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Renee Nicole Allen

DeShun Harris

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#SOCIALJUSTICE: COMBATting IMPLICIT BIAS IN AN AGE OF MILLENNIALS, COLORBLINDNESS & MICROAGGRESSIONS

Renee Nicole Allen & Deshun Harris*

ABSTRACT

Law schools, in an effort to produce practice-ready graduates, are in an opportune position to take the lead in confronting social justice. Many schools are shifting from traditional classroom instruction to more experiential learning environments which place students early in their academic pursuits in contact with clients and legal problems. While academic support originally focused on racial integration in law schools, today's Academic Support professionals support students who are diverse in various ways. As professionals, we cannot assume that our diverse students do not carry bias. Implicit bias, a bias one is not consciously aware of, has the ability to derail relationships with clients and peers. Complicating matters is the general assumption that Millennials, the "colorblind" generation, are the most tolerant of all previous generations. Yet, studies have found Millennials just as susceptible to bias as previous generations. Thus, law schools have the responsibility to train their students to become lawyers who are capable of working with diverse groups of people and do so with the ability to mitigate their biases, which could potentially bring a fairer administration of justice. This training must go beyond informing students about implicit bias but also teach them mechanisms to combat such bias.

INTRODUCTION

In April of 2016, two memos went viral: law students' anonymous critique of a professor who wore a Black Lives Matter t-shirt on campus, and the professor's response.¹ Soon after, it was

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* DeShun Harris is the Director of Academic Support and Bar Services at Texas A&M University School of Law. She is a law graduate of Texas Tech University School of Law and a master of laws graduate of American University, Washington College of Law.

* Renee Nicole Allen is the Director of the Academic Success at the University of Tennessee College of Law. She is a graduate of University of Florida, Levin College of Law. I wish to thank Michael Higdon for his insight and suggestions and Jingwei Zhang for research assistance.

¹ Scott Jaschik, *The Law Professor Who Answered Back*, INSIDE HIGHER ED. (July 12, 2016), <https://www.insidehighered.com/news/2016/07/12/law-professor-responds-students-who-complained-about-her-black-lives-matter-shirt>.

revealed that the initial memo was written by Whittier Law students and the response was drafted by Professor Patricia Leary, a Whittier faculty member since 1992.² Although students of color make up more than half of Whittier's student body,³ the authors of the anonymous memo alleged that when she wore a Black Lives Matter t-shirt on campus, Professor Leary sought to indoctrinate students with her personal opinions, favored particular students while alienating others, and failed to exercise restraint or appropriately direct her energy towards teaching.⁴ The anonymous students wrote, "[j]ust as our personal beliefs have no place in law exams, your personal beliefs have no place in the classroom."⁵ They called Professor Leary's actions ignorant, disrespectful, and mindless.⁶ They alleged that, by wearing the shirt, she demonstrated support of actions of some Black Lives Matter members which they deemed criminal.⁷ Finally, the students justified the anonymous nature of their memo by citing fear of retaliation for their minority held views and the "appalling levels of discrimination"⁸ demonstrated by Whittier's faculty and administration against students who hold such views.⁹

Following her belief, "that every moment in life (and certainly the life of law school) can be an occasion for teaching and learning,"¹⁰ Professor Leary responded to the student memo in kind.¹¹ In her response, she addressed the content of the student memo, challenging the students to think and write critically.¹² First, she challenged the idea

² *Id.*

³ *U.S. News and World Report Ranks Whittier Law School as Most Diverse Law School in California*, WHITTIER L. SCH. (Apr. 14, 2014), [ps://www.law.whittier.edu/index/news/article/us-news-and-world-report-whittier-law-school-most-diverse-in-california](https://www.law.whittier.edu/index/news/article/us-news-and-world-report-whittier-law-school-most-diverse-in-california).

⁴ Memorandum from Concerned Students to Patricia Leary, Professor of Law, Whittier L.Sch. (Apr. 26, 2016), <https://imgur.com/gallery/dRYBo>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Memorandum from Concerned Students to Patricia Leary, Professor of Law, Whittier L. Sch. (Apr. 26, 2016), <https://imgur.com/gallery/dRYBo>.

¹⁰ Memorandum from Patricia Leary, Professor of Law, Whittier L. Sch. to Concerned Students (Apr. 26, 2016), <https://imgur.com/gallery/dRYBo>.

¹¹ *Id.*

¹² *Id.*

that students are consumers whose tuition dollars dictate the content of the classroom and conduct of the professors.¹³ Second, noting that she wore the shirt on the day she discussed police brutality in the black community in her Criminal Procedure course, she reminded students that the law is fluid and shaped by the context of the world in which it develops.¹⁴ Writing specifically about her Black Lives Matter t-shirt, Professor Leary reminded students about the broad societal ambivalence regarding police brutality against people of color in which the Black Lives Matter movement arose.¹⁵ Finally, she asserted that the movement, “is not about white people”¹⁶ or violence. She closed her letter by providing constructive feedback about their legal writing.¹⁷

Maybe Professor Leary should have provided trigger warnings, “alerts that professors are expected to issue if something in a course might cause a strong emotional response,”¹⁸ to her students the night before wearing the shirt to her class. But what would this action have done to challenge her students’ views about race and social justice? Besides, clients, judges, and attorneys do not carry warnings that prepare attorneys for necessary, yet challenging, interactions.

Professor Leary’s experience is likely a product of the fact that conversations about race and social justice in the law school classroom have become sterile.¹⁹ The reasons our Millennial students may avoid these conversations are discussed herein. Perhaps law faculty hesitate to approach issues of race and social justice because they are concerned about backlash they may face. Many in Professor Leary’s position face negative reactions from students and colleagues and are often accused

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Memorandum from Patricia Leary, Professor of Law, Whittier L. Sch. to Concerned Students (Apr. 26, 2016), <https://imgur.com/gallery/dRYBo>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Greg Lukianoff & Jonathan Haidt, *The Coddling of the American Mind*, ATLANTIC (Sept. 2015), <https://www.theatlantic.com/magazine/archive/2015/09/the-coddling-of-the-american-mind/399356/>.

¹⁹ See Camille Gear Rich, *Decline to State: Diversity Talk and the American Law Student*, 18 S. CAL. REV. L. & SOC. JUST. 539, 542 (2009).

of pushing a social agenda that has no place in a law school classroom.²⁰ Yet, in our quest to educate lawyers who will impact social justice, equipping our students with cultural competency skills, including the ability to recognize and mitigate bias, is our job.

This paper will address how Academic Support professionals, and educators in general, can educate our diverse students, and their peers, about bias. First, we first explore the racial climate and perceptions of today's law student with a focus on Millennials.²¹ Second, we explore how these perceptions manifest in colorblindness and microaggressions.²² Next, we define how implicit bias affects law students and the legal profession in general. In the final section, we discuss teaching methods and resources that can be used to teach Millennials how to recognize and mitigate implicit bias.²³

I. MILLENNIALS & RACE

Millennials are the generation of Americans born as early as 1980²⁴ through 2004.²⁵ Generally, Millennials have “a new focus on teamwork, achievement, modesty, and good conduct.”²⁶ Specifically, “[t]hey are more numerous, more affluent, better educated, and more ethnically diverse.”²⁷ In fact, Millennials are our nation's “least Caucasian”²⁸ generation. Per the 2015 Census Bureau Report, which

²⁰ Margalynne J. Armstrong & Stephanie Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635, 655–57 (2008).

²¹ See *infra* Part I.

²² See *infra* Part II.

²³ See *infra* Part III.

²⁴ *The Whys and Hows of Generations Research*, PEW RES. CENTER (Sept. 3, 2015), <http://www.people-press.org/2015/09/03/the-whys-and-hows-of-generations-research/>.

²⁵ Bruce Horowitz, *After Gen X, Millennials, What Should Next Generation Be?*, USA TODAY (May 4, 2012, 2:08 PM), <http://usatoday30.usatoday.com/money/advertising/story/2012-05-03/naming-the-next-generation/54737518/1?loc=interstitialskip>.

