

## **The Way of ColorInsight:**

### **Understanding Race and Law Effectively Through Mindfulness-Based ColorInsight Practices**

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#### I. Introduction

Despite much good effort to the contrary, reports from a wide variety of fields and locations serve daily to remind us that race still matters in America.<sup>2</sup> To many legal scholars, these reports are not only *not* news but they suggest work that must be done within the legal academy to minimize racial bias within contemporary law. For example, in his groundbreaking Article, *Trojan Horses of Race*, Jerry Kang highlighted the research identifying and confirming implicit bias as a pervasive cognitive, interpersonal dynamic, and placed on the research agenda that should follow this revelation scholarship by law professors examining “teaching strategies,” as well as “debiasing programs, and [educational] environments.”<sup>3</sup> More recently, Margalynne Armstrong and Stephanie Wildman have argued that educators, especially those in law, must

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<sup>2</sup> See, e.g., TA-NEHESI COATES, *BETWEEN THE WORLD AND ME* (2015) (describing the impact of race and racism in contemporary America); MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2012) (arguing that in the era of the War on Drugs, the criminal justice system has reinforced the caste system in America); DARIA ROITHMAYR, *REPRODUCING RACISM: HOW EVERYDAY CHOICES LOCK IN WHITE ADVANTAGES* (2014) (Arguing that interlocking policies and practices continually exacerbate the accumulated privileges of Whiteness in America). See also “Sotomayor says race still matters,” *Tulsa World*, September 11, 2014 ([http://www.tulsaworld.com/news/courts/sotomayor-says-race-still-matters-in-america/article\\_d2db0913-41bb-598a-a1c9-d2e70c2c408e.html](http://www.tulsaworld.com/news/courts/sotomayor-says-race-still-matters-in-america/article_d2db0913-41bb-598a-a1c9-d2e70c2c408e.html), website last visited by author on December 16, 2014) (According to Justice Sonya Sotomayor, “We all aspire to a colorblind society. There’s a pull in each of us that wants race not to matter. But the reality is that as much as we wish it away, it makes a difference in our society. Society is still affected by it at every level....The structure of our society automatically that race still matters.”)

<sup>3</sup> Jerry Kang, *Trojan Horses of Race*, 118 *Harv. L. Rev.* 1489, 1536-7 (2005).

move from “colorblindness to color insight,” developing approaches to teaching law which increase our capacity to understand race, and in particular Whiteness, and its pervasive operation in the law.<sup>4</sup> This is so even though teaching and learning about race, and especially about Whiteness, is notoriously difficult for all of us.<sup>5</sup>

To teach about race<sup>6</sup> in ways that increase understanding and minimize bias, and to do so in increasingly diverse classrooms requires that we each continually explore new methods and be radically open to adopting what works. This Article breaks ground by importing analyses and findings from the interdisciplinary literature on the pedagogy of race into the legal education literature, a body of scholarship which elaborates how both colorblindness and implicit bias may impact performance in law school classrooms and in practice beyond, and by identifying ways that contemplative pedagogy may be an important component of effective corrective responses.

As developments within the field of the scholarship of teaching and learning confirm,<sup>7</sup> two important trends in the world of education theory and pedagogy have emerged within the past ten years that may assist us all – faculty, students and staff – in efforts to better address race (including Whiteness), identity, implicit bias and other social justice issues across the law school

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<sup>4</sup> Margalynne Armstrong and Stephanie Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 635 N. C. L. Rev. 86 (2008) (positing that “legal educators must develop and understanding of whiteness and its relationship to equality and teach future lawyers to do so as well”). See also Margalynne Armstrong and Stephanie Wildman, “Colorblindness is the New Racism: Raising Awareness About Privilege Using Color Insight,” in *DECONSTRUCTING PRIVILEGE: TEACHING AND LEARNING AS ALLIES IN THE CLASSROOM* (2012) (identifying “privilege” and “stereotype” as key concepts to be put in focus through discussion and discursive examination of personal experience focused on developing one’s “color insight”). See also “Practicing Social Justice Feminism in the Classroom,” 2014 Freedom Center Journal 1 (2014) (suggesting similar discursive practices as a means of developing what might be called gendered color insight). Professor Wildman has recognized the value of bringing mindfulness into legal education generally. See Stephanie Wildman, *Finding Breathing Space, Embracing the Contradictions and Education Work*, 47 U.C. Davis L. Rev. 1047 (2014).  
<sup>5</sup> See, e.g., Robin DiAngelo, *White Fragility*, 3 Intern’l J. Critical Pedagogy 54 (2011) (describing the difficulties of teaching about race and racism as a white person among white people, and identifying “white fragility” as a common problem that should be addressed by practices and pedagogy which increases white “stamina.”) See also *BUILDING ON BEST PRACTICES: TEACHING THE NEWLY ESSENTIAL KNOWLEDGE, SKILLS AND VALUES IN A CHANGING WORLD* (FORTHCOMING 2015), *infra*, notes \_\_\_ and accompanying texts.

<sup>6</sup> The research and analysis presented herein is generally grounded in the work of Critical Legal Scholars of a variety of traditions, including Critical Race theorists. [See, e.g., Kimberle Crenshaw et al., *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (1995)...] It joins that literature with the literatures in the fields of the psychology of education and contemplative pedagogy. [See., e.g... or see *infra* notes...]

<sup>7</sup> See Barr and Tagg, *From Teaching to Learning: A New Paradigm for Undergraduate Learning*, *Change*, 27 (6), 12, 15-16 (1995) (describing and arguing for a shift from an “instruction paradigm” to a “learning paradigm” in higher education for the 21<sup>st</sup> century); see also [cite Claude Steele and POD text...]. Barr and Tagg argue that “[t]he Learning Paradigm requires a constant search for new structures and methods that work better for student learning and success.” Within the legal academy, the learning paradigm has been promoted as a means of improving student outcomes and well-being. See, e.g., [complete cite:] Quinnipiac School of Law (<http://www.quinnipiac.edu/academics/undergraduate-studies/learning-paradigm/>) Compare Kate Bloch, *Cognition and Star Trek: Learning and Legal Education*, 42 John Marshall L. Rev. 959 (2009). It is in the spirit of the Learning Paradigm approach that I present this exploration of the potential value of contemplative practices for teaching about race and related issues of inequality and justice. See also [Gonzaga Institute for Law Teaching and Learning, <http://lawteaching.org/about/> (website last visited on February 6, 2015).]

curriculum. The first is pedagogy aimed at incorporating mindfulness and other awareness practices across the curriculum and into educational institutions across a range of courses.<sup>8</sup> The second is the development of the theory and practices of inclusivity and identity safety as features of educational environments that support effective learning for all.<sup>9</sup> Taken together, these two movements provide substantive and systematic support for improving teaching and learning about race (and other difficult issues related to social identity and justice) in traditional law school settings and beyond.<sup>10</sup>

Specifically, in this Article, I argue that educators may increase capacity to understand the impacts of race and color on law and legal education, minimize implicit bias, improve student performance and better promote the interests of justice in a diverse society by working to incorporate and blend these two important pedagogical trends: the theory and practice supporting inclusive and identity-safe classrooms; and the theory and practice of mindfulness in teaching and learning. Building on the work of Armstrong and Wildman, DiAngelo, and other scholars of the pedagogy of race, I identify mindfulness<sup>11</sup> as essential to teaching and learning in this area. Specifically, I introduce and describe the Practices of ColorInsight<sup>12</sup> as a set of mindfulness-based and compassion-based pedagogical practices which support the development of such awareness and the building of the capacity and stamina necessary to cross-racial engagement notwithstanding the challenging issues that routinely arise across personal, interpersonal, and systemic domains.

Twenty-first century classrooms demand teachers and learners grounded in a broader set of skills and sensitivities than perhaps ever before. Among the important drivers of the demand

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<sup>8</sup> These terms continue to be under construction. The University of Virginia's Contemplative Sciences Center defines Contemplative Pedagogy as "the integration of contemplative or meditative practices into higher education." [cite to UVA news website: <http://news.virginia.edu/content/faculty-explore-usefulness-contemplative-practices-classroom>, last visited by author on December 10, 2014]

<sup>9</sup> While the notion of inclusivity has been a part of the lexicon of education theory for decades, in recent years, the term has taken on a specific meaning related to the work of creating effective learning in diverse classrooms. See Enacting Inclusivity Through Engaged Pedagogy (2014) ("In 2005, the American Association of American Colleges and Universities (AACU) called for universities to approach diversity through the lens of Inclusive Excellence, a comprehensive and innovative approach linked to teaching, a core goal of educational institutions.") See also *infra* note \_\_ (UNESCO "inclusivity" commitment). The effort dovetails with "anti-oppression" or "anti-oppressive" pedagogy – "classroom pedagogy that addresses the myriad ways in which racism, sexism, classism, heterosexism, and other forms of subjugation and oppression play out in educational institutions as well as broader society." Riyad A. Shahjahan, *Being "Lazy" and Slowing Down: Toward Decolonizing Time, Our Body, and Pedagogy*, Educ. Phil. and Theory at 2, DOI: 10.1080/00131857.2014.880645 (2014).

<sup>10</sup> This is not the first effort along these lines. See, e.g., Deborah Orr, *The Uses of Mindfulness in Anti-oppression Pedagogy*, \_\_ Canadian J. Educ. \_\_ (2002)(pioneering the formation of an "holistic critical pedagogy"). However, this Article is the first to place this movement within the broader inclusivity and contemplative/mindful pedagogy movements in the United States; to argue for the infusion of these sensibilities not only into seminars and other classes specifically dealing with race but fully across the legal curriculum and academic community; and to set forth an array of specific, mindfulness- and compassion-based practices that may assist us in accomplishing these objectives.

<sup>11</sup> See *infra* notes \_\_ and accompanying text.

<sup>12</sup> See *infra* notes \_\_ and accompanying text (hereinafter "ColorInsight Practices").

for more comprehensively skilled teachers are the demographic changes taking place within our schools. Law schools, like all institutions, are vastly more diverse today than when most law professors were themselves students. With these changes in demographics, the needs of students are changing, and the demands on teachers charged with supporting the development and learning of *all* of our students are legitimately shifting as well.

In addition, research and experience confirms the immensity of the challenges of effectively teaching and learning in diverse classrooms. Studies have reported troubling achievement- or performance-gaps between law students of color and whites, even after controlling for class and other variables.<sup>13</sup> Most of the discussions about the cause of such gaps have traditionally focused on the deficiencies *in students* – in student culture, capability, and preparedness, including inadequate parental support, disproportionate economic distress, and other (mostly non-school) factors.<sup>14</sup> While such factors remain critically important, a growing body of research and analysis points to links between factors *in the educational environment* itself and student outcomes, factors such as implicit bias, the prevalence of stereotyping and the phenomenon of "stereotype threat."<sup>15</sup>

As a result of increasing diversity in our classrooms (across all dimensions), and increasing calls for accountability to each student, teachers need to develop a commitment to ongoing capacity building aimed specifically at increasing intergroup and interpersonal effectiveness in teaching and learning environments. The growing mountain of data and analysis makes a compelling case for increased commitment on the part of educational institutions to taking more systematic steps to address these deficiencies.

One of the most important and effective means of working to ameliorate stereotype and other performance threats is through efforts to increase the sense of inclusivity in each classroom learning community and across our institutions, and to enhance the sense of safety which students feel in these spaces, both individually, and as part of valued learning communities.<sup>16</sup> However, our capacity, as teachers, students, and life-long learners, to better address these issues personally, interpersonally, and systemically, requires particular developmental efforts on the part of teachers as well. In particular, success in these efforts will very likely depend on our development of a set of meta-skills in the area of personal, social and emotional awareness. For individuals, research is increasingly confirming the efficacy of mindfulness and compassion-based practices in helping develop the particular meta-awareness capacities most important to cultural sensitivity and effectiveness in diverse learning communities – capacities such as self-

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<sup>13</sup> Timothy Clythesdale, *A Forked River Runs Through Law School: Toward Understanding Race, Gender, Age and Related Performance Gaps in Law School Performance and Bar Passage*, Law and Social Inquiry (2004).

<sup>14</sup> See [insert cite]; *But see* Clythesdale, *supra*, at \_\_\_ (discussing the impact of stereotyping on the performance of Black law students and Bar takers).

<sup>15</sup> See Kang, *supra* note 2 at 1529-30 (discussing "stereotype threat").

<sup>16</sup> See Susan Ambrose, HOW LEARNING WORKS: SEVEN RESEARCH-BASED PRINCIPLES FOR SMART TEACHING.... See also Tobin Hart, *Reciprocal Revelation: The Pedagogy of Interiority* at \_\_\_ citing Karen Horny, *Neurosis and Human Growth: The Struggle Toward Self-Realization* (1950) ("When an individual does not feel the basic sense of belonging that a community engenders, a sense of alienation and anxiety rules.")

awareness, presence in the here and now, perspective-taking, emotion-regulation, and the empathy which supports compassionate action.

In this paper, I argue for the introduction of a curated, adapted set of awareness (mindfulness) and compassion practices – experienced at the level of the personal, interpersonal and the systemic -- as central components of teaching and learning about race. I argue for the implementation of these practices in classrooms and other settings seeking where the goal is to deepen understanding and increase productivity across lines of real and perceived difference. I discuss how these practices have been shown to be effective, lifelong paths of insight and understanding around issues of race, social identity and their impact in the world. In Part II, I discuss the literature on the teaching and learning theory of inclusivity, and the psychological literature on stereotype-threat and identity-safety. I argue that these new approaches assist us in understanding what students in diverse classrooms need to be better capable of performing to their highest capacities, and in understanding what we can do to better address those needs. In Part III, I discuss research indicating that mindfulness supports self- and social-awareness, psychological flexibility, empathy and compassion – key underpinnings of inclusivity, identity-safe classroom creation and management. In the course of this, I discuss how “universal mindfulness” assists in the awareness-based capacity building that is essential not only to teaching and learning in diverse communities, but to enhance teaching and learning in *all* settings. I conclude that section with a suggestion for the “next level” of work for those interested in developing this analysis and the pedagogy it supports further, highlighting both the deep, ongoing commitments to personal contemplative practice required to support these efforts, as well as the broad benefits that make these reforms essential to 21<sup>st</sup> century education for the practice of law. Whether discussing issues of difference or other matters, I argue that mindfulness and other practices provide a source of meaning and connection in our classrooms and beyond. Nevertheless, implementing these recommendations will require commitments to practice that go beyond what is commonly covered in traditional mindfulness settings. While a full explication of means of implementing these recommendations is beyond the scope of this paper, in the Appendices, I open windows onto resources that have, for years, assisted teachers in developing the capacities argued for here.

## II. Inclusivity as a 21<sup>st</sup> Century Educational Imperative.

Inclusivity has increasingly been highlighted as an objective of 21<sup>st</sup> century education, both in the United States and abroad.<sup>17</sup> Though it sounds simple, actually creating and maintaining inclusive classrooms is multifaceted, if not daunting work. It requires understanding of both inclusivity, and of the common barriers to it – including explicit and implicit bias, the lack of a sense of safety around identity in learning communities<sup>18</sup>, and the tendency to be

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<sup>17</sup> See *infra*, note 5.

