* note 28, at 900.

⁵² *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701 (2007).

⁵³ *Id.* at 748. (Roberts, C.J., quoting *Brown v. Board of Education*, 349 U.S. 294, 300-301 (1955)).

⁵⁴ Jones, *supra* note 3, at 438. Of course, there are dissenting opinions in all of these cases, and strong professors will encourage robust debate about these opinions.

⁵⁵ *Adarand Constructors v. Peña*, 515 U.S. 200 (1995) (Scalia, J., concurring).

⁵⁶ *Id.* at 239.

Similarly, in *Ricci v. DeStefano*, a case striking down the City of New Haven's efforts to address the disparate racial impact of the results of a firefighter examination, the Court's majority labeled the City of New Haven's attention to the racially disparate impact of its promotion examinations as evidence of the City's discriminatory intent under Title VII of the Civil Rights Act of 1965.⁵⁷ In doing so, the majority opinion divorced the current controversy from the history of discrimination against African American firefighters, viewing this history and context as irrelevant to the narrative.⁵⁸ The majority viewed the controversy as simply the City of New Haven "reject[ing] the test results solely because the higher scoring candidates were white."⁵⁹ The Court ignored "the backdrop of entrenched inequality that the promotion process at issue in this litigation" was designed to address.⁶⁰

III. WHEN WORLDS COLLIDE: CLASHING NARRATIVES AND THE DISCONNECT BETWEEN STUDENTS AND CLIENTS

Those who believe that we are post-racial assume a "false universalism": we all enjoy the same advantages and suffer under the same disadvantages.⁶¹ But, most law students and their clients lead different lives—racially, ethnically, and socioeconomically.⁶² Although there is increasing racial and socioeconomic diversity in law school classes, students are relatively privileged compared to their clients.⁶³

The difference goes beyond demographics. Even when the lawyer and client are of the same race or ethnicity, the students are often living more integrated lives. They are more likely to have friends of different ethnicities.⁶⁴ Their generation grew up without much racial divide in their popular icons, idolizing Eminem as much as Jay-Z, and Oprah Winfrey as much as Katie Couric.⁶⁵ But as the author Touré has written, "some people suggest that the multiracial embrace of Barack Obama, Oprah Winfrey, Michael Jordan, Will Smith, and others portends the end of racism. But this, as the writer Arundati Roy says, is like the President pardoning one turkey before Thanksgiving and then eating another—and

⁵⁷ 557 U.S. 557; *see also* Norton, *supra* note 50, at 215–20.

⁵⁸ 557 U.S. 557, 576–577; *see also* Norton, *supra* note 50, at 219.

⁵⁹ *See Ricci*, *supra* note 35, at 579 (2009) (Ginsburg, J., dissenting).

⁶⁰ *Id.* at 611. *See also* Norton, *supra* note 50, at 219 (discussing the court's exclusion of discussion of discrimination against African American firefighters).

⁶¹ Powell, *supra* note 14, at 791.

⁶² *See* Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality"*, 4 CLINICAL L. REV. 1, 38 (1997); Fran Quigley, *Seizing the Disorienting Moment*, 2 CLINICAL L. REV. 37, 53 (1995).

⁶³ *See* Angela Onwuachi-Willig, *Teaching Civil Rights: Teaching Employment Discrimination*, 54 ST. LOUIS U. L. J. 755, 760 (2010); Lani Guinier, *Admissions Rituals as Political Acts: Guardians at the Gates of Our Democratic Ideals*, 117 HARV. L. REV. 113, 145–50 (2003).

⁶⁴ *See* Eric Fong & Wsevolod W. Isajiw, *Determinants of Friendship Choices in Multiethnic Society*, 15 Soc. F. 249, 268 (finding that individual characteristics including higher levels of education and income are associated with higher likelihood of inter-ethnic friendships).