²⁶ NEIL HOWE & WILLIAM STRAUSS, *MILLENNIALS RISING THE NEXT GREAT GENERATION* 4 (2000).

²⁷ *Id.*

²⁸ *Id.* at 15.

defined Millennials as the group born from 1982 through 2000, 44.5% of Millennials are racial or ethnic minorities.²⁹ This number increased to almost 50% for individuals born after the year 2000.³⁰ The diversity of this generation is reflected in law school student bodies. According to American Bar Association statistics, 27.9% of first-year law students enrolled in the fall of 2013 identified as minorities (compared to 12.5% minority enrollment in the fall of 1987).³¹

As part of its ongoing Look Different Campaign, MTV published a study of Millennials and bias that found that 84% of millennials were taught that everyone should be treated equally regardless of race, and that 89% of Millennials subscribed to this idea.³² The same study found that 72% of Millennials “believe their generation believes in equality more than older people.”³³ While it is true that “millennials will serve as a demographic bridge between older, whiter generations and subsequent, more diverse generations,”³⁴ racial diversity alone has done little to change Millennials’ bias or negative perceptions about race. When Millennial views on race are examined, there remains a cognitive dissonance between who they are as a generation and their perceptions about race.³⁵ Notably, “Millennials see racism as a matter of different treatment, justified by race, that you solve by removing race from the equation.”³⁶ This is demonstrated by the fact

²⁹ Press Release, Sumter County, Fla. is Nation’s Oldest, Census Bureau Reports (June 23, 2016), <https://www.census.gov/newsroom/press-releases/2016/cb16-107.html>.

³⁰ *Id.*

³¹ Section on Legal Education and Admissions to the Bar, *Statistics*, AM. BAR ASS’N., http://www.americanbar.org/groups/legal_education/resources/statistics.html (scroll to Ethnic/Gender Data and select Total JD Minority Enrollment) (last visited Mar. 28, 2018).

³² MTV & DAVID BINDER, BIAS SURVEY SUMMARY (Apr. 2014), http://d1fqdnmgwphrky.cloudfront.net/studies/000/000/001/DBR_MTV_Bias_Survey_Executive_Summary.pdf?1398858309.

³³ *Id.*

³⁴ William H. Frey, *Diversity Defines the Millennial Generation*, BROOKINGS (June 28, 2016), <https://www.brookings.edu/blog/the-avenue/2016/06/28/diversity-defines-the-millennial-generation/>.

³⁵ Jamelle Bouie, *Why Do Millennials Not Understand Racism? They Think if We Ignore Skin Color, Racism Will Somehow Disappear*, SLATE (May 16, 2014), http://www.slate.com/articles/news_and_politics/politics/2014/05/millennials_racism_and_mtv_poll_young_people_are_confused_about_bias_prejudice.html.

³⁶ *Id.*

that “73% believe never considering race would improve society,”³⁷ possibly doing more harm than good. Because of their firm belief in racial equality, a majority of millennials “believe it’s never fair to give preferential treatment to one race over another, regardless of historical inequalities.”³⁸ Despite being raised to believe all people are equal, Millennials can acknowledge that racial bias exist within their generation.³⁹ Yet, because they were raised in households where race was not discussed, they find it difficult to engage in meaningful discussions about racial bias.⁴⁰

Like other generations, Millennials have been taught that race relations improve over time, from generation to generation.⁴¹ This message is perpetuated despite the reality of racial inequality in America.⁴² When compared to their parents, Millennials view their generation as more open-minded and tolerant.⁴³ While Millennials *think* they are more tolerant than their parents, when surveyed about issues affecting institutional racism, there is little meaningful difference between Millennials and their Generation X or Baby Boomer parents.⁴⁴ Analysis of 2010-2014 General Social Survey data demonstrates this for white millennials finding that, “[o]n work ethic, 31 percent of millennials rate blacks as lazier than whites, compared to 32 percent of Generation X whites and 35 percent of Baby Boomers.”⁴⁵ Further analysis demonstrates that Millennial views about race vary along racial

³⁷ *MTV Delves Into ‘Looking Different’*, BLOG.VIACOM (June 17, 2014, 9:00 AM), <http://blog.viacom.com/2014/06/mtv-delves-into-looking-different/>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Leah Donnelly, *Will Racism End When Old Bigots Die?*, NPR (Jan. 14, 2017), <http://www.npr.org/sections/codeswitch/2017/01/14/505266448/will-racism-end-when-old-bigots-die>.

⁴² *Id.*

⁴³ ROBERT P. JONES ET AL., A GENERATION IN TRANSITION: RELIGION, VALUES AND POLITICS AMONG COLLEGE-AGE MILLENNIALS 5 (2012), <https://www.prii.org/wp-content/uploads/2012/04/Millennials-Survey-Report.pdf>.

⁴⁴ See Donnelly, *supra* note 41.

⁴⁵ Scott Clement, *Millennials Are Just About as Racist as Their Parents*, WASH. POST (Apr. 7, 2015), https://www.washingtonpost.com/news/wonk/wp/2015/04/07/white-millennials-are-just-about-as-racist-as-their-parents/?utm_term=.ceb96b9a95c8 (providing analysis of the 2010, 2012, and 2014 General Social Survey conducted by NORC).

lines.⁴⁶ White and Asian Millennials are less likely to regard racism as a pressing issue in this country.⁴⁷ This may be a product of experience as non-white Millennials “face unique challenges in a range of areas, including employment, education, gun violence, health, and criminal justice,”⁴⁸ that white Millennials are less likely to experience. Millennials may very well be more tolerant than other generations when it comes to social issues like interracial dating, but this tolerance along with a demonstrated split on how white and non-white Millennials view race, will do little to combat institutional racism.⁴⁹

While racially tolerant, Millennials are also seemingly apathetic when it comes to race.⁵⁰ Considering our current social climate where conversations about police brutality and white supremacy are seemingly unavoidable, white Millennials who appear apathetic may actually be experiencing racial fatigue.⁵¹ These students “avoid having to perpetually police and re-evaluate their own conduct” by avoiding conversations about race.⁵² It is also likely that “[s]ome racially fatigued

⁴⁶ Nicole Lewis, *Think Millennials Are Woke? A New Poll Suggests Some Are Still Sleeping on Racism*, WASH. POST (Aug. 10 2017), https://www.washingtonpost.com/news/post-nation/wp/2017/08/10/think-all-millennials-are-woke-a-new-poll-suggests-some-are-still-sleeping-on-racism/?utm_term=.1587273cda30 (citing GenForward Aug. 2017).

⁴⁷ *Id.*

⁴⁸ JON C. ROGOWSKI & CATHY J. COHEN, *BLACK MILLENNIALS IN AMERICA* 6 (2015), https://ypp.dmlcentral.net/sites/default/files/publications/BYP_ReportDesign04b_Dec03_HiRes_0.pdf (finding that 35.6% of Millennial black women report experiencing discrimination in the workplace based on race and/or gender compared to 13.9% of white women; 54% of black Millennials report they or someone they know were harassed by police compared to 32.8% of whites; 26.8% of black Millennials believe the legal system treats all groups equally compared to 41% of whites).

⁴⁹ See Sean Mcelwee, *Millennials Are More Racist than They Think*, POLITICO (Mar. 9, 2015), <https://www.politico.com/magazine/story/2015/03/millennials-race-115909> (discussing *MILLENNIALS: CONFIDENT. CONNECTED. OPEN TO CHANGE*, PEW RES. CENTER (2010), <http://assets.pewresearch.org/wp-content/uploads/sites/3/2010/10/millennials-confident-connected-open-to-change.pdf>).

⁵⁰ *Id.*

⁵¹ See Rich, *supra* note 19, at 563. Rich describes the concept of the “racially fatigued” as the, mostly white “students who are fundamentally uncomfortable talking about race.” *Id.*

⁵² *Id.* at 564.

students are simply afraid of participating in conversations, because they believe that one insensitive or impolite comment could result in them being branded as racist.”⁵³ Ironically, most racially fatigued students likely identify as allies to people of color.⁵⁴ Yet, when they choose to remain passive, they are complicit in continuing racism that is institutional and systematic.⁵⁵ Instead of discussing subtle prejudice and institutional racism, these students would rather blame the few actors who carry out explicit acts of racism for our continuing race-related problems.⁵⁶

II. COLORBLINDNESS AND MICROAGGRESSIONS

The cognitive dissonance between the racial and ethnic diversity of the Millennial generation and the prevailing racial bias can be better understood by exploring colorblind ideology and the myth of a post-racial America.

