

Brooklyn Law School  
**BrooklynWorks**

---

Faculty Scholarship

---

2022

## **Race and Lawyering in the Legal Writing Classroom**

Danielle L. Tully

Follow this and additional works at: <https://brooklynworks.brooklaw.edu/faculty>



Part of the [Law and Race Commons](#), and the [Legal Writing and Research Commons](#)

---

## RACE AND LAWYERING IN THE LEGAL WRITING CLASSROOM

L. Danielle Tully\*

It's September 2021. Race walks into my classroom.<sup>1</sup> It walks in with me.<sup>2</sup> It walks in with my students. Race hangs on the walls, lingers in the air, and moistens the soil. In an alternate narrative, one with a different historical trajectory, where those who came before us made vastly different choices, we would find ourselves facing a different landscape. But we are here, in this moment. So race is in my legal writing classroom.<sup>3</sup> To pretend otherwise would be like ignoring a legally significant fact in my research or when counseling a client. As a professor who teaches critical lawyering skills, such an error would be, at best, incompetent, at worst, malpractice.

To say nothing of race fosters a perception that it is siloed in law—“rather than seeing it as something that pervades, underpins or

---

\* L. Danielle Tully is an Associate Professor of Legal Writing at Brooklyn Law School.

<sup>1</sup> See Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635, 652 (2008) (“In this racialized world, race enters the law school classroom even when faculty do not name or discuss it.”).

<sup>2</sup> My race, among other identities, informs my cognitive and emotional processes. I am a female, White, cis-gendered, financially stable, law professor. I attended public, parochial, and private educational institutions and am a first-gen lawyer and second-gen college graduate on both sides. I have been in a mixed heritage family for nearly two-thirds of my life and am raising two children who identify as Black. Together we have lived, worked, and gone to school on three continents in a long list of countries. I bring all of this—and much more—to my work as an advocate, teacher, and scholar. I acknowledge that my experiences are my own, and I honor the experiences and identities my students bring with them to our community.

<sup>3</sup> Although this essay addresses race, race and our experience of it are neither flat nor static. See Julia Hernandez, *Lawyering Close to Home*, 27 CLIN. L. REV. 131, 146-47 (2020) (“Identity characteristics often embody experiences, but they do not stand for any particular experience, values, or goals. They are important on their own, but such broad group identifiers are neither protective of specific interests, nor elucidative of the peculiar insights of a lived experience.”). Additionally, race both intersects with and amplifies other aspects of an individual’s identity. See Leslie G. Espinoza, *Multi-Identity: Community and Culture*, 2 VA. J. SOC. POL’Y & L. 23, 25 (1994) (“Understanding personal identity, however, requires expression of multiple and distinct defining categories and the recognition of a unifying concept—the individual identity.”).

structures” all areas of it.<sup>4</sup> To say nothing of race reinforces a White-dominant social culture that obscures power and reinforces a false narrative that law—not to mention the study and practice of it—is neutral.<sup>5</sup> To say nothing of race communicates to my students that their lived experiences are not valuable to their legal education or to their law practice. Both conclusions are false. To say nothing of race perpetuates law school as a White space.<sup>6</sup>

So how do I address race? Carefully, thoughtfully, self-reflectively, and honestly. And also, despite effort and intention, inadequately. Addressing race in my first-year legal writing course is an ever-changing work in progress. First, I approach my classroom as a “community of practice.”<sup>7</sup> Habituating law students to the discourse of law is a key learning objective of my first-year legal writing curriculum. Echoing the words of Professors Chris Rideout and Jill Ramsfield, I acknowledge that what I teach “takes place within a discourse that is complex and highly conventionalized and which is also closely constrained by the institutional characteristics of law—the roles of lawyers, the organization of law practice, the purposes of law as a social and economic institution, and the underlying ideology of

---

<sup>4</sup> Kathryn M. Young, *Understanding the Social and Cognitive Processes in Law School that Create Unhealthy Lawyers*, 89 *FORDHAM L. REV.* 2575, 2581 (2021).