⁶⁵ Onwuachi-Willig, *supra* note 63, at 756. Although some pop icons like The Jackson 5, Marvin Gaye, or Stevie Wonder over the last 50 years enjoyed some cross-racial support, it was the support of the Black community and not their "cross over hits" that formed the base of those artists' success. *See* Maureen Mahon, RIGHT TO ROCK: THE BLACK ROCK COALITION AND THE CULTURAL POLITICS OF RACE at 159 ("By and large, African American artists must first demonstrate success in the black market before gaining access to the mainstream."). In contrast, artists like Jay-Z enjoy significant white support, as reports indicate that seventy to eighty percent of rap music consumers are white. *See e.g.*, Carl Bialik, *Is the Conventional Wisdom Correct in Measuring Hip Hop Audience?*, WALL ST. J. May 5, 2005 available at <http://online.wsj.com/article/0,,SB111521814339424546,00.html>; Julie Watson, *Rapper's Delight: A Billion Dollar Industry*, FORBES (Feb. 18, 2004), <http://www.nbcnews.com/id/4304261/#.UkgJuRZY7II>. This shift is reflective of the shift in the way younger generations view race.

America eats thousands.”⁶⁶ Race is becoming less significant in their personal lives, but they have become even further removed from awareness of their own racial privilege.

But progress in students’ personal lives does not mean that we all live in an environment void of racial significance. Many racial minorities do not have opportunities for interracial interactions on a regular, personal basis.⁶⁷ Their lives stand in vivid contrast to the post-racial narrative. Law students often have difficulty reconciling their belief that overt racial discrimination is a thing of the past with the institutional and structural racism that results in racial disparities in many aspects of society. They see these racial disparities, yet they see no racial significance.

In a recent study of Millennials’ views on race,⁶⁸ the majority of participants expressed the belief that race still shapes American life.⁶⁹ However, the study found significant racial differences in how this group thinks and talks about race.⁷⁰ Specifically, the study determined that “young people of color are more likely to independently bring up race, resources and access to them, while white Millennials are less likely” to make those connections.⁷¹ Black college students in the study indicated that they thought white people were often trying to get them to “stop whining” about race.⁷² Many participants of all races firmly believed that class is more important than race in predicting individual outcomes,⁷³ and some expressed the belief that “the fact that the upper class consists overwhelmingly of white people, while people of color are greatly overrepresented in the ranks of the poor, is either an historical accident or currently irrelevant.”⁷⁴ Finally, many in the study emphasized the importance of individual effort in changing the racial disparities they identified, and some white participants blamed individual behavior and “cultural factors” for the racial disparities.⁷⁵

A. Teaching Racial Narratives

Narratives have the ability to create understanding between the lawyer and client.⁷⁶ The understanding that comes with narratives is “based on identification with character and story that forces the listener to put aside their own points of identity. One experiences the narrative by getting caught up in the story.”⁷⁷ But, many of my law students seem unable to achieve this understanding because they

⁶⁶ Touré, *Inside the Racist Mind*, TIME IDEAS (Apr. 19, 2012) <http://ideas.time.com/2012/04/19/inside-the-racist-mind/> (last visited Dec. 2, 2014).

⁶⁷ See John Logan, *Separate and Unequal: The Neighborhood Gap for Blacks, Hispanics and Asians in Metropolitan America*, US2010 PROJECT (July 2011), available at <http://www.s4.brown.edu/us2010/Data/Report/report0727.pdf>.

⁶⁸ For this study, Millennials were considered to be people between the ages of 18 and 25.

⁶⁹ Dom Apollon, *Don't Call Them Post-Racial: Millennials Say Race Matters to Them*, COLORLINES, (June 2011), http://colorlines.com/archives/2011/06/youth_and_race_focus_group_main.html.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* For example, when speaking of a Latina colleague, one participant said:

She was saying, basically, she wants to move in with her boyfriend, and her mom is going crazy, she is saying, “You are doing the typical Mexican thing where you are gonna move in and get married, and your husband is gonna have to pay, and you are, like, just gonna pop out a bunch of kids,” and, like, she was telling me that that is kind of, like, what somewhat like Mexican ethic. So if you are gonna have, like, people who do that, they are not gonna make as much money, they are just gonna keep, you know, the income inequality is just gonna keep going.