Leading scholar Dr. Eduardo Bonilla-Silva describes colorblind racism as a “racial ideology based on the superficial extension of the principles of liberalism to racial matters that results in “‘raceless’ explanations for all sort of race-related affairs.”⁵⁷ According to Dr. Bonilla-Silva, colorblind racism has three central components: frames, race talk, and racial stories.⁵⁸ The frames of colorblind racism are “minimization of racism,” “cultural racism,” “naturalization,” and “abstract liberalism [which] is the core frame of this ideology.”⁵⁹ Abstract liberalism describes what occurs when a stated belief that all people, regardless of race, are equal and should be afforded equal opportunities appears to only be lip service because all reasonable actions designed to engender racial equality are rebuffed.⁶⁰ Race talk

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 565.

⁵⁶ Rich, *supra* note 19, at 563–64.

⁵⁷ Eduardo Bonilla-Silva, *The Structure of Racism in Color-Blind, “Post-Racial” America*, 59 AMERICAN BEHAV. SCIENTIST 1358, 1364 (2015).

⁵⁸ *Id.* at 1364–66.

⁵⁹ *Id.* at 1364.

⁶⁰ *See id.* (“Abstract liberalism is the core frame of this ideology and incorporates the notion of liberalism in an abstract and decontextualized manner. By employing

occurs when semantics, such as the phrase “[s]ome of my best friends are black” are employed to avoid meaningful dialogue about sensitive racial topics.⁶¹ Finally, racial stories “reflect people’s attempts to rationalize the racial order with material from their own lives.”⁶² For example:

[t]he dominant storylines of color-blind racism are ‘The past is the past,’ ‘I did not own any slaves,’ ‘If Jews, Irish, and Italians made it, how come Blacks have not,’ and ‘I did not get a job, or promotion, or was not accepted to college because of a Black man.’⁶³

Though it seems innocuous, colorblindness is actually a form of racism.⁶⁴ It is harmful because it “foist[s] whiteness on everyone,” “strips non-white people of their uniqueness,” “suppresses critically important narratives of oppression,” assumes the American experience is the same for everyone, and “promotes the idea that non-white races are inferior.”⁶⁵ Overall, colorblindness prevents moving forward in a meaningful way.

Colorblind ideology evolved after the abolition of Jim Crow and the success of the Civil Rights movement.⁶⁶ Influencing Generation X,⁶⁷ the Clinton administration took pains to address race relations in America, leading many scholars to assert that America was post racial

this frame, Whites appear ‘reasonable’ and ‘moral’ while opposing all kinds of interventions to deal with racial inequality.”).

⁶¹ *Id.* at 1365.

⁶² Bonilla-Silva, *supra* note 57, at 1365.

⁶³ *Id.*

⁶⁴ Dani Bostick, *How Colorblindness Is Actually Racist*, HUFFINGTON POST (July 11, 2016, 6:04 PM), http://www.huffingtonpost.com/dani-bostick/how-colorblindness-is-act_b_10886176.html.

⁶⁵ *Id.* See also Bonilla-Silva, *supra* note 57, at 1363–68 (supporting the theory that color-blindness is a form of racism that negatively impacts society).

⁶⁶ Eduardo Bonilla-Silva & Victor E. Ray, *Getting over the Obama Hope Hangover: The New Racism in ‘Post-Racial’ America*, in THEORIES OF RACE AND ETHNICITY: CONTEMPORARY DEBATES AND PERSPECTIVES 57, 61–62 (Karim Murji & John Solomos eds., 2014).

⁶⁷ Generation X encompasses individuals born between 1965 and the 1980’s, between the Baby Boomers (1946-1965) and Millennials. See *The Whys and Hows of Generation Research*, *supra* note 24.

and “argue[] that anyone who was not colorblind or transracial was, in fact, racist.”⁶⁸ Post September 11, 2001, “[c]olor blind racists exploited the raw feelings . . . playing up a united, patriotic America where national defense had overtaken racial divides, and where antiracist and antiwar activists were threats to national security.”⁶⁹ After the election of Barack Obama, John McWhorter was one of many to proclaim that racism no longer existed in America.⁷⁰

The youngest Millennials were just four years old when America elected its first African American president. Considering the significant progress America made over fifty years, parents with noble intentions encouraged Millennials to be colorblind.⁷¹ Though history seemed to support this sentiment, incidents like the killings of unarmed black men by the police,⁷² the shooting at a historic black church by a millennial⁷³, and white power rallies like the one that occurred in Charlottesville⁷⁴ demonstrate that we are not yet living in a society where race is not a factor. In fact, “[i]f educational opportunity,

⁶⁸ IBRAM X. KENDI, *STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA* 467–68 (2016) (discussing JIM SLEEPER, *LIBERAL RACISM* (1997)).

⁶⁹ *Id.* at 478.

⁷⁰ John McWhorter, *Racism in America is Over*, *FORBES* (Dec. 30, 2008, 2:00 PM), https://www.forbes.com/2008/12/30/end-of-racism-oped-cx_jm_1230mcwhorter.html.

⁷¹ Michael Denzel Smith, *White Millennials are Products of a Failed Lesson in Colorblindness*, *PBS* (Mar. 26, 2015, 12:58 PM), <https://www.pbs.org/newshour/nation/white-millennials-products-failed-lesson-colorblindness>.

⁷² Meredith Edwards & Dakin Andone, *Ex-South Carolina Cop Michael Slager Gets 20 Years for Walter Scott Killing*, *CNN* (Dec. 7, 2017, 4:10 PM), <http://www.cnn.com/2017/12/07/us/michael-slager-sentencing/index.html>; Chauncey DeVega, *What Does the Police Killing of Tamir Rice Tell Us About Colorblind Racism and the Gun Right?*, *ALTERNET* (Dec. 4, 2014), <https://www.alternet.org/speakeasy/chaunceydevega/what-does-police-killing-tamir-rice-tell-us-about-colorblind-racism-and-gun>.

⁷³ Alan Blinder & Kevin Sack, *Dylann Roof is Sentenced to Death in Charleston Church Massacre*, *N.Y. TIMES* (Jan. 10, 2017), <https://www.nytimes.com/2017/01/10/us/dylann-roof-trial-charleston.html>.

⁷⁴ Doug Stanglin & Gabe Cavallaro, *1 Dead, 19 Injured as Car Hits Crowd After a ‘Unite The Right’ Rally In Charlottesville; Driver in Custody*, *USA TODAY* (Aug. 12, 2017, 10:16 AM), <https://www.usatoday.com/story/news/2017/08/12/charlottesville-va-braces-alt-right-rally-thousands-robert-e-lee-statue/561833001/>.

occupational advancement, health, upward mobility and equal treatment in the public sphere can be used as indicators of how color-blind we are as a nation, then we have failed.”⁷⁵

While we aspire to be post-racial, it is likely we “overstate[d] the significance”⁷⁶ of the election of Barack Obama. Research and polling demonstrate that

[t]he racial divide in political attitudes, as well in social and economic outcomes, remains stubbornly immune to the passage of time. Whites and Blacks, and to a lesser degree Latinos, continue to disagree by as much as 40-50 percentage points on such matters as which presidential candidates to support, which political party to identify with, and whether or not government should intervene on behalf of African Americans in order to safeguard their rights in the labor market and improve their social and economic condition.⁷⁷

Hopeful about eliminating racial divides, older generations were optimistic and unrealistic about how time would impact racial views. According to a 2005 study of Millennials, “when asked whether racism would be eliminated in their lifetime, respondents were pessimistic, with about only one-third in each racial/ethnic category believing the elimination of racism in their lifetime was very or somewhat likely.”⁷⁸ This is problematic because when one aspires to be colorblind, she suppresses any awareness of race or whiteness, thereby maintaining white privilege by not engaging in meaningful conversations about race.⁷⁹ This does little to move the ball towards racial equality or social justice.