<sup>5</sup> Additionally, to ignore Whiteness specifically reinforces White primacy. The erasure of Whiteness from discussions of law and the legal system spotlights “race” as “other” and anything but White. See Armstrong & Wildman, *supra* note 1 at 641 (discussing the operation of whiteness in the law and in law school classrooms).

<sup>6</sup> See generally Wendy Leo Moore, *The Mechanisms of White Space(s)*, 64 *AM. BEHAVIORAL SCIENTIST* 1946, 1951-57 (2020) (concluding that law schools are raced White and, at the intersection of law and education, create a totalizing socialization that reproduces inequality). Expanding on her thesis, law professor and scholar Bennett Capers has argued the legal institutions, even HBCU’s, function as “white spaces.” Bennett Capers, *Law Schools as White Space*, 106 *MINN. L. REV.* 7, 15 (2021). See also Armstrong & Wildman, *supra* note 1 at 658 (noting “the academy replicates itself as a predominantly white institution serving predominantly white interests. This replication impacts how students study law, and it further reproduces itself as they enter the legal profession.”).

<sup>7</sup> See Mary Helen McNeal, *Slow Down, People Breathing\*: Lawyering, Culture and Place*, 18 *CLIN. L. REV.* 183, 184-85 (2011) (describing “communities of practice” as groups of lawyers who share specific commonalities that can include practice areas, geographic locality, and cultural affinity and who develop common standards and expectations).

the law.”<sup>8</sup> Within my legal writing classroom, culture is derived, in part, from the “containing culture” of the law school and also the profession.<sup>9</sup> And at the same time, my students and I can shape that containing culture by how we create our community of practice. Like law, culture evolves.<sup>10</sup>

I strive to cultivate cultural change through the syllabus & course policies, introductory questionnaire, core skills focus, assessment & feedback, and reflective practice.

### I. Signaling Values in the Syllabus & Course Policies

Like many legal writing professors, my syllabus and course policies are not merely a bulleted list of topics, due dates, and requirements.<sup>11</sup> Together they are a map through our journey. They situate our work together and acknowledge that we will explore cultural self-awareness,<sup>12</sup> attorney well-being, and professional identity. They make clear that learning the law requires us to grapple with many issues, including race, societal inequities, values, and power. They acknowledge that members of our community have faced both individual racism and structural racism. These documents assert that effective lawyers understand the role culture, context, and cognition play in law, legal systems, and the lawyering process. Finally, my syllabus asserts that learning the law requires that we grapple with the historical impact law has had on marginalized and vulnerable populations as well as lawyers’ roles and responsibilities in movements for social change.

---

<sup>8</sup> J. Christopher Rideout & Jill J. Ramsfield, *Legal Writing: A Revised View*, 69 WASH. L. REV. 35, 80-81 (1994).

<sup>9</sup> See McNeal, *supra* note 7, at 187 n. 17, 188 (defining “containing culture” and noting “[l]awyers practice law in ways that are consistent with their communities’ underlying values, mindsets, and habits.”). Professor Naomi Mezey has argued that “[l]aw can be seen as one (albeit powerful) institutional cultural actor whose diverse agents (legislators, judges, civil servants, citizens) order and reorder meaning.” Naomi Mezey, *Law as Culture*, 13 YALE J.L. & HUMAN. 35, 45 (2001).

<sup>10</sup> See Asciano Piomelli, *Cross-Cultural Lawyering by the Book: The Latest Clinical Texts and a Sketch of a Future Agenda*, 4 HASTINGS RACE & POVERTY L.J. 131, 135 (2006) (analogizing culture to a current that we move with and against, and even redirect).

<sup>11</sup> Legal Writing Syllabus & Course Policies (Fall 2021) (on file with author).

<sup>12</sup> I define cultural self-awareness as an ability to recognize and understand how culture influences one’s own values, beliefs, and judgments.