<sup>18</sup> Building on the scholarship of Etienne Wenger and the concept of “Communities of Practice,” the scholarship of teaching and learning has identified “learning communities” as central to the development of committed and engaged learners in the 21<sup>st</sup> century. See Robert B. Barr and John Tagg, *infra* note \_\_\_ at 16 (“In the Learning Paradigm, [...a]

reluctant to discuss race and other potentially divisive identity issues in mixed groups. And it requires not merely the development of strategies for addressing these barriers and ameliorating them, but also the development of skills and capacities in ourselves and in our students for increasing the sense of inclusivity and identity-safety in any given learning community. In the following section, I discuss each of these in turn.

A. Inclusivity: defining and contextualizing the term.

1. Defining the term.

What is “inclusivity?” Inclusivity is the term used increasingly among educators worldwide, with implications for educational institutions at every level of operation.<sup>19</sup> At the level of the classroom, inclusivity refers to the philosophy and pedagogy of engaging and valuing every student, and seeking to enhance the relational dynamics of the class as a whole, by intentionally attending not merely to the intellectual but also to the social and emotional climate of the classroom.<sup>20</sup> In recognition of the fact that our classrooms exist and are constructed within broad

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college’s purpose is not to transfer knowledge but to create environments and experiences that bring students to discover and construct knowledge for themselves, to make students members of communities of learners that make discoveries and solve problems.”) Classrooms are perhaps best viewed as “bounded learning communities,” since they come together for a limited purpose and time. See Brent G. Wilson et al., *Designing and Facilitating Learning Communities in Formal Courses, the International Review of Research in Open and Distance Learning*, Vol. 4., No. 3 (2004) (note that item 5 on the list of characteristics of a learning community is “respectful inclusion).”

In contrast to classic communities-of-practice formulations, substantial supports for course-based communities can and should be designed ahead of time by the instructor, anticipating the learning and collaborative needs of students. Based on Ludwig-Hardman's (2003) comprehensive review of the learning-community literature, we have identified seven features that seem to facilitate its creation: 1) shared goals; 2) safe and supportive conditions; 3) collective identity; 4) collaboration; 5) respectful inclusion; 6) progressive discourse toward knowledge building; and 7) mutual appropriation. These features are not strict criteria to be satisfied to develop a learning community, but they are qualities or features associated with learning communities, which should be considered when attempting to establish or support such communities in courses and programs.

Id. (Available online at: <http://www.irrodl.org/index.php/irrodl/article/view/204/286>). While there are a number of models for what constitutes the ideal environment for effective learning environment, the consistency between the objectives of inclusive classroom advocates and learning community proponents provides a principled basis for highlighting this research and approach.

<sup>19</sup> See *infra* note \_\_\_ and accompanying text.

<sup>20</sup> See Susan Ambrose *et al.*, HOW LEARNING WORKS: SEVEN RESEARCH-BASED PRINCIPLES FOR SMART TEACHING (2010) (discussing the importance of inclusive class climates to student performance); see also the United Nations Educational, Scientific and Cultural Organization (UNESCO), “Inclusive Education in Action,” Policy Guidelines on Inclusivity in Education, 2009 (discussing “inclusivity” as a human rights imperative for educators, essential to achieving equity in education for all, and important to the promotion of global peace) See webpage at [http://www.inclusion-in-action.org/iea/dokumente/upload/72074\\_177849e.pdf](http://www.inclusion-in-action.org/iea/dokumente/upload/72074_177849e.pdf) (last visited by author on February 9, 2014). See also Enrica Ruggs and Michelle Hebl, Literature Overview: Diversity, Inclusion and Cultural Awareness for Classroom and Outreach Education, in B. Bogue and E. Cady (eds.) *Apply Research to Practice (ARP) Resources* (2012), retrieved December 10, 2014 from <http://www.engr.psu.edu/AWE/ARPResources.aspx>.

cultural, social and political contexts, and that higher education has not traditionally been equally accessible or welcoming to all, the aim is to enlist each teacher in the ongoing work of making each classroom maximally effective as a learning space for each and every student, and for the class as a whole.<sup>21</sup> Classrooms grounded in inclusivity are classrooms where each student encounters not only a course, but a classroom environment that has been intentionally shaped to enhance his or her sense of inclusion and safety, and a teacher, regardless of the subject matter, who is committed to the principles and practices of inclusivity.<sup>22</sup>

## 2. An Example from My Law School Experience: The “KKK as Kiwanis Club” Story<sup>23</sup>

Perhaps we may be able to better understand what “inclusivity” means and why it matters so by thinking about instances in which institutional and classroom experiences reflects its absence.<sup>24</sup> Each of us has stories, from our own experience, or perhaps from the experience of someone we cared for or only knew in passing, which come to mind as we seek to understand what it might mean to feel systematically marginalized in an educational setting. Reflecting on those stories is a good place to begin as we consider more deeply how we might make our classrooms more effective for every student.<sup>25</sup>

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Recently, the term “inclusivity” has been criticized as incorporating a presumption of a space controlled by others into which another might be invited in under circumstances of inequality. The term “engagement” has sometimes been suggested as an alternative. While I understand the desire to suggest otherwise, the reality is that indeed, new entrants into an existing community inevitably enter under circumstances of unequal power. To mask that reality by reference to alternative terms, even aspirational and desirable ones, seems to me to be the sort of naïve conceit that the inclusivity project aims to avoid.

<sup>21</sup> See Hiraldo Payne, *The Role of Critical Race Theory in Higher Education*, (2011)

<sup>22</sup> *Id.*

<sup>23</sup> See Derald Wing Sue et al., *Racial Microaggressions in Everyday Life: Implications for Clinical Practice* (2007) (defining racial microaggressions and microinvalidations). Microinvalidations are described as “communications that exclude, negate, or nullify the psychological thoughts, feelings or experiential reality of a person of color.” Sue at \_\_. I would label the incident described in this story as a microinvalidation.

<sup>24</sup> A note about the style of writing to follow. By now the inclusion of narrative in both legal scholarship, and the scholarship of teaching and learning more broadly, has become relatively mainstream, if not completely without controversy. [cite] However, I intend that my use of narrative in this piece not only provide an important and authoritative grounding in lived-experience, through which we may learn more about the nature of this problem than we might otherwise, but also that it demonstrate the practice of bringing mindful, reflexive autoethnographic narrative inquiry writing to legal writing in and about legal education. See Sheila Trahar, *Beyond the Story Itself: Narrative Inquiry and Autoethnography in Intercultural Research in Higher Education*, Forum: Qualitative Social Research, Vol. 10, No. 1, 1, 4 (2009) (“Narrative Inquiry is both the method and the phenomena of the research, ... and characteristically begins with the researcher’s autobiographical narrative connected with the research puzzle.”) See also F. Michael Connelly and D. Jean Clandinin, *Stories of Experience and Narrative and Inquiry*, Educational Researcher, Vol. 19., No. 5, (1990) (generally describing Narrative Inquiry as a research method). As discussed below, the sharing of narratives around racial experience can promote both healing and understanding, for students, faculty and staff alike. See *Telling Our Own Story: The Role of Narrative in Racial Healing at 2-3* (2013) (discussing the personal and political functions of narrative).

<sup>25</sup> See Maurianne Adams, Lee Ann Bell, and Pat Griffin, *Teaching for Diversity and Social Justice* (2d ed., 2007) at 24 (describing the increasing reliance by diversity educators on the personal experiences of teachers and students “as pedagogical texts in their own right.”). Such narratives are increasingly viewed not only as valuable teaching tools

Examining my own life, I can think of examples at various stages, all the way through my experience of law school. More than twenty years ago this fall, as I was settling into my first week of law school at the University of Virginia, I felt a growing sense that something beyond the obvious, but quite important, was happening there. In class after class, we took up not merely the basic doctrine of Torts, Criminal Law and Contracts, but also aspects of the rich historical, cultural and social contexts that had indeed been critical to the development of the so-called Black Letter Law. G. Edward ("Ted") White<sup>26</sup> brought the venerable Justices Oliver Wendell Holmes and Benjamin Cardozo alive, helping us see how concepts such as "the reasonable person" had emerged into the central concept of negligence law. Peter Lowe<sup>27</sup> helped us see how culture shaped notions of fair and just criminal law, while giving lawyers and judges tremendous power to shape the impact of law on real people in the real world. And Doug Leslie<sup>28</sup> helped us understand the centrality of basic contract rules within the context of a society committed to capital accumulation and commerce. There were others, but there were notably no women and no professors of color among those guiding me through my introduction to the study of law in that first year.<sup>29</sup>

It turned out that it wasn't simply that we were learning, on a practical level, how the world around us worked on levels more fundamentally than we had come to know before. We were also learning something more. We were learning *not* to see race (or gender or class) as a relevant factor in arriving at this new understanding.<sup>30</sup> We were learning to be race-blind,<sup>31</sup> but we were also, subtly learning something more: that people whose experiences and backgrounds differed significantly from those of the scholars highlighted most often – women and people of color – had nothing important to say about the issues under consideration. In effect, and though we were of many colors and background, we were experiencing what some sociologists have called the "whitewashing" of our minds.<sup>32</sup>

The teaching and learning of race-blindness and the irrelevance of minority perspective was both implicit and explicit. We were implicitly taught to be race-blind each time a faculty member marched through an entire course without addressing any of these intersections, even when called on to do so by a student. We were implicitly taught to be race-blind each time a faculty member indicated that a paper on a topic dealing with the racial implications of a law was not worthy of their time, and not likely to be published. [cite the paper on conditions at UVA's Darden School, by comparison (on file with author)]

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but also as therapeutic in their own right. See Rachel Godsil and Brianna Goodale, *Telling Our Own Story: The Role of Narrative in Racial Healing* (2013).

<sup>26</sup> See, G.E. White, *Tort Law in American Legal History*

<sup>27</sup> Peter Lowe, *Criminal Law*

<sup>28</sup> See Douglas Leslie, *Contracts*

<sup>29</sup> [confirm via UVA faculty admin records]

<sup>30</sup> See Elizabeth Mertz (hidden curriculums). See also *Educating Lawyers* (on hidden values and apprenticeships).

<sup>31</sup> Compare Margalynne Armstrong and Stephanie Wildman, *Teaching Race, Reaching Whiteness: Transforming Colorblindness to Color Insight*, \_\_ NC Law Rev. \_\_ (2008).

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We were taught to be race-blind explicitly each time a faculty member silenced a courageous student who sought to raise the issue. Those of us accustomed to analyzing race as an important factor in the development of our communities and the broader society were told that our questions were not relevant often enough that we often stopped asking the questions. I recall once, encountering a description of former Supreme Court Justice Black as having been a member of the KKK and asking the professor what we might make of it, in which the professor responded by suggesting I was wrong for speculating that it might have had any effect: “being a member of the KKK at that time was akin to being a member of the Kiwanis Club,” he said, to the vocal amusement of my mostly white peers.

There was some truth to his point, of course. The Justice in question hailed from the southern United States during the first half of the 20<sup>th</sup> century, a period culturally and legally committed to white supremacy. And I tried very hard to see this through my professor's eyes – the eyes of a very successful law professor at a prestigious law school, whose insights I had generally found more valuable than most. Nevertheless, in that class exchange, I was perplexed before I realized I also felt wounded, angry and then alienated from the professor and from many of my amused (or at least silent) classmates.

With little assistance from faculty, I was forced to leave my emotions and concerns aside. I was left chewing on my questions, and struggling with the cognitive dissonance<sup>33</sup> of trying to make sense -- as a Black woman from the South, whose own family had experienced the reality of racial segregation and systemic subordination for generations -- of a “just” legal world in which such an affiliation by a future Supreme Court justice could be deemed of no consequence.

Those questions did not go away – questions like, How might a case like the famous case of *Palsgraf v. Long Island Railroad* have come out differently if, instead of being a single immigrant woman, the “plaintiff” -- Mrs. Palsgraf, who suffered a humiliating defeat, complete with the indignity of an order to pay the railroad company's court costs -- had instead been Mrs. Paine, the revered matriarch of a family whose roots supposedly stretched to the Mayflower? And, What were the racial and other identity factors ricocheting silently through the analysis of *Williams v. Walker Thomas*, in which the court upheld the sharp terms of a boilerplate rent-to-own contract against the Williamses?

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<sup>33</sup> Cognitive, emotional or other dissonance is a common feature of classes in which issues of identity-based social justice and injustice are discussed. See Adams et al at 107:

Raising social justice issues in a classroom unsettles both unconscious and deeply held beliefs about society, self, and social relations. This disequilibrium can be uncomfortable, as familiar ground shifts and participants encounter uncertainty, doubt and self-questioning as they attempt to regain their balance... We understand dissonance as an integral and valuable part of the social justice educational process and believe we should not dismiss such reactions as intransigence or participant refusal to “get it.” Respectfully working with participants who experience dissonance is crucial to establishing a safe class environment.

Ultimately, in fact, I and other students concerned about matters of context were left pretty much on our own to develop a way of understanding what was going on. If we were to do well in these classes, we would have to find some way of connecting to the material, and of valuing our insights about it, notwithstanding the ways that it was being presented and the narratives surrounding it.

Fortunately, we had each other,<sup>34</sup> and in conversations after classes we assured one another that our questions were both relevant and important. But what happened in those instances was not without consequence. In those exchanges, we learned that the classroom was not particularly designed to address our experience, concerns or needs. We learned that our voices didn't matter as much as those of others. We learned to doubt our insights more than we should have. And we learned that our own identities – as people of color, as Black, as people who had grown up poor – were potential sources of stigma in our classes, and could be seen by others as possible markers of “lack of fit” for the profession. Managing the threat of such stereotypical outcomes was, I now know, one of the factors that I and other students like me, an additional psychological burden that I managed throughout law school, and, indeed, throughout my career in the profession.

## B. Impediments to Inclusive Classrooms

While the preceding narrative demonstrates some of what may be experienced by a student in a classroom that lacks sufficient inclusivity, and suggests both acute and chronic dimensions of impact about which we should be concerned, the following discussion focuses on the obstacles to creating inclusive classrooms that any dedicated, well-meaning teacher may face.

Preliminarily, I note that each faculty faces unique challenges when it comes to addressing these issues in their classrooms. As just one example, in majority white campus contexts, faculty of color (especially, but not only women), may feel a similar lack of inclusivity in the broader campus community.<sup>35</sup> While the reverse may be true in predominantly minority environments, studies indicate that, regardless of our make-up or environment, bias in favor of white males persists.<sup>36</sup> Such dynamics may impact a faculty member's level of comfort in addressing these matters head-on. Thus, it should be noted that the work of creating inclusive and performance-enhancing environments for our students necessarily calls forth the work of creating inclusive and performance-enhancing environments for *all* members of the academic community. Our classroom work cannot effectively be accomplished unless the entire institution sees inclusivity as an institutional/administrative level objective and not just a classroom/faculty level objective, and fully recognizes that, as is true in our classrooms, inclusivity is not accomplished by

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<sup>34</sup> In my own entering class at the University of Virginia School of Law in the fall of 1990, the 33 African Americans (22 women and 11 men) made up 10% of the 330 members. [editor: cite needed here?] Cite to Claude Steele's Whistling Vivaldi on the importance of having peer group conversations about such incidents, and the opportunity to reframe them.

