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Commentary: Should I Be “Shipley” or “Flores Collazo” Today? The Racialization of the Law Student and Legal Workplace Candidate

Kristymarie Shipley, née Flores Collazo

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Should I Be “Shipley” or “Flores Collazo” Today? The Racialization of the Law Student and Legal Workplace Candidate

Kristymarie Shipley, née Flores Collazo[†]

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[†] JD, University of Iowa College of Law (2015); BA/BS, University of Florida (2005). Much gratitude to Professors Angela Onwuachi-Willig and Adrien Wing, for the eyes they have opened through their Critical Race Theory and Sex-Based Discrimination courses. Many thanks also to Sidot Kentay Shipley for his unwavering support and Han Hee Yu for her thoughtful and meticulous editorial assistance.

1. Instead of a personal narrative, I considered using fictitious characters or telling other people’s stories in the first person to avoid alienating members of the legal community with my views on race and gender. As imperfect as my experiences may be, their honesty makes them credible. After all, “if we allow our shame to keep us silent, then the historical record will never include these stories, and it will be as if these things never happened, and law schools will never change.” Angela Onwuachi-Willig, *Silence of the Lambs*, in *Presumed Incompetent: The Intersections of Race and Class for Women in Academia* 142, 150–51 (Gabriella Gutiérrez y Muhs, Yolanda Flores Niemann, & Carmen G. González eds. 2012) (quoting Robert S. Chang & Adrienne D. Davis, *An Epistolary Exchange: Making Up Is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 *Harv. J.L. & Gender* 1, 12 (2010) (quote as appears in the original)).

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I. INTRODUCING THE CANDIDATE’S STRUGGLE

Leaving my hometown, Caguas, Puerto Rico, for the University of Florida was an eye-opening experience. I was not only new to college but also to the English-speaking United States. Because the college orientation did not include a tour of the dining hall and I was not yet able to string together the necessary words to ask someone in English, my second language, I had no idea how to figure out the cafeteria system. So I sneakily followed a girl from my residence hall into the dining hall. Once there, I swiped my card as she did. I grabbed the same foods that she grabbed because I did not want to lose sight of her. I then followed her out when she finished her meal.

I followed this basic pattern throughout my years as an undergraduate: find someone who seems to know what she is doing, observe, mimic, and adjust efforts as needed. With time, I also learned to ask a lot of questions—a *lot* of questions. At the University of Florida, I was able to simply walk into *La Casita*, the Institute of Hispanic and Latino Culture, and immediately find individuals willing to help with transitioning into life away from home and gain access to resources that would make the transition smoother. It provided a forum where many students like myself could feel comfortable asking “silly” questions that may seem like second nature to others.

But during my experience at law school and my search for legal employment, I was not able to adhere to the familiar pattern that had worked so well during my undergraduate experience. Everyone else also seemed to be navigating the complexities of law school and legal employment. As a Puerto Rican female student married to an African American man, it was difficult for me to find anyone, student or otherwise, who fully understood the transition I was experiencing. Although the University of Iowa College of Law had a Latino Law Student Association, the group mainly focused on providing opportunities for those interested in assisting immigrant communities rather than being an affinity or support group for Latinos. I struggled to find a support group that understood how different parts of my identity shaped and influenced my life, and in turn my law school and job-hunting experience.

Through personal narratives and scholarship, this paper demonstrates the

difficulties that law candidates who survive at the intersection of race, gender, ethnicity, and class face in successfully navigating their way through the law school experience and the legal profession, including interactions with administrators and law faculty and the interview process. The purpose is not to blame or point fingers, but to portray the barriers and lack of resources that racialized and gendered law candidates experience in their struggle for success. Through this portrayal, I hope to use my story as an opportunity to provide a glimpse into the experiences of racialized and gendered law candidates and to frame potential areas of change.

My law school experience taught me that the advice given to women of color is consistently inconsistent due to general misunderstandings of the complex burdens of working one’s identity, which include performing one’s identity to avoid the imposition of racialized and gendered stereotypes and discriminatory outcomes;² covering, which is downplaying a disfavored trait;³ and reverse covering, which is acting according to stereotypes.⁴ At times, the advice I received about thriving in law school and in the legal market was color-blind⁵ and gender-blind. But for someone whose identity is so closely linked to her roots, color-blindness and gender-blindness, in many instances, strip me of my intersectional racial, ethnic, and gender identity, leaving me uncertain as to how to express my full self. Other times, the advice I received encouraged me to embrace my “otherness” and to use it to stand out. But in a competitive environment with the added pressure of being a spokesperson for all Latinas who might ever wish to embark on a law career, that option did not seem appealing to me on many occasions. Having to constantly fluctuate between covering, an underemphasis of my otherness, and reverse covering, an overemphasis of my otherness, means that otherness consistently frames my identity, leading to isolation in many interactions.

In essence, I experienced how the racialization and “otherization”⁶ of a candidate may be an asset or a hindrance in legal career development. In particular, I experienced how the delicate navigation of intersectional identity expression can be tense in three specific areas: class participation and interactions with faculty; résumé drafting; and job interviews. In the remainder

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2. Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1288–89 (2003).
 3. Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 772 (2002).
 4. *Id.* at 906.
 5. To be color-blind is to insist on equal treatment across the board, an approach that fails to remedy anything but the “most blatant forms of discrimination.” RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 8 (2d ed. 2012).
 6. Otherization, a derivative of Edward W. Said’s “orientalism” concept, is the perception or representation of another culture and its members in stereotyped ways. See EDWARD W. SAID, *ORIENTALISM* 12–13 (1978) (explaining that Orientalism is “[a] *distribution* of geopolitical awareness into aesthetic, scholarly, economic, sociological, historical and philosophical texts; it is an *elaboration* not only of some basic geographical distinction . . . but also of a whole series of ‘interests’ which . . . it not only creates but also maintains”) (emphasis in original).

of this paper, I use personal narrative vignettes to illustrate the challenges that underrepresented minorities, particularly women of color like me, face in these three contexts.

Part II focuses on the overarching theories of racial construction, intersectionality, and covering as tools for understanding the racialized and gendered law candidates' experiences. Part III addresses the experience of students of color in class participation and the resulting performance anxiety. Part IV examines the racialized and gendered candidates' choices in résumé drafting in the context of balancing the benefits and perils of highlighting their identity. This balancing exercise continues throughout the interview process, where it becomes even more critical. Part V addresses bridge building and microaggressions as motivating factors in covering or reverse covering one's otherness in the interview process. Part VI exposes the relevance of this discussion to stakeholders: nonracialized candidates, law faculty and staff, and the legal recruiter, highlighting areas for change and providing potential solutions to increase awareness. Part VII concludes by sharing the factors I considered when conducting my job search.

II. WHAT COLORS THE DISCUSSION

This section explains the racial construction of Puerto Rican women, the intersectionality of race and gender, and the covering strategies that color the discussion of my narrative.

