

# THE RAGE OF A PRIVILEGED CLASS

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## INTRODUCTION

Being a lawyer is difficult. Both the training and practice are demanding. Even when compared to other stressful occupations and graduate or professional programs, the legal profession has consistently had some of the highest rates of major depressive disorders.<sup>1</sup> A number of factors may contribute to these conditions, such as high occupational stress, emotional exhaustion, and weak interpersonal relationships.<sup>2</sup> Among law students, the process of legal education adversely impacts psychological well-being.<sup>3</sup> As such, law students experience higher rates of depression and suicidality than individuals in the general U.S. population.<sup>4</sup> They also experience more negative mental health outcomes than graduate and medical school students.<sup>5</sup>

One of the things that has been rarely analyzed in the spaces of mental health and the legal profession is the influence of racism. In 1993, scholar Ellis Cose published a book titled *The Rage of a Privileged Class: Why Are*

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1. See G. Andrew H. Benjamin et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT'L J.L. & PSYCHIATRY 233, 234 (1990); William W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079, 1079 (1990); Beth Han et al., *Suicidal Ideation, Suicide Attempt, and Occupations Among Employed Adults Aged 18–64 Years in the United States*, 66 COMPREHENSIVE PSYCHIATRY 176, 178 (2016); Patrick R. Krill et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46, 46, 48 (2016); Albert Woodward et al., *Occupations and the Prevalence of Major Depressive Episode in the National Survey on Drug Use and Health*, 40 PSYCHIATRIC REHABILITATION J. 172, 175 (2017).

2. Chongmin Na et al., *The Causes and Consequences of Job-Related Stress Among Prosecutors*, 43 AM. J. CRIM. JUST. 329, 331–33 (2017).

3. G. Andrew H. Benjamin et al., *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. BAR FOUND. RSCH. J. 225, 225.

4. Jerome M. Organ et al., *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 139–40 (2016).

5. *Id.* at 136; see also Benjamin et al., *supra* note 3, at 227–28, 247.

*Middle-Class Blacks Angry? Why Should America Care?*<sup>6</sup> At its core, the book explores why affluent, successful Black Americans remain enraged despite economic prosperity.<sup>7</sup> This rage, according to Cose, persists because they encounter racism in their everyday lives, both inside and outside of work; the positions they hold in society do not shield them from racism.<sup>8</sup> Although the book was not about Black lawyers per se, it featured them prominently. While Cose's work offers middle-class Black Americans' personal and observational accounts of racism, we build on his work by employing empirical social science to buttress his major points. More specifically, we focus on Cose's analysis in chapter 3 of *The Rage of a Privileged Class*. There, he explores the constants of what Black Americans cope with in their everyday lives—the “dozen demons”<sup>9</sup>—and what it often means for them in a professional context.<sup>10</sup> Accordingly, we contend that the various experiences of bias, discrimination, racism, and stereotyping adversely impact the mental health of Black law students and attorneys.

### I. INABILITY TO FIT IN

Within legal institutions, especially employment settings, there may be a desire to recruit exceptional Black professionals. However, what may override that is a desire to find Black professionals who fit within the organization's culture.<sup>11</sup> Although sociodemographic variables such as race are shown to explain a small amount of variance in perceived person-organization fit (“P-O fit”),<sup>12</sup> there is reason to believe that achieving organizational fit is not the same for all individuals.<sup>13</sup> Despite the small amount of variance explained by race, Black employees still report significantly less organizational fit in the workplace compared to white male employees in similar positions.<sup>14</sup> A possible explanation for the finding that race does not account for much overall variance relates to self-reported measures. Literature on P-O fit usually relies on self-reported measures, where participants are asked to report on their perceived fit in a given workplace environment.<sup>15</sup> One issue with self-reported measures of fit is that they are highly individualized and may have little to do with organizational experiences connected to group status.<sup>16</sup> Thus, in this case, self-reporting

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6. ELLIS COSE, *THE RAGE OF A PRIVILEGED CLASS: WHY ARE MIDDLE-CLASS BLACKS ANGRY?: WHY SHOULD AMERICA CARE?* (1993).

7. *Id.* at 1.

8. *Id.*

9. *Id.* at 56.

10. *See id.* at 53–72.

11. *See id.* at 20.

12. *See* Kay A. Lovelace & Benson Rosen, *Differences in Achieving Person-Organization Fit Among Diverse Groups of Managers*, 22 J. MGMT. 703, 712 (1996); Dorota Merecz-Kot & Aleksandra Andysz, *Socio-demographic Predictors of Person-Organization Fit*, 30 INT'L J. OCCUPATIONAL MED. ENV'T HEALTH 133, 136, 142 (2017).

13. *See* Lovelace & Rosen, *supra* note 12, at 703.

14. *Id.* at 703, 711, 717.

15. Merecz-Kot & Andysz, *supra* note 12, at 145.

16. *See id.*

questionnaires may not exactly measure what they intend to. In addition, self-reported measures of P-O fit have been shown to lack cross-cultural validity.<sup>17</sup> Therefore, it is possible that self-reported measures are invalid across different sociodemographic groups as well, leading to more unexplained variance.

Yet, despite the small variance in P-O fit explained by race as a whole, Black individuals still perceive less fit as compared to their white counterparts.<sup>18</sup> There are many possible reasons for this, including lack of representation and same-race role models; differences in culture, life, and organizational experiences; and slower organizational advancement as compared to majority group members.<sup>19</sup> If minority employees notice they are not advancing in their organizations or that they are not being treated fairly, they may conclude that their organizations are discriminatory and that they do not in fact belong in such places.<sup>20</sup>

There are several ways in which organization members assess fit,<sup>21</sup> but research has shown that racial minorities and women are forced to rely more heavily on observational methods as opposed to direct feedback from others regarding their performance.<sup>22</sup> Minority employees are simply less able to receive direct feedback, possibly because majority group members are reluctant or unwilling to give it to them.<sup>23</sup> Implications for P-O fit relate to job satisfaction, turnover rate, and evaluation by others. P-O fit is positively correlated with job satisfaction<sup>24</sup> and performance evaluation<sup>25</sup> and negatively correlated with perceived stress<sup>26</sup> and likelihood of leaving the organization over time.<sup>27</sup>

## II. EXCLUSION FROM THE CLUB

Many Black Americans who attain the “right education, master the right accent, and dress in the proper clothes still find that certain doors never seem to open, that there are private clubs—in both a real and a symbolic sense—they cannot join.”<sup>28</sup> Exclusion from the club has its roots in racism and discrimination. In a modern context, this is likely to include aversive racism.

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17. James W. Westerman & Sita Vanka, *A Cross-Cultural Empirical Analysis of Person-Organization Fit Measures as Predictors of Student Performance in Business Education: Comparing Students in the United States and India*, 4 *ACAD. MGMT. LEARNING & EDUC.* 409, 415–18 (2005).

18. Lovelace & Rosen, *supra* note 12, at 703, 711, 717.

19. *Id.* at 704.

20. *Id.* at 705.

21. *See id.*

22. *Id.* at 705–06, 711, 718.

23. *Id.*

24. *Id.* at 706–07, 712, 718–19.

25. Melvyn R. W. Hamstra et al., *Does Employee Perceived Person-Organization Fit Promote Performance?: The Moderating Role of Supervisor Perceived Person-Organization Fit*, 28 *EUR. J. WORK & ORGANIZATIONAL PSYCH.* 594, 597–98 (2019).

26. Lovelace & Rosen, *supra* note 12, at 703, 712, 718–19.

27. Rein De Cooman et al., *Person-Organization Fit: Testing Socialization and Attraction-Selection-Attrition Hypotheses*, 74 *J. VOCATIONAL BEHAV.* 102, 105–06 (2009).