## II. Fostering Belonging with the Introductory Questionnaire

Students learn early and often that much of what they experienced before entering law school is meant only for the margins—if at all.<sup>13</sup> In fact, many introductory questionnaires signal to students that certain status markers—like where they earned their undergraduate degree—should be shared, while other experiences—like their stint as a short-order cook—should be hidden. When students have difficulty reconciling their personal identities with their lawyerly identity, they may experience harmful psychological dissonance.<sup>14</sup> They may also lose touch with their reason for entering law school.<sup>15</sup>

Although imperfect, through my introductory questions, I try to communicate to my students that their pre-law experiences are valuable and that all those experiences are deep repositories of knowledge and skill from which they can draw. Recent questions include:

- Tell me what inspired you to pursue a law degree.

---

<sup>13</sup> See Susan Bandes, *Feeling and Thinking Like a Lawyer: Cognition, Emotion, and the Practice and Progress of Law*, 89 *FORDHAM L. REV.* 2427, 2427-28 (2021) (recounting an experience in her 1L Contracts course and the gap between the legal principle she jotted down and her feelings about the legal outcome).

<sup>14</sup> See Elizabeth Bodamer, *Do I Belong Here? Examining Perceived Experiences of Bias, Stereotype Concerns, and Sense of Belonging in U.S. Law Schools*, 69 *J. LEG. EDUC.* 455, 467-77 (2021) (relying on the 2018 Law School Survey of Student Engagement [LSSSE] dataset to explore law students' sense of belonging in law school and concluding that "minoritized students" have a lower sense of belonging in law school, which has "implications for persistence, engagement, and achievement"); Susan Grover & Nikeshia Womack, *Stories at the Edge of Class—Marginalization in the Law School Experience*, 16 *SEATTLE SOC. JUST. J.* 41 (2017) (gathering stories of how students across the United States experience law school and discussing the marginalizing impact on "outsider" students); Sarah Schendel, *Listen! Amplifying the Experiences of Black Law School Graduates in 2020*, 100 *NEB. L. REV.* 73, 83-87 (2021) (reporting results of her 2020 survey of 122 Black law school graduates, including students' experience with racism's physical, mental, and emotional toll).

<sup>15</sup> ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO THINK LIKE A LAWYER* 27 (2007) (noting that students "los[e] touch with some fundamental aspects of what brought [them] to law school in the first place: concerns with justice, fairness, or helping people.").

- Tell me a little bit about how you approach problem solving. You can do this by explaining a problem that you solved or by explaining your process. You can also pick another approach.
- Briefly describe your writing process.
- Do you have any prior experience with the legal profession, legal system, or legal work? Please explain.
- Briefly describe the work experience (paid and unpaid) that you bring to law school. What did you learn from it that will help you? You can approach this any way you like. Tell me one story or list them all.
- What are you looking forward to this semester and what causes you to feel concern or apprehension?
- Please share any other information that you would like me to know as your professor.

My goal with this survey is to encourage students to connect their pre-law selves to their law selves.<sup>16</sup> I also share my own answers to the survey questions as a way to build relationships with my students and to demystify the professoriate. When we take time to share our authentic personal and professional identities with our students, we contribute to our community of practice as whole, complex people.<sup>17</sup> Doing so fosters belonging.

Belonging is subjective. It is the sense that one *feels* a part of their community.<sup>18</sup> These feelings of fitting in “are linked to their ideologies of themselves as racial, ethnic, cultural, and gendered beings within society.”<sup>19</sup> A student’s sense of belonging is also tied to their

---

<sup>16</sup> For additional details on the introductory questionnaire see L. Danielle Tully, *Professional Identity Formation as a Power Skill*, 1 PROCEEDINGS No. 2 (Winter 2020), <https://law.uoregon.edu/issue-2-professional-identity-formation-power-skill> [<https://perma.cc/A5ZP-8W4M>].

<sup>17</sup> As an introvert and a private person, opening up isn’t always easy. So far, it has been worth the personal discomfort.