A. One Hundred Percent Puerto Rican . . . or Latina . . . or Hispanic . . . or Whatever: The Social Constructions of Race

When someone asks me what I am I always respond, “I am from Puerto Rico.”⁷ My goal is to clarify that I am from the actual island of Puerto Rico, as opposed to being from the United States with Puerto Rican ancestry, and to let the person determine what that means. Whether the person wants to consider me Puerto Rican, Latina, Hispanic, American, or an alien is up to them. Peeling back all the layers of those labels is too time-consuming to be worthwhile.

Race is a social construction: it is “neither an essence nor an illusion, but rather an ongoing, contradictory, self-reinforcing process subject to the macro forces of social and political struggle and the micro effects of daily decisions.”⁸ In the Latino community specifically, one's racial identity may not be exclusively, or even predominantly, tied to one's actual race.⁹ Due to the phenotypic variations within the Latino community, sociologists Elizabeth Aranda and Guillermo Rebollo-Gil have coined the terms “ethnoracism” to refer

7. I often wonder if a member of the majority group, confronted with the question “what are you?” would even know what the enquirer was referring to.

8. Ian Haney-López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 7 (1994).

9. *Id.* at 7–8.

to discrimination on the basis of alternate identity markers such as national origin, shade of skin, language use, or accent.¹⁰ This phenotypic diversity allows some members of the community to pass.¹¹ The ethnoracism markers, however, highlight the passing members’ “otherness” and “re-racialize” them.¹²

One of the most drastic cultural or racial identity recognitions I experienced moving from Puerto Rico to the United States, or “the mainland” as we “Islanders” call it, was realizing that I was now part of a minority.¹³ I grew up in Puerto Rico, where a spectral view of race goes well beyond the U.S. black-white binary of racial construction.¹⁴ Nancy S. Landale and R.S. Oropesa, in their study of the ethnic and racial identities of Puerto Rican women who have experienced similar transitions, note that Puerto Rican women, either Islanders or from the mainland, describe themselves as any of the following: white, black, *trigueña* (which roughly translates to “wheat-colored” or light brown), Puerto Rican, Hispanic, Latina, Spanish, Hispanic American, American, and “Other.”¹⁵

Landale and Oropesa found that both Island and mainland women were more likely to describe themselves simply as “Puerto Rican” when presented with an open-ended question about their race.¹⁶ But in the United States, “Puerto Rican” is not a racial identifier; it is an ethnicity. Landale and Oropesa explain that mainland women from Puerto Rico are more likely to develop a national racial identity (Puerto Rican) or choose a panethnic category (i.e. Hispanic or Latina) than to conform to the U.S. black-white binary.¹⁷

It is important to note that whereas in the United States one drop of black blood makes you black, in Latin America and the Caribbean one drop of non-black blood makes you “not-black.”¹⁸ This “reverse one-drop rule” pushes Latin American and Caribbean conceptions of race away from the U.S. black-white binary and towards a conception of race as varied as the possible skin tones and defined in terms of those skin tones. The different racial identification practices between mainland and Island Puerto Rican women are a clear example of this distinction between the conceptions of race.¹⁹ When Island women do not choose to identify as Puerto Rican, they are more likely than mainland Puerto

10. Elizabeth Aranda & Guillermo Rebollo-Gil, *Ethnoracism and the “Sandwiched” Minorities*, 47 AM. BEHAV. SCIENTIST 910, 917–23 (2004).

11. *Id.*

12. *Id.*

13. For a long time, I took pride in being an “Islander.” But writing this paper and reading about national racial construction and panethnic identities has led me to realize that, after living in the United States for fifteen years, I may have crossed the line, at some point, into the mainland Puerto Rican’s side.

14. Nancy S. Landale & R.S. Oropesa, *White, Black, or Puerto Rican? Racial Self-Identification among Mainland and Island Puerto Ricans*, 81 SOC. FORCES 231, 234 (2002).

15. *Id.* at 242.

16. *Id.*

17. *Id.*

18. *Id.* at 233 (citing PETER WINN, AMERICAS: THE CHANGING FACE OF LATIN AMERICA AND THE CARIBBEAN 277 (1992)).

19. Landale & Oropesa, *supra* note 14, at 245.

Rican women to use skin-tone identifications—black, white, or *trigueña*—as their racial classification.²⁰

These differences in racialization resonate with my personal experience. I grew up with the “Puerto Rican first, American second” mentality and the “¡Yo soy Boricua, pa’ que tú lo sepas!” on my lips.²¹ And so did the majority of the people around me. Thus, the distinguishing factor became my skin tone. Although my husband, who is African American, often teases me that I am pale and white, back home I was *trigueña*, an identifier based on my “wheat-like” colored skin.²² My sister, who has fair skin, was the white one. In contrast, my father, who was darker than me and whose Taíno²³ features were more prominent, would have been referred to as “indio” or Native American.

When I left Puerto Rico for college, however, my racialization changed. My skin tone was no longer the relevant identifier. Although my answer to “what are you?” remained “Puerto Rican,” I was constantly reminded that in the mainland my racial identity was broader, and I was repeatedly labeled as Hispanic, a panethnic group. And so began my panethnic racialization, which I felt failed to completely encompass the national identity that defined my individuality, resulting in a consistent desire to overexplain that I am Puerto Rican. . . but yes, also Latina, or Hispanic. . . or whatever.

B. *Puertorriqueña. Latina.*²⁴

In Spanish, gendered adjectives are obligatory; the descriptor and the object’s gender are inseparable. My gender and my racial identity are similarly intertwined and cannot be separated for dissection or analysis without one taking off a chunk of the other on its way out. Kimberlé Williams Crenshaw was the first to formally introduce the theory of intersectionality to address this juxtaposition.²⁵ Intersectionality is “the predicament of women of color and others who sit at the intersection of two or more categories.”²⁶ This theory exposes how analyzing a woman of color’s experience, either through the gender looking glass or the race looking glass, without joint consideration, invariably leads to an incomplete analysis, leaving women of color unprotected when legally determining whether there has been discrimination.²⁷ For individuals at the intersection, like myself, a discussion of race will automatically be gendered,

20. *Id.*

21. “I am Puerto Rican, just so you know!” (author’s translation).

22. Landale & Oropesa, *supra* note 14, at 251.

23. José A. Báez, *Imperial Puerto Rico: Prelude to Statehood?*, 10 ST. LOUIS U. PUB. L. REV. 627, 641–42, 642 n.93 (1991) (explaining how *Taíno* came to be the name used to describe the Arawak Native Americans present in Puerto Rico when the Spaniards “discovered” it).

24. Puerto Rican female.

25. Kimberlé Williams Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, in CRITICAL RACE FEMINISM: A READER 23, 23 (Adrien Katherine Wing ed., 2d ed. 2003).