<sup>35</sup> See An Open Letter of Love to Black Students... See also Presumed Incompetent....

<sup>36</sup> See, e.g. (study on bias among professors in favor of white male student-sounding names in emails seeking mentors)

providing access and integration alone. Inclusivity requires a range of efforts aimed at not merely hiring and welcoming but engaging with all members of the community to ensure that all are respected and supported in thriving. This is all the more true insofar as faculty of color are most often those serving in leadership in the efforts to increase inclusivity measures within classrooms and across the broader campus.<sup>37</sup>

For these and related reasons, in addition to the classroom-level issues noted below, similar concerns must be identified, aired and addressed at the broader institutional, school and departmental levels. The recent trend in higher education of higher officers of diversity and inclusion mark important steps in the right direction, but they are not enough. The objectives of inclusivity and identity-safety must be explored fully and ongoingly at all levels, working towards the creation of broader institutional, school, and departmental contexts of inclusivity and identity-safety for faculty and staff, if we are to ensure that the efforts we make at the classroom level can be fulfilled.<sup>38</sup>

That said, I turn now to what any one of us may face as we seek to increase inclusivity within our classrooms.

### 1. Surfacing the Invisible Cultural Context

At the outset, I'd like to name an aspect of this work that we seldom explicitly acknowledge: that each of us teaching in traditional educational settings almost inevitably reenacts and re-inscribes prevailing cultural norms and imperatives. While this statement may be uncontroversial, some of these cultural norms are more or less obviously hegemonic than others. For example, our classrooms are not only in some ways constructed by explicit and implicit biases against or in favor of certain social identities and performances, but also by culturally ingrained concepts that appear to be relatively benign, but may, on reflection, be important sub-supports of these biases – such as prevailing notions of merit, productivity, the mind/body split, and even the notion of time itself.<sup>39</sup> These apparently neutral constructs infuse all of our classroom efforts – even those focused on anti-oppression and greater autonomy. For example, consider the hidden assumptions about “normal” social engagement implicit in my professor's Kiwanis Club comment, above. For another example, consider the implications of even more subtle culturally-prescribed factors with which we all must contend, such as our prevailing notions of time and rationality:

*Time's colonization of the body is [also] ingrained in the underlying Eurocentric epistemologies and monastic traditions of the academy rooted in dominant mind supremacy epistemologies. [Moreover,] [a] mind-centered framework for knowledge production is also prevalent in liberal education and anti-oppressive*

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<sup>37</sup> See Meera Deo, *The Ugly Truth about Legal Academia...See also Presumed Incompetent...*

<sup>38</sup> See [UNESCO guidance on inclusivity in education]

<sup>39</sup> Riyad A. Shahjahan, *Being Lazy and Slowing Down: Toward Decolonizing Time, Our Body and Pedagogy*, *Educational Philosophy and Theory*, *supra* note 1 at 2.

circles.<sup>40</sup> [...'C]ontemporary liberal Western and critical education are built on a profound division: the privileging of the mind-intellect over the body-spirit.... The body is relevant only as a vessel that houses the brain, which as seen to be the organ responsible for mind/intellect.'<sup>41</sup>

With its tendency to support the development of awareness of unspoken assumptions, and the dawning of insight into interconnectedness, contemplative pedagogy may inherently work against hidden assumptions that normalize hierarchy-enforcing behavior. With its emphasis on creating space for silence, its encouragement of the value of slowing down and single-tasking, its efforts to engage in whole-body and body/mind-spirit-based inquiries and methods, contemplative pedagogy inevitably challenges many such received notions.<sup>42</sup> In fact, these practices have been suggested by some as a means of doing just that.<sup>43</sup> As a consequence, effective infusion of these methods into our classrooms will ultimately require that we develop new and effective ways of naming, explaining, and responding to these often unspoken tensions with prevailing academic institutional norms as they inevitably though often tacitly arise in our classrooms.

This level of critical inquiry and analysis will not appeal to every teacher. The more pragmatic among us may find such concerns to be beyond the scope of our capacity to address in the classrooms of today. To some degree, this may be so. But I believe we owe it to ourselves, to our disciplines, and most importantly, to our students and the society they will help make real, to raise our awareness of these invisible cultural and infrastructural barriers to broad inclusivity. Indeed, the efficacy of the following good efforts may ultimately depend upon it.

## 2. The “Chilly” Classroom

Classrooms in which the climate – the intellectual, social, emotional and physical environments in which students learn<sup>44</sup> -- is characterized by relatively marginalizing discourse and cues have been described as “chilly climate” classrooms.<sup>45</sup> Such classrooms have been shown by research to have a negative impact on student performance in them:

These studies suggested that course climate does not have to be blatantly exclusive or hostile in order to have a marginalizing effect on students and that, although each instance of subtle marginalization may be manageable on its own,

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<sup>40</sup> *Id.* at 7 (emphasis in original).

<sup>41</sup> *Id.* (internal citations omitted).

<sup>42</sup> See, e.g., Mirabai and Bush....

<sup>43</sup> “*Being Lazy*,” *supra* note \_\_ at 9-11. (Suggesting that “to re-embody the body in the learning environment, we need to slow down, be mindful, embrace the present moment,” and arguing for necessary “policy changes and resource allocation in HE (Higher Education)).

<sup>44</sup> Susan A. Ambrose, *HOW LEARNING WORKS*, *supra* note \_\_ at \_\_ (Chapter Six).

<sup>45</sup> *Id.* at \_\_ (describing the collective designation given to studies that reveal climates that marginalize women).

the sum total of accumulated “micro-inequities” can have a profound negative impact on learning.<sup>46</sup>

Moreover, new research confirms what some of us know from personal experience: that some of us may have suffered a clinically-significant degree of trauma, depression, and lower levels of performance as a result. As discussed more fully below, students whose voices are routinely ignored in classes, and who don't see examples of culturally-aware thinking or analysis included among the required materials will experience classes not only as lacking in inclusivity, but also, as indicative of implicit if not explicit bias, and thus lacking in identity-safety.<sup>47</sup>

### 3. Implicit Bias

Another challenge that arises when teaching about identity-based inequality is the prevalence of both conscious (explicit) and unconscious (implicit) bias. Evidence from a wide-variety of validated studies indicates that Americans hold a range of often unconscious but sometimes conscious biases, particularly against Black Americans.<sup>48</sup> These may get in the way of addressing these matters well for many reasons, including student conscious unwillingness to discuss them, implicit desires to avoid addressing them and the conflict that might thereby arise, and so on.<sup>49</sup> In addition, these biases arise differently depending on the demographics of the classroom communities themselves, with women and faculty of color often experiencing difficulties that white faculty do not.<sup>50</sup>

On the other hand, when faculty persist in addressing issue of racial disparity, they may not actually be doing as much good as they might think: a recent study indicates that whites support for policies that support greater equality and fairness actually decreases when they are given indications that unfair policies disproportionately affect Black people.<sup>51</sup>

Here is the good news: mindfulness meditation may indeed minimize the level of bias – both implicit and explicit – in our classrooms. Indeed, recent research findings in implicit bias suggest that even a short mindfulness exercise may lead to less biased reactions.<sup>52</sup>

### 4. The Reluctance Toward “Doing” Race (or Other Potentially Divisive) Talk

Despite the efforts that continue to be made to promote and maintain diversity in our schools, students today appear to be faring only marginally better. In the typical law school classroom,

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<sup>46</sup> *Id.* at \_\_\_.

<sup>47</sup> DOROTHY STEELE AND BECKI COHN-VARGAS, IDENTITY-SAFE CLASSROOMS...

<sup>48</sup> See, e.g., Jerry Kang, *Trojan Horses of Race: Implicit Bias* .... (2005). See also...

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<sup>50</sup> See [Presumed Incompetent]

<sup>51</sup> See Jennifer Eberhardt *et al.*...

<sup>52</sup> Adam Lueke and Brian Gibson, *Mindfulness Meditation Reduces Implicit Age and Race Bias: The Role of Reduced Automaticity of Responding*, *J. of Soc. Psych. And Personality Science* 1-8 (2014), published online before print on November 24, 2014: doi 11777/ 1948550614559651.

for example, teaching about race and racism continues to be done, if at all, in ways that promote the sense that it is an issue that arises only at the margins of everyday life. Often, faculty leave the teaching of these issues to seminars and separate classes that deal explicitly with the issue, contributing to a sense that it is an issue to be addressed somewhere else, by someone else, and leaving students unsure of its relevance or how best to address it as it arises in their personal or practice lives.

The reluctance and even inability to address race forthrightly in law is understandable if not inevitable, given the promulgation of the abstract “colorblindness” narrative by the Supreme Court over the last twenty years. In important case after important case, a majority on the Court has discouraged, if not distained efforts to deepen understanding of the operation of race in our lives and classrooms. For example, in *Parents Involved*, a plurality of the highest Court in the land dismissed as “faddish racial theories” teaching about White Privilege at the high school level,<sup>53</sup> and ruled the specific voluntary efforts to develop cross-racial understanding by public schools at the primary level in that case unconstitutional.<sup>54</sup> Four Justices vehemently disagreed.<sup>55</sup> Yet, just three short years after Justice O’Connor’s tepid endorsement of the benefits of teaching for “diversity” in the *Grutter* opinion, all the while failing to address the importance of teaching about and against the centuries of race-based domination in American history, the Chief Justice furthers the endorsement of racial amnesia<sup>56</sup> among the American people by discouraging well-meaning, voluntary efforts by schools to support students in learning about these issues effectively together.

The good news is that more and more teachers today are persuaded of the value of teaching and learning about aspects of the intersections between race, racism and law.<sup>57</sup> Unfortunately, however, many if not most are not personally comfortable doing so.<sup>58</sup> Thus, students continue to report that issues of race are not addressed well in their mainstream curricular courses, if addressed at all.<sup>59</sup>

### C. Fostering Inclusive Classrooms

#### 1. Understanding and Creating Identity-Safety

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<sup>57</sup> Cite to BEST PRACTICES IN CLINICAL LEGAL EDUCATION, 2.0 (FORTHCOMING 2015).

<sup>58</sup> [See...] Compare Jennifer Considine, *Who Am I to Bring Diversity into the Classroom? Learning Communities Wrestle with Creating Inclusive College Classrooms*, *Journal of the Scholarship of Teaching and Learning*, Vol. 14, No. 4, 18-30 (2014) (discussing reluctance of college professors to raise issues of race in the classroom).

<sup>59</sup> See Enrica Ruggs and Michelle Hebl, *Literature Overview: Diversity, Inclusion and Cultural Awareness for Classroom and Outreach Education*, *supra* note \_\_ at 1 (describing self-reports of stigmatized groups who “perceive barriers to education.”) See also, *Am I Going Crazy? A Critical Race Analysis of Graduate School Education, Equity and Excellence*, Vol. 44, Issue 1, 93-114 (2011)

Over the past ten years, education researchers and pedagogy theorists have seen the emergence of the term “stereotype threat” to describe the psychological phenomenon that occurs when an individual believes that there is a nontrivial risk that performance on a valued exercise in a given context may confirm negative stereotypes about him/herself and others of a similar social identity category (race, gender, and so on) actually tends to depress that individual’s actual performance.<sup>60</sup> Building on Robert Merton’s concept of “self-fulfilling prophecy,”<sup>61</sup> the literature in this field helps us understand how often even subtle cues in an environment that indicate that a negative stereotype might be attached to the performance of stigmatized members of a given group may trigger psychological and other efforts to counteract those consequences.<sup>62</sup> These responses on the part of individuals take up energy and capacity that could better be used to address the task at hand, and thereby derogate performance.<sup>63</sup>

Stereotype threat and the lack of safety that results is just one example of how our classrooms and broader institutions may actually play significant roles in shaping the outcomes of some of our students – and not for the better.<sup>64</sup> And while the primary focus has been on research that might illuminate the impacts on stigmatized groups, studies are beginning to show that non-stigmatized groups are affected as well, but in positive ways – they may experience a boost in performance as a result of cues that suggest that members of other groups will perform less well.<sup>65</sup>

One way of minimizing identity threats and other dimensions of the lack of inclusivity in a learning environment is through the intentional infusion of methods aimed at increasing identity safety.<sup>66</sup> Such classrooms demonstrate the following aspects of inclusivity and identity-safety:

- a. Diversity is an explicit value
- b. Relationships between and among co-learners are valued
- c. Learning is student-centered
- d. Caring is made visible<sup>67</sup>

## 2. Positive Intergroup Experiences and the Management of Bias

Since the mid-twentieth century, traditional psychology has defined the issue of discrimination as one of personal prejudice or bias.<sup>68</sup> There is no doubt that personal and

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<sup>60</sup> Steele, *supra* note \_\_; Inzlicht and Schmader *supra* note \_\_. The incident described in my own classroom-experience narrative (above, Section \_\_) might be characterized as one in which “stereotype threat” would be expected to arise.

<sup>61</sup> Robert Merton, *The Self-Fulfilling Prophecy*, *The Antioch Review*, 8:2 (1948).

<sup>62</sup> See, e.g., Clythesdale, *supra* note \_\_; [cite 2013 Stereotype Threat anthology]

<sup>63</sup> [cite to article from text noted at fn 57]

<sup>64</sup> *Id.*

<sup>65</sup> See, e.g., [ ... ] in Inzlicht and Schmader *supra* note \_\_ at \_\_.

<sup>66</sup> Dorothy Steele and Becki Cohn-Vargas, *IDENTITY-SAFE CLASSROOMS* (2012).

<sup>67</sup> *Id.* at [ ].

<sup>68</sup> See, e.g., GORDON ALLPORT, *THE NATURE OF PREJUDICE* (1954).

interpersonal bias exists, and continues to show up in our classrooms and other learning communities.<sup>69</sup> Each of us brings prior conditioning, habits and patterns of social and personal engagement that impact how we perceive the world and one another.<sup>70</sup> As a result, teachers necessarily shoulder the challenging responsibility of maintaining awareness of how their own biases – prior conditionings, habits and perceptual patterns – may impact what they bring into the classroom, and how they respond to student contributions and needs.

Recently however, scholars are seeking to broaden our efforts at effectively addressing bias and prejudice in our classroom communities and beyond. They are increasingly highlighting the goal of increasing understanding and effectiveness by examining what positive psychology and cognitive behavioral approaches tell us about intergroup cohesion and effectiveness.<sup>71</sup> These approaches help us think more comprehensively and constructively about what we can do together to minimize the impact of stereotypes and other forms of bias in our classrooms and workplaces.<sup>72</sup>

For example, psychologists have noted the degree to which bias in our society and its institutions is more the rule than the exception.<sup>73</sup> Sociologists have shown that patterns of dominance and subordination based on age, gender and “arbitrary sets” of characteristics are ubiquitous across societies wealthy enough to experience a surplus of resources.<sup>74</sup> These arbitrary sets typically include race, ethnicity, clan, caste and social class.<sup>75</sup> And while their effects may be powerful in isolation, they are likely to be even more so when visited upon individuals in various combinations, creating the compounded experience of discrimination known as intersectionality.<sup>76</sup> Relatedly, all societies exhibit patterns of privilege and subordination based on relatively favored and disfavored identities.<sup>77</sup>

These pervasive patterns show up in individual life experience. Since experience is a significant driver of perspective, dramatic differences in life experience create predictable interpersonal challenges in dealing with topics and issues in which people of differing social identities often see issues through different bases of experience leading to very different points of view. Thus, the capacity to acknowledge our conditioning, and with that, to acknowledge both

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<sup>69</sup> See Harvard Implicit Bias Project...