⁷⁶ See Leslie Espinoza Garvey, *The Race Card: Dealing with Domestic Violence in the Courts*, 11 AM. U. J. GENDER SOC. POL’Y & L. 287, 302 (2003).

⁷⁷ *Id.*

cannot put aside their own views about race and become absorbed in the client's racial narrative. The students' beliefs, conscious or subconscious, in the fundamental fairness of our government institutions and the post-racial perspective of all of the players in the legal story, hampered their ability to understand the problems facing their clients and provide the representation their clients deserved.

Each year, I spend a significant amount of class time trying to prepare my students to recognize some of the cultural biases that they may bring to their representation and think about how those biases may impact their relationships with their clients. I do not single out race, but discuss it along with other issues of cultural difference the students might encounter in their cases. I have them read excerpts from "The Five Habits: Building Cross-Cultural Competence in Lawyers" by Susan Bryant.⁷⁸ I engage the students in a general discussion of the article and how they think it may impact or inform their work in the clinic. We also engage in several exercises designed to help them begin to understand and use the habits from Bryant's articles. They also read portions of "Law as Microaggressions" by Peggy Cooper Davis⁷⁹ and Lucie White's "Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G."⁸⁰ and discuss the way that race, class, and gender issues played into the examples discussed in the articles. Finally, we have discussions about the importance of challenging our own biases based on culture. The students say all of the right things during class discussions about lawyering across cultural differences.

But when it comes to their actual cases, this preparation often falls apart. In one case, the clinic is co-counsel to a class of plaintiffs in a school desegregation suit that was filed in the 1960s. The lawsuit seeks to enforce a court order mandating that this Southern school district desegregate its schools. Today, the Federal court has not declared the school district "unitary"⁸¹ because it continues to operate racially-identifiable schools; there are significant resource disparities between the "white schools" and the "black schools," and substantial differences in the educational opportunities provided to the black and white children.

While working on the case, some of the students and I traveled to the school district to meet with members of the plaintiff class and tour the schools. To me, the role that racial discrimination continued to play in depriving our clients of their constitutional rights was unmistakable. The history of *de jure* segregation in the school system was well-documented. The continuing disparities between the "black schools" and "white schools" were stark. And the black community's stories about the unequal resources provided to their children compared to the opportunities available to white children were heartbreaking. Yet, many of my students did not believe that race was a continuing factor in the disparate treatment of black and white children. My students believed there was no intentional racial discrimination by those currently running the school system, both as an evidentiary matter and according to their personal opinions.⁸²

The continuing disparities between the "black schools" and "white schools" were clear and stark. Additionally, the black community's stories about the inequality in the resources provided to their

⁷⁸ 8 CLINICAL L. REV. 33 (2001).

⁷⁹ 98 YALE L.J. 1559 (1989).

⁸⁰ 38 BUFF. L. REV. 1 (1990).

⁸¹ "Unitary status" is a term used in school desegregation cases after a judge has declared that a school is no longer operating and has eliminated vestiges of a dual or segregated school system "root and branch." *Green v. Cnty. Sch. Bd. of New Kent Cnty., Va.*, 391 U.S. 430, 438, 441 (1968).

⁸² The students were aware that a showing of intentional discrimination was not required in the case. Rather, the school district bore the burden of proof to show that racial disparities are not proximately caused by prior *de jure* discrimination and segregation. *See Freeman v. Pitts*, 503 U.S. 467, 475-77 (1992) (suggesting current racial segregation can be assumed to be proximately caused by the school district's previous *de jure* segregation).

children compared to those available to white children were heartbreaking and provided further evidence of discrimination, if only anecdotal.

No member of the current school board had used a racial slur or referred to the schools by the race of the students. No member of the current school board had stated that black children should not attend school with white children. In fact, there was one black member of the board, and all of the decisions board were facially race-neutral, having been made while the district was under a court order.