28. COSE, *supra* note 6, at 57.

The theory of aversive racism suggests that explicit, outward expressions of racism have largely been replaced with a newer form that is more subtle and relies on covert expressions of inequality and prejudice.<sup>29</sup> In an employment context, this is reflected in the different standards set for racial minorities.<sup>30</sup> Research has shown that Black employees are frequently treated differently than white employees in the workplace and are often rated as subpar compared to their white counterparts.<sup>31</sup> Explicit forms of racism may still play a role, too, as employers are likely to outwardly discriminate against racial minorities if they think they can get away with it.<sup>32</sup> Faced with these circumstances, to advance their positions and gain access to the club, Black employees must rise above racial discrimination in the workplace.<sup>33</sup>

But aside from the various ways discrimination can manifest itself in recruitment and workplace settings, another factor contributing to exclusion is a lack of social capital. Social capital refers to the resources (e.g., information, influence, and status) that are exchanged within social networks.<sup>34</sup> When it comes to job and employment opportunities, as the popular phrase goes, “[i]t’s not what you know, it’s who you know.”<sup>35</sup> Resources obtained from social capital may include, but are not limited to: job information; knowledge of individuals who can influence employment decisions; financial resources, such as inheritance or rent-free living; and more, all of which are very important in determining the kind of education a person is able to obtain and the kinds of job opportunities available to them.<sup>36</sup>

Black Americans, even those who are educated and have gone above and beyond to fit in with the privileged majority groups, face significant career challenges due to lack of social capital.<sup>37</sup> Namely, Black individuals are excluded from “old boy” networks—or “those [networks] occupied by high status white men.”<sup>38</sup> Being a member of such a network can provide significant social capital, resulting in even more job opportunities and a deluge of other benefits. Because racial minorities are excluded from old boy networks, they have come to adapt and form their own networks; however, their networks have been shown to provide significantly less social capital as compared to old boy networks.<sup>39</sup> So, it is not a complete lack of a social networks that leaves Black Americans excluded but rather the fact that

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29. Derek R. Avery et al., *Racial Discrimination in Organizations*, in THE OXFORD HANDBOOK OF WORKPLACE DISCRIMINATION 89, 92–93 (Adrienne J. Colella & Eden B. King eds., 2018).

30. *Id.* at 93.

31. *Id.* at 95.

32. *Id.* at 99.

33. *Id.* at 95.

34. See ROCHELLE PARKS-YANCY, EQUAL WORK, UNEQUAL CAREERS: AFRICAN AMERICANS IN THE WORKFORCE 1 (2010).

35. *Id.*

36. *Id.* at 1–2.

37. *Id.* at 2.

38. Steve McDonald, *What’s in the “Old Boys” Network?: Accessing Social Capital in Gendered and Racialized Networks*, 33 SOC. NETWORKS 317, 317 (2011).

39. *Id.*

membership in Black social networks is simply less likely to translate into career-related benefits.<sup>40</sup> As a result, minority employees are stuck in an endless cycle of limited employment opportunities, fewer resources, and relatively low-paying positions.<sup>41</sup> Without the help of old, white, rich men, minority individuals are left with diminished employment prospects.<sup>42</sup> This is supported by a 2011 analysis of nationally representative survey data showing that people in white male networks receive twice as many job leads as people in female or minority networks.<sup>43</sup> White male networks are also shown to be comprised of higher-status connections than female or minority networks.<sup>44</sup>

Because they are left out of old boy networks and majority-white social groups, Black individuals often have to try and develop social ties with white individuals. However, white Americans, in viewing Black Americans as lower status, are less likely to provide any favors, given that white individuals assume that there will not be any career-related benefit for them in return.<sup>45</sup>

### III. LOW EXPECTATIONS

Black individuals may believe that white individuals are out to stymie their achievement and that they have no option but failure, whatever the reality of the situation.<sup>46</sup> Interracial trust is difficult to cultivate. For example, the reciprocity effect of self-disclosure suggests that a self-disclosure made by one person to another increases trust, resulting in reciprocation, where the other person responds by making their own self-disclosure.<sup>47</sup> Yet, disclosures made by majority group members to minority individuals are not shown to increase cross-racial trust.<sup>48</sup> In the employment context, Black employees may feel that white employees give them opportunities where failure is a high-probability event.

White men still dominate positions of power, yet, slowly but steadily, underrepresented group members are gaining entrance to the club. Those who are able to break through and penetrate the glass ceiling, though, are not in the clear. Rather, minority individuals often face a phenomenon called the “glass cliff,” where their membership is less stable than their majority group counterparts.<sup>49</sup> And further, the decision to finally grant entry to the club for racial minorities might be based on strategy and organizational

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40. See PARKS-YANCY, *supra* note 34, at 2–3.

41. See McDonald, *supra* note 38, at 318.

42. See *id.*

43. *Id.* at 324.

44. *Id.* at 326.

45. PARKS-YANCY, *supra* note 34, at 3.

46. See COSE, *supra* note 6, at 59.

47. See Christopher G. Wetzel & Carol Wright-Buckley, *Reciprocity of Self-Disclosure: Breakdowns of Trust in Cross-Racial Dyads*, 9 BASIC & APPLIED SOC. PSYCH. 277, 283, 287 (1988).

48. See *id.* at 277–79.

49. Thekla Morgenroth et al., *The Who, When, and Why of the Glass Cliff Phenomenon: A Meta-analysis of Appointments to Precarious Leadership Positions*, 146 PSYCH. BULL. 797, 798 (2020).

presentation, as opposed to merit or deservingness. Organizations frequently appoint racial minorities in times of crisis, simply to make themselves look good and indicate a dedication to change by shifting away from previous majority group leadership.<sup>50</sup> In other words, organizational leaders are more likely to appoint minority employees not because they have faith in their abilities but rather because they believe it will signal change when things are not going very well otherwise.<sup>51</sup> The evidence supports this; in times of crisis, women and underrepresented racial and ethnic groups are significantly more likely to be appointed to leadership positions.<sup>52</sup>

Besides organizational presentation, another possibility is that underrepresented groups are appointed to positions of power and influence during times of crisis because leadership positions are less desirable during such times when failure is inevitable.<sup>53</sup> Critically, these appointments are temporary. An analysis of CEO transitions in Fortune 500 companies over a fifteen-year period shows that soon after minority executives are appointed during times of crisis, they are replaced by white men in instances where the companies continue to struggle.<sup>54</sup> However, it is important to note that an organization's continued poor performance is likely a result of inherited difficult circumstances, as opposed to a minority executive's ineffective leadership. Basically, when minority individuals are finally given entrance to the club, they are not permitted to stay very long, unless they have some magical silver bullet to pull the company out of hard times. They are held to unrealistic expectations, while white men are not, and they thus have a difficult time maintaining leadership positions in light of the glass cliff.

Even in instances where one's leadership position is thought to be more stable, such as in the absence of crisis, minority leaders still face challenges. Minority leaders have a greater likelihood of employment separation compared to white leaders and are less likely to be recognized and celebrated for their accomplishments.<sup>55</sup>

#### IV. SHATTERED HOPES

Black employees who enter organizations may end up leaving, having concluded that nonwhite employees—barring the spectacularly odd exception—were not destined to make it in that world.<sup>56</sup> Too often, these assumptions are internalized and become self-fulfilling prophecies.

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50. *Id.* at 799.

51. *Id.*

52. *Id.* at 825; see also Alison Cook & Christy Glass, *Above the Glass Ceiling: When Are Women and Racial/Ethnic Minorities Promoted to CEO?*, 35 STRATEGIC MGMT. J. 1080, 1084 (2014).

53. See Morgenroth et al., *supra* note 49, at 799.

54. Cook & Glass, *supra* note 52, at 1082–84.

55. See, e.g., William G. Obenauer & Nishtha Langer, *Inclusion Is Not a Slam Dunk: A Study of Differential Leadership Outcomes in the Absence of a Glass Cliff*, LEADERSHIP Q., Dec. 2019, at 1, 13.

56. COSE, *supra* note 6, at 60.

Stereotype threat provides an example in the academic space, but we might imagine its role in the employment context, as well.