<sup>70</sup> See, e.g., Patricia Hill Collins, *Black Feminist Thought* (2000). See also Derald Wing Sue, *Microaggressions in Everyday Life*

<sup>71</sup> See, e.g., *MOVING BEYOND PREJUDICE: PATHWAYS TO POSITIVE INTERGROUP RELATIONS* (2011) (hereinafter *MOVING BEYOND PREJUDICE*).

<sup>72</sup> See, e.g., CLAUDE STEELE, *WHISTLING VIVALDI: HOW STEREOTYPES AFFECT US AND WHAT WE CAN DO* (2010).

<sup>73</sup> Robert W. Livingston, *What Can Tolerance Teach Us About Prejudice? Profiles of the Nonprejudiced*, in *MOVING BEYOND PREJUDICE* at 21-40.

<sup>74</sup> Jim Sidanius and Felicia Pratto, *SOCIAL DOMINANCE* 33-34 (2001) (hereinafter “SOCIAL DOMINANCE”).

<sup>75</sup> *SOCIAL DOMINANCE* at 33 (relying on the important 1978 work of Pierre van den Berghe, *MAN IN SOCIETY: A BIOSOCIAL VIEW*).

<sup>76</sup> Patricia Hill Collins, *BLACK FEMINIST THOUGHT* (2000); and PATRICIA HILL COLLINS, *FIGHTING WORDS: BLACK WOMEN AND THE SEARCH FOR JUSTICE* (1998) at 205 (defining intersectionality as “the ability of social phenomena, race, class and gender, to mutually construct one another”).

<sup>77</sup> *SOCIAL DOMINANCE* at 32.

the gifts and the limitations of the particular set of experiences that contribute to predispositions in the social spaces and broader contexts of our learning communities is important to the work of learning and supporting the learning of others in diverse settings.

Moreover, such patterns lead to structured-in bias leading to degrees of relative privilege and subordination in all settings, including our schools and even our classrooms.<sup>78</sup> They impact how members of our classroom communities, whether teachers or students, experience these spaces and often have an impact on our capacities to perform.<sup>79</sup> The research confirming these dynamics, and showing how they contribute to and sometimes even cause performance gaps, is clear and is mounting.<sup>80</sup> Thus, efforts to minimize stereotype, bias and the sense of unsafety in our classrooms has the potential to increase student performance. Beyond that, we have what many see as an ethical obligation to do what we may to create learning spaces in which each member of the classroom community may thrive. The consequences of doing so are far-ranging, and include increased performance but, as I'll attempt to show briefly in my concluding section, go much beyond.

The foregoing discussion has shown that while bias has existed and will likely always exist within our classrooms and schools, efforts to address and ameliorate bias and related unwelcoming cues may not only assist individual students in improving their performance but also support the class as a whole in working more effectively together. In the next section, I discuss the emerging evidence that practices of awareness and concentration may provide additional, important benefits. Such evidence does more than merely provide a rationale for incorporating mindfulness into legal education. As I argue below, such evidence provides a moral and ethical imperative for doing so – especially for those of us engaged in the preparation of students for the practice of law and the provision of justice.

#### D. Inclusivity and Social Justice as a Teaching and Learning Objective

As indicated above, inclusive, identity-safe classrooms have been shown to enhance student performance. In addition to suggesting the incorporation of these methods of improving inclusivity and identity-safety for those reasons, I offer one more: doing so should be seen as an ethical and moral imperative and a marker of the pursuit of justice in 21<sup>st</sup> century education.

Our schools are more diverse today than ever. Schools thus have not only an opportunity but an obligation to provide settings in which all students may thrive. In addition, given that we know both that bias continues to infect our society, and that our systems of education are not exempt from those dynamics, we – personally and institutionally – should commit to ongoing work to minimize the impact of bias in our institutions. Indeed, as sociologists continue to find

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<sup>78</sup> Steele, *supra* note 5 at \_\_\_.

<sup>79</sup> *Id.* at \_\_\_.

<sup>80</sup> See, e.g., Susan Ambrose, HOW LEARNING WORKS: SEVEN RESEARCH-BASED PRINCIPLES FOR SMART TEACHING (2010); Michael Inzlicht and Toni Schmader, STEREOTYPE THREAT: THEORY, PROCESS AND APPLICATION (2012). See also Clythesdale, *supra* note 12 at \_\_\_; and Jonathan Feingold and Doug Souza, *Measuring the Racial Unevenness of Law School*, 15 Berk. J. Af. Am. L. & Pol'y 1 (2013) (describing, naming and examining research indicating the “racial unevenness” that characterizes the experience of law students in North America).

hierarchy-enforcing and hierarchy-ameliorating norms and projects in all societies, in my own work, I employ inclusive teaching and learning practices explicitly to offset the racial (and gender-based) hierarchy-enforcing norms and projects that I believe comprise not only our broader society, but our educational institutions as well. As we seek to prepare students for work in a diverse world, we should seek to do so in ways that enhance their capacity to contribute to an effective, fair and diverse society. A contemplative approach, skillfully incorporating practices such as those described, below can help.

### III. Contemplative Pedagogy and the Development of Inclusive, Identity-safe Intergroup Learning and Working Communities

In an era of perhaps unprecedented focus on the craft of teaching and the capacities of teachers to support student learning more effectively, contemplative pedagogy has emerged as a significant, and for many inspiring, new approach.<sup>81</sup> In truth, contemplative pedagogy is not entirely new, but a re-emergence of a tradition in education with roots at its very core.<sup>82</sup> With its core commitment to heightening students' capacities to bring focus and attention more regularly to bear on their work,<sup>83</sup> contemplative pedagogy has the potential to enhance learning in myriad ways, and is especially promising in teaching and learning in diverse settings.

What is contemplative pedagogy? While this phrase is subject to continuing elaboration as teachers gain and share experience, a key aspect of the definition is that embeds teaching and learning methods in "an inward or first-person focus that creates opportunities for greater connection and insight."<sup>84</sup> Contemplative here refers not merely to methods, but to an

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<sup>81</sup> See, e.g., DANIEL BARBEZAT AND MIRABAI BUSH, CONTEMPLATIVE PRACTICES IN HIGHER EDUCATION: POWERFUL METHODS TO TRANSFORM TEACHING AND LEARNING 5 (2014) (hereinafter CONTEMPLATIVE PRACTICES).

<sup>82</sup> Cite Magee (*Educating Lawyers to Meditate?* citing Brian Stock's \_\_\_\_.)

<sup>83</sup> As has often been acknowledged by contemplative pedagogy scholars, in 1890, at the dawn of modern education, William James wrote of the value of contemplative approaches to knowing and learning, even as he recognized the challenges presented thereby:

Whether the attention come by grace of genius or by dint of will, the longer one does attend to a topic the more mastery of it one has. And the faculty of voluntarily bringing back a wandering attention, over and over again, is the very root of judgment, character and will. No one is compos sui if he has it not. An education which should improve this faculty would be the education par excellence. But it is easier to define this ideal than to give practical directions for bringing it about. . . . [*I*]ntrospection is difficult and fallible; and [...] the difficulty is simply that of all observation of whatever kind.

WILLIAM JAMES, THE PRINCIPLES OF PSYCHOLOGY 494 (1890) (italics in original). See also Barbezat and Bush at 18-19 (discussing James's insight.) The difficulty of the approach to which this paper is committed (to say nothing of its ultimate objectives) is fully comprehended.

<sup>84</sup> BARBEZAT AND BUSH, CONTEMPLATIVE PRACTICES at 5 (2014). The term "contemplative education" was coined by Naropa University, which sought to bring together traditional Western educational practices with Eastern, and particularly, Buddhist, practices. The movement to incorporate contemplative practices and inquiry across a wide variety of disciplines has now expanded well beyond the frame originally set forth by Naropa, to incorporate

epistemology, an approach to knowing that complements third-person, objective epistemology and sources with first- and second-person methods.<sup>85</sup> The many and varied practices “share in common a distinct non-linear consciousness that invites opening or expansion of awareness.”<sup>86</sup>

In terms of objectives, teachers employing these methods seek, among other things, to:

- (1) Support students in developing focus and increasing attention
- (2) Deepen understanding of course material through contemplation and introspection<sup>87</sup>
- (3) Increase compassion and connection
- (4) Deepen students' engagement with the deep, underlying questions of the discourse
- (5) Inquire into the nature of their minds, emotions/sensations, values and applications of their learning for meaning and ongoing insight<sup>88</sup>

In contemplative pedagogy, objectives such as these are introduced, inquired into, and explored collectively by the community of learners,<sup>89</sup> rather than being imposed from outside or by the instructor alone. Thus, from the opening and convening of the course, teachers engaging contemplative pedagogy seek to create a sense of shared community and mutual worth that is often unlike the typical classroom environment, where individual competition and “one-upping” one another is often idealized.<sup>90</sup>

This alternative, more open and even vulnerable stance is not only challenging for students, but for teachers in traditional, secular or secularized settings as well. Put simply, contemporary academia is not generally a place where compassion, community, and embodied presence are highly valued. For this and other reasons, teachers who seek to develop and incorporate contemplative pedagogies into their classes are often supported by deep commitments to contemplative practice and ways of living, and to inner work to undo in themselves the conditionings of the traditional approaches to education.

A wide variety of practices have been brought within the scope of the contemplative pedagogy project. Among the most central are practices of meditation commonly referred to as “mindfulness meditation,” or simply “mindfulness.”<sup>91</sup>

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practices from a wide variety of traditions. In addition, the discourse of contemplative pedagogy has specifically focused on the human capacities enhanced by the practices and presented these practices as secular rather than religious. See Barbezat and Bush at

<sup>85</sup> See Francisco Varela... See Hal Roth or Judith (Naropa professor). See also Tobin Hart, *infra* note \_\_\_ at \_\_\_ (defining “contemplation as an epistemic process, a way of knowing that complements the objective and the sensory.”).

<sup>86</sup> Hart, *supra* note 70 at 2.

<sup>87</sup> Compare Varela at \_\_\_ (distinguishing introspection (reflecting on thought) from mindfulness (reflecting in ...)).

<sup>88</sup> Compare *id.* at 11.

<sup>89</sup> See *infra* (Wenger et al.)

<sup>90</sup> See [materials for the group dynamics course taught at CIIS]

<sup>91</sup> The following description provides a prelude to a distinct definitional challenge, that of identifying an adequate way of describing what I mean by mindfulness meditation:

Mindfulness meditation (or mindfulness) is the name given to one or more of a set of practices aimed at increasing awareness of the present moment and of broader reality, as well as the state of awareness that commonly results from these practices.<sup>92</sup> It is the awareness that results from paying attention in a particular way, with the attitude of nonjudgmental, non-shaming compassionate, kind friendliness for what arises in the present. [fn: JKZ, adapted]

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In mindfulness meditation, you bring awareness to your breath, then to physical sensations, then to sounds, then to thoughts or emotions, and finally, to choiceless, or present moment awareness. You simply become mindful of whatever is arising in the present moment – whatever is prominent and distinct, whether sounds, sensations in the body or thoughts, emotions, and other states of mind. You witness them as ever-changing and impermanent phenomena, coming and going.

Steve Flowers and Bob Stahl, *LIVING WITH YOUR HEART WIDE OPEN* 84 (2011). And prior to developing this definition further, a cautionary note is in order. In the prescient words of Dr. Kabat Zinn, published more than a decade ago:

Because interest in mindfulness [...] is likely to increase further [...], it becomes critically important that those coming to the field with professional interest and enthusiasm recognize the unique qualities and characteristics of mindfulness as a meditative practice, with all that implies, so that mindfulness is not simply seized upon as the next promising cognitive behavioral technique, decontextualized and “plugged” into a behaviorist paradigm, with the aim of driving desirable change, or fixing whatever is broken.

Jon Kabat-Zinn., *Mindfulness-Based Interventions in Context: Past, Present and Future*, *Clinical Psychology: Science and Practice*, V10, N2, 144, 145 (2003) (hereinafter “*Mindfulness-Based Interventions*”). So much attention has been given to the notion of mindfulness in recent years that Kabat-Zinn’s suggestion seems almost quaint. And yet, the wisdom of these words is self-evident. Thus, they bear repeating and considerable reflection whenever we suggest mindfulness as an intervention into a new area or context.

<sup>92</sup> See, Jon Kabat Zinn (ed.), *MINDFULNESS* (2012). See also Daniel Siegel, *THE MINDFUL BRAIN: REFLECTION AND ATTUNEMENT IN THE CULTIVATION OF WELL-BEING* (2007). While there is no single definition of mindfulness, I typically adhere to definitions posited by Kabat-Zinn and others trained in and practicing Mindfulness-Based Stress Reduction, a sophisticated translation of the essence of Buddhist philosophy and practice and delivery in a way designed to reflect its essential universalism. As Kabat Zinn explained in an early and now classic research article:

[T]he Buddha himself was not a Buddhist. One may think of dharma as a sort of universally generative grammar (Chomsky, 1965), and innate set of empirically testable rules that govern and describe the generation of inward, first-person experiences of suffering and happiness in human beings. In that sense, dharma is at its core truly universal and not exclusively Buddhist. It is neither a belief, an ideology or a philosophy. Rather, it is a coherent description of the mind, emotion, suffering and its potential release, based on highly refined practices and systematically training and cultivating various aspects of mind and heart via the faculty of mindful attention (the words for mind and heart are the same in Asian languages; thus “mindfulness” includes an affectionate, compassionate quality within the attended, a sense of open-hearted, friendly presence and interest....[B]eing about attention, [mindfulness] is of necessity universal.

Kabat Zinn, *Mindfulness Based Interventions* at 146.

Mindfulness practices have been shown in repeated studies to increase concentration and to enhance emotion regulation.<sup>93</sup> They also appear to increase and support a state of mindful awareness that promotes psychological flexibility and cognitive well-being.<sup>94</sup> And importantly, these practices have been shown to increase compassion for others: not pity, but the capacity to turn towards and focus on the suffering of another, and desire or take actions toward the relief of that suffering.<sup>95</sup> The regular practice of mindfulness appears to have benefits, then, that support intellectual, social and emotional well-being and functioning, on both personal and interpersonal levels. Each of these outcomes would enhance our capacity to withstand the psychological and emotional disequilibrium that often arises as we work through analyses and conversations about race and other challenging issues in conflict more effectively.

Indeed, within the past ten or more years, cognitive and contextual behavioral psychologists have studied the efficacy of these practices and included (often scaled-down) versions of them among therapeutic interventions that support the return to and the maintenance of mental health, including psychological flexibility and values-aligned, mentally-fit action in the world.<sup>96</sup> More and more, psychologists rely on mindfulness as a means of supporting mental well-being and effective action.

The empirically-based convergence of mindfulness and behavioral psychology provides strong support for examining the role that mindfulness practices may play in the teaching and learning generally. In fact, given the particular emotional and identity-based challenges faced by law students, lawyers and judges working in diverse, conflict-laden settings and scenarios, many are convinced that moral and ethical reasons support the exploration of the apparent applications of some version of mindfulness to legal education -- in law school and in educational and professional settings beyond.