26. DELGADO & STEFANCIC, *supra* note **Error! Bookmark not defined.**, at 7.

27. Crenshaw, *supra* note 25, at 24.

and any discussion of gender will automatically be racialized. There is no such thing as a “monolithic ‘women’s experience’ that can be described independently of other facets of experience like race, class, and sexual orientation.”²⁸ Essentialism, or assuming there is a uniform racialized or gendered experience,²⁹ strips members of that group of the expression of other facets of their identity. More specifically, as Berta Esperanza Hernández-Truyol explains, the intersectionality of Latinas’ ethnicity and sex may lead to a sense of otherness within and outside the majority community.³⁰ For example, when a Latina fails to conform to an ethnic stereotype within the majority community, she may face the same isolation she would face if she were to fail to adhere to the gender stereotype within her own Latino community.³¹

Because of these intertwined identities, many racialized and gendered law candidates may struggle to identify which facet of their identity is creating the sense of otherness in any given interaction.³² It may also further complicate decisions regarding to how to portray, downplay, or exploit these different facets to achieve the law candidate’s ultimate goal: employment.

C. “Don’t Be the Firm’s Latina.”

When a black Iowa Law graduate learned that I had secured a firm summer job in Cedar Rapids, he gave me the following advice: “Don’t be the firm’s Latina.” His argument was that what may highlight me as unique during the application process may highlight me as “other” within the workplace. His main concern was that emphasizing my otherness might ostracize me and jeopardize receiving a permanent offer at the end of the summer. His strong advocacy for assimilation resonated Kenji Yoshino’s statement that “[a]ssimilation is the magic in the American Dream,” the way to bring it to fruition.³³

To achieve assimilation, underrepresented groups use three main strategies: conversion,³⁴ passing,³⁵ and covering.³⁶ This paper will focus on the third strategy, covering, which is when “the underlying identity is neither altered nor hidden, but is downplayed.”³⁷ Yoshino utilizes a narrative from Paul Barrett’s

28. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, in *CRITICAL RACE FEMINISM*, *supra* note 25, at 34.

29. *Id.*

30. Berta Esperanza Hernández-Truyol, *Latinas—Everywhere Alien: Culture, Gender, and Sex*, in *CRITICAL RACE FEMINISM*, *supra* note 25, at 65.

31. *Id.*

32. See, e.g., Linda E. Dávila, Note, *The Underrepresentation of Hispanic Attorneys in Corporate Law Firms*, 39 *STAN. L. REV.* 1403 (1987).

33. Yoshino, *supra* note 3, at 771.

34. Conversion is the alteration of one’s underlying identity to conform to the majority culture, such as when a lesbian changes her orientation. *Id.* at 772.

35. Passing is hiding one’s underlying identity with the same goal, such as when a lesbian presents herself to the world as straight. *Id.*

36. *Id.* at 772.

37. *Id.*

The Good Black about Lawrence Mungin, an African American attorney who brought an unsuccessful race discrimination suit against his former law firm employer, to illustrate covering practices that ultimately hurt Mungin's work environment.³⁸ Some specific strategies Mungin used to attempt to cover include: avoiding racially divided or divisive groups, sharing in the humor of others' racial comments, remaining silent when experiencing racism, and altering his way of dress and speech.³⁹ Another manner of covering is emphasizing one's academic achievements, employment credentials, or pedigree.⁴⁰ The purpose is to assert one's defining characteristics before the other participant in the interaction forms an opinion about one as a racialized or gendered individual.⁴¹ Instead of forming an idea of that person based on her race or gender, the recipient then forms one based on her accomplishments.⁴² In other words, the racialized and gendered candidate covers to show she is one of the worthy ones.⁴³

III. RAISE YOUR HAND: A BURDEN AND A DUTY

My experiences as a racialized and gendered candidate are not unique. However, my intersecting identities further exacerbate the performance anxiety inherent in a competitive educational environment such as a law school.⁴⁴ This section exposes the racialized and gendered candidate's anxieties in class and factors she considers when deciding whether to participate. As an "other," the underrepresented candidate is salient and memorable. My experience is that racially aware (or charged) commentary during class discussions or during faculty interactions may influence future references or the faculty's impressions of the candidate. It may also expose the racialized—or racialized and gendered—candidate's view to scrutiny from faculty and fellow students, which is often heightened by the speaker's otherness.

The racialized and/or gendered other may see class participation as either a burden or a duty. The distinction is subtle: a duty is something one proudly undertakes because one feels a sense of responsibility towards the task. A burden is something one has to do, regardless of how one may feel about the task. I explore these two perspectives; thereafter, I share my experience.

38. *Id.* at 879 (referencing PAUL M. BARRETT, *THE GOOD BLACK: A TRUE STORY OF RACE IN AMERICA* (1999)).

39. *See id.* at 882.

40. *Id.* at 883.

41. *Id.*

42. *Id.*

43. *See* Adrien Katherine Wing, *One L Redux*, 78 *UMKC L. REV.* 1119, 1121–22 (2010) (discussing the perception that as black students in an affirmative-action world, white students may perceive blacks as unworthy of their educational opportunities and later achievement).

44. For a discussion of how performance anxiety affects women's class participation, see Felice Batlan et al., *Not Our Mother's Law School?: A Third-Wave Feminist Study of Women's Experiences in Law School*, 39 *U. BALT. L. F.* 124 (2009).

A. Class Participation as a Burden

In 2014, UCLA Law School had 1,100 students. Of those students, thirty-three, or 3 percent, were black.⁴⁵ Some of these students came together and created a video commentary with the purpose of increasing awareness about UCLA Law’s lack of diversity and the burden of feeling like representatives for their community.⁴⁶ The video went viral.⁴⁷ Disconcertingly, the students’ feelings are timeless.

Supreme Court Justice and former women’s rights activist Ruth Bader Ginsburg explained that, as one of nine women in the 1956 Harvard Law School first-year class of five hundred, “you felt in class as if all eyes were on you and that if you didn’t perform well you would be failing, not only for yourself, but for all women.”⁴⁸ The burden is compounded when the candidate is not only gendered, but also racialized.

Peggy McIntosh, feminist and antiracism activist, reflected that as a white woman, she “can speak in public to a powerful male group without putting [her] race on trial.”⁴⁹ In contrast, Adrien K. Wing, professor and international human rights scholar, reflected on her first year of law school in 1979 and explained that she dreaded participating in class because, “[i]f [she] were found wanting, it might be that the white males would think all people of [her] race or gender were lacking.”⁵⁰ However, a white male classmate would not feel the same burden because “[i]f one of them failed to handle the grilling, it would just be regarded as his personal failure.”⁵¹ Fifty-six years after Justice Ginsburg and thirty-three years after Professor Wing, I experienced the same apprehensions.