Stereotype threat relates to the experience one has in situations in which a stereotype about one of their identities (e.g., race, gender) is applicable.<sup>57</sup> Just knowing that one may be viewed and treated on the basis of that stereotype leads to performance interference.<sup>58</sup> Stereotyped individuals are faced with greater stress and constant distraction and disruption,<sup>59</sup> resulting in impaired cognitive functioning.<sup>60</sup> Stereotyped individuals live on edge, in a way, always in fear of possibly acting in a way that confirms stereotypes about their group.<sup>61</sup> Just being aware of a stereotype is sufficient; one need not believe the stereotype applies to oneself to be affected.<sup>62</sup> Stereotype threat is based on awareness of the way other people around us think.<sup>63</sup>

A common example of stereotype threat occurs during exams. Black students tend to perform worse than white students not because they are less prepared or less intelligent but because negative stereotypes about their race come to mind in an academic setting.<sup>64</sup> This effect is greatly mitigated in situations where Black students are told a test is not about their ability and/or is not racially biased<sup>65</sup> and is made worse in situations where negative stereotypes are made more salient.<sup>66</sup> Stereotype threat for Black individuals is not limited to academia; it occurs in any domain where negative stereotypes about them prevail,<sup>67</sup> including employment selection or tests of verbal intelligence.<sup>68</sup>

Besides the short-term consequence of impaired performance, chronic stereotype threat is believed to result in domain disengagement and domain disidentification in the long term.<sup>69</sup> First, domain disengagement occurs where members of a negatively stereotyped group start placing less importance on their performance in a stereotyped domain.<sup>70</sup> An example of this is Black students losing interest in keeping up their grades in school.<sup>71</sup>

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57. Henry L. Gates Jr. & Claude M. Steele, *A Conversation with Claude M. Steele: Stereotype Threat and Black Achievement*, 6 DU BOIS REV. 251, 251 (2009).

58. Hannah-Hanh D. Nguyen & Ann Marie Ryan, *Does Stereotype Threat Affect Test Performance of Minorities and Women?: A Meta-analysis of Experimental Evidence*, 93 J. APPLIED PSYCH. 1314, 1314–15 (2008).

59. Gates & Steele, *supra* note 57, at 252.

60. Nguyen & Ryan, *supra* note 58, at 1326.

61. *Id.* at 1314 (quoting Claude M. Steele & Joshua Aronson, *Stereotype Threat and the Test Performance of Academically Successful African Americans*, in *THE BLACK-WHITE TEST SCORE GAP* 401, 401 (Christopher Jencks & Meredith Phillips eds., 1998)).

62. *See* Gates & Steele, *supra* note 57, at 252.

63. *Id.* at 253.

64. Yolanda F. Niemann et al., *Intergroup Stereotypes of Working Class Blacks and Whites: Implications for Stereotype Threat*, 22 W.J. BLACK STUD. 103, 103 (1998).

65. *Id.* at 103–04.

66. *Id.* at 103.

67. *Id.*

68. Nguyen & Ryan, *supra* note 58, at 1314–15.

69. Anna Woodcock et al., *The Consequences of Chronic Stereotype Threat: Domain Disidentification and Abandonment*, 103 J. PERSONALITY & SOC. PSYCH. 635, 635 (2012).

70. *Id.*

71. *Id.*

They may stop going to class or participating and engaging with their peers.<sup>72</sup> This is the more immediate response to chronic stereotype threat.<sup>73</sup> After experiencing performance impairment, not due to lack of effort or intelligence but due to circumstances outside of their control and the intense stressors related to being in a stereotyped group, many Black students, understandably, start to “give up.” Eventually, disengagement turns into more permanent abandonment—or the separation of the self and the domain in question.<sup>74</sup> To mitigate the threat of possibly confirming negative stereotypes, Black individuals more permanently distance themselves from the workplace or academics. However, the consequence of permanent abandonment in response to stereotype threat is not necessarily inevitable.

To understand the areas where Black Americans might be vulnerable to stereotype threat, it is important to understand the content of common stereotypes. One potential basis for stereotypes is the outgroup homogeneity effect, where, in general, a given out-group tends to be perceived as more homogeneous than one’s in-group.<sup>75</sup> So, from the point of view of white individuals, Black individuals might appear to bear many similarities and vice versa. And, in fact, white individuals tend to have a more simplistic, and largely negative, view of Black individuals, while at the same time maintain a more complex view of their own group.<sup>76</sup> Further, while Black Americans have their own stereotypes regarding white Americans, Black Americans tend to distinguish between male and female stereotypes, while white Americans tend to view Black Americans through the lens of male stereotypes only.<sup>77</sup> In a study, Black Americans did have negative stereotypes about white Americans, but they also had some positive ones, whereas white Americans were only shown to have negative stereotypes about Black Americans.<sup>78</sup>

#### V. FAINT PRAISE

White individuals’ praise of racial minorities can be a double-edged sword. On one hand, it may have a buoying effect. On the other hand, it may be damaging, especially when it assumes that there are only certain acceptable types of Black individuals.<sup>79</sup> As a general matter, positive stereotypes, though sometimes perceived as harmless or even complimentary by majority group members, are still perceived as unacceptable and offensive by target groups.<sup>80</sup> Black individuals react negatively to white individuals who

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72. *Id.* at 636.

73. *Id.* at 635.

74. *Id.*

75. Niemann et al., *supra* note 64, at 104.

76. *Id.* at 106.

77. *Id.*

78. *Id.* at 105.

79. See COSE, *supra* note 6, at 61.

80. Alexander M. Czopp, *When Is a Compliment Not a Compliment?: Evaluating Expressions of Positive Stereotypes*, 44 J. EXPERIMENTAL SOC. PSYCH. 413, 414 (2008).

express positive stereotypes, regardless of their intentions,<sup>81</sup> rating them as more prejudiced and less likeable.<sup>82</sup> On the other hand, white individuals who witness other white individuals expressing positive stereotypes rated them more favorably compared to Black individuals.<sup>83</sup> Black people view positive stereotypes to be just as prejudiced as negative ones, on the basis that such comments are assumptions made on the basis of race and can lead to pigeonholing and stereotype threat.<sup>84</sup> White individuals, however, do not quite seem to understand.<sup>85</sup>

Moreover, as a society, we have transitioned away from blatant acts of discrimination.<sup>86</sup> However, more subtle forms of prejudice may take the form of praise and positivity but are still driven by race. This means that, for minority individuals, praise from white individuals is ambiguous, resulting in feelings of uncertainty and other serious psychological consequences.<sup>87</sup> Of course, it is possible for praise from white individuals to be motivated by actual merit and ability.<sup>88</sup> But at the same time, praise may be motivated by reputational concerns, egalitarianism, fear of potential litigation, or the desire to be unprejudiced.<sup>89</sup> Given this wide range of possibilities, minority employees must learn to be suspicious of white employees and managers in the workplace based on their potential motivations and, in the process, must maintain a heightened sense of vigilance based on the perception that their identity is under constant threat.<sup>90</sup>

The desire of white individuals to appear unprejudiced when interacting with minority individuals is still, at its core, a motivation based on the race of others. And for that reason, racial minorities have learned to perceive positive overtures as a threat, not knowing whether they are based on their race rather than deservingness.<sup>91</sup> Ultimately, the very likely possibility of praise stemming from race is experienced as a type of social identity threat, defined as the concern that one is being treated on the basis of one's race or ethnicity.<sup>92</sup> The ambiguity of praise combined with the perceived threat toward one's identity leads to a heightened level of vigilance to certain situational cues.<sup>93</sup> Racial minorities are constantly on the lookout for

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81. *Id.* at 413, 416, 418.

82. *Id.* at 413, 417, 418.

83. *Id.*

84. *Id.* at 414.

85. *Id.* at 418.

86. Jonathan W. Kunstman & Christina B. Fitzpatrick, *Why Are They Being So Nice to Us?: Social Identity Threat and the Suspicion of Whites' Motives*, 17 *SELF & IDENTITY* 432, 432 (2018).

87. Katherine T. U. Emerson & Mary C. Murphy, *Identity Threat at Work: How Social Identity Threat and Situational Cues Contribute to Racial and Ethnic Disparities in the Workplace*, 20 *CULTURAL DIVERSITY & ETHNIC MINORITY PSYCH.* 508, 508–09 (2014).

88. See Kunstman & Fitzpatrick, *supra* note 86, at 433.

89. See Laura G. Barron et al., *Effects of Manifest Ethnic Identification on Employment Discrimination*, 17 *CULTURAL DIVERSITY & ETHNIC MINORITY PSYCH.* 23, 24 (2011).