#### A. Mindfulness as a Foundational Support for Effective Teaching and Learning in Diverse Settings.

##### 1. Deepening focus, concentration and understanding.

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<sup>93</sup> [see most recent in Mindfulness Research Guide database; see studies cited in Goleman, Focus]

<sup>94</sup> Compare Stephen Hayes, Acceptance and Commitment Therapy (aiming at enhancing “psychological flexibility”) and Ellen Langer, Mindful Education (arguing that the objective of mindful education is the support of a “flexible mind.”).

<sup>95</sup> Barbazat and Bush at 175.

<sup>96</sup> See Robert D. Zettle, *The Evolution of a Contextual Approach to Therapy: From to Comprehensive Distancing ACT*, *The International J. of Consultative Therapy*, 2011, Vol. 7, (1), 78-84 (describing the intellectual and empirical evolution of ACT). See also Steven C. Hayes, ACCEPTANCE AND COMMITMENT THERAPY (20\_\_); see also the website of the Association for Contextual Science at <http://contextualscience.org/act> (describing ACT therapy as an “empirically-based psychological intervention that uses acceptance and mindfulness strategies, together with commitment and behavioral change strategies, to promote psychological flexibility.”) (website last visited by the author on October 18, 2014).

Mindfulness practices generally invite a focus on some aspect of the present moment, and through that, invite a deepening of awareness and understanding of the true nature of phenomena in the present.<sup>97</sup> Thus, contemplative practices have been shown to deepen focus and concentration.<sup>98</sup> Moreover, they have been relied upon as means of supplementing sources of knowledge – typically third person (such as treatises, cases and articles) and second person sources (such as presentations and interviews) – with first-person sources (personal insight), through which deeper understanding is likely to be possible.<sup>99</sup>

2. Increasing awareness of conditioning and perceptual habits of mind associated with bias and positionality.

As indicated above, one of the primary objectives of mindfulness practice, across a wide-variety of conceptualizations and forms, is to increase awareness.<sup>100</sup> Focused awareness-based practices increase the capacity to home in on aspects of the present moment. Grounding awareness practices in awareness of breathing,<sup>101</sup> we expand our practices, both formally, and informally, to focus on other objects and increase awareness of the experience of breathing as we go about our day, the coming and going of stimuli such as emotions, sensations, thoughts, and sounds, inviting heightened capacity for concentration. Other practices invite attending and opening to gentle appreciation of the changing nature of our experience, and to the capacity to shift our attention as stimuli shift in intensity and prevalence. Gradually, the practices increase awareness of habitual tendencies we all experience with regard to our thoughts, emotions, perceptions and related behaviors.<sup>102</sup>

For example, we might notice that we have a subtle tendency to become distracted and emotionally frustrated when we hear a person speaking with a thick accent that we consider to be “foreign.” With mindfulness practice, we bring awareness to the tightness we feel slowly arising in our chest as frustration and impatience increases, we notice our palms or underarms beginning to feel moist, or we notice our mind wandering in a habit of “zoning out.” Noticing these reactions, with as little judgment and as much self-compassion as possible would be consistent with mindfulness practice. Recognizing these reactions, we accept them as true in our experience in the moment. We do not wish to accept these reactions for all time. However, we

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<sup>97</sup> Stephen Batchelor, *BUDDHISM WITHOUT BELIEFS* (1997) (“.

<sup>98</sup> Daniel Goleman, *FOCUS* (2013).

<sup>99</sup> See [website of Naropa University, defining “Contemplative Education.”]. See also Francisco Varela, *THE EMBODIED MIND* (\_\_\_); ARTHUR ZAJONC, *MEDITATION AS CONTEMPLATIVE INQUIRY...* See also Rhonda V. Magee, *Educating Lawyers to Meditate*, 79 *UMKC L. Rev.* 535, 582-88 (2011).

<sup>100</sup> See, e.g., Varela, *supra* note \_\_\_ (“We have already described mindfulness/awareness practice as a gradual development of the ability to be present with one’s mind and body not only in formal meditation but in the experiences of everyday life.”)

<sup>101</sup> *FULL CATASTROPHE LIVING* at 53 (“Mindfulness of breathing is central to all aspects of meditation practice.”)

<sup>102</sup> *Id.* at \_\_\_.

are willing to do so, to “stop the war within,”<sup>103</sup> for as long as may be necessary to increase our understanding of our own habits, tendencies. And we are willing to try doing so with kindness.

At some point, however, in the process of working to improve our capacities for working with others – including those with accents we are tempted to see as a sign of “the Other,” we turn to the work of choosing a different way of responding to the same stimuli in the world. And since we cannot change what we cannot see, the practice of increasing awareness of these habits and tendencies tends to support development of the capacity to change such habits and tendencies over time.

### 3. Increasing capacity for emotion regulation

Because of the high potential for emotional reactivity in discussions and analyses dealing with topics such as race and related social justice issues, the capacity for emotional self-regulation is an important pre-condition for being able to inquire about, analyze and discuss these matters in the mixed settings of our classroom learning communities, workplaces, and beyond.

The regulation of emotions is key to overall self-regulation, which includes but is not limited to emotion regulation. Self-regulation has been defined as “the ability to flexibly activate, monitor, inhibit, persevere and/or adapt one’s behavior, attention, emotions and cognitive strategies in response to direction from internal cues, environmental stimuli and feedback from others, in an attempt to attain personally-relevant goals.”<sup>104</sup> In addition to increasing emotional self-regulation skills, mindfulness practices have been found, in numerous studies, to increase one’s capacity for self-regulation.<sup>105</sup>

Thus, for example, if we find ourselves feeling the heat rising in our chest and out the blood pounding in our foreheads when, in a classroom discussion involving racial profiling, a classmate argues that such patterns of over-policing of brown and black people are consistent with the fact brown and black people “commit most of the crimes,” or that “police are thugs that cannot be trusted,” rather than reacting – slamming shut a book, rolling our eyes or otherwise expressing our disagreement and disrespect – we might, for the sake of the learning community and for ourselves, notice those reactions, with self-compassion and kindness. We notice them, and, with compassion for ourselves and others in this moment together, we examine the range of ways that we might respond. We may choose to respond in a way that continues the dialogue,

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<sup>103</sup> Teachers of Western mindfulness such as Jack Kornfield and Tara Brach has used the phrase “stopping the war within” to describe what might be called the “the self-compassion objective” of mindfulness practice. (Personal experience of author.)

<sup>104</sup> Moilanen, K.L., *The Adolescent Self-Regulatory Inventory: The Development and Validation of a Questionnaire of Long-term and Short-term Self-Regulation* (2007).

<sup>105</sup> Vago, D.R., and Silbersweig, D.A., *Self-awareness, Self-regulation, and Self-transcendence (S-ART): A Framework for Understanding the Neurobiological Mechanisms of Mindfulness*, *Frontiers in Human Neuroscience*, 6, 1-30 (2012). *See also* Shien Ling Keng et al., *Effects of Mindfulness on Psychological Health: A Review of Empirical Studies*, *Clin. Psych. Rev.*, Vol. 31, Issue 6, 1041-56 (2011) (finding that mindfulness practices increase emotional awareness and behavioral self-regulation).

but that reflects our willingness to see others with whom we disagree in a more compassionate light. And yet, we are able to speak what we feel must be said, with less attachment to any particular outcome flowing from the discussion than we might have otherwise harbored.

Dr. Jon Kabat Zinn describes how this increased ability to respond rather than react may arise naturally as we practice mindful awareness of it all -- of the body, breath, emotions, thoughts and the flow of sensations characterizing our experience of living, moment after moment, alone and with one another:

When we start paying attention to breathing on a regular basis, our relationship to it changes dramatically. As we have already seen, tuning in to it helps us to gather our often unfocused energies and center ourselves. The breath reminds us to tune into our body and to encounter the rest of our experience with mindfulness, in this very moment.

When we are mindful of our breathing, it automatically helps us to establish greater calmness in both the body and the mind. Then we are better able to be aware of our thoughts and feelings with a greater degree of calm and with a more discerning eye. We are able to see things more clearly and within a larger perspective, all because we are a little more awake, a little more aware. And with this awareness comes a feeling of having more room to move, of having more options, of being free to choose effective and appropriate responses in stressful situations rather than losing our equilibrium and sense of self as a result of feeling overwhelmed, thrown off balance by knee-jerk reactions.<sup>106</sup>

#### 4. Increasing capacity for perspective-taking and compassion

Some of the practices engaged in as part of mindfulness meditation have been shown to increase compassion and empathy towards others.<sup>107</sup> Indeed, these practices may lead to the experience of a felt and inherent sense of inherent interconnectedness.<sup>108</sup>

Because compassion and empathy are so vital to efforts at working together across lines of real and imagined difference, researchers have examined whether such practices may assist in the work of increasing positive intergroup contact and creating inclusive classrooms. For example, [discuss the study cited in the first chapter in the *Moving Beyond Prejudice: Positive Group Interactions* text]<sup>109</sup>

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<sup>106</sup> JKZ FCL at 49-50.

<sup>107</sup> Ricard Matthieu; Dr. Tanya Singer's work on behalf of Germany's Max Plancke Institute has provided extensive empirical support for the efficacy of mindfulness practices that include dialogue and lovingkindness as a means of enhancing compassion. [refer to notes from Boston conference, and cite]

<sup>108</sup> FULL CATASTROPHE LIVING at 180 ("The ability to perceive interconnectedness and wholeness in addition to separateness and fragmentation can be cultivated through mindfulness practice.")

<sup>109</sup> Robert W. Livingston, *What Can Tolerance Teach Us About Prejudice? Profiles of the Nonprejudiced*, in MOVING BEYOND PREJUDICE.

Further, mindfulness practices may lead to increasing equanimity – the capacity to approach these difficulties from a the perspective of the whole. “We shed all discriminations and prejudice, and remove all boundaries between ourselves and others. In a conflict, we remain impartial, able to understand and love both sides.”<sup>110</sup> Admittedly, this may sound, at best, highly aspirational for most of us. Indeed, it may sound like a renunciation of the role of advocate, a role that those of us committed to social justice believe to be important. It is worth noting (and perhaps clarifying) that many who practice deep mindfulness experience do find themselves more and more capable of not only of taking into consideration the point of view of others, but from this place making, perhaps, a more objective judgment as a prelude to taking action.<sup>111</sup>

### 5. Ameliorating stereotype threat.

In addition, mindfulness may play an important role in giving potentially stereotyped and stigmatized students the capacity to protect against or minimize the harm from stereotype threat. One intriguing study has shown that basic mindfulness training assisted women against the denigrating effects of stereotype when confronted with a math exam.<sup>112</sup> While more research is obviously needed, this finding provides support for innovations in teaching and studying race and law that include mindfulness practices as a means of providing a supportive and more productive environment for those students, in particular, whom we know from prior research may be risk of the derogatory effects of stereotyping in the classroom and on the broader campus.

As an example, if a student hears a professor express sympathy for those in power who were previously members of a racial terror group like the KKK; or, if a student (or teacher!) overhears a classmate stating that members of a given race have lower IQs than others, or are more genetically like monkeys than humans,<sup>113</sup> the student may find it difficult to concentrate during the lecture to follow. This is especially likely to be so if the overhearing student is in what could fairly be viewed as the targeted group herself. If subsequently called on by the teacher, she may have a more difficult time marshaling what she knows and speaking eloquently before the group. She may be distracted and unable to listen as well as she might otherwise to the lecture to follow.

Mindfulness practices are not the only proper response in such a situation. But they are among the practices that can and do assist students and other class members in maintaining composure during unfortunate (and probably inevitable) instances of insensitivity and incivility in our classrooms.

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<sup>110</sup> Thich Nhat Hanh, *THE HEART OF THE BUDDHA'S TEACHING* at 162.

<sup>111</sup> Nedelsky... Cite also the MLK equanimity story in Zajonc book.

<sup>112</sup> Wegner, *Mindful Maths: Reducing Stereotype Threat Through a Mindfulness Exercise*, *Conscious Cogn.* 21 (1) 471:5 (2012).

<sup>113</sup> A variation on this comment resurfaces quietly in my classes infrequently, directed at students (twice in 17 years) or seemingly at me (one report in 17 years). These comments would be characterized as “microassaults.” See Derald Wing Sue, *infra* note \_\_ .

## 6. Healing embodied life trauma

We all know that increasingly diverse classrooms include students from a wide-variety of backgrounds, both domestic and international. Not infrequently, students have survived distressing or even traumatic experiences in their lives to date. Recent studies indicate that mindfulness may increase the health and well-being of survivors of childhood trauma.<sup>114</sup> This trauma is not merely psychological, but held in the cells of the body.<sup>115</sup> Such well-being may be important to the capacity to address issues of race from a positive rather than a negative pre-disposition, with predictably positive rather than negative implications for in-class interactions across categories of real and perceived differences.

Interpersonal healing is supported by being with others in ways that manifest identity safety, including appreciation for diversity, care, concern for the relationships of the class members and a focus on student-centered experience.<sup>116</sup> Each of these elements is aided by creating space for sitting with suffering around social identity differences.

Thus, if we are subconsciously nursing unhealed wounds likely to be triggered in class settings by conversations about race – the ridicule of one of us, a Chinese American man, endured in response by the first and only previous teacher of color we ever had when we argued in support of the police officers after the Rodney King beating; the harassment one of us, a Latino, endured at gunpoint by a white police officer in our third year of college which so traumatized us that we left that college and could only return and get back on track with our education 5-years later; the pain one of us, a white woman, endured while having been the only white kid in re-segregated public school system in San Francisco – we are often quite predictably not in a position to look upon these issues with utmost clarity. Our capacity to look upon the experiences of others with compassion may predictably be at least somewhat limited.

I've encountered each of these and other challenges in my work to help facilitate conversations about topics such as race and related injustice in mixed groups. In my own experience, practices such as mindfulness meditation, as well as lovingkindness, forgiveness and other practices specifically aimed at promoting healing and other pro-social transformations of experience are particularly important to our work in creating the conditions of effective communication around these issues. Research into these anecdotal findings just beginning, and we need more of it. But initial indications appear to confirm that this is so, and provide the inspiration for exploring more.

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<sup>114</sup> Robert C. Whitaker et al., *Adverse Childhood Experiences, Dispositional Mindfulness and Adult Health*, Preventative Medicine 67, 147-53 (2014)

<sup>115</sup> Beth Berila, *Contemplating the Effects of Oppression: Integrating Mindfulness Into Diversity Classrooms*, J. of Contem. Inq. (2014).

<sup>116</sup> See Relationship-Centered Therapy... See also (Chapters from Moving Beyond Prejudice on intergroup work)

The theoretical argument that I am making here is that in the foregoing ways and others<sup>117</sup> contemplative pedagogy supports the pedagogy of vulnerability<sup>118</sup> and the pedagogy of interiority<sup>119</sup> that are the missing infrastructure needed to assist both faculty and students in better teaching and learning around matters of particular relevance in diverse classes which typically present personal and interpersonal challenges. In the next section, then, I discuss in greater detail the particular ways that contemplative practices assist us in dealing with and teaching about race, bias and the social and emotional challenges they present in our classrooms, in furtherance of the ongoing work of advocating for justice around these issues.