⁷⁵ Charles A. Gallagher, *Color-Blind Privilege: The Social and Political Functions of Erasing the Color Line in Post Race America*, 10 RACE, GENDER & CLASS 22, 35 (2003).

⁷⁶ Vincent L. Hutchings, *Change or More of the Same? Evaluating Racial Attitudes in the Obama Era*, 74 PUB. OPINION Q. 917, 938 (2009).

⁷⁷ *Id.*

⁷⁸ Cathy J. Cohen, *Millennials & the Myth of the Post-Racial Society: Black Youth, Intra-Generational Divisions & the Continuing Racial Divide in American Politics*, 140 DAEDALUS 199, 197 (2011).

⁷⁹ Armstrong & Wildman, *supra* note 20, at 648–49.

Post-racial, colorblind Millennials “strongly believe that racial identity is not an important component of one’s self-image.”⁸⁰ Subtle demonstrations of bias are a likely consequence of Millennials’ belief that they are colorblind. While overt acts of blatant racism occur, colorblind Millennials are more likely to demonstrate bias through microaggressions.⁸¹ In general, “[a] microaggression is a seemingly innocuous casual comment or gesture that’s typically used to dismiss and degrade the experience and identities of women and minorities and other marginalized people.”⁸² Specific unconscious, racial microaggressions include microinsults and microinvalidations.⁸³ Microinsults are “communications that convey rudeness and insensitivity and demean a person’s racial heritage or identity.”⁸⁴ Microinvalidations are “communications that exclude, negate, or nullify the psychological thoughts, feelings, or experiential reality of a person of color.”⁸⁵ Whether microinsults and microinvalidations are verbal or nonverbal, the person communicating is generally unaware of the hidden message(s) received by a person of color.⁸⁶ The context in which these hidden messages are conveyed may determine if they are actually microaggressions.⁸⁷

Microaggressions are characterized by key themes: “alien in one’s own land, ascription of intelligence, color blindness, criminality/assumption of criminal status, denial of individual racism, myth of meritocracy, pathologizing cultural values/communication styles, second-class status, and environmental invalidation.”⁸⁸ While microaggressions are too numerous to include in an exhaustive list, a statement like “[y]ou are so articulate”⁸⁹ is a microinsult which falls within the ascription of intelligence theme. The hidden message

⁸⁰ Rich, *supra* note 19, at 560.

⁸¹ *Id.* at 572 n.113.

⁸² Aja Romano, *How Get Out Deconstructs Racism for White People*, VOX (Mar. 7, 2017, 1:30 PM), <https://www.vox.com/culture/2017/3/7/14759756/get-out-benevolent-racism-white-feminism>.

⁸³ Derald Wing Sue et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, AM. PSYCHOLOGIST, May-June 2007, at 271, 273–74.

⁸⁴ *Id.* at 274.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Sue et al., *supra* note 83, at 275.

⁸⁹ *Id.* at 276.

received by a person of color is, “[i]t is unusual for someone of your race to be intelligent.”⁹⁰

Students who experience microaggressions handle them in diverse ways including silence, verbal, and physical confrontation, and attempts to “dispel racial stereotypes.”⁹¹ A Latina female student reported:

I have been told that as a Hispanic, I received special treatment by the university so as to diversify the school. I told these individuals that I did not work so vigorously in high school to be dismissed by ignorant comments in college. I have earned my spot here and maintained good grades to prove it. I was disappointed by this disregard but I was prompted to continue striving to do my best to prove myself.⁹²

Regardless of the academic setting in which racial microaggressions occur, very few students utilize campus resources to resolve them.⁹³ Unfortunately, “[t]he classroom is often not a safe space to discuss or process racial microaggressions”⁹⁴ In line with the difficulty Millennials experience when discussing race, Millennials who experience microaggressions commonly assumed the person was ignorant and ignored the event.⁹⁵

Although Millennials have adopted frameworks that suggest they are colorblind or immune to prejudice and bias, the research demonstrates that neither is true. Because of this, it is important that we begin to raise their awareness about impediments to their ability to act in unbiased ways.

⁹⁰ *Id.*

⁹¹ STACY A. HARWOOD ET AL., RACIAL MICROAGGRESSIONS AT THE UNIVERSITY OF ILLINOIS AT URBANA-CHAMPAIGN: VOICES OF STUDENTS OF COLOR IN THE CLASSROOM 14 (2015),

<http://www.racialmicroaggressions.illinois.edu/files/2015/03/RMA-Classroom-Report.pdf>.

⁹² *Id.* at 15.

⁹³ *Id.* at 14.

⁹⁴ *Id.* at 15.

⁹⁵ *Id.* at 14.

III. DEFINING IMPLICIT BIAS

Studies have shown that explicit bias like racial prejudice is on the decline, but discrepancies between racial groups still exist.⁹⁶ While explicit bias continues to exist and should be addressed in efforts to create more culturally competent law students and lawyers,⁹⁷ this paper will focus on implicit bias research which emerged as an area of study as another possible cause of the existing discrepancies.⁹⁸ Implicit bias has an impact on the legal profession.⁹⁹ Thus, this section will explore what implicit bias is and its relationship to law students and attorneys.

To understand bias generally, it is important to first understand the role stereotypes play in how people comprehend the world around them.¹⁰⁰ Stereotypes are categorizations of people based on favorable or unfavorable traits.¹⁰¹ Stereotypes are formed as a result of the brain's need to develop cognitive schemas to sort and process incoming information efficiently.¹⁰² Schemas allow individuals to use frameworks based on prior experience "to understand new people, circumstances, objects and their relationship to each other."¹⁰³ These stereotype schemas develop in childhood even before "children develop

⁹⁶ Patricia G. Devine et al., *Long-Term Reduction in Implicit Race Bias: A Prejudice Habit-Breaking Intervention*, 48 J. EXPERIMENTAL SOC. PSYCHOL. 1267, 1267 (2012) [hereinafter Devine et al., *Long-Term Reduction*].

⁹⁷ See Debra Chopp, *Addressing Cultural Bias in the Legal Profession*, 41 N.Y.U. REV. L. & SOC. CHANGE 367, 380 (2017) (discussing the importance of addressing explicit and implicit biases in legal education, focusing on examples from other professions). See generally Evelyn R. Carter & Mary C. Murphy, *Group-Based Differences in Perceptions of Racism: What Counts, to Whom, and Why?*, 9 SOC. PERSONALITY PSYCHOL. COMPASS 269 (2015) (arguing that perceptions of racism differs between Whites and Blacks and advancing interventions such as increasing Whites knowledge of the history of racism in America to converge White and Black perceptions of racism).

⁹⁸ Devine et al., *Long-Term Reduction*, *supra* note 96, at 1267.

⁹⁹ Andrea A. Curcio, *Addressing Barriers to Cultural Sensibility Learning: Lessons from Social Cognition Theory*, 15 NEV. L. J. 537, 552 (2015).

¹⁰⁰ See *id.* at 545.

¹⁰¹ Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945, 950 (2006).

¹⁰² Curcio, *supra* note 99, at 545.