90. Kunstman & Fitzpatrick, *supra* note 86, at 433.

91. *Id.*

92. *Id.*

93. Emerson & Murphy, *supra* note 87, at 509.

information about whether or not they will be accepted and valued.<sup>94</sup> Certain cues may confirm that their identity is a source of stigma, while other cues might signal identity safety, providing some reassurance that any praise they receive is not motivated by group membership.<sup>95</sup> Under the former identity-threatening conditions, racial minorities are likely to experience even higher levels of vigilance regarding situational cues.<sup>96</sup>

Praise or positivity that is perceived as inauthentic is one potential signal of identity threat.<sup>97</sup> This is especially true in contexts in which racial stereotypes are salient, such as academia, for example. Black students are even more likely to remain vigilant in academic settings, constantly searching for signs that white professors' praise is driven by race as opposed to their abilities.<sup>98</sup> If positive feedback appears to be condescending or indicative of low standards, identity threat is elicited.<sup>99</sup> In general, other signals of inauthentic praise are fake smiles<sup>100</sup> and effusiveness,<sup>101</sup> in addition to inconsistent responses in public compared to private settings.<sup>102</sup> If a professor is only positive in front of other students and tends to be more negative in office hours or on graded assignments, one can assume the professor is motivated by the desire to appear egalitarian.<sup>103</sup> This type of inconsistency may be detected in the workplace, too. Many organizations market themselves as diverse to attract racial and ethnic minorities, but if this does not match up with reality,<sup>104</sup> employees of color will be more suspicious and less trusting of white employees on the inside.

Other cues that are used to assess identity relate to an organization's beliefs and values, like a company's diversity statement. Any diversity statement that includes reference to a "color-blind" philosophy is likely to contribute to identity threat.<sup>105</sup> The notion that differences can be suppressed or ignored undercuts organizational trust, especially when it is coupled with low minority representation.<sup>106</sup> An all-inclusive multicultural approach, on the other hand, is likely to contribute to identity security.<sup>107</sup> This type of approach is more likely to foster trust on the grounds that it acknowledges and celebrates diversity and aims to create an environment where all perspectives are valued.<sup>108</sup>

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94. *Id.*

95. *Id.*

96. *Id.*

97. Kunstman & Fitzpatrick, *supra* note 86, at 434.

98. *Id.*

99. *Id.*

100. *Id.* at 437.

101. *Id.* at 434.

102. *Id.* at 433.

103. *See id.* at 433–34.

104. Emerson & Murphy, *supra* note 87, at 512.

105. *Id.* at 511.

106. *Id.*

107. *Id.*

108. *Id.*

Structure and policy cues can also be used to figure out who gets ahead and why.<sup>109</sup> If it turns out that identity is related to success, racial minorities are more likely to experience identity threat. For instance, more subjective and informal hiring processes, like reliance on employee referrals, frequently perpetuate racial biases.<sup>110</sup> Ultimately, racial minorities, faced with ambiguity regarding treatment, are constantly living on edge, searching for cues to figure out whether they truly belong or not.

The feelings of uncertainty and concern that one's treatment can potentially be attributed to race leads to significant psychological and behavioral consequences.<sup>111</sup> Such consequences only become more severe as suspicion regarding treatment and vigilance to cues increase.<sup>112</sup> While suspicion may have some benefits, such as the ability to more accurately read white people, it puts racial minorities in a constant state of anxiety about belonging and acceptance.<sup>113</sup> It can also contribute to stereotype threat and worry about possibly confirming negative stereotypes—a threat that only further hinders performance in the workplace.<sup>114</sup> In less diverse workplaces, where the burden of debunking negative stereotypes falls on only one or a handful of individuals, racial minorities are found to have higher blood pressure, anxiety, and depression and significant deficits in memory.<sup>115</sup> Social identity threat has also been linked to lower performance and promotability ratings and increased turnover and absenteeism.<sup>116</sup>

#### VI. PRESUMPTION OF FAILURE

White people too often assume that Black individuals will not succeed in challenging roles.<sup>117</sup> Racial cues, like names and ways of speaking, predict prejudice and differential treatment. In the employment context, job applicants with racialized names and accents are viewed less positively by interviewers than applicants without such characteristics.<sup>118</sup> A study found discrimination against Black applicants specifically, such that applicants with stereotypically white names received 50 percent more callbacks for interviews than those with stereotypically Black names, despite identical

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109. *Id.* at 512.

110. *Id.* at 513.

111. *Id.* at 508.

112. Kunstman & Fitzpatrick, *supra* note 86, at 435.

113. Emerson & Murphy, *supra* note 87, at 509.

114. *Id.* at 508.

115. *Id.* at 509.

116. *Id.*

117. COSE, *supra* note 6, at 61–62.

118. See Simon Howard & Alex M. Borgella, *Are Adewale and Ngochi More Employable than Jamal and Lakeisha?: The Influence of Nationality and Ethnicity Cues on Employment-Related Evaluations of Blacks in the United States*, 160 J. SOC. PSYCH. 509, 513–15 (2019); Sharon L. Segrest Purkiss et al., *Implicit Sources of Bias in Employment Interview Judgments and Decisions*, 101 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 152, 160–63 (2006).

resumes.<sup>119</sup> Racialized names also affect the benefits of a better resume: a higher-quality resume makes little difference in the number of callbacks for applicants with Black names but elicits 30 percent more callbacks for those with white names.<sup>120</sup>

One reason for this is that racialized cues bring associations and stereotypes about minority groups to the forefront. Studies of name perception show that racialized names are often associated with less education and lower socioeconomic status, leading to more general negative evaluations.<sup>121</sup> Others have suggested that white names are the baseline; white names are seen as more common and neutral, while everything else, Black names included, is viewed in comparison and often seen as less positive.<sup>122</sup>

In the legal field, negative expectations based on race commonly show up in racially based perceptions about writing ability. For instance, law partners are shown to evaluate Black associates more harshly compared to their white counterparts for the exact same work.<sup>123</sup> In one study, a memo containing various errors written by a fictitious law associate was given to different law firm partners.<sup>124</sup> While all the partners received the same memo, half were told the associate was Black, while the other half were told the associate was white.<sup>125</sup> Unconscious confirmation bias led to more harsh evaluations when the fictitious law associate was Black.<sup>126</sup> Based on race alone, partners expected to find a lower-quality memo and, as a result, that is what they found.<sup>127</sup> In addition to assigning the memo a lower overall rating, law partners found significantly more spelling, writing, and factual errors in the hypothetical Black associate's memo compared to the hypothetical white associate's memo.<sup>128</sup> Although in this study, the law associate's name remained constant, other research has suggested that racialized cues like

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119. See Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable than Lakisha and Jamal?: A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. REV. 991, 998–99 (2004).

120. *Id.* at 999–1003.

121. M. Rose Barlow & Joanna N. Lahey, *What Race Is Lacey?: Intersecting Perceptions of Racial Minority Status and Social Class*, 99 SOC. SCI. Q. 1680, 1685–90 (2018).

122. John L. Cotton et al., *Whiteness of a Name: Is “White” the Baseline?*, 29 J. MANAGERIAL PSYCH. 405, 405, 410–12, 415–16 (2014).

123. See Arin N. Reeves, *Written in Black & White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills*, YELLOW PAPER SERIES (Nextions, Chi., Ill.), Apr. 2014, at 1.

124. *Id.* at 3.

125. *Id.* at 4.

126. *Id.*

127. *Id.*

128. *Id.*

names,<sup>129</sup> accents,<sup>130</sup> and physical features<sup>131</sup> strengthen this effect, making it more likely for Black employees to be perceived negatively and evaluated more harshly.