Stereotype threat is one of the main factors that turn class participation into a burden. Stereotype threat is the situational predicament in which a racialized candidate fears that their actions will confirm negative stereotypes about their social group.⁵² Class participation, to a racialized and gendered candidate, poses the threat of “contempt, censure, judgment, recognition, challenge, annihilation, visibility.”⁵³

However, lack of participation may be equally harmful.⁵⁴ While women of

45. RecordtoCapture, 33, YOUTUBE (Feb. 10, 2014), <https://www.youtube.com/watch?v=5y3C5KBcCPI>.

46. *Id.*

47. As of June 11, 2016, the video had been viewed 83,698 times. *Id.*

48. MAKERS, *Ruth Bader Ginsburg: Legal Pioneer*, YOUTUBE (Mar. 3, 2014), https://www.youtube.com/watch?v=bB7o_9GbuwE.

49. Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, PEACE & FREEDOM MAG., Jul./Aug. 1989, at 10, 11.

50. Wing, *supra* note 43, at 1120.

51. *Id.*

52. *Id.*

53. AUDRE LORDE, *The Transformation of Silence into Language and Action*, in *SISTER OUTSIDER: ESSAYS AND SPEECHES BY AUDRE LORDE* 40, 42 (2007).

54. Angela D. Gilmore, *It Is Better to Speak*, in *CRITICAL RACE FEMINISM*, *supra* note 25, at 116 (“Yet usually I do not achieve anything as a result of my silence. Silence does not cause the fear to disappear. Silence does not make me feel more secure. Silence does not dispel

color may use silence strategically, it may negatively affect the educational process.⁵⁵ Angela Onwuachi-Willig explains the effects of silence from the academic perspective.⁵⁶ The majority members may erroneously interpret silence as a confirmation of the stereotype that women of color do not have anything to contribute to the discussion.⁵⁷ Thus racialized and/or gendered law students and law faculty similarly feel a pressure, or a duty, to participate.⁵⁸

B. Class Participation as a Duty

The flipside of fear and anxiety regarding class participation is a sense of duty.⁵⁹ This duty to participate encompasses a sense of responsibility to your own otherness that does not just stop with class participation but also bleeds into law school involvement, which may affect classroom performance.⁶⁰ As one of the students in the UCLA Law video explained,

I feel, being a student of color on campus, I feel a great deal of responsibility. Whether it's seeking support systems that other people do not have to seek out. Whether it's being extremely involved in order to feel invested at a school that I go to. It's a lot of energy that I expend that I feel like the average classmate doesn't have to do, because they don't have to try to create space for themselves on campus, or create space for future black students. So that's, I feel like, a big burden that I carry that so many of my peers don't have to worry about because they are not here to make space for future generations. They are here to get an education. They are here to make money in the future. They are here for their own personal gain when I am here constantly thinking about everyone else that I want to be able to occupy this space.⁶¹

Underrepresented students often feel a duty to achieve, not just for themselves, but also for those that come after them. Barbara Smith, an activist at the intersection of race, sex, and sexual orientation, wrote that she was enraged when she realized that “black women writers, academics, and politicians who protect their closets never think about people like [oppressed students] or about how their silences contribute to the silencing of others.”⁶² This piece also inspired Angela D. Gilmore to share the anxiety she experienced in law school and in the legal profession as a lesbian black woman constantly wavering

ignorance.”).

55. Onwuachi-Willig, *supra* note 1, at 145; *see also* Baltan et al., *supra* note 44, at 151.

56. Onwuachi-Willig, *supra* note 1, at 145.

57. *Id.*

58. *See id.*

59. Gilmore, *supra* note 54 (“Silence does not dispel ignorance.”).

60. *See id.* at 116–17 (discussing the same sense of duty from a new law school faculty member’s point of view).

61. 33, *supra* note 45.

62. Gilmore, *supra* note 54, at 116. (quoting Barbara Smith, *The NEA Is the Least of It*, MS., Nov.–Dec. 1990, at 65, 67).

between performing her identity loudly and remaining silent.⁶³ Once again, these scholars reinforce the idea that participating and speaking up is a duty owed to others in one’s community, aimed at making sure they do not feel like that they must remain silent as well.

This concept of duty extends beyond that owed to one’s underrepresented community and those that will follow in one’s steps. It includes feeling responsible for enriching the majority’s educational experience.⁶⁴ As Onwuachi-Willig explains, silence could deprive the conversation of a valuable fresh perspective.⁶⁵

Admitting token numbers of racially and gender diverse students belies law schools’ claims to prepare students for the work environment and also leads diverse candidates to feel isolated.⁶⁶ “Critical mass,” or meaningful representation, is achieved when there is sufficient representation of underrepresented minority students to encourage their class participation and counteract isolation.⁶⁷ The concept is that if underrepresented candidates are admitted in sufficient numbers, the educational experience of all candidates is enriched through exposure to diverse perspectives and cross-racial and cross-gendered interactions.⁶⁸ Critical mass creates an environment that “promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals.”⁶⁹ These interactions prepare all candidates to work in a global market and become good citizens.⁷⁰ However, a lack of critical mass often turns the duty of class participation into a spokesperson’s burden.⁷¹

C. When the Duty Becomes a Burden

We were sitting in class. Out of just under twenty students, only two of us would be considered minorities: a Korean man and a Puerto Rican woman. We were discussing the calculation of remedies for wrongful death. I seldom speak in class. My feedback in the past had been somewhat quickly dismissed. On this day, the professor explained that, when calculating lost wages, if the victim is black, the defendant should be able to present evidence that, on average, black men do not live as long as white men. What I hear is: the black victim would not

63. *Id.*

64. *See* Onwuachi-Willig, *supra* note 1, at 145–46.

65. *See id.*

66. *See* Grutter v. Bollinger, 539 U.S. 306, 318–19, 333 (2003).

67. *Id.* at 318 (citing the testimony of Erica Munzel, former University of Michigan Law School Director of Admissions).

68. *See id.* at 316, 329 (discussing the substantial educational benefits of achieving critical mass).

69. *Id.* at 330 (internal citations omitted).

70. *Id.* at 331.

71. *See id.* at 333 (discussing how a university cannot accomplish these educational objectives or combat the idea that a minority student’s contribution is limited to the minority viewpoint “with only token numbers of minority students”).

have lived that long anyway so his family should receive less in damages. I raise my hand. How is that fair?

To provide some context, this discussion occurred in the wake of the shooting of Michael Brown.⁷² I argued that providing information on differences in life expectancy based on racial markers to a jury is more prejudicial than probative. It ignores the systems of oppression that result in such differences. A defendant should not benefit from those systems. For example, imagine that Police Officer Darren Wilson's conduct had been determined to be willful and unreasonable (out goes immunity), and Michael Brown's family sued for wrongful death (in this hypothetical he is gainfully employed and has dependents). Officer Wilson, as a defendant, should not be able to escape financial responsibility with an argument that black men die at a younger age, especially when actions like his are one of the reasons why black men die at a younger age. The professor characterized life expectancy differences as factual, and moved on to comparisons of obese black men to fit white men who live longer and why these numbers were important. I wondered, "How can they be important when you are comparing apples and oranges?" The class moved on but I was left reeling. The focus should have been on health or weight if that was the issue, not on race.