<sup>18</sup> See Bodamer, *supra* note 14, at 458-59 (explaining “sense of belonging” as defined in sociology of education).

<sup>19</sup> *Id.* at 460. According to the 2020 LSSSE report, 23% of Black law students surveyed say their schools do “very little” to create a supportive environment for race/ethnicity. LSSSE, DIVERSITY AND EXCLUSION: 2020 ANNUAL SURVEY RESULTS 7 (2020), <https://lssse.indiana.edu/wp-content/uploads/2020/09/Diversity-and-Exclusion-Final-9.29.20.pdf>, [<https://perma.cc/F5RM-S8XT>] (hereinafter LSSSE SURVEY 2020).

experiences of “stereotyping, implicit and explicit bias, and prejudice.”<sup>20</sup>

Specifically fostering our students’ sense of belonging is essential because it directly impacts their academic and educational satisfaction.<sup>21</sup> In addition, intentionally fostering belonging is particularly important because law schools—and the legal profession generally—remain profoundly segregated spaces.<sup>22</sup> Recent data from the Diversity and Inclusiveness module of the 2020 Annual LSSSE Survey further suggest that a law student’s race and gender impact how they view their law school’s efforts to support racial/ethnic diversity.<sup>23</sup> For example, the data also show that “White students are more likely to have a strong sense of belonging than their classmates of color.”<sup>24</sup> This conclusion is not surprising. As Elizabeth Bodamer notes: “Minoritized students are expected to excel in law school burdened by doubt, presumptions of incompetence, subtle implicit bias, and the pervasive stereotypes that hijack their interactions with others.”<sup>25</sup>

---

<sup>20</sup> Bodamer, *supra* note 14, at 463. Bodamer further notes that students’ experiences of “perceived discrimination and the awareness of stereotypes have a significant effect on an individuals’ performance and well-being.” *Id.* at 462.

<sup>21</sup> *Id.* at 457 (citing a recent study using LSSSE data and noting the study “also revealed that law students from disadvantaged background reported weaker relationships with faculty, staff, and peers . . . .”); *See generally* Tsedale M. Melaku, *YOU DON’T LOOK LIKE A LAWYER: BLACK WOMEN AND SYSTEMIC GENDERED RACISM* (2021) (using ethnographic research to explore how raceXgender impact Black women’s experience in the legal profession).

<sup>22</sup> White men and women are over-represented in the legal profession. AMERICAN BAR ASSOCIATION, *ABA Profile of the Legal Profession* (2021), <https://www.americanbar.org/content/dam/aba/administrative/news/2021/0721/polp.pdf> [https://perma.cc/R7Z6-2LN4] (indicating that men represent approximately 67% of the profession and 85.4% of all lawyers are White). However, law schools have become more racially diverse in the last decade. *See id.* at 56 (noting that between 2011 and 2020 the percentage of students pursuing a JD degree who identify as students of color increased from 25% to 32%). In addition, since 2016 women have comprised the majority of law students; in 2020 they made up 54.1% of the enrolled JD student population. *Id.* at 55.

<sup>23</sup> The 2020 Annual LSSSE Survey report notes that “[a]lmost a quarter (23%) of Black law students nationwide say their law schools do ‘very little’ to create a supportive environment for race/ethnicity” whereas “32% of White students believe the schools do ‘very much’ to support racial/ethnic diversity[.]” LSSSE SURVEY 2020 *supra* note 19, at 7.

<sup>24</sup> *Id.* at 9.

<sup>25</sup> Bodamer, *supra* note 14, at 478.

My introductory questionnaire can't remedy legal education's history of exclusion, but it can signal (in some small way) that my students' multifaceted experiences and identities are welcome in my classroom. My hope is that they will also feel that they belong in law school and that there is a place for them in the profession.

Expanding on these introductory questions, throughout the year, I use various exercises to help students explore how our identities impact lawyering. One such exercise relies on a 2014 TED Talk by Taiye Selassi, "Don't ask me where I'm from, ask where I'm a local."<sup>26</sup> This exercise asks students to consider what makes up one's identity. Using the TED Talk as inspiration, my students consider how rituals, relationships, and restrictions impact their own identities and to find connections across perceived difference. They also consider how these concepts of identity and perception impact lawyering and the law.