Negative expectations based on race are also an issue in the classroom. In general, Black students are rated less favorably compared to white students.<sup>132</sup> This effect is largely mitigated when the teacher is also Black,<sup>133</sup> but it is strengthened in situations such as oral presentations, where racialized accents are made more salient.<sup>134</sup>

## VII. PIGEONHOLING

Too often organizational leadership sees Black individuals as fitting within narrow boxes.<sup>135</sup> In an employment context, individuals are often pigeonholed based on their social identity (e.g., race, gender, or ethnicity). Simply because they belong to a certain social category, they are unfairly put into a box by others—perhaps they are believed to only have a particular skill set or be fit for only one type of job or position, for instance. This is common in an employment context, where implicit associations about race and gender translate directly into evaluations of potential careers and beliefs about what others can do.<sup>136</sup> Pigeonholing has been widely studied with regard to gender. In general, men are more frequently assumed to hold higher-status, powerful positions.<sup>137</sup>

A similar phenomenon is found regarding race in professional settings, where implicit biases translate into assumptions about an individual's career

129. See, e.g., Howard & Borgella, *supra* note 118, at 513–15.

130. See, e.g., William Y. Chin, *Linguistic Profiling in Education: How Accent Bias Denies Equal Educational Opportunities to Students of Color*, 12 SCHOLAR 355, 359–64 (2010); Segrest Purkiss et al., *supra* note 118, at 160–63.

131. See, e.g., Irene V. Blair et al., *The Role of Afrocentric Features in Person Perception: Judging by Features and Categories*, 83 J. PERSONALITY & SOC. PSYCH. 5, 13–17, 19–22 (2002).

132. Douglas B. Downey & Shana Pribesh, *When Race Matters: Teachers' Evaluations of Students' Classroom Behavior*, 77 SOC. EDUC. 267, 275 (2004).

133. *Id.*

134. See Chin, *supra* note 130, at 374–75.

135. See COSE, *supra* note 6, at 68.

136. See, e.g., Gregory S. Parks & Quinetta M. Roberson, *Michelle Obama: A Contemporary Analysis of Race and Gender Discrimination Through the Lens of Title VII*, 20 HASTINGS WOMEN'S L.J. 3, 9 (2009).

137. See Mahzarin R. Banaji & Curtis D. Hardin, *Automatic Stereotyping*, 7 PSYCH. SCI. 136, 136–39 (1996); Mahzarin R. Banaji & Anthony G. Greenwald, *Implicit Gender Stereotyping in Judgments of Fame*, 68 J. PERSONALITY & SOC. PSYCH. 181, 186 (1995); Brian A. Nosek et al., *Harvesting Implicit Group Attitudes and Beliefs from a Demonstration Web Site*, 6 GRP. DYNAMICS 101, 107–08 (2002); Laurie A. Rudman & Stephen E. Kilianski, *Implicit and Explicit Attitudes Toward Female Authority*, 26 PERSONALITY & SOC. PSYCH. BULL. 1315, 1324–25 (2000); Laurie A. Rudman et al., *Implicit Self-Concept and Evaluative Implicit Gender Stereotypes: Self and Ingroup Share Desirable Traits*, 27 PERSONALITY & SOC. PSYCH. BULL. 1164, 1167–68 (2001); Michael J. White & Gwendolen B. White, *Implicit and Explicit Occupational Gender Stereotypes*, 55 SEX ROLES 259, 263–64 (2006); Stephanie Russell-Kraft, *Mistaken for the Court Reporter: Litigating as a Woman*, BLOOMBERG L. (Aug. 16, 2017, 12:32 PM), <https://news.bloomberglaw.com/business-and-practice/mistaken-for-the-court-reporter-litigating-as-a-woman> [https://perma.cc/AJY6-7DRT].

and skill set. A web-based Implicit Association Test (IAT) study shows that white individuals hold a strong preference for white individuals over Black individuals.<sup>138</sup> This preference is expressed in the workplace via treatment of Black employees by white employees. White supervisors and subordinates alike are shown to acknowledge racial disparities in the workplace, yet they attribute such disparities to Black employees' levels of motivation rather than to discrimination against Black individuals or their lesser educational chances.<sup>139</sup> Implicit associations lead white employees to assume Black employees are always lesser in the workplace and that Black individuals in fact are responsible for existing inequalities, likely leading to discrimination and disparities in treatment, as well. Another example relates to diversity and inclusion positions. In modern U.S. society, with a newfound emphasis on diversity within organizations, Black employees are also pigeonholed into filling roles focused on fostering diversity that do not necessarily prepare them for advancement into senior leadership roles.<sup>140</sup> Black employees are tokenized and assumed to only fit within this type of role, as opposed to being considered for positions based on their actual skill set and abilities.

#### VIII. IDENTITY TROUBLES

Sometimes in the educational or employment context, bias and discrimination may be so taxing that Black individuals may feel that they cannot afford to express their racial identity.<sup>141</sup> Fear of negative evaluation is a significant concern for racial minorities in their everyday interactions, outside confrontation situations. Often, racial minorities are forced to employ a type of self-censorship called impression management to deflect association with negative stereotypes,<sup>142</sup> especially when interacting with white or higher-status others.<sup>143</sup> Impression management involves downplaying one's racial identity through strategies such as avoidance (avoiding categorization by minimizing race-related communication), affiliation (emphasizing commonalities with majority group members), enhancement (attempting to establish more positive associations with one's racial group through education or selective confirmation of stereotypes), and racial humor (building cohesion with majority group members and reducing

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138. Nosek et al., *supra* note 137, at 105.

139. See Ryan A. Smith & Matthew O. Hunt, *White Supervisor and Subordinate Beliefs About Black/White Inequality: Implications for Understanding and Reducing Workplace Racial Disparities*, 67 *SOC. PROBS.* 1, 10 (2020).

140. Laura Morgan Roberts & Anthony J. Mayo, *Conclusion—Intersections of Race, Work, and Leadership: Lessons in Advancing Black Leaders*, in *RACE, WORK, AND LEADERSHIP: NEW PERSPECTIVES ON THE BLACK EXPERIENCE* 419, 425 (Laura M. Roberts et al. eds., 2019).

141. COSE, *supra* note 6, at 65–66.

142. See Laura Morgan Roberts et al., *Strategies for Managing Impressions of Racial Identity in the Workplace*, 20 *CULTURAL DIVERSITY & ETHNIC MINORITY PSYCH.* 529, 529 (2014) (citing Laura M. Roberts, *Changing Faces: Professional Image Construction in Diverse Organizational Settings*, 30 *ACAD. MGMT. REV.* 685, 696 (2005)).

143. Jillian K. Swencionis et al., *Warmth-Competence Tradeoffs in Impression Management Across Race and Social-Class Divides*, 73 *J. SOC. ISSUES* 175, 181 (2017).

negative associations with one's racial group by making racial jokes).<sup>144</sup> Use of specific impression management strategies is predicted by racial and professional centrality—the importance of race and profession to one's overall self-concept.<sup>145</sup> Individuals with high racial centrality are more likely to engage in enhancement and less likely to engage in avoidance and racial humor, while individuals with high professional centrality are more likely to engage in affiliation, such that the relationship between professional centrality and affiliation is even stronger in the presence of high racial centrality.<sup>146</sup>

Although it is generally assumed that outward expressions of racial identification are antecedents to prejudice, there may be some contexts where behavioral reactions differ.<sup>147</sup> Specifically, there are some scenarios, like the employment recruitment and selection process, where strong racial identification is related to more positive evaluations from majority group members.<sup>148</sup> One potential explanation for this is that majority group members fear being labeled as prejudiced or being on the receiving end of litigation, concerns that become more salient in face-to-face interracial interactions. In this particular context, behavioral manifestations of racial identity serve as a protective force—and warning—against discrimination but only for those already attuned to those concerns.<sup>149</sup>

For the most part, though, racial minorities are still faced with a harsh reality: silence yourself and downplay your identity or face the consequences. Even when racial minorities engage in behaviors that are shown to be beneficial for majority group members, such as control and monitoring behaviors in the workplace, they frequently find themselves rewarded less and punished more.<sup>150</sup> Online, racial minorities are pressured to self-censor in an attempt to present more neutral images to prevent being associated with stereotypes or perceived negatively.<sup>151</sup> Ultimately, situations where strong identification leads to more positive outcomes are outliers. More often, impression management is employed in an attempt to avoid a reduction in status.

