

Professionalism as a Racial Construct

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Roadmap

- Understand how professionalism can be used as a tool to police and regulate people of color in the legal field (8 minutes)
- Examine the bias and discrimination threshold applicable in legal practice and identify how such standards and expectations are counter to a race and equity conscious and inclusive environment (14 minutes)
- Recognize the occurrence and enabling of a selective offense and consider strategies for responding to, discouraging, and avoiding such conduct in the legal profession (12 minutes)
- Reflect on the questions “is justice blind?” and “what is meant by reasonable person” (12 minutes)
- Deconstruct what is meant by professionalism, review responses when inappropriate conduct occurs, and understand steps to move toward accountability in legal practice (14 minutes)

About Me and Why I Wrote this Essay

One of the 5% of Black attorneys in the U.S.

10 years as a legal services attorney representing tenants

Litigate primarily in NYC Housing Court

“Put your head down and do your work”

Professionalism isn't a two-way street

What's the purpose of professionalism if it doesn't apply to everyone?

The Impact of the Essay

Taught in 12+ law schools and counting including

- NYU Law
- UC Santa Clara
- Georgetown Law
- Harvard Law School

Part of materials given to employees for DEI training at several law firms, legal organizations, universities, companies and govt agencies

Featured in several magazines including Dame Magazine


Featured on Radio shows including Sirius XM Urban

Linkedin and Twitter famous

Well beyond legal profession

What is Professionalism as a Racial Construct?

professionalism is a standard with a set of beliefs about how one should operate in the workplace. While professionalism seemingly applies to everyone, it is used to widely police and regulate people of color in various ways including hair, tone, and food scents. Thus, it is not merely that there is a double standard in how professionalism applies; it is that the standard itself is based on a set of beliefs grounded in racial subordination and white supremacy



Bias and Discrimination Threshold

Bias and Discrimination Threshold

Professionalism was based on the notion that one withstood **racism** and **bias** with grace and lightheartedness.

The higher the threshold one had to tolerate bias, the more polished the attorney or paralegal appeared. This was particularly the case for women, people of color, LGBTQIA people, and people with disabilities.

Example of Bias Threshold in Court

Scenario: oral arguments before the bench

Conduct: Yelling, berating, ad hominem attacks, interrupting, talking over

Reaction 1: politely respond

Reaction 2: “This is outrageous behavior and quite frankly wouldn’t be happening if I was a white male.”

Result: equalizing the conduct of both attorneys in the situation, no actual consequences for bad actors

Example of Bias Threshold in Legal Offices

Anne, a white woman, sends an email directed at Benita, a black woman, that mocks her experience and title. The email includes 5 other recipients copied.

Benita replies all, “I do not appreciate the way you are speaking to me. It’s condescending and unnecessary. Black women’s voices matter here.”

After seeing Benita’s response, Anne forwards the email to Mariah, another Black woman at the organization then goes to her office and asks, “do you think I’m racist?”

Mariah responds, “Racist? No. Look I think your email could’ve been worded a bit better. But I also think Benita’s response was way over the top.”

What happened here?

Anne strategically sought out the opinion of a person who is the same identity as Benita

Anne knew beforehand that Mariah would likely have an opinion that doesn't rock the boat. (That's why she chose her to ask).

Anne further uses Mariah's opinion in conversations with others, "even Mariah thinks Benita was doing too much."

This helps to create a narrative that Benita is unprofessional and minimizes Anne's actions.

Mariah is then positioned as a true professional, neutral, seasoned employee. Benita is positioned as irrational.

Who has a thick skin?

Professionalism as a racial construct manifests itself in two ways.

First, that professionalism is measured by how well a person adapts to a hostile work environment is in of itself a racial construct because that system is built for people of color to fail.

Second, that professionalism incorporates the ideology to have a thick skin manifests as a racial construct because even the definition of thick skin aligns with who holds the most power.

For example, if attorneys on the receiving end of microaggressions, bias, and racism are considered sensitive for not laughing along, why are the attorneys who engage in harmful behavior not also considered sensitive for their inability to handle criticism about their conduct?