### III. Developing "Critical" Thinking through Core Skills

Although the legal writing discipline has long critiqued hierarchies within law schools and called attention to legal writing as a "pink ghetto"—a devalued space within the law school cordoned off as "women's work" where work is neither secure nor fairly compensated—when I began teaching legal writing six years ago, I was surprised to learn that the *discipline* had largely ignored race and power.<sup>27</sup> Various legal writing scholars tackled these topics in law review articles, but the ideas weren't trickling down into textbooks.<sup>28</sup> And they didn't seem to be spreading (or spreading quickly) into the classroom.

---

<sup>26</sup> Taiye Selassi, *Don't ask where I'm from, ask where I'm a local*, (TEDGlobal video October 2014), [https://www.ted.com/talks/taiye\\_selasi\\_don\\_t\\_ask\\_where\\_i\\_m\\_from\\_ask\\_where\\_i\\_m\\_a\\_local?language=en](https://www.ted.com/talks/taiye_selasi_don_t_ask_where_i_m_from_ask_where_i_m_a_local?language=en) [https://perma.cc/LDN3-RWSW].

<sup>27</sup> I use *discipline* specifically in this section. There are many, many individual legal writing professors who explore race, gender, and power in their scholarship and classrooms. I have been inspired by them and offer this piece as another voice in the conversation they began long ago.

<sup>28</sup> For an annotated bibliography see Alyssa Thurston, "Teaching Diversity, Inclusion, and Social Justice in Legal Writing: A Selected Annotated Bibliography," 255-64 in *INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION AND EQUITY IN THE LAW SCHOOL CLASSROOM* (2021). See also Diversity and Inclusion Committee, AALS Section on Legal Research, *Reasoning, and Writing, Diversity and Inclusion Resources Guide* (Dec. 2015) (including citations to legal writing scholarship) (on file with author).



This realization was particularly concerning because the legal writing classroom is an essential entry point for professional socialization. Legal writing is often a year-long course with a small class size, and the content and manner in which professors present material impact the lens through which their students view the legal system and the law. They also impact whether and to what extent law students see themselves in law's narrative and, more specifically, in the profession. Therefore, I cannot ignore race and power when teaching "traditional skills." Both race and power are embedded in the very notion of what is considered *core* or *traditional*.<sup>29</sup>

As a result, when teaching lawyering skills, I explicitly ask my students to evaluate how culture, context, and cognition affect legal problem solving and communication. For example, before they read their first case, I assign Bennett Capers' article *Reading Back, Reading Black*<sup>30</sup> and we discuss critical case reading.<sup>31</sup> My intention here is to introduce them to the legal opinion genre and to help them understand the rhetorical moves made by an opinion's author(s). Then, when we read cases, we talk about the gaps and silences in the text. Surfacing meaning from gaps and silences helps students to better understand and critique the relationship between language, law, and power.

I also intentionally cultivate constructive discomfort. I do this by creating simulations that are based in real places and events. These simulations resist clear answers. I also leave holes in my case files to prime students to consider the preferences, stereotypes, and other mental shortcuts that impact their understanding of our client's case and the law.<sup>32</sup> As Lorraine Bannai & Anne Enquist wrote nearly

---

<sup>29</sup> See Moore, *supra* note 6, at 1951-53 (discussing legal education's development and how it is intertwined with the reproduction of racial inequality and noting that "the very institution that trains the people who will be most influential in creating and interpreting the legal structure that organizes United States society, socializes them *not* to problematize the connection between law and domination.").

<sup>30</sup> I. Bennett Capers, *Reading Back, Reading Black*, 35 HOFSTRA L. REV. 9 (2007).