#### IX. SELF-CENSORSHIP AND SILENCE

“[M]any Blacks find their voices stilled when sensitive racial issues are raised.”<sup>152</sup> The decision to speak out against the prejudiced actions of

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144. Morgan Roberts et al., *supra* note 142, at 530.

145. *Id.* at 534.

146. *Id.*

147. See Barron et al., *supra* note 89, at 23.

148. *Id.* at 24.

149. *Id.* at 28.

150. James D. Westphal & Ithai Stern, *Flattery Will Get You Everywhere (Especially If You Are a Male Caucasian): How Ingratiation, Boardroom Behavior, and Demographic Minority Status Affect Additional Board Appointments at U.S. Companies*, 50 ACAD. MGMT. J. 267, 283 (2007).

151. See Mikaela Pitcan et al., *Performing a Vanilla Self: Respectability Politics, Social Class, and the Digital World*, 23 J. COMPUTER-MEDIATED COMMUN. 163, 170 (2018).

152. COSE, *supra* note 6, at 66.

another is strongly influenced by the potential outcomes of confrontation—namely, the interpersonal and intrapersonal consequences for the confronter.<sup>153</sup> Concerns regarding these consequences are warranted, especially for racial minorities, who are often faced with more severe and more frequent consequences as confronters of prejudice, as compared to majority group members. As a result, racial minorities are less likely to respond and more likely to self-censor in response to discrimination.

With regard to interpersonal consequences, confronters are often perceived more negatively for confronting prejudice by third-party bystanders, especially when the prejudiced actions are somewhat ambiguous.<sup>154</sup> One example of this relates to positive stereotypes, which, despite being problematic in their own ways, are occasionally perceived as compliments.<sup>155</sup> In instances like these, confronters are frequently viewed as overreacting and evaluated unfavorably as a result. The more prejudiced the bystanders, the stronger this effect becomes.<sup>156</sup> In addition, bystanders who use more aggressive tactics, like explicit language or physical force, are more likely to be seen negatively compared to those who use less aggressive tactics.<sup>157</sup>

Critically, negative outcomes are not a concern for all. Nonminority individuals who confront prejudice are frequently rated as more likeable and respectable compared to nonminority individuals who do not confront prejudice.<sup>158</sup> Ironically, members of the social category being targeted in the initial prejudiced action (e.g., women confronting sexism, Black individuals confronting racism) are the ones perceived negatively by bystanders after engaging in confrontation.<sup>159</sup> However, this effect is reversed when bystanders are members of the same social category as the confronter. For example, Black individuals tend to evaluate other Black individuals who confront racism more favorably than Black individuals who do not.<sup>160</sup> However, this effect only holds when membership to the social category is central to the bystanders' self-concepts.<sup>161</sup> In addition, bystanders often make assumptions regarding the confronter's identity. For instance, bystanders assumed a Black-white biracial confronter to more strongly identify with being Black.<sup>162</sup>

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153. Alexander M. Czopp, *The Consequences of Confronting Prejudice*, in *CONFRONTING PREJUDICE AND DISCRIMINATION: THE SCIENCE OF CHANGING MINDS AND BEHAVIORS* 201, 203 (Robyn K. Mallet & Margo J. Monteith eds., 2019).

154. *Id.*

155. *Id.*

156. *Id.* at 204.

157. *Id.*

158. *Id.*

159. *Id.* at 205.

160. *See id.* (citing Cheryl R. Kaiser et al., *Group Identification Moderates Attitudes Toward Ingroup Members Who Confront Discrimination*, 45 *J. EXPERIMENTAL SOC. PSYCH.* 770, 775 (2009)).

161. *Id.*

162. *Id.* (citing Leigh S. Wilton et al., *White's Perceptions of Biracial Individuals' Race Shift When Biracials Speak out Against Bias*, 9 *SOC. PSYCH. & PERSONALITY SCI.* 953, 956 (2017)).

Intrapersonal consequences (between the confronter and the confrontee) are consistent with the reactions of most bystanders. Confronters tend to be evaluated more negatively by the confrontee, and this is especially true when the confrontee perceives the confrontation as unwarranted, likely because they believe themselves to be unbiased.<sup>163</sup> However, once again, negative outcomes are not always inevitable and depend on the parties involved. Confrontees who are willing to accept confrontation actually report more favorable evaluations of their confronters.<sup>164</sup> Still, negative outcomes are a more likely reality for racial minorities compared to others. Racial minorities are typically aware of this. Many Black individuals assume they will be perceived negatively by white evaluators unless the evaluators have shown themselves to be less discriminatory.<sup>165</sup> It is due to this type of assumption, based in reality, that a disparity in self-censorship arises.

#### X. MENDACITY

What may be most damaging to Black individuals is the lies that seem to be an integral part of America's approach to race. Many of the lies are simple self-deception, as when corporate executives claim their companies are utterly color-blind.<sup>166</sup> In U.S. society, many white people live in constant fear of being labeled as racist. As a result, in interracial interactions, white individuals proceed with caution: trying to keep themselves in line, making sure they do not act on any prejudiced attitudes—sometimes resulting in “reverse discrimination.”<sup>167</sup> Diversity training programs within organizations also create an illusion of fairness, ultimately giving a “free pass” for prejudiced behavior.<sup>168</sup> Ultimately, much of the United States's approach to race is built on lies. An outward portrayal of egalitarianism is often the goal for many organizations, yet few seem to do any work beyond the surface.

Reverse discrimination occurs when white people treat minority group members better than majority group members.<sup>169</sup> This kind of treatment usually occurs when white individuals fear that treating a minority member as they would any other majority group member could be attributed to racism.<sup>170</sup> Although, on the surface, it might appear as though this is an improvement over negatively prejudiced treatment, reverse discrimination

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163. *Id.* at 206.

164. See Alexander M. Czopp et al., *Standing up for a Change: Reducing Bias Through Interpersonal Confrontation*, 90 J. PERSONALITY & SOC. PSYCH. 784, 791 (2006).

165. See Swencionis et al., *supra* note 143, at 184 (citing Daryl A. Wout et al., *Targets as Perceivers: How People Determine When They Will Be Negatively Stereotyped*, 96 J. PERSONALITY & SOC. PSYCH. 349, 355 (2009)).

166. COSE, *supra* note 6, at 67.

167. Benoît Monin & Dale T. Miller, *Moral Credentials and the Expression of Prejudice*, 81 J. PERSONALITY & SOC. PSYCH. 33, 33 (2001).

168. Cheryl R. Kaiser et al., *Presumed Fair: Ironic Effects of Organizational Diversity Structures*, 104 J. PERSONALITY & SOC. PSYCH. 504, 516 (2013).

169. See Monin & Miller, *supra* note 167, at 33–34.

170. *Id.*

comes with its own set of problems.<sup>171</sup> And, at the end of the day, reverse discrimination is still treatment on the basis of race.

One commonly studied consequence of reverse discrimination is moral credentialing. If a person is motivated by self-presentation, unprejudiced treatment will only last as long as is needed to appear egalitarian. White individuals need to simply show they are unprejudiced and once this has been accomplished and they have obtained their “moral credentials,” they feel free to express and act on prejudiced attitudes.<sup>172</sup>

However, moral credentialing is not necessarily a self-presentational strategy in terms of how one is viewed by the outside world. Rather, moral credentialing serves to make people feel better about themselves.<sup>173</sup> Moral credentialing occurs even when one’s audience is not aware of one’s prior credentialing behavior,<sup>174</sup> suggesting its purpose is for the individual—all that matters is that one perceive oneself as egalitarian, so from that point on, one is “off the hook,” free from the responsibility to act in unprejudiced ways.<sup>175</sup> In recruitment situations, people who establish unprejudiced moral credentials by selecting a racial minority in an initial recruitment are significantly more likely to select a white man during subsequent recruitments.<sup>176</sup>

When it comes to complying with requests made by Black individuals, all that is necessary for white individuals is “token compliance.” Consistent with the concept of moral credentialing, the desire to establish an unprejudiced self-image can be satisfied by short-term egalitarian behaviors.<sup>177</sup> Again, once a white person has shown she are “egalitarian,” she can move on to deny requests from Black individuals in the long term.<sup>178</sup> White people who are not given an opportunity to comply in the short term are more likely to comply with a request from a Black individual later, because they were never given a chance to comply earlier and have not yet “patted themselves on the back” for being egalitarian.<sup>179</sup>

Other attempts to be egalitarian take a different turn. One study shows that even liberal individuals, who presumably mean well, tend to “dumb down” their own language when speaking with racial minorities.<sup>180</sup> White liberals

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171. *Id.*

172. *Id.*

173. See Anna C. Merritt et al., *Moral Self-Licensing: When Being Good Frees Us to Be Bad*, 4 SOC. & PERSONALITY PSYCH. COMPASS 344, 352 (2010).