#### B. Discerning particular practices for use in a given course or class.

Infusing contemplative pedagogy into a target course in an effective way is not a simple or easy matter. In addition to engaging in self-study about contemplative pedagogy and its many examples, a teacher must also identify the specific learning intentions for the course and possible desired and measurable outcomes. Then, we must reflect on which practices, introduced at what point, would most likely assist in advancing these intentions and objectives over the flow of the course.<sup>120</sup> Ideally, one is knowledgeable both of the relevant subject matter and of contemplative practices to be able to engage in this first phase of planning and development.

How one ultimately decides what practices to use when should also be determined in a manner that is both reflective and reflexive. While some trial and error is inevitable, the teacher who engages in practices of contemplative inquiry – reflection, dyad practices, journaling, etc. -- as a means of discerning what practices to include when will likely find their efforts aligning with their teaching and learning intentions in a way that generally builds on the understanding of their students, enhancing their learning over time in the course.

For example, in a number of different classes covering issues at the intersection of race and law, I've employed practices which seek to create safe, brave environments for learning together across backgrounds which differ in terms of race, culture, national origin and so on. Such spaces depend for their efficacy on the cultivation of trust in both the teacher/facilitator, in each participant for themselves and among one another.<sup>121</sup> In addition, I've employed simple mindfulness practices aimed at supporting increased awareness of emotion and signs of distress,<sup>122</sup> minimizing the automatic reactivity that is part of the cognitive process known as bias,<sup>123</sup> and in the hope of reducing the performance decrements associated with stereotype

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<sup>117</sup> A full exploration of the efficacy of contemplative pedagogy for this work is beyond the scope of this Article.

<sup>118</sup> See *infra*, Brantmeier, note 141.

<sup>119</sup> Tobin Hart, *Reciprocal Revelation: Toward a Pedagogy of Interiority*, *Journal of Cognitive Affective Learning* Vol. 3, No. 2 (2007).

<sup>120</sup> See Arthur Zajonc, *MEDITATION AS CONTEMPLATIVE INQUIRY: WHEN KNOWING BECOMES LOVE* (20\_\_).

<sup>121</sup> [Cite to *TEACHING FOR DIVERSITY*]

<sup>122</sup> See, e.g. Arch & Craske, *Mechanisms of Mindfulness: Emotion Regulation Following a Focused-Breathing Induction*, 44 *Behav. Res. & Ther.* 12 (2006).

<sup>123</sup> See Lueke et al., *supra* note 52.

threat.<sup>124</sup> Moreover, I've employed compassion and lovingkindness practices to assist in developing empathy, and in increasing orientation towards compassion and perspective-taking -- practices which have been shown to increase capacity for discussing difficult issues related to diversity, and, like simple mindfulness practices, to reduce bias.<sup>125</sup>

While my findings so far are purely qualitative, they indicate some of the benefits of infusing these practices into teaching and learning together about race and racism in diverse settings. One semester, a Latina student from a recent immigrant background had shared with me some of the ways her heritage had left her feeling marginalized. When asked to write a response to the questions "how might contemplative practice [mindfulness, etc.] assist you in bringing greater awareness to these aspects of your life? Might it assist you in connecting with others whose experiences differ?" this student shared the following:

To be honest with you the meditation helped. The loving[kindness] meditation made me think of the things and people I am grateful for....Again, I think that after the meditation, I think how petty I am for focusing on what is not perfect instead of being grateful for what is good.... I think that the meditation has really put things in perspective because I feel like I can remove myself from a situation and really think about what's going on. Sometimes I feel pretty upset over NOTHING. Or I feel upset about really small and petting things that are insignificant to the rest of my life. Mindfulness has helped me see the big picture. I don't feel the need to sweat everything. And when I do worry I think about things in a more positive/optimistic manner.

- JS<sup>126</sup>

Another Latina spoke of the benefits to her of dealing with her identity challenges mindfully:

Mindfulness would also help me heal myself and treat myself with more compassion instead of constantly trying so hard not to fit a certain mold or expectation of myself.

- BU<sup>127</sup>

And another student of color, from a group not often considered victimized by contemporary racism, responded as follows:

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<sup>124</sup> Wegner, *supra* note 115.

<sup>125</sup> Alexander J. Stell & Tom Farsides, Brief Lovingkindness Meditation Reduces Racial Bias, Mediated By Positive Other-Regarding Emotions, Springer Science+Business Media (2015).

<sup>126</sup> Student response "KJ" excerpt (April, 2011) (on file with author). All student initials herein modified to maintain anonymity.

<sup>127</sup> Student response "AU" excerpt, Contemplative Lawyering (April, 2011)

Being an Asian male in a Tech company, obviously I'm not in the dominant race, but I know I'm privileged and disadvantaged at the same time. In general the tech community views Asians as smart, hard-working, and obeying. Because of that, they are perfect subordinates, not leaders. We are not shown in the daily business news as leaders, but hardly profiled as trouble-makers either. I'm privileged in that people automatically think I belong to the group that's good at math and have great work ethics [sic]. At the same time, people would think twice about giving me the opportunity to guide and manage projects and teams. We have all been told about the meritocracy ideal of the society, but so far we are not there yet.

How should I deal with it? I think the RAIN [**R**ecognize, **A**ccept, **I**nvestigate, with **N**on-identification/**N**onjudgment] process will help me understand and navigate through the issue. I see "racism" is no longer an overt attitude by the majority of the population, rather, stereotyping, often unconsciously, is prevalent. I need to recognize that I have been benefitted in some aspects and harmed in others. I need to accept reality. Further, if I feel angry or anxious about the hidden prejudice, I should investigate why and how my emotion is triggered. Finally, I want to become non-judgmental about other's behavior and make peace with my own identity.

- *GX*<sup>128</sup>

Finally, a response from a white, female student indicates ColorInsight's broad potential to increase understanding across the range of racial experiences:

When thinking about privilege, feelings of sadness and agitation arise. The sadness, in part, comes from living in a society where members are still oppressed, yet there doesn't seem to be a harnessed collective energy to address the social ills. The civil rights movement and women's liberation movement are part of our history I feel very empowered by. Yet now, we live in a society where discrimination isn't as overt (minus second class citizenship based on sexual identity and class). So, the agitation comes from within myself, acting too complacent about the situation. Although I intend to commit my livelihood towards social equalization, it doesn't feel like my actions are enough and that the vast majority of society is in denial or is uncomfortable recognizing discrimination continuing to pervade our society. I do believe that RAIN can help cultivate understanding and awareness, enabling a deeper connection to others with social identities different from my own.

- *KB*<sup>129</sup>

C. Faculty Commitment to Practicing, Teaching, Learning and Developing Over Time.

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<sup>128</sup> Student "HX" response excerpt, *Contemplative Lawyering* (April, 2011)

<sup>129</sup> Student "KB" response excerpt, *Contemplative Lawyering* (April, 2011)

It is important to repeat here what I mentioned at the outset: teaching well in ways that incorporate and embody these practices is not to be accomplished overnight. Learning what we will need to learn to continue to be effective in these efforts takes time as well. As I have indicated in all of the foregoing, the work of teaching race mindfully is, indeed, multi-faceted and skilled work. Thus, those interested in pursuing the approach and applications presented here must consider carefully the level of their commitment to practicing and embodying these practices in their everyday lives. There is much to learn, but objectively, in terms of substantive information; and subjectively, about ourselves.<sup>130</sup> For the true depth of the impact of these practices may only be obvious to -- and accessible in the act of teaching and learning by -- one committed to engaging the contemplative teaching and learning practices deeply. This is true for *all* dimensions of this work, but may be especially true for the contemplative or mindful pedagogy dimension:

[W]ithout the foundation of personal [contemplative] practice, and embodying [rather than “modeling”] what it is that one is teaching, attempts at mindfulness-based interventions become caricatures of mindfulness, missing the radical, transformational essence and becoming caught by perhaps important but not necessarily fundamental similarities between mindfulness and other relaxation strategies, cognitive behavioral exercises, and self-monitoring tasks.<sup>131</sup>

Moreover, it's worth seriously considering the challenges to long-term changes in our teaching habits, patterns and conditioning with regard to these issues. Most of us who teach were educated in schools more committed to the “Instruction”<sup>132</sup> or “Banking”<sup>133</sup> paradigms of education than those committed to anything like the Learning Paradigm animating this Article. Unlearning the ways that were modelled for us over the years is often an additional strain of ongoing personal developmental work for teachers.

Thus, and notwithstanding these methods of working with the difficulty, such work will, almost inevitably, be challenging. Research has indicated the need for such efforts to take place over time and for faculty support of administration and peers to ensure the permanence of such

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<sup>130</sup> Adams *et al.*, *supra* note \_\_\_ at 385:

Self-examination about the effects of oppressive socialization in our lives is a never-ending learning process. We all have areas of limited vision, particularly where we are members of the advantaged group and have been taught to assume our own experiences as normative. When we stay open to ongoing learning, and accept the inevitable mistakes as we uncover new areas of ignorance or lack of awareness, our students can learn to do so as well. Such self-awareness supports the long view needed to sustain our commitments and not retreat from this difficult but vital work.

<sup>131</sup> Mindfulness-Based Interventions at 150.

<sup>132</sup> See Contidine, *supra* note \_\_\_.

<sup>133</sup> Paolo Friere, *Pedagogy of the Oppressed*...

changes.<sup>134</sup> In addition, the research on incorporating student-centered learning on diversity confirms the struggles that even the most dedicated faculty face.<sup>135</sup> Therefore, it also helps to view oneself as a lifelong student in this aspect of the work, and to embrace a long-term developmental perspective on one's classroom work.<sup>136</sup>

While incorporating contemplative practices has been shown to be of benefit – both in piles of research studies, and in my own experience -- it must be kept in mind that doing so will not make this challenging work easy. It is no panacea. The conflicts, emotions and different experiences that make these matters difficult to discuss everywhere will continue to make classroom efforts difficult – for teachers and for students alike.<sup>137</sup> Ultimately, these practices may be most beneficial in helping us develop the self-care, patience, equanimity, and long-term perspective necessary to “sit with the difficulty” of working through these issues year after year, class after class, without giving up on the effort. They help us to live the claim made by Virginia Woolf, on the topic of writing, by women, in an era when such work was often not recognized as valuable and was often downright denigrated: “And so, *to work*, even in poverty and obscurity, is *worthwhile*.”<sup>138</sup>

Beyond that, we might also work to encourage deeper support for these efforts. Those of us not laboring “in poverty and obscurity” to address these issues more effectively must continue to make the work as safe as possible for the many who are. We might become engaged in some aspect or another of the broader contemplative pedagogy movement.<sup>139</sup> Indeed, teachers interested in mindfulness-based interventions for teaching and learning *about race* may come to see (as I have) the benefits of these practices and a contemplative teaching and learning approach for deep inquiry into *all* of the subjects covered in the traditional curriculum.

In a prior Article,<sup>140</sup> I made the case for a broad commitment to an approach to educating lawyers which embodies a thorough commitment to mindfulness throughout the legal curriculum -- in developmentally and subject-matter appropriate ways. In the absence of a broad-based program providing support for the integration of these practices across the curriculum and institution, teachers and students who engage in practices such as these may find that they face

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<sup>134</sup> See Considine, *supra* note \_\_ at 20 (faculty development strategies need “more than just a workshop...”instructor reflection and coherence with instructor philosophy and beliefs...and institutional support.”) (internal citations omitted).

<sup>135</sup> *Id* at 22.

<sup>136</sup> *Id.* at 21, 25. (“What had once been a position of expertise and authority is now a position of learning, questioning and experimentation.”)

<sup>137</sup> Adams et al., at 381 (“[L]ittle attention has been paid to helping social justice educators cope with the emotional and intellectual challenges of this kind of teaching. Yet few would claim that raising issues of oppression and social justice in the classroom is a dispassionate activity. Content as cognitively complex and socially and emotionally charged as social justice inevitably challenges both personal and intellectual knowledge and commitments....Accordingly, the self-knowledge and self-awareness that we believe are desirable qualities for any teacher become indispensable in social justice education.”)

<sup>138</sup> VIRGINIA WOOLF, *A ROOM OF ONE'S OWN* (19\_\_)... at\_\_ (emphasis added).

<sup>139</sup> Bush and Barbezat, *supra* note \_\_ at \_\_.

<sup>140</sup> Magee, *Educating Lawyers to Meditate?* *supra* note \_\_, *passim*.

an ongoing battle to establish the legitimacy of taking time away from other, more culturally accepted ways of teaching and learning to pursue these practices. It is my hope, therefore, that those inspired to explore methods for enhancing teaching and learning about race and related or similarly challenging topics will continue their explorations, connecting this work with that of the many who are presently seeking to incorporate these practices across the curriculum, and taking the time and expending the resources to necessary to prepare oneself for holistic, mindfulness-based teaching and learning that includes everyone.<sup>141</sup>

#### IV. Conclusion

Every day, one incident or another reminds each of us that we do not live in a colorblind world. In the United States, race *still* matters. Thus, the law, to approach justice, will continue to need the thoughtful contributions of trained, practiced and committed professionals with the skills and capacities to work more effectively with race and racism in their own and in others' daily lives. And yet, we all struggle against the countervailing message of colorblindness. Moreover, even where we understand the value of these efforts, we must each work with the emotional and material suffering that we and others feel around these issues. It takes work to communicate across lines of real and perceived racial and other identities around of difference, and to find ways of working together effectively for change. The difficulties inherent in this work arise in every interaction and site of law and legal education – in classrooms and in law firms, in police precincts and in courtrooms, and elsewhere. In an entirely real sense, individual's fates across a range of settings -- including at times their very lives -- hang in the balance.

This Article posits that it is the capacity of lawyers *to suffer with ourselves and with others* – with genuine compassion for personal, interpersonal, and systemic suffering meditated through law -- that holds the key to lasting healing of the racial issues that arise in law. I offer the teaching, learning and lifelong engagement of particular contemplative or mindful practices - - ColorInsight Practices – to assist law students, lawyers, judges and other lawmakers with this essential yet perennially critical but essentially difficult work. In time, *the Way of ColorInsight* assists not only in enhancing everyday performance and wellbeing, but more profoundly, in accomplishing the personal, interpersonal and systemic work of ending *and healing* the legacies of racism and related practices of hierarchy, degradation and exclusion replete throughout American law that touch and concern each and all of us.

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<sup>141</sup> See the Center for Contemplative Mind in Society and the Association of Contemplative Mind in Higher Education (website last visited by author March 31, 2015). See also BEST PRACTICES, *supra* note 5.

## Appendix A:

### D. An Introduction to Contemplative Practices for Supporting Inclusive and Effective Classrooms.

Educators whose work involves the analysis and discussion of issues that invoke the challenges associated with differing social identities and socio-cultural histories in America have been at the forefront of elaborating practices specifically useful in supporting that work.<sup>142</sup> In this section, I identify and briefly describe a wide-variety of contemplative practices available now to assist teachers and learners in co-creating environments in which they may more safely work with their experiences, process their discomfort, and increase empathy and compassion, all while more effectively and deeply<sup>143</sup> learning, growing working for change together.