At that moment, I felt like class participation became more of a risk than a reward. The professor quickly dismissed my comment, and I felt I had come off as too personally invested (since my husband is black) to have a conversation about the legal merits of a certain piece of evidence. Because I continued to bring the issue back to the racial component and whether the data was necessary, I felt I was coming off as combative. As I tuned out the rest of the discussion, I felt I may have come off as immature. Because my point was not coming across, or getting across, I went back to not speaking in class—to silence. Because I *am* personally invested, I thought of the perfect point: "Professor, you just said my husband's life is worth less." Because I *am* combative, I thought: "Professor, you have disregarded my point of view, diminished my racial and social concerns, and continually tried to reduce this issue to dollars and cents when wrongful death is about the life lost." Even more I felt like saying: "Professor, when you ended the conversation by saying 'everything has a dollar value, even human life,' you were being flippant about your student. While it might have been easy to discuss this man's life in terms of dollars and cents because he is an abstract black man to whom you do not relate, that black man is someone to somebody."

I stayed quiet because I felt naïve. I felt like the representative for all things minority. I felt like it was my responsibility to rescue the learning experience and I failed. I felt like I became the hypothetical. As Paulette Caldwell eloquently explained,

72. See, e.g., Phil Helsel, *Ferguson Reaches Tentative Deal with Justice Department*, NBC NEWS (Jan. 27, 2016, 11:50 PM), <http://www.nbcnews.com/storyline/michael-brown-shooting/ferguson-reaches-tentative-deal-justice-department-n505596>.

I was not prepared to adopt an abstract, dispassionate, objective stance to an issue that so obviously affected me personally; nor was I prepared to suffer publicly, through intense and passionate advocacy, the pain and outrage that I experience each time a black woman is dismissed, belittled, and ignored simply because she challenges our objectification.⁷³

A racialized and gendered candidate often becomes a spokesperson, or a hypothetical, rather than an individual. By challenging the authority figure in the room, I felt I had surely tainted the Professor’s perspective of who I was—a perspective that could leave the classroom and venture into the legal community. What might have been a regular class discussion to every other student was to me, a highly visible invisible minority, a failure to carry my burden as a minority student. I had failed to represent minorities by not having the legal wherewithal to convince the Professor that the data was prejudicial and not apt for a jury. I was left with a burden I did not feel I should have had to shoulder on my own. By simply not participating, I refused to take that burden on. In the process, I became isolated.

IV. SHOULD I TELL THEM I AM NOT WHITE?: RACIALIZING THE RÉSUMÉ

During law school, it is important to build connections and seek opportunities to stand out. In this process, identifying as a racialized and gendered candidate may be a double-edged sword. Although identifying as a minority may be an asset, highlighting one’s otherness nonetheless reinforces the line between candidates from the dominant culture and racialized and gendered candidates, further isolating them and blurring or erasing other facets of their identity.

Corporations are diversifying their workforces more rapidly than the law firms they hire.⁷⁴ Some clients demand that the law firms they contract also strive for more diversity in their promotion practices.⁷⁵ For example, Wal-Mart Stores pulled active work from two large firms that did not conform to Wal-Mart’s standards for diversity, even though they were exceeding work product quality expectations.⁷⁶ To increase client satisfaction, many law firms are seeking to recruit more minorities.⁷⁷

Hispanics have suddenly become the “hot” minority. The U.S. Census Bureau projects that the Hispanic population of the United States will double by

73. Onwuachi-Willig, *supra* note 1, at 147–48 (quoting Paulette Caldwell, *A Hairpiece: Perspectives on the Intersection of Race and Gender*, 41 DUKE L.J. 365, 369 (1991)).

74. AM. BAR ASS’N, PRESIDENTIAL INITIATIVE COMM’N ON DIVERSITY, DIVERSITY IN THE LEGAL PROFESSION: THE NEXT STEPS 9 (Apr. 2010).

75. Karen Donovan, *Pushed by Clients, Law Firms Step Up Diversity Efforts*, N.Y. TIMES, (July 21, 2006), http://www.nytimes.com/2006/07/21/business/21legal.html?pagewanted=all&_r=0.

76. *Id.*

77. *Id.*

the year 2050, reaching over 106 million.⁷⁸ Simultaneously, in part due to the growth in the Hispanic population, Spanish has become the most widely spoken non-English language in the United States.⁷⁹ However, not all Hispanic candidates fit the “desirable candidate” mold. Critical race theorist Richard Delgado and critical white studies scholar Jean Stefancic highlight the differential racialization to which these shifting hiring priorities may lead.⁸⁰ Different minority groups are racialized differently as the labor market changes.⁸¹ Racial or ethnic markers that may have once been undesirable may quickly become an asset.⁸²

Trying to stand out through one’s racial or gender identity may be a double-edged sword because a résumé emphasizing the candidate’s racial or gender identity may quickly relegate the candidate to the “no” pile based on the recruiter’s assumptions about her cultural and social capital or competence. Therefore, a Hispanic and bilingual candidate must make a choice. Option one: highlight her identity. Option two: cover throughout her résumé to avoid being rejected because of the recruiter’s assumptions.

Option one may quickly lead to “reverse covering,” signaling or highlighting her otherness.⁸³ An example of reverse covering is when a woman is required or expected to act or dress in a feminine way.⁸⁴ Similarly, a Hispanic candidate is considered desirable if she fulfills the stereotypical expectation of being bilingual.

Option two is perilous. Before choosing to bury her otherness to get the job, the candidate must determine whether she would even like to venture into a workplace where her otherness will render her unqualified without further examination. While the legal market is a different arena, I believe the story of José Zamora is illustrative.⁸⁵ Zamora’s story went viral in 2013 after he sent hundreds of résumés each week seeking employment and did not get a single response.⁸⁶ Zamora decided to cover by removing the “s” from his first name and resubmitted his résumé to the same companies for the same positions, now

78. Jens Manuel Krogstad, *With Fewer New Arrivals, Census Lowers Hispanic Population Projections*, PEW RES. CTR. (Dec. 16, 2014), <http://www.pewresearch.org/fact-tank/2014/12/16/with-fewer-new-arrivals-census-lowers-hispanic-population-projections-2/> (The U.S. Census Bureau lowered their projections by 30 million, arriving at the 106 million projection.).

79. Jens Manuel Krogstad & Ana González-Barrera, *A Majority of English-Speaking Hispanics in the U.S. Are Bilingual*, PEW RES. CTR. (Mar. 24, 2015), <http://www.pewresearch.org/fact-tank/2015/03/24/a-majority-of-english-speaking-hispanics-in-the-u-s-are-bilingual/>.

80. DELGADO & STEFANCIC, *supra* note **Error! Bookmark not defined.**, at 9.

81. *Id.*

82. *Id.*

83. Yoshino, *supra* note 3, at 906.

84. *Id.* at 908.