Although the students interacted well with our clients and never shared their doubts with them, the students' skepticism came out in our supervision meetings. My students shared my outrage at the poor conditions in the predominantly black schools. They were saddened by the thought that those students did not have the same opportunities for academic and life success that they themselves had enjoyed. Yet, in discussing the causes of these disparities the law students focused on what the plaintiffs or community could do to improve the situation. They told me that black residents should speak up and be more vocal about their needs, be more active in the work of the school board, and stop dwelling on the past and focus on the present. The students were focused on getting a particular outcome for the clients, but not on the root cause of the disparity the clients faced or how to prevent a recurrence of the inequality. In the end, these students believed that if parents in the black community followed the rules like other parents in the school district, the resources would eventually be distributed fairly. After all, they said, no one harbored any ill will towards those families. They also repeated their concerns that although there were troubling disparities between the clearly-identifiable "black schools" and the clearly identifiable "white schools," there was no "evidence" that the disparities continued to be racially motivated.

The students rationalized the racial disparities they saw. In multiple supervision meetings, I explored the students' conclusions that racial discrimination was not a continuing problem facing their clients. I asked the students what role they saw race discrimination playing in the problems their clients faced and in their own representations of clients. The students assumed that the institutions with which the parents and families interacted were fundamentally fair, free of the taint of racial discrimination. They saw no reason to question that assumption. When I asked them about the racial disparities we saw during our visit and the documented history of racial discrimination, the students recognized that the black families lacked an effective voice in the distribution of educational resources, but attributed that to a lack of participation, differences in socioeconomic class, and educational background between the white and black families in the county. They sympathized with the school board's need to set budget priorities in these tough economic times, but never questioned the board's racial neutrality in setting those priorities. The students clearly recognized that something was at work in creating the disparities; they just did not see racial discrimination as a factor. Additionally, when I encouraged them to think about ways to address the clients' beliefs that race was an issue in the case, the students voiced their reluctance to raise race discrimination claims and expressed concern about how the other characters in the case would respond to law students claiming that racial discrimination continued to be at play.

I struggled with these students' responses, as I could not envision a case with a more obvious race component – the history, the facts, and the law all explicitly dealt with race. Yet, the students instead focused primarily on the lack of proof of explicit racial animus on the part of the current parties. Although I began supervision sessions with the hopes of being non-directive, eventually, I became instructive and explained the central role that race played in the clients' situation and why removing race from the discussion would never achieve justice for their clients. I also played a central role in crafting an advocacy plan that addressed some of the underlying racial issues.

If the law students were outraged at the quality of education the black students were receiving and engaged in representing the clients to get more educational resources, what difference does it make that they did not buy into the centrality of race in the clients' legal problems?

In the end, my law students' post-racialism affected their representation in the school desegregation case and the employment discrimination case discussed earlier. During the semester, I taught the students about client-centered lawyering. We read and explored articles about cross-cultural lawyering. During class discussions, they all appeared to understand and embrace the importance of these approaches in helping their clients address their legal issues. The students were attentive to cross-cultural issues and client-centeredness in their clinic cases that raised issues of gender, religion, age, and disability discrimination. The challenges these students faced in their representation were not about rejecting the importance of cross-cultural lawyering or rejecting the belief that society continues to discriminate against vulnerable populations. Rather, the employment of a post-racial analysis, even when employed by students conscious of continuing inequalities and the need to be cross-cultural and client-centered advocates, inhibited their ability to effectively develop a trusting and effective relationship with clients because of the students' reluctance to acknowledge the role of racial discrimination in the inequalities they saw. That post-racial analysis also erects barriers to effective representation by limiting students' thoughts about potential legal options and courses of action. Here, the students were fixated on approaches to the clients' legal problems that did not involve challenging the racial discrimination at issue. They did not see discrimination; they could not see beyond their own lived experiences, substituting their race-neutral view of the world for the clients' narratives.

To be clear, there is nothing wrong with race-neutral theories. But, the students' insistence on viewing the facts in these cases as race-neutral masked the raced nature of the problems facing our clients, curtailing the range of options the students considered as they tried to make sense of the clients' stories and goals through the lens of their own post-racial perspective. The students saw the marginalization of people of color, but could not see race as being responsible. To these students, the ambiguity in the facts proved the lack of any racial animus. This is not at all surprising, as we tend to interpret ambiguous evidence in a way that is consistent with our own worldview.⁸³ They ignored the nuanced ways in which race impacted the issues they addressed and the lives of their clients. Faced with a history of discrimination, they chose to understand the history merely as past background and not explore its relationship to the current challenges facing their clients. In denying the relevance of race, the students allowed white privilege to persist and racism to continue unchallenged, ultimately doing a disservice both to the clients and the community.