174. Monin & Miller, *supra* note 167, at 39.

175. *Id.*

176. *Id.* at 37.

177. Donald G. Dutton & Vicki L. Lennox, *Effect of Prior “Token” Compliance on Subsequent Interracial Behavior*, 29 J. PERSONALITY & SOC. PSYCH. 65, 66 (1974).

178. *See id.*

179. *Id.*

180. Jyoti Madhusoodanan, *White Liberals Present Themselves as Less Competent in Interactions with African-Americans*, YALE INSIGHTS (Nov. 15, 2018), <https://insights.som.yale.edu/insights/white-liberals-present-themselves-as-less-competent-in-interactions-with-african-americans> [https://perma.cc/5UJ8-6UCT] (citing Cydney H. Dupree & Susan T. Fiske, *Self-Presentation in Interracial Settings: The Competence Downshift by White Liberals*, 117 J. PERSONALITY & SOC. PSYCH. 579 (2019)).

tend to use more Germanic, simple language as opposed to more Latinate, academic language. This behavior seems to be an attempt to get along and establish rapport with racial minorities, however, it can be seen as patronizing and is still based on common stereotypes and assumptions about people of color.<sup>181</sup>

The lies do not stop there, though—they also exist on an organizational level. Diversity structures, including trainings and measures put in place to make an organization more egalitarian, are often counterproductive in many ways.<sup>182</sup> While it is true that diversity structures can be useful in changing norms and increasing awareness of biases and organizational trust, they have the potential to lead to a false illusion of fairness and equal treatment.<sup>183</sup> Similar to the idea of moral credentialing, an organizational leader may assume that throwing together measures aimed at increasing diversity and awareness will make the workplace immune to prejudice and discrimination. In fact, instead of making group members more aware and better at recognizing discrimination, the mere presence of diversity structures on its own has the opposite effect.<sup>184</sup> Organizations with diversity structures have lower perceptions of discrimination and less support for victims of discrimination.<sup>185</sup> And the presence of a diversity award can lead both white and racial minorities to perceive actually biased company procedures as fairer to minority employees.<sup>186</sup>

#### XI. GUILT BY ASSOCIATION

While well-educated and professionally successful Black Americans may feel as though their accomplishments should provide a buffer against racial stereotyping in their everyday lives, this hope is far from reality.<sup>187</sup> Racial discrimination is common among Black Americans but varies by education level and gender. College-educated Black Americans experience discrimination more frequently and more severely than high-school-educated Black Americans.<sup>188</sup> College-educated Black Americans are also more

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181. *Id.*

182. See Kaiser et al., *supra* note 168, at 505.

183. *Id.*

184. *Id.* at 516.

185. *Id.*

186. Teri A. Kirby et al., *Insidious Procedures: Diversity Awards Legitimize Unfair Organizational Practices*, 28 SOC. JUST. RSCH. 169, 181 (2015).

187. COSE, *supra* note 6, at 68–69. For powerful anecdotal evidence, see *12 ANGRY MEN: TRUE STORIES OF BEING A BLACK MAN IN AMERICA TODAY* 87–99, 111–23 (Gregory S. Parks & Matthew W. Hughey eds., 2010); Andre M. Davis, *To the Man Who Called Me N-Word*, BALT. SUN (May 9, 2008), <https://www.baltimoresun.com/news/bs-xpm-2008-05-09-0805080297-story.html> [<https://perma.cc/5TS5-STWX>]; David Margolick, *At the Bar; Falsely Accused: In a Humiliating Arrest, a Black Judge Finds Lessons of Law and Race Relations*, N.Y. TIMES (Jan. 7, 1994), <https://www.nytimes.com/1994/01/07/us/bar-falsely-accused-humiliating-arrest-black-judge-finds-lessons-law-race.html> [<https://perma.cc/C7HT-P6L8>].

188. Monica Anderson, *For Black Americans, Experiences of Racial Discrimination Vary by Education Level, Gender*, PEW RSCH. CTR. (May 2, 2019), <https://www.pewresearch.org/>

likely to believe their race has negatively impacted their ability to succeed, as compared to high-school-educated Black Americans, and this pattern has been consistent across multiple surveys dating back to at least 2016.<sup>189</sup> One potential explanation for this finding is that college-educated Black Americans are more likely to work in predominately white environments, like universities and workplaces, which leads to greater exposure to prejudice and therefore more opportunities to face discrimination.<sup>190</sup>

Experiences of racial discrimination also vary by gender, such that Black males are more likely to encounter certain types of discrimination compared to Black females. Black males are more likely than Black females to experience unfair treatment by law enforcement, have others act as if they are suspicious of them, and be subjected to slurs or jokes.<sup>191</sup> Discrimination also varies by appearance. Black and Latinx individuals with the lightest skin are significantly more likely to be seen by white individuals as intelligent than those with the darkest skin, regardless of education level or verbal intelligence.<sup>192</sup> This suggests white individuals have prejudicial attitudes corresponding to skin tone, likely translating into greater discrimination directed at those with darker skin tones.

## XII. COPING FATIGUE

Racism may push Black individuals to the psychological brink.<sup>193</sup> The effect of racism on mental health is well documented in the literature, which has demonstrated significant disparities in the overall health and well-being of minorities compared to majority groups. But there is complexity in the relationship between race and mental health, where various factors and both chronic and acute stressors likely contribute to an increased mental health risk for minority individuals.<sup>194</sup>

Black individuals are more likely than any other racial group to experience physical and emotional stress.<sup>195</sup> The first reason for this is discrimination. Evidently, actual experiences of bias lead to stress.<sup>196</sup> This includes more major and easily identifiable instances of racism, such as housing discrimination.<sup>197</sup> But it also includes experiences of the more modern, subtle forms, such as aversive racism. Aversive discriminatory acts are often ambiguous, meaning minority individuals might have difficulty attributing

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fact-tank/2019/05/02/for-black-americans-experiences-of-racial-discrimination-vary-by-education-level-gender [https://perma.cc/6CK5-8UNY].

189. *Id.*

190. *Id.*

191. *Id.*

192. Lance Hannon, *White Colorism*, 2 SOC. CURRENTS 13, 17–19 (2015).

193. COSE, *supra* note 6, at 63–64.

194. David R. Williams, *Stress and the Mental Health of Populations of Color: Advancing Our Understanding of Race-Related Stressors*, 59 J. HEALTH & SOC. BEHAV. 466, 467 (2018).

195. Kathryn Freeman Anderson, *Diagnosing Discrimination: Stress from Perceived Racism and the Mental and Physical Health Effects*, 83 SOCIO. INQUIRY 1, 23–24 (2013).