85. Cate Matthews, *He Dropped One Letter in His Name While Applying for Jobs, and the Responses Rolled In*, HUFFINGTON POST (Sept. 2, 2014), http://www.huffingtonpost.com/2014/09/02/jose-joe-job-discrimination_n_5753880.html.

86. *Id.*

as “Joe Zamora.”⁸⁷ A week later the responses started rolling in.⁸⁸

The next section illustrates how the choice between covering and emphasizing one’s identity in a résumé affects the interview experience.

V. CAN’T COVER ALL OF THIS DURING AN INTERVIEW: NEGOTIATING YOUR OTHERNESS THROUGH BRIDGE BUILDING AND DODGING MICROAGGRESSIONS

The racialized and gendered candidate walks into an interview at a presumed disadvantage. To succeed, the candidate must attempt to level the interview playing field and simultaneously resist reacting to any microaggressions that come her way. This section briefly explores the burden of bridge building and then illustrates microaggressions in the interviewing process and how the racialized and gendered candidate’s reactions to these microaggressions may be integral to her success.

A. Building a Bridge: Hiding Your Otherness to Remain Relatable

Given the lack of minority representation in many law firms, more often than not a racialized candidate will cross-interview, or interview with someone who is not of the same race.⁸⁹ The gendered candidate will most likely have a similar experience, often interviewing with someone of the opposite gender.⁹⁰ Linda E. Dávila outlines the challenges inherent in cross-cultural and cross-gender interviews: “nonprofessional interviewers are likely to choose lawyers who they perceive as fitting their own patterns of behavior. Since these interviewers—who are mostly white males—may not see Hispanics as fitting the patterns of behavior of white males, they will look instead for someone who will.”⁹¹

College preparatory materials, which target majority communities, teach bridge building as the skill of translating privileged life experiences, for example studying abroad, into relatable proficiencies and transferable skills during college or job interviews.⁹² Even if I used them in a different manner, these strategies had to become second nature to me. For a nonracialized or nongendered candidate, the goal of bridge building is to not appear exclusivist or to make their privileged experiences relatable.⁹³ Racialized and gendered

87. *Id.*

88. *Id.*

89. See AM. BAR ASS’N, LAWYER DEMOGRAPHICS YEAR 2015 (2015), http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer-demographics-tables-2015.authcheckdam.pdf. Eighty-eight percent of practicing attorneys in 2010 were Non-Hispanic Whites. *Id.*

90. See *id.* Sixty-five percent of practicing attorneys in 2015 were men. *Id.*

91. Dávila, *supra* note 32, at 1412.

92. See DON DUNBAR WITH G.F. LICHTENBERG, WHAT YOU DON’T KNOW CAN KEEP YOU OUT OF COLLEGE CH. 9 (2007).

93. *Id.* (describing the difference between listing the countries visited while studying abroad and

candidates utilize bridge building to build rapport in a different way. For example, in my experience, male interviewers wanted to discuss sports, a traditionally masculine subject. When I interacted with male interviewers, the performance of the Florida Gators football team typically came up during the interview. The impending Gators discussion meant that if I had missed the latest game, I needed to get an update from ESPN.com or my husband. Sometimes I went as far as finding out the undergraduate institution of the interviewer, checking for potential rivalries to exploit. Thus, in my experience, the racialized and gendered candidate has to build bridges, not by making their own privileged experiences relatable, but by highlighting experiences that are relatable from the interviewer's privileged perspective—in this case, assumed competence in a traditionally masculine subject.

B. Cross-Interviews: Highlighting Your Otherness While Navigating the Microaggressions Minefield

A candidate's responses to microaggressions may subconsciously demonstrate to the interviewer whether the candidate's identity performance may affect the workplace in the future.⁹⁴ Microaggressions are subtle put-downs that minorities often experience during cross-race interactions.⁹⁵ "Microaggressions are brief and commonplace daily verbal, behavioral, and environmental indignities, whether intentional or unintentional, that communicate hostile, derogatory, or negative racial, gender, sexual-orientation, and religious slights and insults to the target person or group."⁹⁶ What differentiates microaggressions from what is commonly understood as out-and-out racial or gender discrimination is their subtlety and the fact that often the perpetrator may be unaware that he or she is engaging in the behavior.⁹⁷

Below I relate three microaggressions I have experienced during the job interview process. I use these experiences as examples of the microaggressions minefield, but I do not mean to purport that I navigated the minefield effectively. These narrative pieces illustrate instances of both covering and reverse covering.

1. "You Don't Have an Accent."

One of the most common covering strategies is changing speech patterns or altering vocabulary.⁹⁸ Fully bilingual individuals may resort to mimicry, a

extracting stories about the experience to exemplify desirable skills).

94. See DERALD WING SUE, MICROAGGRESSIONS IN EVERYDAY LIFE: RACE, GENDER, AND SEXUAL ORIENTATION 220 (2010) (discussing the "catch-22" of responding to microaggressions).

95. EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA 37 (4th ed. 2013); see, e.g., SUE, *supra* note 94, at 218.

96. SUE, *supra* note 94, at 5.

97. *Id.* at xv–xvi.

98. See discussion *supra* Part II.C.

language acquisition tool to improve pronunciation, as a covering tool.⁹⁹ I am a mimicker. Personally, mimicking U.S. singers has helped a lot in hiding my accent. But when I let my guard down, and when I am nervous, excited, or speaking too quickly, my accent returns. I am constantly torn between covering my accent and embracing it. On the one hand, an accent could be a telltale sign of bilingual skills.¹⁰⁰ Furthermore, it forces the listener to pay closer attention to avoid misinterpretation. On the other hand, someone with an accent may immediately be perceived as incompetent. Ethnoracism leads to negative perceptions of someone with an accent.¹⁰¹

My mimicry also leads to a lack of control over my accent, which can be an asset or a hindrance. It is an asset when I pronounce thirty out of thirty-two words correctly simply by imitation. However, I may accidentally copy someone’s distinct accent, which the person may perceive as mockery. In other instances, when my accent rears its “ugly” head, I am immediately perceived as incompetent. It stops being about the thirty victorious, properly pronounced words and instead highlights my lack of dominance over those other two.

When an interviewer finds out that my first language is Spanish, I get the congratulatory “Oh, but you don’t have an accent.” The underlying message in this microaggression is a congratulation on efficiently assimilating.¹⁰² The laudatory note is a sign that an accent is something one should aim to get rid of or that having an accent would more clearly define me as an “other” and I have successfully overcome that. My response to this microaggression is to reverse cover, highlighting my bilingualism as an asset and choosing to take the statement as a compliment on my successful second language acquisition. So I smile, say thank you, and turn my mimicry into a conversation piece. This conversation piece, however, continues to reinforce the racialized and gendered candidate’s isolation from the majority community.

2. “I Did Not See the Latino Law Student Association in Your Résumé.”