Finally, the students' post-racial orientation inhibited the development of a positive lawyer-client relationship. In the end, the burden was placed upon the clients to prove the relevance of race and to thus overcome the students' post-racial orientation.

IV. POST-RACIALISM AND CROSS-CULTURAL LAWYERING

A. The Significance of Culture in Lawyering

*"Culture is the logic by which we give order to the world."*⁸⁴

Culture has been defined as "the differences between individuals that are related to different backgrounds, value systems, religions, classes, ethnicities, races, or other factors that contribute to a

⁸³ See Selmi, *supra* note 11, at 852.

⁸⁴ Bryant, *supra* note 78, at 40.

person's experience of the world."⁸⁵ We all attach meaning to what we hear and observe based on our own cultural perspective. Yet, people who are members of a dominant culture – those who subscribe to the established and generally accepted social customs and norms – often hesitate to identify themselves as cultural beings.⁸⁶ The lack of cultural awareness leads to a reluctance to see how their culture shapes their attitudes, biases, and beliefs, impacting how they view and interact with the world.

The post-racial lens through which many law students view the world is a dominant social and legal culture. It is one aspect of the logic through which they give order to the world. My students' views of the world shape not only their own experiences, but also how they view and analyze the experiences of others. Unfortunately, although many law students are able to recognize their own racial or ethnic culture, even if they question its relevance to their role as lawyers, they often ignore the fact that they are strongly influenced by larger societal culture. Moreover, they forget that the legal system has its own culture; with additional norms that give meaning to what law students see, hear, and do.⁸⁷ A law student may recognize legal culture as a series of professional norms and procedures, forgetting that legal culture also includes an overarching attitude and approach to the world. It is critical for students to develop a cultural self-awareness and account for the impact this cultural perspective may have on their lawyer-client relationships.

Like every other member of our society, lawyers and law students attach meaning to the words, actions, and behaviors of others based on their own cultural perspective.⁸⁸ Their experience as dominant members of "post-racial society" and the legal training that law students receive converge to mask cultural differences and the relative privilege they enjoy.⁸⁹ These attendant cultural attitudes and beliefs can create expectations that allow law students to attach significance to a client's experience based on that law student's cultural background, or prompt the law student to discount the significance of the client's experience based on the law student's adoption of certain cultural norms and beliefs. Michelle Jacobs discusses the impact "expectancies" have on the lawyer-client relationship.⁹⁰ According to Professor Jacobs, expectancy is "a belief, hypothesis, theory, assumption or accessible construct that is brought from a previous experience and is used either consciously or unconsciously as a basis for interpreting or generating behavior in the present context."⁹¹ In the context of legal representation, a law student's own cultural background can create expectancies, shaping how the student views the client's problems, how the student frames the legal issues, and the potential legal strategies the law student may pursue.⁹²

In my clinical examples discussed earlier, the students' "expectancies" in the context of their own post-racial culture hampered their ability to acknowledge and address the role that race played in the controversies their clients faced. Their cultural perspective prompted the students to substitute their own narrative, erasing the significance of race and racial discrimination from the story, for the narrative the client told and lived. And although those students had learned about and discussed the importance of

⁸⁵ Antoinette Sedillo Lopez, *Making and Breaking Habits: Teaching (And Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH. U. J. L. & POL'Y 37, 39 (2008).

⁸⁶ See Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369, 398 (2005).

⁸⁷ Naomi Mezey, *Law as Culture*, 13 YALE J.L. & HUMAN. 35, 45–57 (2001).

⁸⁸ Michelle S. Jacobs, *People from The Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 377 (1997).

⁸⁹ Weng, *supra* note 86, at 398.

⁹⁰ Jacobs, *supra* note 88.

⁹¹ *Id.* at 381.