¹⁰³ Nicole E. Negowetti, *Navigating the Pitfalls of Implicit Bias: A Cognitive Science Primer for Civil Litigators*, 4 ST. MARY'S J. LEGAL MALPRACTICE & ETHICS 278, 285 (2014).

the cognitive ability and flexibility to question or critically evaluate the stereotype's validity or acceptability."¹⁰⁴ Stereotypes are related to bias and prejudice because bias and prejudice are "attitudes based upon applying stereotypes to individuals or social groups."¹⁰⁵ Because stereotypes, bias, and prejudice are imbedded in our socialization from childhood through adulthood, they often operate automatically and unconsciously.¹⁰⁶ Implicit bias is built on this framework of ingrained attitudes, as "implicit biases are automatic, unconscious mental processes. . . . formed by one's own life experiences and lurk beneath the surface of the conscious" of which may motivate the actor's actions without their awareness.¹⁰⁷

The mind processes information using automatic and controlled processes.¹⁰⁸ Controlled processes are conscious and flexible; they are associated with problem-solving and the adaption of personal beliefs.¹⁰⁹ With controlled processes, a person may have an explicit belief in god that results in observances like prayer.¹¹⁰ In contrast, automatic processes may be unconscious and are the result of deeply engrained associations that have been repeated over time.¹¹¹ With automatic processes, one defaults to the underlying preference which may or may not be conscious; for example, an egalitarian person defaulting to an unconscious preference for White people.¹¹²

The example illustrates a disturbing occurrence of automatic and controlled processes in conflict regarding a particular group.¹¹³ This

¹⁰⁴ Patricia G. Devine, *Stereotypes and Prejudice: Their Automatic and Controlled Components*, 56 J. PERSONALITY & SOC. PSYCHOL. 5, 6 (1989) [hereinafter Devine, *Stereotypes*].

¹⁰⁵ Curcio, *supra* note 99, at 545.

¹⁰⁶ Devine, *Stereotypes*, *supra* note 104, at 6.

¹⁰⁷ Negowetti, *supra* note 103, at 284; *see also* Greenwald & Krieger, *supra* note 101, at 946.

¹⁰⁸ Devine, *Stereotypes*, *supra* note 104, at 6.

¹⁰⁹ *Id.*

¹¹⁰ MARHZARIN R. BANAJI & ANTHONY G. GREENWALD, BLIND SPOT: HIDDEN BIASES OF GOOD PEOPLE 54 (2013).

¹¹¹ Devine, *Stereotypes*, *supra* note 104, at 6.

¹¹² *See* BANAJI & GREENWALD, *supra* note 110, at 57 (describing scholar Malcom Gladwell's distress over tests that showed he had a slight preference for white people, in spite of his mother being non-white).

¹¹³ Devine, *Stereotypes*, *supra* note 104, at 6.

concept is called dissociation and it involves a conflict when, for example, an individual rejects a stereotype as a personal belief (controlled) but the unconscious (automatic) aligns with the stereotype.¹¹⁴ Researchers found automatic use of stereotypes occurs for both low prejudiced and high prejudiced individuals.¹¹⁵

Automatic use of stereotypes is most likely to occur in circumstances where one must act without time to reflect, have limited rest, and are mentally exhausted.¹¹⁶ This is a representation of how “racial, gender, religious, and other biases are [so] woven into the fabric of our culture” that both low and high biased people will act on these biases without time to reflect.¹¹⁷ The impact of implicit bias is that it can betray us unintentionally.¹¹⁸ For example, studies indicate that if someone harbors bias against a targeted group, in her interactions with the targeted group she is likely, unbeknownst to herself, to convey negative body language with less smiling, eye contact, and even how close she sits to the person; all of which is often perceived by the person belonging to the targeted group.¹¹⁹

In investigating implicit bias, the Implicit Association Test (IAT) is a prominent research tool.¹²⁰ An IAT measures the associations one has between two categories (e.g., women or men) and an attribute (e.g., good or bad).¹²¹ The value of the test is that it may unmask biases that the actor is unaware they hold.¹²² IAT can measure several societal biases, including assessing anti-gay bias, gender bias, or age bias.¹²³ A

¹¹⁴ Greenwald & Krieger, *supra* note 101, at 949; Devine, *Stereotypes*, *supra* note 104, at 6.

¹¹⁵ See Devine, *Stereotypes*, *supra* note 104, at 15–16.

¹¹⁶ Jeff Stone & Gordon B. Moskowitz, *Non-Conscious Bias in Medical Decision Making: What Can Be Done to Reduce It*, 45 MED. EDUC. 768, 769 (2011).

¹¹⁷ Curcio, *supra* note 99, at 548.

¹¹⁸ Negowetti, *supra* note 103, at 289.

¹¹⁹ Curcio, *supra* note 99, at 550–51.

¹²⁰ Greenwald & Krieger, *supra* note 101, at 952.

¹²¹ Anthony G. Greenwald et al., *Measuring Individual Differences in Implicit Cognition: The Implicit Association Test*, 74 J. PERSONALITY & SOC. PSYCHOL. 1464, 1478 (1998).

¹²² *Id.* at 1465.

¹²³ Many IATs are hosted by Project Implicit, founded in 1998. See *About Us*, PROJECT IMPLICIT, <https://projectimplicit.net/about.html> (last visited Mar. 24, 2018). The website includes a list of IATs that are currently available for individuals to

Race IAT measures implicit biases that may be associated with Blacks as compared to Whites.¹²⁴ During part of the test, the test taker is asked to pair Black faces with negative words in contrast to pairing White faces with positive words; while another part asks the test taker to pair Black faces with positive words in contrast to pairing White faces with negative words.¹²⁵ The test taker is scored on her ability to make the association under timed conditions with accuracy; these factors are used to determine the implicit association (favorable or unfavorable bias) the test taker has toward Black people.¹²⁶

Studies have evaluated bias among lawyers and the judiciary using the IAT.¹²⁷ These studies indicated both groups which took the Race IAT had racial implicit biases.¹²⁸ The IAT is only one of many tools for measuring one's implicit bias, but IAT is one of the most popular.¹²⁹ While the test has been touted as also being able to predict behavior that conforms to that bias, that contention is currently debated among scholars; and challenges exist related to the IAT's ability to reliably measure implicit bias.¹³⁰ One of the IAT creators argues that even if the IAT is unable to measure if someone will act on those implicit biases, it is fruitful at the very least to begin a conversation

take. *See Take a Test*, PROJECT IMPLICIT, <https://implicit.harvard.edu/implicit/takeatest.html>. (last visited Mar. 24, 2018).

¹²⁴ Greenwald & Krieger, *supra* note 101, at 952.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Curcio, *supra* note 99, at 552–53.

¹²⁸ *Id.* at 552.

¹²⁹ *Id.* at 552. *See* Greenwald et al., *supra* note 121, at 1464; *see also* Jessica Nordell, *Is This How Discrimination Ends?*, ATLANTIC (May 7, 2017), <https://www.theatlantic.com/science/archive/2017/05/unconscious-bias-training/525405/> (noting 2.5 million people have taken the IAT tests).

¹³⁰ *See, e.g.,* Nordell, *supra* note 129; Jesse Singal, *Psychology's Favorite Tool for Measuring Racism Isn't Up to the Job*, CUT (Jan. 11, 2017), <https://www.thecut.com/2017/01/psychologys-racism-measuring-tool-isnt-up-to-the-job.html>; Tom Bartlett, *Can We Really Measure Implicit Bias? Maybe Not*, CHRON. FOR HIGHER EDUC. (Jan. 5, 2017), <https://www.chronicle.com/article/Can-We-Really-Measure-Implicit/238807>; Heather Mac Donald, *The False 'Science' of Implicit Bias*, WALL ST. J. (Oct. 9, 2017), <https://www.wsj.com/articles/the-false-science-of-implicit-bias-1507590908>.

about its existence.¹³¹ But given that implicit bias recently rose as a potential cause of the complex issue of racial disparities, seeking to determine implicit bias's exact role and the proper interventions is just beginning.¹³² Notwithstanding the issues related to the IAT, the research is clear that implicit bias exists and that it *can* have an impact on behavior.¹³³ If there is uncertainty regarding the IAT's ability to predict behavior, then it has implications for how one should explain the IAT if they choose to use it as part of a training.¹³⁴

In considering training to alleviate bias, research is clear that legal training alone is insufficient to eliminate bias.¹³⁵ Legal training with its emphasis on objectivity, thus puts lawyers and law students in a position to be susceptible to implicit bias.¹³⁶ In fact, "when a person believes himself to be objective, he is more susceptible to biases."¹³⁷ Further, studies conducted on legal actors show that implicit bias operates in the profession.¹³⁸ For example, one study evaluated the impact of race in the evaluation of a memo by law firm partners.¹³⁹ In the experiment, researchers sent out the same memo using the same name and qualifications but with an African American or Caucasian identifier.¹⁴⁰ The results were that even though the paper was the same, more errors were found in the papers for the African American identifier than those of the Caucasian identifier.¹⁴¹ The results of the study

¹³¹ See Bartlett, *supra* note 130 (quoting Anthony Greenwald). Brian Nosek, one of the founders of IAT, questions its efficacy. *Id.* However, Greenwald and Banaji still stand by IAT and their results. *Id.*

¹³² *Id.*

¹³³ See Patrick S. Forscher et al., *Breaking the Prejudice Habit: Mechanisms, Timecourse, and Longevity*, 72 J. EXPERIMENTAL SOC. PSYCHOL 133, 133 (2017) (noting that implicit bias has the potential to impact behavior) [hereinafter Forscher et al., *Prejudice Habit*].