<sup>31</sup> For suggestions on how to integrate critical perspectives through case briefing see Hang Pham, "The Critical Case Brief: A Practical Approach to Integrating Critical Perspectives in the 1L Curriculum," 51-60 INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION AND EQUITY IN THE LAW SCHOOL CLASSROOM (2021).

<sup>32</sup> L. Danielle Tully, *Collaborative Case Development in the First Year Legal Writing Problem*, 31 THE SECOND DRAFT, no. 2 (2018), [https://www.lwionline.org/sites/default/files/2018-09/LWI\\_2018\\_SecondDraft\\_Fall-VOL31No2\\_FINAL.pdf](https://www.lwionline.org/sites/default/files/2018-09/LWI_2018_SecondDraft_Fall-VOL31No2_FINAL.pdf) [<https://perma.cc/VKA8-6CHF>].

twenty years ago: “[S]tudents need to be able to recognize bias in the cases they read, in the arguments crafted by others, and in their own arguments. There are no easy answers or set rules for determining when or whether it is or is not appropriate to use arguments based on bias or stereotypes. The only clear rule is that basing arguments on unexamined assumptions is poor lawyering.”<sup>33</sup> In the past couple of years, my students have explored disorderly conduct, off-campus student speech, wiretap statutes, and immigration laws. In each simulation, I encourage students to move beyond merely finding and articulating legal rules by asking them to consider how those rules impact individuals and communities.

Throughout the year, we return often to a set of key questions. Among them: what does *stare decisis* compel<sup>34</sup>; where is there wiggle room/discretion; who/what does this interpretation of the rule serve?<sup>35</sup> Whether exploring predictive or persuasive problem-solving, I interweave legal scholarship, podcasts, TED Talks, and other sources to help ground our conversations and provide common vocabulary. My students readily engage and are quick to share their thoughts and experiences.

Interweaving critical thinking and critical perspectives is not without risks. While I aspire to strike the balance between *ouch* and *aha* moments—that liminal space where deep learning and growth occur—I approach concepts of race and power with intention and attention. I am particularly aware of and sensitive to how such topics can traumatize and retraumatize students.<sup>36</sup> Avoiding race and power

---

<sup>33</sup> Lorraine Bannai & Anne Enquist, *(Un)Examined Assumptions and (Un)Intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language*, 27 SEATTLE U. L. REV. 1, 32 (2003)

<sup>34</sup> For example, I have used *Commonwealth v. Warren*, 475 Mass. 530 (2016) to discuss *stare decisis*, the evolution of law, and the use of social science research in legal opinions. I have also paired *United States v. Thind*, 26 U.S. 204 (1923) with excerpts from Ian Haney Lopez’s book, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (2006) and engaged students in critiquing law’s false veneer of neutrality.

<sup>35</sup> For example, in 2020 and 2021, I assigned excerpts from Jamelia Morgan’s *Rethinking Disorderly Conduct*, 109 CAL. L. REV. 1637 (2020). I asked students to consider the theoretical frames she explored in her article. I also asked them to consider assumptions they made and strategies they pursued with our hypothetical client and how bias may have impacted their lawyering.

<sup>36</sup> See Hernandez, *supra* note 3, at 131-34 (using personal ethnography to illustrate how law school triggered “a profound dissonance and confusion about [her] relationship with [her] community, family, and self” and arguing

and addressing them badly both cause harm.<sup>37</sup> Rather than avoid possible offense or discomfort, as noted earlier, I attempt to foster a community of practice where students feel supported and that they belong. I do this with humility, cognizant that even with best efforts and intentions I will make mistakes and may still negatively impact my students and their experience in my class.

#### **IV. Debiasing Assessment & Feedback while Revealing the Hidden Curriculum**

The hidden curriculum and corrosive power of grade curving undermine healthy, inclusive learning environments. While I remain subject to law school grading policies, I rely on anonymous grading and rubric-based feedback to debias the grading process as much as possible.<sup>38</sup> Anonymous feedback enables me to engage with the text as it appears on a page, disassociated from any perceptions I may have about a particular student. In addition, using rubrics grounds my assessment process. Carefully constructed rubrics help me to focus on a particular assignment's learning objectives and each student's mastery of distinct skills.