⁹² *Id.*

developing their ability to represent clients across cultures, for them those cross-cultural lawyering *skills* did not readily translate into the need to challenge their own underlying cultural assumptions about the significance of race.

B. Cross-Cultural Lawyering and the Development of Lawyering Skills

Many scholars have written about habits and behaviors that impede communications between a lawyer and client from different cultures and offered thoughts on how to help law students increase their awareness of cultural differences and the impact those differences may have on representation.⁹³ Lessons of cross-cultural lawyering, or cultural competence, encourage students to learn about the client's culture, focusing on the ways that differences between the client's culture and the student's culture can impact and impede the representation.⁹⁴ This client-focused information includes cultural views on eye contact, physical space, and reaction to authority figures.⁹⁵ With the current approach to cross-cultural lawyering, the goal is to make consideration of the lawyer's and client's culture a normal part of the lawyer's thought process.

Cultural self-awareness is a key element of cross-cultural lawyering, helping lawyers to "recognize that as cultural beings, we may hold attitudes and beliefs that can detrimentally influence our perceptions of and interactions with individuals who are ethnically and racially different from ourselves."⁹⁶ Not only must the student make a habit of identifying and exploring his or her client's culture, the student must learn about himself or herself as a cultural being.⁹⁷ The client's and lawyer's individual cultures are seen as central, and the lawyer is encouraged to think about how those cultures may impact the representation.⁹⁸

This approach to cross-cultural lawyering has been powerful in helping students think about the ways in which culture can impact their interactions with their clients and impede effective representation. But, the focus on the process and dynamics between the lawyer and client does not go far enough to deal with post-racialism and the subtle, often invisible, forms of racism at play in discrimination cases. And while it may help some students notice racial differences, this approach requires adjustment to adequately address the culture of race-neutrality. Cross-cultural lawyering asks us to view the world from our client's perspective. Why isn't encouraging students to identify with their client enough? Because students simply cannot identify with their client if they think race is not important or that this country does not still struggle with racism. Students may acknowledge that their client is a racial minority, but they cannot grasp its meaning for their client because the students misunderstand the nature of racism and the impact that racial differences have on daily life. 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

⁹³ See, e.g., Lopez, *supra* note 85, at 39; Weng, *supra* note 86; Paul R. Tremblay, *Interviewing and Counseling Across Cultures: Heuristics and Biases*, 9 CLINICAL L. REV. 373 (2002); Bryant, *supra* note 78; Jacobs, *supra* note 88. Some of the articles make mention of the importance of acknowledging sameness and not falling into a trap of making assumptions of shared experience. See e.g., Alexis Anderson, Lynn Barenberg & Carwina Weng, *Challenges of "Sameness": Pitfalls and Benefits to Assumed Connections in Lawyering*, 18 CLINICAL L. REV. 339, (2012) (discussing the dangers of assumed similarity and the effects on law students' interactions with clinic clients).

⁹⁴ Bryant, *supra* note 78, at 39–41.

⁹⁵ Weng, *supra* note 86, at 369.

⁹⁶ Weng, *supra* note 86, at 372; see also Jacobs, *supra* note 88, at 405; 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, 1810 (1993) (arguing that increased knowledge of "personal identification issues" improves an attorney's ability to effectively communicate with her client).

⁹⁷ Bryant, *supra* note 78.

⁹⁸ *Id.*

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.

Many of our students do not perceive their beliefs on race as cultural, but rather as a reflection of a universal truth. They are not aware of the impact that this cultural perception has on the way they approach the world or the way they approach their client's problems. But, if my students are to effectively work for justice and represent their clients, I need to challenge that lack of awareness of the racial realities of the world they live and work in.