196. Williams, *supra* note 194, at 470.

197. Elizabeth A. Deitch et al., *Subtle Yet Significant: The Existence and Impact of Everyday Racial Discrimination in the Workplace*, 56 HUM. RELS. 1299, 1300 (2003).

these experiences to racism.<sup>198</sup> However, regardless of whether minority individuals have identified experiences of aversive racism as such, they are still subject to negative outcomes as a result.<sup>199</sup> Black individuals are shown to experience everyday, subtle forms of mistreatment in the workplace significantly more than white individuals, leading to greater negative outcomes, regardless of how those experiences are attributed.<sup>200</sup>

Over time, experiences of discrimination lead to internalized racism, further contributing to increased stress. Internalized racism refers to the acceptance by minority individuals of negative associations with their own groups, resulting from lifelong continuous exposure to discrimination.<sup>201</sup> Each and every day, for years on end, minority individuals are treated as if they do not matter, eventually leading them to believe it themselves. Internalized racism results in greater stress, in addition to feelings of worthlessness, low self-esteem, and overall poor psychological well-being.<sup>202</sup>

In addition to actual exposure to discrimination, the mere threat of exposure can affect stress levels.<sup>203</sup> Minority individuals are constantly living on edge, in search of cues that signal their identities are being threatened through discrimination.<sup>204</sup> The human body is not designed to be in a state of heightened vigilance long term, yet minority individuals are forced to exist this way to survive. In the workplace, for instance, minority employees are always searching for information regarding whether they will be accepted and affirmed or rejected and stigmatized.<sup>205</sup> This state is only relaxed when minority individuals are assured that treatment from others will not be linked to group membership.<sup>206</sup> But, in settings where discrimination and prejudice are rampant, minority individuals are forced to remain in a state of psychological arousal in an attempt to protect themselves from future discrimination and threats to their own identities.<sup>207</sup> Existing in a state of uncertainty, besides increasing physical stress levels, contributes to lower feelings of social belonging and connectedness to others.<sup>208</sup>

Ultimately, increased stress levels in response to racism are significant, as experiencing both emotional and physical stress from perceived racist treatment is an important factor in predicting poor mental and physical health outcomes.<sup>209</sup>

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198. *Id.* at 1302.

199. *Id.*

200. *Id.* at 1314.

201. Williams, *supra* note 194, at 474.

202. *Id.*

203. *Id.* at 470.

204. See Emerson & Murphy, *supra* note 87, at 509.

205. *Id.*

206. *Id.*

207. See Williams, *supra* note 194, at 470.

208. Gregory M. Walton & Geoffrey L. Cohen, *A Question of Belonging: Race, Social Fit, and Achievement*, 92 J. PERSONALITY & SOC. PSYCH. 82, 94 (2007).

209. Freeman Anderson, *supra* note 195, at 64.

Aside from stress alone, racism is related to a whole host of negative psychological outcomes. Maintaining a heightened state of vigilance in response to discrimination is also associated with lower levels of satisfaction and well-being, in addition to increased concerns about acceptance, decreased trust, increased anxiety, impaired executive functioning, lower performance, and increased turnover and absenteeism in the workplace.<sup>210</sup>

Experiences of discrimination are shown to be associated with an increased risk of symptoms of anxiety and depression.<sup>211</sup> A 2012 meta-analysis also found a positive association between perceived racism and psychological distress, as well as a moderation effect for psychological outcomes with anxiety, depression, and other psychiatric symptoms having a significantly stronger association than quality of life indicators.<sup>212</sup> Another study found that the impact of reported racism on the mental health of Black individuals was stronger for individuals who denied thinking about their race. And overall, the more discrimination a person has experienced, the worse that person's mental health tends to be.<sup>213</sup>

Internalized racism also has a significant association with mental health, such that the higher individuals' acceptance of negative cultural stereotypes about their group, the more likely they are to experience depressive symptoms.<sup>214</sup> Perhaps unsurprisingly, the acceptance of negative cultural stereotypes has also been shown to result in unfavorable self-evaluations.<sup>215</sup>

#### CONCLUSION

Bias, discrimination, racism, and stereotyping may adversely impact the mental health of Black law students and attorneys. In turn, individuals diagnosed with depression are vulnerable to adverse academic and work performance-related outcomes. As such, depression may create self-fulfilling prophecies vis-à-vis Black law students and attorneys.

Left untreated, depression infringes on the ability to encode and recall information, which directly affects test tasking and overall academic performance.<sup>216</sup> Major depressive disorder, for instance, often includes

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210. See Emerson & Murphy, *supra* note 87, at 508–09.

211. Williams, *supra* note 194, at 468.

212. Alex L. Pieterse et al., *Perceived Racism and Mental Health Among Black American Adults: A Meta-analytic Review*, 59 J. COUNSELING PSYCH. 1, 6 (2012).

213. Naa Oyo A. Kwate & Melody S. Goodman, *Cross-Sectional and Longitudinal Effects of Racism on Mental Health Among Residents of Black Neighborhoods in New York City*, 105 AM. J. PUB. HEALTH 711, 715 (2015).

214. See Dawne M. Mouzon & Jamila S. McLean, *Internalized Racism and Mental Health Among African-Americans, US-Born Caribbean Blacks, and Foreign-Born Caribbean Blacks*, 22 ETHNICITY & HEALTH 36, 42–43, 45 (2017).

215. David R. Williams & Ruth Williams-Morris, *Racism and Mental Health: The African American Experience*, 5 ETHNICITY & HEALTH 243, 255 (2000).

216. Allyson G. Harrison et al., *The Impact of Depression and Anxiety on Speed of Academic Performance and Retrieval Fluency in Postsecondary Students*, 34 CLINICAL NEUROPSYCHOLOGY 1, 3 (2020); Matthew Owens et al., *Anxiety and Depression in Academic Performance: An Exploration of the Mediating Factors of Worry and Working Memory*, 33 SCH. PSYCH. INT'L 433, 441 (2012).

symptoms of psychomotor agitation causing difficulty thinking, concentrating, and making decisions.<sup>217</sup> For young people diagnosed with depression specifically, perfectionism is likely to play a role in productivity and achievement. In studies looking at personal standards for performance, depression relates strongly to inconsistencies—such that actual performance does not line up with one’s own standards—in addition to lower grade point averages.<sup>218</sup>

On top of academic performance, the negative effects of depression demonstrate a similar pattern in the workplace. Symptoms of depression are negatively correlated with productivity<sup>219</sup> and performance at work.<sup>220</sup> Although, it is important to note that this effect can be reversed by treatment: as one’s symptoms improve, job performance often goes up.<sup>221</sup> However, the effects on job performance of living with depression are perhaps more detrimental than those of some physical ailments. In a longitudinal study comparing depression patients to individuals with rheumatoid arthritis, depression patients demonstrated significantly worse job performance over time.<sup>222</sup> Another study revealed the impact of depression on unemployment, absenteeism, and presenteeism.<sup>223</sup> Individuals with more severe depression are more likely to be unemployed,<sup>224</sup> absent from work,<sup>225</sup> or present at work but significantly less productive.<sup>226</sup> In addition to the severe mental toll, depression is estimated to cost the United States between \$36.6 and \$51.5 billion annually in lost productivity.<sup>227</sup> Depressed employees exhibit more job loss, premature retirement, on-the-job functional limitations, and absences compared to their nondepressed coworkers.<sup>228</sup> Ultimately, when compared to other physical and mental conditions, depression appears to have the largest detrimental impact on overall job performance,<sup>229</sup> with great implications for employment and well-being.

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217. See Harrison et al., *supra* note 216, at 3.

218. Lindsey Leenaars & David Lester, *Perfectionism, Depression, and Academic Performance*, 99 PSYCH. REPS. 941, 941 (2006).

219. See Philip S. Wang et al., *Effects of Major Depression on Moment-in-Time Work Performance*, 161 AM. J. PSYCHIATRY 1885, 1889 (2004).

220. See S. B. Harvey et al., *Depression and Work Performance: An Ecological Study Using Web-Based Screening*, 61 OCCUPATIONAL MED. 209, 210 (2011).

221. David A. Adler et al., *Job Performance Deficits Due to Depression*, 163 AM. J. PSYCHIATRY 1569, 1573 (2006).

222. *Id.*

223. Debra Lerner & Rachel Mosher Henke, *What Does Research Tell Us About Depression, Job Performance, and Work Productivity?*, 50 J. OCCUPATIONAL & ENV'T MED. 401, 401 (2008).

224. *Id.* at 404.

225. *Id.* at 405.

226. *Id.* at 406.

227. Debra Lerner et al., *Work Performance of Employees with Depression: The Impact of Work Stressors*, 24 AM. J. HEALTH PROMOTION 205, 205 (2010).

228. *Id.* at 206.

229. Dena Croog, *Impact of Depression on Work Productivity*, PRIMARY PSYCHIATRY, July 2007, at 22, 22.