¹³⁴ See Singal, *supra* note 130.

¹³⁵ See Chopp, *supra* note 97, at 381–82 (“[L]awyers cannot be effective in an increasingly diverse United States without further training in bias.”).

¹³⁶ See Curcio, *supra* note 99, at 555.

¹³⁷ Negowetti, *supra* note 103, at 281.

¹³⁸ See Curcio, *supra* note 99, at 553–54; Negowetti, *supra* note 103, at 281.

¹³⁹ ARIN N. REEVES, WRITTEN IN BLACK & WHITE: EXPLORING CONFIRMATION BIAS IN RACIALIZED PERCEPTIONS OF WRITING SKILLS (2014), <http://nextions.com/wp-content/uploads/2017/05/written-in-black-and-white-yellow-paper-series.pdf>.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

indicate that in the legal profession “commonly held perceptions are biased against African-Americans and in favor of Caucasians.”¹⁴²

Given that bias exists in the field, law schools should begin interventions for implicit bias among law students. This is particularly important because research on law students indicates that they believe that legal training eliminates bias.¹⁴³ Because law students have this belief and the belief is false, it is critically important to assist them in learning about and mitigating implicit bias.

IV. MITIGATING IMPLICIT BIAS

If implicit bias can lead one to act in a manner inconsistent with one’s beliefs, then it is important that one can identify methods to mitigate implicit bias. Mitigating implicit bias requires significant work, so much so that a recent unpublished study evaluating 400 implicit bias change studies over twenty years showed that less than five percent were actually effective in minimizing implicit bias over long periods of time and none had an impact on behavior.¹⁴⁴ Researchers hypothesize that these interventions may not target the proper system that leads to behavior.¹⁴⁵ This result is consistent with research on implicit bias being deeply ingrained and connected to one’s conception of self.¹⁴⁶ Yet, it should not lead one to resign that undertaking to train on implicit bias and interventions to mitigate are futile. Indeed, in our efforts to diversify the profession, it is important to investigate methods that can assist us in creating an inclusive environment that take us beyond diversity statements and into actual efforts.¹⁴⁷

¹⁴² *Id.*

¹⁴³ Curcio, *supra* note 99, at 540.

¹⁴⁴ Patrick S. Forscher et al., A Meta-Analysis of Change in Implicit Bias (July 1, 2017) (unpublished manuscript), <https://psyarxiv.com/dv8tu>.

¹⁴⁵ *Id.*

¹⁴⁶ Patrick S. Forscher & Patricia G. Devine, *Knowledge-Based Interventions Are More Likely to Reduce Legal Disparities Than Are Implicit Bias Interventions*, in ENHANCING JUSTICE REDUCING BIAS 303, 309 (Sarah Redfield ed., 2017). [hereinafter Forscher & Devine, *Knowledge-Based*].

¹⁴⁷ See Carter & Murphy, *supra* note 97, at 273 (summarizing a study that indicated that when a company seemingly endorsed diversity, even without actions, white individuals were more likely to perceive that institution as fair even if it used racist tactics).

In fact, one promising theory that has led to change in behavior treats implicit bias as a habit.¹⁴⁸ In treating implicit bias as a habit, one recognizes the mind requires “experiences that are potent, adaptive, or repeatedly practiced.”¹⁴⁹ Thus, one-time or short-term use of mitigation strategies is unlikely to upend implicit bias because implicit bias is an automatic process.¹⁵⁰ Even those one-time or short term mitigation strategies that reduce implicit bias only do so for one hour and, of those lasting longer, no more than several days.¹⁵¹ However, longer lasting changes occur in treating implicit bias as a habit that can be broken.¹⁵² The habit-breaking intervention can be developed into an implicit bias training or workshop.¹⁵³

In treating implicit bias as a habit, two components are required for an effective training. First, trainees must understand how bias will arise.¹⁵⁴ Second, trainees must learn alternative responses to bias that are consistent with their egalitarian goals.¹⁵⁵ The egalitarian goals are important to induce guilt which then triggers the “self-regulatory efforts to disrupt automatic bias and prevent future expressions of bias.”¹⁵⁶ It is worth emphasizing that to undergo an effective training, one must not only be aware of their implicit bias, one must also be concerned about their implicit bias, and engage in strategies to reduce it.¹⁵⁷ This revelation means that for those students who are unconcerned with their bias, implicit or explicit, may require different interventions.¹⁵⁸

¹⁴⁸ Devine et al., *Long-Term Reduction*, *supra* note 96, at 1268.

¹⁴⁹ Calvin K. Lai & Mahzarin R. Banaji, *The Psychology of Implicit Intergroup Bias and the Prospect of Change* 15 (Jan. 31, 2018) (unpublished manuscript), <https://psyarxiv.com/7gq24>.

¹⁵⁰ Devine et al., *Long-Term Reduction*, *supra* note 96, at 1268.

¹⁵¹ Lai & Banaji, *supra* note 149, at 15.

¹⁵² Devine et al., *Long-Term Reduction*, *supra* note 96, at 1268.

¹⁵³ Stone & Moskowitz, *supra* note 116, at 772.

¹⁵⁴ *See* Devine et al., *Long-Term Reduction*, *supra* note 96, at 1268 (emphasizing self-awareness and alternative responses as key steps in achieving the goal of overcoming bias).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *See* Carter & Murphy, *supra* note 97, at 277 (advocating for an intervention that assists Whites in learning about structural racism to alleviate the cognitive load so it may lead to a perception that favors mitigation efforts). *See also* Devine et al., *Long-Term Reduction*, *supra* note 96, at 1276 (concluding that even people who do not

The implicit bias training develops understanding of implicit bias by increasing the student's awareness of implicit bias.¹⁵⁹ An instructor increases awareness in two ways: feedback and education.¹⁶⁰ During the feedback portion of training, trainees are asked to participate in a task designed to introduce trainees to how implicit bias operates.¹⁶¹ One method of doing so is to ask trainees to undertake the Race IAT before the training, but with a *pedagogical* purpose to increase awareness of implicit bias rather than a measure of implicit bias.¹⁶² A link to the IAT can be sent to trainees for them to complete the IAT up to three days before the training date.¹⁶³ Trainees are then given feedback about their performance.¹⁶⁴

Other tasks to introduce implicit bias that would occur during the training, instead of before it, includes using an informal poll whereby participants are given a series of prompts related to biases such as beauty, weight, race, or gender requesting the participant to indicate their level of agreement with the prompt (e.g., strongly agree, agree, neutral, disagree, strongly disagree).¹⁶⁵ An example prompt is "An attractive person is more likely to be hired before a less attractive person, but equally qualified person."¹⁶⁶ The feedback portion is to reveal research related to the realities behind this premise and to get students to discuss the rationale behind why they agree or disagree with the prompt.¹⁶⁷ For example, in looking at attractiveness, studies show that beautiful people are hired sooner and get promoted more quickly

have an internal motivation to act without prejudice made efforts to mitigate their bias which may be the result of the engaging education and training).

¹⁵⁹ Devine et al., *Long-Term Reduction*, *supra* note 96, at 1268.

¹⁶⁰ Forscher & Devine, *Knowledge-Based*, *supra* note 146, at 311.