As you may surmise from even a cursory review of the practices highlighted below, each of them requires students to be open to experiencing themselves and their time in the classroom in ways that may not be common in the school environment, and may not have been part of their experiences in the past. As a result, it may be essential to provide students with a sense in advance of what it may look and feel like to experience contemplative practices as part of the study of this material. Included in this preview should be discussion of the need to work on these issues on at least three dimensions – personally, interpersonally, and systemically, since any ultimate healing or transformative justice around such matters will require not merely individual but also collective, systemic change.<sup>144</sup>

In addition, to infuse such practices into their classroom work, faculty themselves will need to be willing to experience themselves in ways that differ from that of the dominant approaches to teaching in contemporary academia. They will be more likely to experience the classroom as less hierarchical, with power over the content covered and responsibility for learning together being more explicitly shared with the students. They will need to be comfortable sharing relevant personal experiences in ways that may sometimes leave them feeling vulnerable.<sup>145</sup> According to “pedagogy of vulnerability” developer Ed Brantmeier:

The practice of vulnerability is especially valuable in the context of learning about diversity – especially topics of power, oppression and privilege. Instructors, in a

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<sup>142</sup> See, e.g., Maurianne Adams, Lee Anne Bell, and Pat Griffin, *TEACHING FOR DIVERSITY AND SOCIAL JUSTICE* (eds.) (2007) (2<sup>nd</sup> ed.) and Michelle Petrone, *Faculty Learning Communities for Diversity*, Milton Cox (eds.), *FACULTY LEARNING COMMUNITIES* (\_\_\_\_).

<sup>143</sup> *Id.* at \_\_\_\_.

<sup>144</sup> See Magee at \_\_\_\_; see also Godsil *et al*, *infra* note \_\_\_\_ at 15.

<sup>145</sup> See Ed Brantmeier, *The Pedagogy of Vulnerability: Definitions, Assumptions and Applications* in Lin, J., Oxford, R., and Brantmeier, E.J., *Re-envisioning Higher Education: Embodied Pathways to Wisdom and Transformation* (Information Age Publishing, forthcoming) (An approach to education developed by peace and multicultural education practitioners characterized by sharing, co-learning and admitting that “you don’t know”).

mutually-negotiated process, open their social identities and experience up for critical reflection and scrutiny for the purpose of engaging a community of learners in critical reflections on diversity, including topics of power, privilege, oppression and social justice. The process is mutually-negotiated because both instructor and student explore their social identities and how they play out in the larger society, in a caring context where trust serves as a foundation of the community of learners.<sup>146</sup>

Exploring such dimensions of the work may be especially difficult in educational settings where the norm is hierarchical and more closed to the personal, such as the traditional law school classroom. In such settings, both faculty and students will be aided not only by a personal mindfulness practice as discussed above<sup>147</sup>, but also by an institutional environment that clearly supports holistic and diverse forms of teaching and learning. As discussed below, the broadening of institutional support for this work may be essential to its ultimate success. However, regardless of the state or level of such support, there is much that an individual faculty member may begin to do on his or her own. It is in the spirit of encouraging such exploration and of developing a virtual network of faculty so-engaged, that I offer the suggested practices to follow.

A final caveat is worthy of note: no faculty member could be expected to incorporate all of the following practices in a single course. I present a brief description of each to support faculty in considering whether and which particular practices among those identified might assist them in the specific pedagogical objectives that they may hold for each of their courses.

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<sup>146</sup> *Id.* at \_\_\_\_.

<sup>147</sup> *See infra* note \_\_\_\_.

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## Brief Descriptions of Contemplative Practices for Supporting Inclusive and Effective Classrooms

### 1. Establishing an Intentional Learning Community

Specifically to teach courses dealing with race and related challenging issues of social identity and injustice through the practices of mindfulness is to support deep and transformative learning and discussion with the intention of increasing understanding about race and related concepts (such as white supremacy, identity-based privilege, racism and subordination). It involves creating the conditions that support the exploration of race in our lived experience, and exploring its implications for law and policy. Done well, it requires, teaching with attention to who is actually, physically in the room, drawing on the particular composition of the class for the benefit of the learning of those present. It requires compassionately attending to the internal and external practices and experiences by which we create learning communities together; and, teaching with the attitude of openness to learning and growing.

However, even when courses do not explicitly center on such matters, such topics are often lurking at what may appear to be the margins, but for students may be more central. The truth is that these topics may be brought into the conversation at nearly any time in our classes. Moreover, the establishment of inclusive classrooms for all may require that each of us seek to provide at least some opportunity within our classes for students to place the issues in primary focus in a context which includes social identity and systemic factors that have or may lead to patterns of privilege and subordination.

Thus, one of the most important responsibilities of a teacher involved with setting the stage for such work may be the *intentional* establishment of a teaching and learning community with the goal of learning together by working with these issues in novel, awareness-centered ways. The following describes, in introductory fashion, some of the practices I've employed in forming such learning communities. For more on the implementation of these practices, please see Some Resources for Additional Skill-building, Study and Practice, Appendix B.

#### a. "Forming The Learning Circle" Practices

Through these practices, a teacher brings attention to the desire of creating, with the students, a space for mindful engagement with one another for the purpose of learning together, and provides tangible support to the class in working towards these outcomes. Naming that desire, and inviting all members of the learning community to share that goal and to work on this project together, assists in turning the classroom from a collective of students in "just another class," into a learning community.<sup>148</sup> The practice involves physically inviting class members

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<sup>148</sup> See [pinpoint to fn re bounded learning communities]

into a circle together.<sup>149</sup> This means that as much as possible, the teacher will set up the classroom learning space so that all are able to sit in a circle along with the teacher, and see one another's faces as the learning community takes shape together. This is often not easy to do, as classrooms are typically not set up to facilitate learning in circles. Planning ahead and seeing what spaces in the school might be used to facilitate this is often, in my experience, well worth the effort. As a further recognition, we may stand together, shoulder to shoulder or hands held, look into one another's eyes. I have sometimes invited members to reflect on a word or two that captures their aspirations for our work together, inviting members to speak those aspirations into the circle. These practices enact and embody our interconnectedness, our individuality-and-oneness, and assist in opening the space to new ways of engaging with one another in the classroom.

Further, we may deepen the experience of creating together by engaging in a verbal or written "commitments" practice. We begin this practice by identifying our concerns and what we might need to support ourselves in the process of engaging with one another around our learning topic, and then making agreements or commitments to working with one another to build trust over time by honoring, as best as possible, these requests. We agree that we will seek to hold ourselves accountable for adhering to these agreements, and will be open to others who share feedback that indicates that we are not keeping up our end of the bargain. In my own classes, I have set aside time to reflect upon and discuss the following such questions in support of developing such commitments and agreements:

- (1) What ground rules might be desirable for supporting participants in discussing difficult matters with greater authenticity and presence to a range of relevant difficult facts and experiences?
- (2) What challenges do class members expect as they seek to embrace accountability for co-creating non-judgmental, safe (though not always comfortable)<sup>150</sup> spaces within which each student may reflect more deeply on these issues -- even in groups whose members differ across categories of identity and experience?
- (3) What support would class members need in identifying and discussing their thoughts and emotional reactions to the material under consideration, and developing a capacity to reflect more objectively on those thoughts, emotions and personal stories, rather than uncritically attaching to and identifying with them?
- (4) Can we work, individually and together, to surface assumptions, habits, biases and blind spots that each of us brings to thinking about such matters?
- (5) Are class members willing to make personal commitments to ongoing self-exploration and interpersonal and inters-systemic work with others, aimed at

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<sup>149</sup> Compare Adams et al., TEACHING FOR DIVERSITY AND SOCIAL JUSTICE, *infra* note \_\_ at 31 (discussing liberatory and critical pedagogy, and noting that "[c]hairs arranged in circles rather than in rows facing a teacher's desk reinforce the imagery of co-learners and co-facilitators.")

<sup>150</sup> *Id.* at 96 (differentiating between safety and comfort). While we strive to have all students feel respected and free to share their perspective in our classes, whatever their point of view, "feeling safe does not mean they will never be challenged or feel uncomfortable," as "feeling uncomfortable at times is a valuable and expected part of an effective social justice class." *Id.*

- increasing self- and other-awareness around these issues and the different and myriad ways they may arise in a given setting?
- (6) Are class members willing to commit to honoring our differences-in-community, by working to listen more deeply to one another's unique experiences, while working together and building on the lived-sense of common humanity that exists across these so-called differences?

Developing such commitments and working to ensure some degree of accountability around them is sometimes if not routinely emotionally difficult for students, who have had little practice in effectively speaking up about needs in settings such as this, or in "calling out" a social acquaintance. Thus, we may wish to bring our own practices of patience and willingness to live with imperfection to the inevitable breaches of these commitments.

"Forming the Learning Circle" practices may be done in a way that previews the layered nature of contemplative learning: we might engage in centering practice involving awareness of breath (discussed below), concentrative inquiry by personal reflection on a question such as "What would I need to be able to show up more fully in this conversation?", followed by a reflective freewriting in which we jot down thoughts, emotions, sensations occurring as we reflect on this question; standing silently, even holding hands around the circle, and finally, mindful dialogue as give one another our undivided attention and share our desired community practices and would-be commitments.

b. "I See You/Everyone Matters" Practice

Once established in a learning circle, a practice I call "I See You/Everyone Matters," may be used to deepen our sense of connection. This is a simple practice of looking into the faces, and if possible, the eyes of everyone in the room, around the circle. If willing, we offer one another a smile, but at a minimum, we respectfully offer our gently attending gaze. In this way, we begin to live our intention of being with others respectfully, of giving everyone our attention, of actually taking each person's humanity in, as we embark on a learning journey together.

c. "I'm With You/Everyone's Included" Practice

As indicated by foregoing, the teacher/facilitator does what he or she can to set the stage for mindful co-creation of community capable of supporting one another in learning together about difficult issues from one another. In this practice, the teacher takes the lead by practicing awareness of each student as he or she enters group-wide conversation. By his demeanor, posture and literal gaze, the teacher embodies presence with each student. This practice, which I call "I'm With You/Everyone's Included," assists all of us in developing presence, empathy and compassion, individually and as a group, and thus plays an important role in developing the group's capacity to function mindfully together.

In my experience, participants are both drawn in and a bit discomfited by practices which embody significant presence. However, I've come to believe that such mixed reactions should come as no surprise. Increasingly, many of us have spent a great deal of time in situations that

do not require connecting with other human beings with the sort of presence called for here -- resembling the intimacy of a gaze, with people outside our immediate family, close friends or physically intimate others. Moreover, depending on our particular backgrounds, cultures and conditioning, looking into the eyes of another may cause added discomfort or anxiety.

Thus, in this practice as in all, we move toward one another with gentleness and with humility, and with compassion for ourselves and for others. Over time, we begin to see that this lightly turning toward one another may, over time, be the most powerful mindful teaching and learning practice that we do all semester.

## 2. Awareness and Concentration Practices

At this point, and following the preparative practices discussed above, we embark on what are for many of us engaged in contemplative education foundational practices for a contemplative-, compassion-, and mindfulness-based pedagogy. Practices which heighten what might be called personal awareness of various aspects of the present moment are essential to a contemplative teaching and learning about any topic. They are particularly important in helping people address difficult issues around race and social injustice. Awareness practices, engaged in over time, provide the ground of deep awareness and belonging that may enable touching into our own experience ever more gently, intimately, deeply, lovingly and courageously. For these reasons, I often refer to these practices -- by which we bring gentle, loving awareness to our own embodied experiences -- as “Coming Home” practices. They are the foundation of the ColorInsight approach, inviting, again and again, “a long, loving look at the real” in our everyday lives.<sup>151</sup>

### a. “Awareness of Simple Objects” Practice<sup>152</sup>

Gently turning to a single, simple object in our immediate vicinity and giving it our sole attention is a foundational practice in contemplative pedagogy. It is a practice that seems simple, but, like all revelatory practices, is more difficult when engaged than would appear at first blush. So, in the tradition of my core mindfulness practice, we begin with a simple awareness practice centered on an everyday object – classically, a raisin.<sup>153</sup>

The instructor arrives with a bowl of raisins and a spoon to enable each student to scoop out a few and pass them around. The teacher guides the group in noticing and sharing some of the various urges, reactions, stories, physical sensations that arise from this encounter with a simple raisin. Everything from latent hunger to longstanding repulsion to the story of a father who insisted a child partake in a religious tradition that she didn't want to, to “my grandmothers' tits” (indeed in a recent class of mine!) may arise. We breathe in and acknowledge this unexpected communion of diverse experiences and reactions to so simple an object as a single

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<sup>151</sup> W. A. Burghardt, S.J., “Contemplation: A Long, Loving Look at the Real” in CHURCH (1998)

<sup>152</sup> *Id.* at 97 (focused on awareness of breathing). See also [JKZ, Full Catastrophe Living, awareness of breath, and the raisin exercise]

<sup>153</sup>

raisin! We continue examining the raisin's texture, colors and other physical properties, before placing the raisin on our lips, then tongue, exploring it without immediately biting it, and then, with full awareness, biting and chewing this thing, as if for the first time.

From awareness of this simple object outside of ourselves, we turn to the project of bringing a similar level of awareness to our own experience. Instead of a raisin, we take our own experience of the breath as the next object of awareness. From there we practice separately focusing our attention on other objects of awareness – bodily sensations, emotions, thoughts, sounds, sights, etc.<sup>154</sup> We increase our emotional intelligence, our ability to recognize, accept, investigate and name the feelings that emerge in our awareness, whether they be fiery or cool, buoyant or sinking. We increase our capacity to notice and attune to the experiences of others.

Thus, as we experience these practices on a regular basis, we are doing the very often challenging work of slowing down and becoming lovingly familiar with our own experience on a more granular level than is generally the case. We are slowly awakening to our own reality, including its inherently, constantly changing nature and of the interconnectedness with all that is inevitably our experience as well – with the air we breathe, the sunlight that warms our shoulders as we sit, the clouds that have gradually settled upon our mood.

This capacity for deeper connection with various dimensions of reality, and for sensing, in our bodies, our interconnection with all, provides another essential dimension of contemplative experience and a deep resource for working together on challenging topics in our classroom settings. In time, we may direct our attention to the experience of our body in its physicality – its breadth and depth, its height and width, its color, its gender – bringing attention to the subtle ways that such characteristics affect our everyday experience of the world.<sup>155</sup> Our very and often subtle experience of race becomes the quiet object of our meditation practice.

#### b. Body Scan<sup>156</sup>

One of the most accessible practices within the basic mindfulness-based stress reduction course is the body scan.<sup>157</sup> In this practice, attention is brought to particular parts of the body, one by one, with the guidance to focus on experiencing the sensations emanating from that part of the body as completely as possible. While traditionally the practice is done while class participants are lying down, this practice, like all mindfulness practices, may be practiced in any position – including seated at a desk.

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<sup>154</sup> JKZ FCL at \_\_\_.

<sup>155</sup> *Compare* ZENJU EARTHLYN MANUEL, *THE WAY OF TENDERNESS: AWAKENING THROUGH RACE, SEXUALITY, AND GENDER* (2015) (describing how the path of awareness may be taken up through awareness of embodied identity and related lived experiences).