While providing feedback anonymously helpfully interrupts both conscious and unconscious bias, I use post-assessment conferences to reconnect with my students—to meet them where they are and help them to receive and process feedback. These conferences also allow us to work together to identify areas for extra support. The goal with multimodal feedback is to move away from fostering unhealthy competition and hyper-credentialing among my students and to support individualized student growth. These conferences also provide an opportunity to hear from students directly in a confidential

---

for centering the experiences of race-class marginalized students in authoritative interpretive communities).

<sup>37</sup> For approaches to developing cultural proficiency see Anastasia Boles, *The Culturally Proficient Law Professor: Beginning the Journey*, 48 *NEW MEXICO L. REV.* 145 (2018).

<sup>38</sup> I acknowledge there is a healthy debate on the benefits/pitfalls of rubric-based assessment. See e.g. Deborah L. Borman, *De-grading Assessment: Rejecting Rubrics in Favor of Authentic Analysis*, 41 *SEATTLE L. REV.* 713 (2018) (arguing that standardized rubrics miss or undervalue key subtleties, may restrict feedback, and foster fixed mindsets in students); Anne Gordon, *Better than Our Biases: Using Psychological Research to Inform our Approach to Inclusive, Effective Feedback*, 27 *CLIN. L. REV.* 195 (2021) (discussing rubrics as an effective assessment tool to mitigate bias). When rubrics are constructed carefully, used transparently, and paired with other forms of feedback, I see more benefit than harm.

environment. In conferences, particularly in the beginning of 1L year, students often share experiences and emotions consistent with imposter syndrome, stereotype threat, and alienation.

At every step, I aim for assessment transparency. Part of this transparency is to acknowledge the current containing culture of legal education and the legal employment landscape. To my students, and to many others in the legal profession, grades matter. To say otherwise is both naïve and privileged. I understand law students face very real internal and external pressures. And I acknowledge it's hard to take risks in environments that feel inhospitable—when the game feels stacked.

This “stacked game” filled with hidden rules and agendas is one of the many reasons that I do not support grading professionalism, even though I am required to include it in my students' final course grade calculation. Normative expectations about how lawyers *should* act, are principally learned through socialization, and historically these norms have been “bleached out.”<sup>39</sup> Because the term “professionalism” has served a gate-keeping function in the legal profession, I define the term narrowly and presume “professionalism” expectations are met.<sup>40</sup> The key to constructive discomfort in any

---

<sup>39</sup> See generally Russell Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 *FORDHAM L. REV.* 2081 (2005); Lucy A. Jewel, *Bourdieu & American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 *BUFF. L. REV.* 1155 (2008). See also Eduardo R. C. Capulong, Andrew King-Ries & Monte Mills, *Antiracism, Reflection, and Professional Identity*, 18 *HASTINGS RACE AND POVERTY L. J.* 3, 14-16 (2021) (critiquing legal education's “race-normed” standards as “white” and calling for professional identity development to specifically include the development of racial identity); Jamie Abrams, *Legal Education's Curricular Tipping Point toward Inclusive Socratic Teaching*, 49 *HOFSTRA L. REV.* 897, 906 (2021) (“Students vacillate between their lived consciousness and ‘the white consciousness required for survival in elite educational institutions.’”) (quoting Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 *WOMEN'S RTS. L. REP.* 297, 298 (1992)).

<sup>40</sup> For the 2021-2022 year, “Professionalism” is 5% of students' overall grade. This percentage is required by the Brooklyn Law School legal writing program. My course policies contain the following language about the professionalism grade: “The curriculum for this class is both practical and demanding. The assignments are designed to put you into the role of a lawyer and will require that you perform tasks that lawyers typically perform. You will necessarily confront some of the challenges and obligations lawyers face in daily practice, such as: balancing workloads, meeting deadlines, adhering to formatting rules, working in groups, and submitting complete and accurate work. In facing these challenges, you will be expected to

learning environment is believing you are able to perform tasks skillfully and responsibly. When I presume my students can do so, it helps to foster their sense of belonging and their learning.