Selective Offense

Selective Offense

Selective offense is the normalization of racist, misogynistic, ableist or otherwise discriminatory behavior while the denunciation of said behavior is seen as disruptive.

This is seen when employees sit in meetings for months or years with a known problematic colleague who engages in harmful racist, misogynistic, or transphobic behavior and take no action to meaningfully admonish or halt the behavior; yet the same employees are suddenly—or selectively—offended when someone from a marginalized group challenges the problematic employee's behavior.

Example of Selective Offense

John, a white male, is a longtime employee at Law Firm X. He is a senior partner. He:

- Continually confuses people of color
- Mispronounces names of people of color
- Has a poor track record of promoting people of color
- Never takes any leadership on diversity, equity and inclusion efforts at the firm
- Consistently tells offensive jokes

General response to John's conduct:

Laughter

Shrugs

"That's just how he is."

John is not seen as unprofessional

General sentiment: "he's not everyone's cup of tea but he does his job well."

Juan is an Asian male. He is a junior partner at Law Firm X.

One day at a meeting, he challenges John's constant mispronunciations of names

Juan raises to others that John's longstanding behavior is inappropriate and that he should be disciplined or at least face consequences

General response to the issues Juan raises:

People pretend to not know about John's extensive history of racist behavior

To minimize Juan's valid issues he has raised, it is characterized as a "personal attack" or "differences in personalities."

People grow uncomfortable in Juan's presence

Juan is labeled as unprofessional and someone who seeks to disrupt the office harmony rather than strengthen it


Four Stages of Selective Offense

Stage 1: people minimize and fail to admonish the harmful behavior.

Stage 2: people impute charm or innocence to the harmful behavior. Even the most clear-cut inappropriate behavior could be likened to humor or quirk. Not deemed harmful, it is instead attributed to the personality of the person perpetuating the harm. The distinction between personality and behavior is crucial because many believe a person can correct another's behavior—but not their personality.

Stage 3: people accept the harmful behavior.

Stage 4: any challenges to the harmful behavior are seen as a personal character attack rather than rectifying harm.



Justice is Blind and
the Reasonable
Person is White

Justice is Blind and the Reasonable Person is White

“Discussion of politics in the workplace must be avoided in order to maintain a harmonious environment.”

In the legal profession, however, lawyers have been taught for centuries that thinking like a lawyer means putting all emotions aside.

Divesting of emotion for the sake of legal reasoning in and of itself is an exercise of privilege.

The reasonable person is supposedly a raceless and genderless blank slate which parallels with the ideology that justice is blind. However, stripping identity from the reasonable person means that whiteness becomes the norm and lens which legal advocates look through.

How “Politeness” Can Make Anti-Racism Learning Ineffective

Anti-racism efforts are created for a white audience only

Anti-racism efforts focus only on white allyship (in a way that is extensive of white saviorism)

DEI work at the legal office is optional. It’s not “the work”.

- In other words, there is a silent understanding that the “real work” doesn’t include anti-racism efforts



How to Disrupt Professionalism as a Racial Construct

Speak Up: Use Terms in the Essay

Both silence and equalizing have the same effect: normalizing white supremacy in your institution

“Why are you so bothered that Jane, a Black woman, called out an attorney for his racist conduct but you do not have this same reaction towards John, a white man, who still cannot correctly pronounce the names of people of color after ten years of working here? This seems like **selective offense.**”

Name it For Decision-makers

“Your Honor, opposing counsel has interrupted me several times and there has been no warning of contempt or forcing them to leave the courtroom. Are my client and I expected to silently endure this—a **high bias threshold**—during this proceeding?”

Incorporate it in Your Legal Work

“Respondent is Chinese American and lives in the Soho section of New York. The area has historically been comprised of 70 percent Asian American and Pacific Islanders; however in the last decade, that population has drastically declined due to gentrification, redlining and displacement. This eviction case is not divorced from that. Respondent would like to remain in her community.”

Thank you!

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