When I walked into the room, I noticed the interviewer was a bit bewildered. My first thought was that with an Anglicized name like Kristymarie Shipley, he was not exactly expecting a Latina to walk into the room.

This interview was my first in-person legal job interview. Thankfully, it was a mock interview that Career Services had set up to provide us feedback on our interviewing skills. For that reason, I tried not to take anything that happened

99. See generally Karen Yates, Teaching Linguistic Mimicry to Improve Second Language Pronunciation (May 2003) (unpublished M.A. thesis, University of North Texas), http://digital.library.unt.edu/ark:/67531/metadc4164/m2/1/high_res_d/thesis.pdf.

100. See JOSIANE F. HAMERS & MICHEL BLANC, BILINGUALITY AND BILINGUALISM 226 (2d ed. 2003).

101. Aranda & Rebollo-Gil, *supra* note 10, at 917–19.

102. *Id.* at 919; see Yoshino, *supra* note 3, at 771 (discussing the magic of achieving assimilation).

in that interview personally. After all, this attorney's job was to tell me what he was really, honestly thinking while he interviewed me so I could adjust my efforts as needed. I was not ready.

After the typical question ("So, tell me about yourself?"), and my prepared answer (a quick speech about my northward movements from Puerto Rico to Florida to Iowa), he dove in.

"So, I did not see the Latino Law Student Association in your résumé."

Bam. Busted. I am not Latina enough. . . Wait, what?

He must have seen all these emotions play out on my face because he explained that he had interviewed a few white students and noticed that they were involved in the organization. These experiences, in turn, made him wonder why I was not in the organization or why I failed to list it on my résumé.

My internal answer was simple: "Because LLSA at Iowa Law is not an organization aimed at serving the Latino community within and outside the law school? Because if it does aim to serve, all its activities revolve around immigration as THE Latino issue."

My verbal answer was: "Well, I was somewhat involved in LLSA last year, but I have limited space on my résumé and I felt it was more important to highlight the organizations I have put more time into." He stared, so I continued. "Besides, the Latino Law Student Association's trademark activity is an alternative spring break trip to Austin to work on immigration issues, which is why most people join. I am not interested in immigration like that, so I invested my time elsewhere."

I thought that was a pretty solid save. It was a semi-intelligent response to the challenging of my chosen activities. I provided valid reasons, while explaining that I had at least been involved in the past. The implication here was that, as a Latina, I was expected to gravitate to what was perceived as a support group built for me. I perceived it as an accusation that even white students were supporting a culture that I seemed to have turned my back on. It was an unfair expectation and an assumption about the purpose and performance of what may have originally been meant as a support network, but no longer functioned as such. And then came the kicker.

3. "Have You Thought about Changing Your Name Back to Your Maiden Name, or Hyphenating?"

The mock interview was very productive. The attorney explained that I needed to stay away from the "we" pronoun and start talking about myself in the first person. He listed my pros as being a Latina in a market that is becoming more diverse, solid grades, and extensive involvement in law school. My response was that being a Latina might not be a salient factor in my résumé. Unless a résumé reviewer looked too much into my B.A. in Spanish, my name and my involvement would not give my "Puerto Rican-ness" away. Then I asked how I could highlight those characteristics he seemed impressed by.

“Have you thought about changing your name back to your maiden name, or hyphenating?”

I felt trivialized, and it was not until later on that I precisely understood my feelings at the time. I felt like my identity was disposable. I was asked to reverse cover, highlighting my most desirable outgroup membership, which in this job market seemed to be “Latina.” Taking your husband’s name, the decision to leave your familiar identity behind and join a new family, is a taxing one that few women take lightly. His comment, while I am sure it was well-intentioned, looked at my name as just a label that I could peel off and rewrite according to the cover of my convenience.

I deadpanned and said “No.” Then I remembered that my goal was to walk out of the room with a connection, so I tilted my head to the side and said, “But that’s not a bad idea. I will consider it.”

VI. WHY IS THIS SUCH A BIG DEAL?: THE MYTH OF MERITOCRACY AND HOW TO OVERCOME IT

While the legal community thinks of its diversity as a priority, it continues to create a hostile environment for diverse individuals. The hostility is not brazen—it is subtle. Micro. And one of its most effective weapons is the myth of meritocracy.

The myth of meritocracy is the illusion that democratic choice and the freedom of confident action are available to all.¹⁰³ This myth rests on two inaccurate assumptions: that the opportunities are equally available and that any differences in achievement are due to the racialized and gendered candidate’s unique choices.¹⁰⁴ Peggy McIntosh exposes the myth of meritocracy as perpetuating white privilege, which often gives whites “license to be ignorant, oblivious, arrogant and destructive.”¹⁰⁵ That ignorance allows stakeholders in law school career development to believe that different outcomes are caused by differences in talent and work ethic and ignore the role of—and their role in—the oppressive environment.

Racialized and gendered candidates cannot help but feel out of place throughout their legal educational experience, and that feeling is highlighted when put under the microscope of the employment screening process. My graduating class had five Latino males. One of them did not have a mailbox across the Dean’s Suite like all other students did, for reasons unknown. He approached the Dean’s Suite’s staff about it.

“Are you sure you don’t have a mailbox?”

“Positive,” he responded.

“Ok. We’ll handle it.”

103. McIntosh, *supra* note 49, at 12.

104. Deborah L. Rhode, *Myths of Meritocracy*, 65 *FORDHAM L. REV.* 585, 586 (1996) (discussing the myth of meritocracy in the gender context).

105. McIntosh, *supra* note 49, at 11.

The staff person never asked his name. He did not think much of this. After all, there are only five Latino males in the third-year class, he had been a student here for three years, and the staff had access to the face book the school prints every year. However, two weeks later, he still did not have a mailbox. He approached the office staff again.

“I checked and you *do* have a hanging folder out there,” the staff person responded.

“No, I don’t.”

“Are you sure?”

“I’m positive.”

“Aren’t you [name of a Latino 2L]?”

“No.”

The student still does not have a mailbox.

This interaction may appear simple and isolated, but it reflects the reality that the racialized candidate is simultaneously highly visible and highly invisible. It creates a need for the racialized candidate to make himself or herself known for markers other than his or her race. Raising awareness about this consistent struggle—whether to move towards or away from identity expression—is crucial for the nonracialized candidate, the law school faculty and staff, and the law firm recruiter.

Furthermore, these stakeholders should be aware of how trying to fight these generalized preconceived notions affects the racialized candidates. Specifically, the nonracialized candidates should care because, one day, they will be the cross-interviewers or the law school faculty. For their part, law faculty and staff can no longer afford the luxury of ignoring the subtleties of the racialized candidate’s experience because their ignorance perpetuates the oppressive environment. When the legal recruiter speaks of equal opportunity in the job market and meritocracy, he perpetuates white privilege and must be aware of this.¹⁰⁶ Your license to be ignorant has been revoked.