C. The Need for a More Aggressive Approach to Cross-Cultural Lawyering

Cross-cultural lawyering rightfully encourages students to acknowledge their culture, but never encourages them to reject or give up any aspect of that culture. But, to use cross-cultural lawyering in a way that promotes justice, we need to not only have our students acknowledge their blinders, but, in some cases, to take those blinders off. Our current approach to cross-cultural lawyering is a non-confrontational way to challenge a student's prejudices and biases, neutralizing those biases in a way that may make it easier for students to acknowledge them. Rather than making students feel that their perspective is wrong, we teach them a set of skills and tools that can be used to improve their interactions with clients.⁹⁹

Teaching awareness of cultural differences and attendant skills is not enough in this purportedly post-racial world. The challenges of civil rights lawyering in a "post-racial" society are not just issues of communicating across cultural barriers, but getting students to acknowledge, address, and ultimately move beyond their cultural assumptions about race-neutrality. In order for us to get our students to confront race issues in their cases and after they leave the clinic, we must be willing to challenge their post-racial beliefs and the way in which these beliefs help to perpetuate racism, inequality, and white-privilege.

Although questioning a student's cultural beliefs may be frowned on by some in the legal academy, challenging their post-racialism is consistent with the broader goals of clinical legal education and with the goals of my civil rights clinic. Promoting justice is central to clinical legal education. A fundamental goal of clinical legal education is "to provide professional education in the interests of justice"¹⁰⁰ and "everything we do as law teachers suggests something about justice."¹⁰¹ Indeed, the report of the American Bar Association's Task Force on Law Schools and the Profession, generally referred to as the MacCrate Report, identified striving to promote justice, fairness, and morality as one of the fundamental values of the legal profession.¹⁰² Law school clinical programs remain the primary source of education when it comes to the social responsibility of lawyers.¹⁰³

⁹⁹ *Id.* at 63.

¹⁰⁰ Stephen Wizner, *The Law School Clinic: Legal Education in the Interest of Justice*, 70 *FORDHAM L. REV.* 1929, 1935 (2002).

¹⁰¹ See Aiken, *supra* note 62, at 3.

¹⁰² AM. BAR ASS'N. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT - AN EDUCATIONAL CONTINUUM (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap) at 236 (1992).

¹⁰³ See Wizner, *supra* note 100, at 1929 (arguing the law school clinic is the primary place for students to learn how to be ethical and socially responsible lawyers); New York State Judicial Institute, *Partners in Justice: A Colloquium on Developing Collaborations Among Courts, Law School Clinical Programs and the Practicing Bar*, (May 2005). Available at courts.state.ny.us/ip/partnersinjustice/index.shtml. See also Introduction to Clinical Education, (2005), at 9-12 available at courts.state.ny.us/ip/partnersinjustice/clinical-legal-education.pdf.

While the goals of clinical legal education have broadened, social justice remains central to many clinical programs, including mine.¹⁰⁴ One of my primary teaching goals is to inspire my students to seek more justice in society and to leave my clinic “justice ready.”¹⁰⁵ Jane Aiken writes that clinical education helps to get students justice ready; to be aware that everything has either a just or unjust effect, to be able to identify injustice when they see it, and to develop the skills and critical and strategic thinking necessary to remedy injustice.¹⁰⁶ Through clinical education, we can deeply impact how students view social problems and craft solutions.¹⁰⁷

D. Towards Immersion Lawyering

The standard battery of clinical teaching approaches does not go far enough to accomplish the many goals of clinical legal education when handling claims of racial discrimination. We cannot be non-directive in discussions about race or our supervision sessions when students approach their work from a post-racial perspective. Exposing them to situations that we believe raises racial issues and then asking whether race plays any role in the interactions or outcomes is not enough. Nor is it enough to show them that there are racial disparities because they may not make the leap to identifying racism. Clinical professors need to bring students deeper into the causes of the disparities and make the connection to ongoing racism explicit.¹⁰⁸

Anthony Alfieri has commented that training the next generation of advocates to be thoughtful and effective civil rights and poverty lawyers requires that they learn a new analytic framework, one that stresses the importance of context and abandoning neutrality.¹⁰⁹ While Professor Alfieri offered his analysis in the context of teaching law students how to counsel marginalized clients to “uncover” their “difference-based identities” to advance a greater societal interest,¹¹⁰ the lessons apply equally when training “post-racial” generation civil rights and social justice lawyers. Here, students must also come to terms with the workings of systemic and institutional racism and question its “neutrality” in the face of subtle, yet equally harmful racial discrimination.¹¹¹