## V. Grounding Growth in Reflective Practice

Cultivating a reflective practice in the legal writing classroom goes beyond identifying growth areas and skill development. In my course, I include frequent, facilitated reflection to help students foster a strong sense of professional identity. For example, in the first week of their 1L year, I ask my students to discuss and explore what they know about “lawyer” culture. This exercise serves numerous purposes. It democratizes discourse by giving students space to voice their thoughts and by providing them with terms and tools to discuss the study and practice of law. It also validates students’ experiences and perspectives.

Pressing students to consider themselves as agents in making and remaking the profession, I spend class time discussing the Model Rules of Professional Responsibility, particularly the preamble and Model Rules 1.1 and 8.4. I often pair these ethics rules with scholarly articles such as Purvi Shah’s *Rebuilding the Ethical Culture of Law*<sup>41</sup> and invite students to share their aspirations for the profession. These assignments and discussions help us to develop our classroom community of practice by situating the law, legal systems, and law practice within dynamic cultural spaces. Rather than treating my students as empty vessels primed to be filled with law’s important dictates, I use these assignments to acknowledge and value my students’ rich and varied experiences.

I also build reflective practice into simulated client representation. Throughout the year, my students explore the values, beliefs, and ethics that define the profession. In discussion posts, reflection assignments, and class discussions, my students

---

demonstrate the high level of professionalism essential to competent lawyering. I acknowledge that “professionalism” is a fraught and problematic term in legal education and the legal profession and it has, at times, been used to serve a gate-keeping function. In this course, professionalism will be defined narrowly and as objectively as possible. Certain attributes of professionalism in law practice and our course include punctuality, preparedness, clear communication, and respect for colleagues and their time. The course expectation is that you have reviewed, are familiar with, and will adhere to Brooklyn Law School policies and the policies outlined in this document and in the syllabus.” Legal Writing Course Policies, *supra* note 11.

<sup>41</sup> Purvi Shah, *Rebuilding the Ethical Culture of Law*, 47 HOFSTRA L. REV. 11 (2018).

demonstrate their desire to explore the challenges facing our communities and the legal system. Additionally, raising the role of race, privilege(s), and power in the legal writing classroom, specifically the enduring legacy of White privilege, further helps to debunk the belief that law is purely objective.

Finally, I engage in reflective practice about my teaching, my students' learning, and their sense of belonging in my classroom. Each semester I seek anonymous mid-semester feedback and also ask students to identify ways for me to support them in their learning. By seeking constructive feedback, I attempt to model the type of legal community I want to build. I also use student feedback to realign my syllabi, course policies, assignments, and assessments to ensure that I am meeting them in the present moment and preparing them to help build a more just future.

## VI. Conclusion

Albeit very slowly, efforts across the legal profession have been coalescing around some core ideas: the law is not neutral, legal education and the legal profession create and perpetuate inequality, and for reform to work—for it to be meaningful and sustained—it must occur in every nook and cranny. Legal writing professors have a critical role to play in this reform. Through our policies, syllabi, and simulations, we signal what's essential, what's worthy of lingering in the margins, and what should be ignored—kept off the page and out of our deliberative process entirely. Failing to interrogate our role in this socialization process doesn't mean it isn't happening. It just means that we are not being purposeful in how we use our power and privilege as law teachers. Race has always been in the legal writing classroom. It is my obligation to acknowledge it and to work toward developing, as Professor Espinoza wrote almost thirty years ago, a “new legal language that is able to express the complexities of justice and to hear the cries of injustice.”<sup>42</sup> It is my goal to work together to bring about a cultural shift in legal education, one that allows students and faculty to thrive in truly inclusive spaces where we all feel we belong.

---

<sup>42</sup> Espinoza, *supra* note 3, at 27.