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Molly Carnes et al., *Promoting Institutional Change Through Bias Literacy*, 5 J. DIVERSITY HIGHER EDUC. 63, 66 (2012) [hereinafter Carnes et al., *Bias Literacy*].

¹⁶⁴ *Id.*

¹⁶⁵ Megan Crenshaw, *Street Law Model Lesson Plan: Implicit Bias*, UNVI. WASH. L. (Mar. 4, 2014),

<https://www.law.washington.edu/clinics/streetlaw/lessons/crim/implicitbias.docx>.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

and earn more.¹⁶⁸ Revealing the studies behind the biases can assist students in seeing that bias exists throughout society and the impact it can have.

Additional methods include the use of visual “mindbugs” that include graphics that show an error in perception in seeing two of the same objects as they are.¹⁶⁹ One might also introduce movement into the awareness component. For example, leading an audience through an IAT as a collective group and asking the audience to tap their legs in response to each pairing.¹⁷⁰ Additionally, one might create a visual split of the room in half with one side representing agree and the other disagree and the attendees are then asked to select by standing on one side of the room in response to a prompt.¹⁷¹ The prompts might include questions such as “I feel uncomfortable talking to people with different political affiliations than I.”¹⁷² Each of these methods raises the attendees’ awareness by giving them feedback that they harbor bias, but they are not alone.

Further, during the awareness part of the training, it is important to address bias as it exists in the field of law and how bias can interfere with the ability to provide just or fair outcomes for the nation’s populace.¹⁷³ One particular way to draw on bias in the field is to make it more relevant by requiring trainees to use what they know about bias

¹⁶⁸ Dario Maestripieri, *The Truth About Why Beautiful People Are More Successful*, PSYCHOL. TODAY (Mar. 8, 2012), <https://www.psychologytoday.com/blog/games-primates-play/201203/the-truth-about-why-beautiful-people-are-more-successful>.

¹⁶⁹ BANAJI & GREENWALD, *supra* note 110, at 3–4.

¹⁷⁰ Stone & Moskowitz, *supra* note 116, at 772–73. Although this activity was completed initially in the context of training for healthcare professionals, the legal profession can learn much from that field’s approach to anti-bias training. See Chopp, *supra* note 97, at 381.

¹⁷¹ Jack Manhire, Dir. of Program Dev. at Tex. A&M Univ. Sch. Of Law, *Breaking Bias Workshop* (Oct. 2, 2015); see also Jennifer Nassar, *Manhire Presents Bias Workshop to Texas A&M Law*, TEX A&M SCH. OF L. (Oct. 8, 2015), <http://law.tamu.edu/media/news-media-resources/story/manhire-presents-bias-workshop-to-tamu-law>.

¹⁷² Jack Manhire, Dir. of Program Dev. at Tex. A&M Univ. Sch. Of Law, *Breaking Bias Workshop* (Oct. 2, 2015).

¹⁷³ Molly Carnes et al., *The Effect of an Intervention to Break the Gender Bias Habit for Faculty at One Institution: A Cluster Randomized, Controlled Trial*, 90 ACAD. MED. 221, 223 (2015) [hereinafter Carnes et al., *The Effect*].

to determine ways they can make their environment equitable.¹⁷⁴ You might use the example stated above in regards to the legal memo that was circulated to portray the biases present in the legal profession or discuss studies related to disparities of minorities and women in holding various legal jobs.¹⁷⁵

The next step is to educate trainees with a focus on how unintended and unconscious implicit bias can lead to behavior and manifest into disparities for stereotyped groups.¹⁷⁶ The education part of the training seizes on the space where trainees are newly aware of implicit bias to extrapolate from general bias (individual level) to societal discrimination issues.¹⁷⁷ It is important to remember during the educational component that the greatest difficulty in the education portion is to overcome trainee's individual bias blind spot, as the research is clear that people easily perceive the biases of others but are unable to see bias in themselves.¹⁷⁸ Thus, to overcome this obstacle, trainees should be given an overview of the origins of implicit bias and its identity as a habit.¹⁷⁹

During this overview, they should learn when implicit bias is most likely to arise in individuals.¹⁸⁰ Presenting data from validated experiments can be used to reinforce that everyone has implicit bias.¹⁸¹ And to tie implicit bias to societal ills, the educational component should incorporate descriptions of how bias manifests in the legal field.¹⁸² Given Millennials preferred way of learning, the instructor should consider how to make the presentation engaging, interactive, and consider micro-lectures in place of a traditional lecture.¹⁸³ Because

¹⁷⁴ See *id.* (explaining how the awareness raised in legal training could be expanded to have the same results in the general population).

¹⁷⁵ See Curcio, *supra* note 99, at 554.

¹⁷⁶ Forscher & Devine, *Knowledge-Based*, *supra* note 146, at 311.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Carnes et al., *The Effect*, *supra* note 173, at 223.

¹⁸⁰ Forscher & Devine, *Knowledge-Based*, *supra* note 146, at 311.

¹⁸¹ Stone & Moskowitz, *supra* note 116, at 773.

¹⁸² Forscher & Devine, *Knowledge-Based*, *supra* note 146, at 313–14 (discussing how to apply training principles to the legal field).

¹⁸³ See generally Renee Nicole Allen & Alicia Jackson, *Contemporary Teaching Strategies: Effectively Engaging Millennials Across the Curriculum*, U. DET. MERCY L. REV. (forthcoming 2018) (on file with author) (explaining how the fast paced

awareness alone is insufficient to conquer implicit bias, one must not stop at this step.¹⁸⁴

Instead, the second important component of implicit bias training is to provide trainees with alternative responses to implicit bias.¹⁸⁵ In delivering the alternative responses, it is important that the instructor reiterates being blind to difference (color-blindness) or being objective, makes people more susceptible to stereotype-based biases; and thus, attempting to be color-blind or to be more objective is an ineffective strategy.¹⁸⁶ Effective evidence-based alternative responses will be discussed below.

To teach trainees to focus on the individual over group stereotypes, one strategy to teach is individuation.¹⁸⁷ Individuation requires one to focus attention on individual information instead of relying on stereotypes.¹⁸⁸ Individuation inhibits the use of stereotypes based on group membership which can lead to inaccurate assumptions about the individual.¹⁸⁹

Another strategy that shifts the focus to the individual are counter-stereotypes.¹⁹⁰ Counter-stereotypes requires one to envision counter-stereotypes for a group.¹⁹¹ The envisioned counter-stereotype can be general like a famous person or redefining the group stereotype or an everyday example like a friend or colleague.¹⁹² For example, one might counter the stereotype that black people are lazy by envisioning

technology driven environment millennials have grown up in requires engaging them in a new multifaceted approach, vastly different to the approach for previous generations).

¹⁸⁴ Forscher & Devine, *Knowledge-Based*, *supra* note 146, at 311.

¹⁸⁵ Carnes et al., *The Effect*, *supra* note 173, at 223.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Elizabeth N. Chapman et al., *Physicians and Implicit Bias: How Doctors May Unwittingly Perpetuate Health Care Disparities*, 28 J. GEN. INTERNAL MED. 1504, 1508 (2013) (using a strategy that has been applied in the medical field).

¹⁸⁹ Carnes et al., *The Effect*, *supra* note 173, at 223.

¹⁹⁰ Devine et al., *Long-Term Reduction*, *supra* note 96, at 1270–71 (explaining that the counter-stereotype imaging strategy involves imagining in detail counter-stereotypic others).