To reinforce contextual lawyering, students must first immerse themselves in their racially diverse clients’ lives. Contextual lawyering incorporates client-specific variables, such as race, in addition to broader social considerations.¹¹² In the past, I had taught cross-cultural lawyering skills and then had

¹⁰⁴ Although clinical legal education often focuses on social justice, it does not have to be a goal of every clinical program. Still, many “transactional” clinical programs also teach and advance social justice by transcending the representation of their individual client to achieve a larger societal impact. See Praveen Kosuri, “Impact” in 3D - Maximizing Impact Through Transactional Clinics, 18 CLINICAL LAW REV. 1 (2011) (arguing that transactional clinics can do impact work and teachers of such clinics ought to expand their understanding of what impact work is).

¹⁰⁵ Jane H. Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C. J.L. & SOC. JUST. 231 (2012).

¹⁰⁶ *Id.* at 231–32.

¹⁰⁷ See *id.* at 233 (arguing that clinical faculty is well suited to teach students to incorporate justice as a major component of their practice because clinics are all about how one ought to practice the law).

¹⁰⁸ Helping to bring law students out of their post-racial malaise should not fall solely on clinical legal educators. Just as legal education is broadly exploring ways to integrate skills teaching into all three years of law school, law professors must explore ways to challenge post-racialism throughout the law school curriculum. Limiting discussions of the continuing importance of race and the realities of racial discrimination to clinical education will fall short because not every law student has an opportunity to participate in a clinical program and issues of race are relevant to every law school course and should be raised in context.

¹⁰⁹ See Anthony V. Alfieri, *(Un)covering Identity in Civil Rights and Poverty Law*, 121 HARV. L. REV. 805, 836 (2008) (exploring four theoretical frameworks to integrate a critical theory of identity and politics into the practice of law).

¹¹⁰ See *id.* at 808.

¹¹¹ See *id.* at 837 (discussing the need to challenge neutrality when counseling clients to “uncover”).

¹¹² *Id.* at 836.

discussed specific bias issues – religious, gender, race, class – as they arose in our cases. To meet the goals of my clinic, I need to implement immersion lawyering, through which my students will delve into the nature of racial discrimination. Additionally, I need to more deliberately teach students about the history, social science, and context of racial discrimination, themes that are foreign to many of them. These themes reinforce the notion of a racially-divided America, in which our clients live. By exposing students to this reality, I help them move away from their preconceived racial notions and better understand our clients' experiences, thus allowing for more effective lawyering. Students should not change any part of their clients' narrative to placate those uncomfortable with discussions about race, nor to achieve social cohesion.

V. CONCLUSION

Client-centered, culturally competent lawyering cannot coexist with the dominant culture's view of race as irrelevant. Students need to acknowledge the relationship of race to power and privilege, and the influence that their racial attitudes can have on the attorney-client relationship.¹¹³ Racism is real, and clients cannot be effectively represented, as envisioned by the client-centered model, if the client's attorney does not recognize this reality.

To represent racial and ethnic minorities, law students must become familiar with the realities of their clients and the role of race in the world. They must abandon their view of the world as color-blind and "neutral" and acknowledge that the "post-racial" narrative is still a goal, not a reality. This requires a fundamental reassessment of their perspective, forcing them to grapple with the complexities of race. Helping students challenge their beliefs in the existence of a post-racial society need not require them to abandon their efforts to realize this goal. The students must understand that moving closer to their ideal post-racial society requires an awareness of race and racism, even in its more subtle forms.¹¹⁴ They need to focus on race and be more attentive to racial inequalities. Not doing so may only worsen the problems facing society and their clients. If the relationship between lawyers and clients replicate the oppression imposed on clients by society, we cannot effectively achieve any measure of social justice through lawyering.¹¹⁵

¹¹³ See Aiken, *supra* note 105.

¹¹⁴ See Selmi, *supra* note 11, at 855.

¹¹⁵ See Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic's Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with a Social Justice Mission*, 16 S. CAL. REV. L. & SOC. JUST. 23, 25 (2006).