Using buzzwords like “white privilege” and “ignorance” may cause some to tune out the message. But consider this: out of a class of 152, only nine were Latinos/Latinas. One of them was a corporate lawyer in another country before starting law school here. Another won campus-wide awards, was Editor-in-Chief of a journal, and went on to clerk for a state court of appeals. A third one won a writing competition and was on a journal board and a moot court team. Another was also on a journal board, won a public defender fellowship in a coveted district, and is now an associate at Chapman & Cutler. Another is an associate at Dorsey & Whitney, part of a tax bracket he has never been acquainted with. These are just some examples taken from these nine individuals being some of the most invested and successful law candidates available. These racialized candidates struggle between visibility and invisibility, which usually leads to

106. See BONILLA-SILVA, *supra* note 95, at 80–81.

anxiety, teetering between validation and covering.¹⁰⁷ The mere presence of that anxiety validates the idea of the meritocracy, and creates a burden on the racialized candidate to prove himself or herself worthy.

As I just did there.

Because it has become second nature to highlight that we are worthy.

That we are not chump change.

But what is the real kicker is that the meritocracy argument disregards that each and every one of those students had to be above average *and* Latino/Latina to get into Iowa Law. When a stakeholder speaks of meritocracy, he seems to disregard the fifty percent of the law school class that is below average and, more often than not, white. When he speaks of equal opportunity in terms of the colorblind evaluation of résumés, he ignores that a racialized candidate has had to overcome a variety of obstacles a nonracialized candidate would not even consider just to achieve the same résumé content. This is how equal opportunity and meritocracy perpetuate white privilege. This is why awareness of the consistent slights the racialized and gendered candidates face matters.

An important step in creating a more productive environment for racialized and gendered candidates is to recognize the implicit bias that may affect interactions with them, as well as the stereotype threat which may hinder the racialized and gendered candidates' performance.¹⁰⁸ Implicit bias encompasses the unconscious ways in which one allows attitudes or stereotypes to affect one's understanding, actions, and decisions.¹⁰⁹ Stereotype threat is the situational predicament in which the racialized candidate debates whether to cover or reverse cover, fearing the risk of confirming negative stereotypes about his or her social group.¹¹⁰ Educators and interviewers may overcome these implicit biases and pattern preferences by establishing a rapport with the candidate before assessing their competence.¹¹¹ Building rapport first may help curb the influence of cultural biases.¹¹²

Similarly, cultural, gender, and/or racial sensitivity training may build upon the awareness stepping stone. Many educators or hiring professionals fail to

107. The covering strategy I refer to here is the emphasis on academic or employment credentials or pedigree to shift the focus away from racial or ethnic markers. *See supra* notes 40–43 and accompanying text.

108. *See generally* AM. BAR ASS'N, COUNCIL FOR RACIAL & ETHNIC DIVERSITY IN THE EDUCATIONAL PIPELINE, BEYOND DIVERSITY: HOW STEREOTYPE THREAT AND IMPLICIT BIAS CONTRIBUTE TO STATUS GAP (2012), http://www.americanbar.org/content/dam/aba/administrative/diversity_pipeline/beyond_diversity_program_book_authcheckdam.pdf.

109. AM. BAR ASS'N, COUNCIL FOR RACIAL & ETHNIC DIVERSITY IN THE EDUCATIONAL PIPELINE, INCREASING DIVERSITY IN THE EDUCATIONAL PIPELINE: THE INVISIBLE BARRIERS (2015), http://www.americanbar.org/content/dam/aba/images/diversity_pipeline/invisible_barriers_brochure_2015.pdf.

110. *Id.*

111. Choon-Hwa Lim, Richard Winter & Christopher C.A. Chan, *Cross-Cultural Interviewing in the Hiring Process: Challenges and Strategies*, 54 CAREER DEV. Q. 265, 267 (2006).

112. *Id.* at 265.

understand the communication nuances that isolate racialized and/or gendered candidates. When a racialized candidate is referred to as “articulate” or when a gendered candidate is referred to as “ambitious,” the implication is that the candidate breaks through the stereotype of racialized candidates having poor dominion of the language and women being conformists.¹¹³ Dismissive statements about a married person’s unmarried name, comments about the candidate’s hair or appearance, or expectations about their involvement and the causes that are important to them equally reflect these racialized or gendered expectations. The educator or the interviewer may not think twice about his or her vocabulary, or his or her commentary. At the same time, the educator or interviewer may be isolating the candidate. Cultural, gender, and/or racial sensitivity training may provide an opportunity to replace the problematic behavior and provide these individuals with skills aimed at lessening that isolation.

Another more lofty potential solution is to provide more role models, which would require an overhaul of the education pipeline. Part of the isolation that results from stereotype threat is the idea that one is left by one’s self to be the representative of one’s race.¹¹⁴ Your identity and individuality are stripped, only to be replaced by the burden of being the definition of the group you represent. These are the instances where reaching critical mass lessens the burden on the few, allowing representation to become a duty once again: a task we undertake proudly, rather than something we have no choice but to shoulder.¹¹⁵

VII. FROM CANDIDATE TO ASSOCIATE: CHOOSING THE LAW FIRM

Cultural and value differences may affect a Hispanic candidate’s priorities when choosing a law firm. For example, “unlike whites and other minorities, Hispanics come from homes that instilled family loyalty and spiritual values rather than more materialistic ones.”¹¹⁶ Furthermore, even when the racialized candidate resolves the balance between attaining gainful employment and honoring their identity, the challenges may persist once in the workforce. Although most law firms recognize the value in diverse associates and have focused on recruitment to address the lack thereof, they ineffectively address, if at all, issues of retention of underrepresented populations, especially those in the intersection of race and gender.¹¹⁷

I latched on to my firm because of their community involvement, their high

113. See SUE, *supra* note 94, 218–19.

114. See discussion *supra* Part III.

115. See *Grutter*, 539 U.S. at 333 (“[D]iminishing the force of such stereotypes is both a crucial part of the Law School’s mission, and one that it cannot accomplish with only token numbers of minority students.”).

116. Dávila, *supra* note 32, at 1415.

117. Jill Schachner Chanen, *Early Exits*, ABA JOURNAL (Aug. 2006), http://www.abajournal.com/magazine/article/early_exits.

retention rate, their proportionate gender ratio, and their reassurance that family time was important. Those values resonated with me, even though they seemed at odds within a civil practice law firm. The firm functions as a team and has treated me as a part of it since I accepted a 2014 summer internship in October 2013. I considered the retention issues and evaluated their most recent hires in terms of men-to-women ratios. I considered the women that had left the firm and looked at their careers after leaving the firm. These women had gone on to be legislators or general counsel at large and prestigious entities. I reached out to a minority hire that left the firm years before, who had nothing negative to say about the firm. I was hyperaware of how the law firm navigated my race and how it interacted with my husband. And I trusted my luck. I found my niche, but in order to do so and in order to retain it, I had and will have to build bridges, cover, and reverse cover. And that is my burden.