¹⁹¹ *Id.*

¹⁹² *Id.*

an enterprising black person like Oprah.¹⁹³ Counter-stereotypes attack the validity of a stereotype by presenting concrete evidence that it does not apply for all individuals in a group.¹⁹⁴

An additional strategy, perspective-taking, induces empathy for persons from a stereotyped group.¹⁹⁵ It requires one to undertake viewing a situation from another's vantage point.¹⁹⁶ Perspective-taking reduces the automaticity of the negative stereotype because perspective-taking requires a person to imagine the difficulties of people who are stereotyped; thus, creating empathy.¹⁹⁷

Further, an instructor can teach trainees to “replac[e] stereotypical responses for non-stereotypical responses.”¹⁹⁸ This strategy is multilayered as it requires a person to “recogniz[e] that a response is based on stereotypes, label[] the response as stereotypical, and reflect[] on why the response occurred.”¹⁹⁹ One way of doing so is to develop an implementation intention which requires an actor to create an if-then plan for a situation.²⁰⁰ For example, if I see this person, then I will think the counter-stereotype.²⁰¹ The strategy works because it creates a link between a situational cue (if x event happens) with a behavioral response (then I will act in this way).²⁰² This in turn “creates a mental association between the cue and response, making effortful behavior more automatic and unconscious.”²⁰³

Finally, increasing contact with a stereotyped group also assists with reducing implicit bias.²⁰⁴ To utilize this strategy, an instructor would offer trainees methods for actively seeking to interact with

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 1271.

¹⁹⁵ Stone & Moskowitz, *supra* note 116, at 774.

¹⁹⁶ Chapman et al., *supra* note 188, at 1508.

¹⁹⁷ Stone & Moskowitz, *supra* note 116, at 774.

¹⁹⁸ Devine et al., *Long-Term Reduction*, *supra* note 96, at 1270.

¹⁹⁹ *Id.*

²⁰⁰ Ute C. Bayer et al., *Responding to Subliminal Cues: Do If-Then Plans Facilitate Action Preparation and Initiation Without Conscious Intent?*, 27 *SOC. COGNITION* 183, 184 (2009).

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ Lai & Banaji, *supra* note 149, at 19.

²⁰⁴ Devine et al., *Long-Term Reduction*, *supra* note 96, at 1271.

stereotyped groups (e.g., attending the social engagements of professional or student organizations aligned with minority groups).²⁰⁵ Interactions with these groups improves perceptions of the group and also alters the schema related to the group.²⁰⁶

Once the instructor has explored the various strategies to mitigate implicit bias, it is important to give trainees an opportunity to practice applying these strategies.²⁰⁷ Trainees can apply the strategies through multiple exercises including the use of case studies, group exercises, discussion, or through written exercises.²⁰⁸ For example, trainees may create situations to use each strategy in law school and their personal life.²⁰⁹ This exercise could be a group exercise or a written reflection exercise with a discussion.

The instructor should provide trainees with reminders to engage in bias-breaking strategies.²¹⁰ It can be done through a commitment letter.²¹¹ A commitment letter engages the trainee to respond to “I commit to overcoming [] bias in [law school] in the following way . . .” and “I commit to overcome [] bias in my personal life in the following way . . .”²¹² A copy of the commitment letter is provided to the trainee and the instructor.²¹³ An instructor may also provide trainees with visual reminders of the training and effective strategies: a folder (or email) with content from the workshop, a bookmark, or perhaps a colorful computer sticker.²¹⁴ Creating a hashtag or developing a place on social media platforms like Facebook to post the use of bias-breaking strategies or to show demonstrations of bias in the news cycle can also be effective methods to continuously engage trainees.²¹⁵ An advantage

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ Carnes et al., *The Effect*, *supra* note 173, at 223.

²⁰⁸ *Id.*

²⁰⁹ Devine et al., *Long-Term Reduction*, *supra* note 96, at 1270.

²¹⁰ Carnes et al., *The Effect*, *supra* note 173, at 223.

²¹¹ *See id.*; Carnes et al., *Bias Literacy*, *supra* note 163, at 68.

²¹² This language is adopted from the example provided by Carnes et al. Carnes et al., *Bias Literacy*, *supra* note 163, at 68.

²¹³ *Id.* at 67.

²¹⁴ Carnes et al., *The Effect*, *supra* note 173, at 223.

²¹⁵ *See* Forscher et al., *Prejudice Habit*, *supra* note 133, at 141 (testing the effects of the habit-breaking intervention using a fake newspaper post to determine if trainees would respond and they did, indicating the training continued to work).

of providing a training within law school, is the ability to facilitate continued dialogue about how implicit bias (and explicit bias) exists in cases; this can be facilitated by sending an email to faculty and staff following the training to alert them that the students underwent the training and encouraging them to consider how they may contribute to extending the conversation.

To engage in a habit-breaking intervention for implicit bias, one must understand how bias will arise and must learn alternative responses to bias that are consistent with their egalitarian goals.²¹⁶ These can be addressed through a training that raises awareness through feedback and education as well as through the provision of alternative responses to bias along with an opportunity to practice and includes reminders.²¹⁷ While training is one method of assisting law students in being less biased, efforts should not be constrained to training.²¹⁸ As a habit, trainings address the individual level of bias, but the structures that allow implicit bias to permeate can and should also be addressed.²¹⁹ Implicit bias requires that institutions undertake an active role in creating environments that mitigate bias in all facets, whether incorporating bias trainings for faculty and staff, or creating metrics in law school hiring that reduces the subjectivity that can allow bias to operate in suppressing minority hires, or undertaking a curriculum with cultural competence learning outcomes.²²⁰ In doing so, law schools can begin to counter engrained social stereotypes that make implicit bias automatic.

²¹⁶ Devine et al., *Long-Term Reduction*, *supra* note 96, at 1268.

²¹⁷ Carnes et al., *The Effect*, *supra* note 173, at 223.

²¹⁸ For example, Chopp suggests revising the Model Rules of Professional Conduct to include language that more clearly mandates inclusive and culturally competent lawyering. *See* Chopp, *supra* note 97, at 393–406.

²¹⁹ Lai & Banaji, *supra* note 149, at 17.

²²⁰ *See* Carnes et al., *The Effect*, *supra* note 173, at 227–28 (stating that institutional transformation requires a multi-layered approach, including at the individual level); *see also* Lai & Banaji, *supra* note 149, at 10–11. *See generally* Andrea A. Curcio et al., *A Survey Instrument to Develop, Tailor, and Help Measure Law Student Cultural Diversity Education Learning Outcomes*, 38 NOVA L. REV. 177 (2014) (identifying methods that law schools may use to help students develop an awareness of how cultural perspectives affect lawyer-client interactions).

Further, while this paper has undertaken to explore a framework for creating an effective training, outside the scope of this paper, instructors should consider how to appropriately address students who are unconcerned with bias and impediments to receiving adequate implicit bias training such as cognitive dissonance, anger, and rejection, which can arise in circumstances where attendance is mandatory.²²¹ Assisting students in mitigating implicit bias is a difficult but worthwhile venture, and while this paper has explored how law schools may undertake training their law students, there are alternatives to this approach such as bringing in an expert or introducing implicit bias and mitigation strategies through other methods like classroom or clinical experiences.

CONCLUSION

Academic support professionals, and educators in general, can support mitigation of implicit bias by considering the impact that bias has on the learning environment, peer interactions, and relationships with future clients. Additionally, if an academic support professional (or educator) wields power in training teaching assistants, in developing orientation, or in leading a professionalism course, she can lead an implicit bias training or request a training be brought in to facilitate the best learning environment for students. Incorporating implicit bias training into law schools or the legal profession is not a new endeavor; these trainings exist at many schools or through continuing legal educations.²²²

This paper seeks to add to that work by considering how implicit bias interventions can be framed by taking into consideration the Millennial audience, who harbor biases yet believe themselves to be color-blind while engaging in microaggressions. Given how implicit bias can be mitigated by treating it as a habit, this paper also advocates for more extensive structural interventions such as bias trainings for

²²¹ See Carnes et al., *Bias Literacy*, *supra* note 163, at 74. See generally Curcio, *supra* note 99 (explaining that lawyers are presumed to be rational thinkers and are capable of setting aside existing biases and prejudices).

²²² See, e.g., Isabella Limonta, *Implicit Bias: "It's in us, it's in all of us"*, BRIEF (Sept. 7, 2017), <http://www.floridalawstudentbrief.com/implicit-bias-its-in-us-its-in-all-of-us/>; Nassar, *supra* note 171; *Special CLE: Implicit Bias*, DALL. BAR ASS'N., <http://www.dallasbar.org/event/special-cle-implicit-bias>.

faculty. It also provides a framework for how we can support reducing this habit by introducing a multi-layered approach to combating bias.