<sup>156</sup> Ussher et al., *Immediate Effects of a Brief Mindfulness-Based Body Scan on Patients with Chronic Pain*, *J. Behav. Med.* (2012) (In a randomly controlled study, researchers found significant reduction in chronic pain and perceived social stress as a result of chronic pain from a 10-minute Body Scan intervention).

<sup>157</sup> JKZ, FCL at 75-97.

In this practice, we start with simple mindfulness of breath, and then bring our awareness to feel the body as a whole and then to a succession of particular areas of the body (beginning, for example, with “the toes of the left foot”).<sup>158</sup> This practice encourages each of us to actually stop, rest the mind, and focus on feeling the sensations in our bodies in real time. After focusing on the left foot (the toes, the sole, the top of the foot, etc.), we dissolve the focus on that area and shift to the ankle, leg, and so on, slowly shifting our focused attention on various parts until we have covered and attended to our entire embodied being.<sup>159</sup>

Not all programs in mindfulness include the body scan. However, in the standard Mindfulness-Based Stress Reduction class, the Body Scan exercise typically is done over the course of 35-45 minutes. Recent studies indicate benefits in a body scan practice of about 10 minutes.<sup>160</sup> In my law classes, I've often abbreviated this practice, inviting students to make a sweep of awareness from say, the feeling of the feet on the floor, up through the legs, the core and mid-section, through the heart, throat region and rest of the head through the crown, noticing any points of particular tension or stress. In my experience, and even in an abbreviated form, this practice is especially useful as a means of grounding class participants in the body as a foundation for conversations that might otherwise tend to draw them up into the head and out into reactivity. However, because many of us have suffered some physical trauma in our lives, teachers should assume that one or more students may have trouble with this practice in particular, and be prepared to assist students with any challenges that arise.<sup>161</sup> Here as everywhere in ColorInsight Practice, compassion and self-compassion are essential.

c. “Self-Compassion” Practice<sup>162</sup>

Self-compassion has always been a part of the classical mindfulness practices, but has only recently been highlighted among practitioners of a variety of versions of Western mindfulness. With the advent of research and popular publications by Kristin Neff, many mindfulness teachers are now incorporating self-compassion explicitly.

Over the years, I've become more and more committed to incorporating explicit self-compassion practices into my work with students and professionals involved in highly stressful work. In my experience, such practices assist people with difficult lives in developing the necessary, felt sense of self-security and well-being that enables them to turn toward others with greater capacity.

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<sup>158</sup> *Id.* at 96.

<sup>159</sup> *Id.*

<sup>160</sup> *See supra* note \_\_\_\_.

<sup>161</sup> *See, e.g.,* Beth Berila, “Towards an Embodied Social Justice: Integrating Mindfulness Into Anti-Oppression Pedagogy,” webinar available at [http://repository.stcloudstate.edu/cgi/viewcontent.cgi?article=1000&context=ews\\_facpubs](http://repository.stcloudstate.edu/cgi/viewcontent.cgi?article=1000&context=ews_facpubs) (last visited by author on December 10, 2014) (suggesting that faculty assume that someone in the class has suffered trauma, and describing a student who'd recently suffered sexual assault and her reactions to a body scan). *See also* Deborah Orr, *The Use of Mindfulness in Anti-oppression Pedagogies: Philosophy and Praxis*, *J. Canad. Educ.* \_\_\_\_ (2002).

<sup>162</sup> *See* Kristin Neff...

A simple mindful visualization practice, adapted from cognitive psychology, involves placing one hand over the abdomen (in the region of the enteric nervous system so intricately connected with what we often call the mind that it has been called the “second brain”<sup>163</sup> and the other over the region of the heart. Breathing in with a focus on these two regions, we call to mind an image of a person, animal (perhaps a former pet) from whom we’ve experienced love, or a place which we associate with home and nurturing support. For about three minutes, breath in and out and, as much as possible, we infuse our being with this sense-memory of the experience of love and nurturing. This practice can assist students in immediately reducing anxiety, and accessing an inherent sense of wellbeing.<sup>164</sup>

In addition, research has indicated that lower degrees of self-reported self-esteem may be associated with higher levels of anxiety when engaging in other contemplative tasks. For example, one study indicated that undergraduate students engaged in a values-exploration articulating one’s values and examining one’s behavior with regard to these – suffered more anxiety during the exercise when they otherwise indicated low self-esteem. Thus, to minimize the anxiety that may arise<sup>165</sup>, it may be worthwhile to engage in practices such as these early on in the course of a classroom in which contemplative practices are offered.

d. Awareness of thoughts, sensations, emotions practices

Bringing our awareness to our experience of the body, with compassion, is a sound foundation for practicing noticing without identifying with thoughts, sensations and emotions. Through these practices, we are developing the emotional literacy and intelligence we will need to work with more challenging aspects of our experience together.

e. Choiceless Awareness<sup>166</sup>

This name “Choiceless Awareness” is given to the practice of sitting with whatever comes up, whether thoughts, emotions, sounds or the sensations of breathing.<sup>167</sup> Like many if not most of these practices, this sounds simple but requires, for many, experience practicing focused awareness practices.<sup>168</sup> The capacity for choiceless awareness aides in the work of engaging in dialogue about bias, privilege, exclusion and belonging by providing a basis for staying present and focused despite the inevitable rising and falling of distracting emotions, thoughts, and sensations.

f. Mindful Journaling<sup>169</sup>

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<sup>163</sup> See, Michael Gershon, *THE SECOND BRAIN* (1998).

<sup>164</sup> See Kristin Neff, *Self Compassion* at \_\_\_.

<sup>165</sup> See *infra* note \_\_\_ and accompanying text.

<sup>166</sup> *FULL CATASTROPHE LIVING* at 69.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *BARBEZAT AND BUSH, CONTEMPLATIVE PRACTICES* AT 125.

Traditionally, “[a] journal records the movement of one’s inner experience.”<sup>170</sup> Although reflective writing is not a novel technique in the academy, mindfulness-based journaling has the potential to assist students in reflecting not discursively, but experientially, in a way that may open up dimensions of knowing and of understanding.<sup>171</sup> Because talking about race, bias, identity-based conflict and the like can be so difficult, writing about these issues is often a good way to get participants to open up.

g. “Awareness of Technology” Practice<sup>172</sup>

Given the prevalence of technology in our lives today, mindful methods of managing technology are of genuine value. In the context of working on problems dealing with diversity, it bears noting that many have found that the online environment, including its greater tendency toward anonymity, unleashes more freedom to act uncivilly, and in some cases with racial or other bias.<sup>173</sup> Thus, practices that specifically invite reflection on the thoughts, sensations and emotions that arise while engaging with technology may be of particular value to those working to bring ColorInsight to bear in their interfaces with technology.

3. Mindful Movement Practices

a. Simple Yoga<sup>174</sup>

Derived from ancient practices developed in India, yoga has been described as a means of unifying mind, body and spirit through the discipline of physical movement.<sup>175</sup> In classes dealing with identity and oppression, movement-based practices can assist by supporting us in staying present to sensations that signal distress, distraction, and other triggers of reactivity. Greater awareness assists us in moving from reaction to response. Teachers have used these practices to assist, for example, in courses on Gender and Sexuality and other anti-oppression classes.<sup>176</sup>

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<sup>170</sup> *Id.*

<sup>171</sup> See Francisco Varela, *The Embodied Mind* (19\_\_ ). See also Mirabai Bush, *Contemplative Practices in Higher Education*, *Contemporary Buddhism*, 183, 188 (2011) (describing contemplative epistemology as “suspension of disbelief (and belief) through direct observation, by being fully present in the moment). See also, Magee, *infra* note \_\_ at 583-85, 585 n. 280 (recognizing the epistemological value of contemplative education in law).

<sup>172</sup> David Levy, Jacob O. Wobbrock *et al.*, *The Effects of Mindfulness Meditation on Multitasking in a High-Stress Information Environment* (2011) (indicating that mindfulness training may increase concentration and reduce stress when interacting with technology under high-stress circumstances).

<sup>173</sup>

<sup>174</sup> *Id.* at 166-70.

<sup>175</sup> *Id.* at 168.

<sup>176</sup> *Id.* at 169 (discussing Professor Cressida Hayes’ class at the University of Alberta). See also Beth Berila, *Toward and Embodied Anti-oppression Pedagogy* (discussing [anti-oppression course in which yoga practice is incorporated]).

b. Walking Meditation<sup>177</sup>

Walking meditation is an invitation to use the simple, ubiquitous act of walking as a means of bringing awareness to the mind and body in the here and now.<sup>178</sup> The practice involves simply bringing one's awareness to the sensations of walking – lifting one foot, shifting the weight, feeling the ground beneath the feet, etc. – and allowing the mind to rest on these movements.<sup>179</sup> This basic mindfulness practice supports participants in deepening their core mindfulness practice and enhancing mindfulness as a capacity or trait.

4. “Beholding” Practices<sup>180</sup>

In the following practices, the instructor invites students to settle into being with one another and with the suffering of others from a place of greater awareness of self and others. Doing so creates space for deepening inner capacity to turn towards rather than away from the difficult, and to emerge from such courageous engagement stronger, both within oneself and in relationships with others.

a. “Seeing Another/Seeing Suffering” Practice<sup>181</sup>

As noted above, simply inviting students to take a few moments and look into the eyes of their fellow class members is a practice leading to enhanced awareness. In classes and discussions focused on the role of race, gender and other social identities in our lives, gentle guidance in bringing our awareness to the racial dimensions of our own gathering is often one of the first awareness practices with which we may struggle together. In these classes, we invite students to reflect on what they know and do not know about the relevance of race and gender, based on their own experiences. A facilitator may then invite a period of reflection on the injuries at stake, and an important aspect of that is to acknowledge the reality of the experiences of the embodied beings inhabiting our learning spaces together. Specific prompts may include: “How have I been injured around race/identity?” and “How and where have I caused harm?”

Some may find explicit references to and examination of race to be challenging, given that we have, for many years, been led to believe that it is through “colorblindness” that we heal the divisions of race and racial hierarchy in our society. Some anxiety around discussions of these issues in mixed company is to be expected. We inquire into those sensations and feelings as a prelude to the discussion. What sensations arise in each of us as we turn toward a discussion of race? What feelings may be beneath these?

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<sup>177</sup> *Id.* at 161-66.

<sup>178</sup> *Id.* at 161.

<sup>179</sup>

<sup>180</sup> Barbezat and Bush, CONTEMPLATIVE PRACTICES at 148.

<sup>181</sup> *Id.* at 98. See also BERNIE GLASSMAN, BEARING WITNESS: A ZEN MASTER'S LESSONS IN MAKING PEACE (1998).

However, like all facets of our lived experience, experiences around race and gender in our lives have much to teach us. We cannot learn the lessons embedded in these dimensions of experience if we are unwilling to name and examine them.

b. "Sitting/Freewriting with Personal Suffering Around Difference"<sup>182</sup>

Sitting with suffering involves guided reflection on the ways we have experienced, or we have witnessed others being treated disrespectfully as a result of social identity. We are examining what we know about the prevalence and consequences of Othering in our lives. The practice may be conducted alone, in pairs, or in small groups. We then invite the groups to share out and reflect together on what they know.

c. "Bearing Witness"

This practice invites the group to experience, together, turning toward suffering in their midst. This practice may involve taking students or participants to a location, such as a memorial or museum, or other scene of suffering or injury.<sup>183</sup> Alternatively, still photos or video clips may be brought into the class or retreat site to be viewed together.

Participants are invited to come into their bodies and to the breath. Keeping a focus on thoughts, sensations and emotions that arise, the invitation is given to bear witness, to watch and to take in as much as possible. Reflection and discussion prompts that follow might include, "What did you see?" and "What insights arise about the suffering that you witnessed here?"

A topical, current, and perhaps local incident provides a way of bringing the circumstances of the broader present moment into awareness. For example, at a recent event, I included a showing of the Eric Garner police brutality incident in Staten Island, NY.

Encountering such suffering while in a group presents an opportunity to experience working together to support our deepening capacity to face suffering and work together for change. We work to hold the difficulty arising in ourselves with gentleness and spaciousness, noting as we go that everyone's experience is valid, and worthy of honor. Following a period of self-reflection and meditation, we turn to small-group discussions of what arose. This is followed by a skillfully facilitated large group discussion.

As with all of these practices, care should be taken in selecting the subject of the witnessing, and participants should be reminded, again and again, of their own responsibility for self-care, and the permission they always hold to withdraw, even leave the room, should the experience prove too much.

## 5. Mindfulness and Personal Identity

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<sup>182</sup> *Id.* at 133 (on Freewriting).

<sup>183</sup> See BERNIE GLASSMAN, BEARING WITNESS: A ZEN MASTER'S LESSONS IN MAKING PEACE (1998).

a. Examining the Sense of Self<sup>184</sup>

While we are often raised to view the world through the lens of identities such as race, gender and religious affiliation, and to define ourselves with reference to such identities, we are legally obliged to think of ourselves as individuals.<sup>185</sup> Thus, in diverse learning communities, we are challenged *both* to think in terms of social identity groups and group dynamics, *and* at the same time to examine our individual self-concepts and perhaps construct new ones.<sup>186</sup>

b. Mindful “Scripting and Rescripting” Dyads<sup>187</sup>

In this practice, class members are supported in sharing their stories, seeing them through different perspectives, and, if desired, “re-storying” or “re-scripting” their own lives. Students are supported in seeing the gifts of their own, unique sets of experiences and backgrounds, and understanding that such backgrounds present positions that provide a basis for knowledge and understanding about various dimensions of race, or for blindspots about the same.

6. Compassion, Empathy and Equanimity Practices

a. Taking on and Transforming Suffering<sup>188</sup>

Bringing a compassionate eye to the witnessing of suffering is an important step in developing the capacity to transform it. The practice of taking on suffering and sending the wish for its relief from that suffering to others is a traditional practice within Tibetan Buddhism known as “Tonglen,” or “Taking and Sending” practice. As modified here, students are invited, on an in breath, to consciously take in the suffering of others, and on an out breath to send relief from that suffering. Here, as elsewhere, I include a guidance that students begin by centering themselves and engaging in a lovingkindness or self-compassion exercise as a ground. In this way, students are actively supported in developing equanimity around these various dimensions of experience and levels of suffering in our world.

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<sup>184</sup> *Id.* at 100.

<sup>185</sup> Adams, *infra* note \_\_ at 8.

<sup>186</sup> See, e.g., Louis Hoffman et al, *Toward a Sustainable Myth of Self*, *Journal of Humanistic Psychology* 31-32 (2008) (Suggesting a fluid, paradoxical myth of the self might support an individual in holding both individualist and collectivist notions of self in health-inducing ways, and noting the particular potential of this notion of self for assisting those dealing with the challenges of social identity in the world).

<sup>187</sup> Elizabeth Anne Erichsen, *Mindful Scripting: Three Practices Toward and Embodied Philosophy of Transformative Learning*, *Applied Social Sciences: Education Sciences*, 17-24 (2013)(discussing mindful narrative identity rescripting, and arguing that “narrative, as a practice of exercising a person’s narrative cognitive abilities, is a contemplative practice”).

<sup>188</sup> Barbazat and Bush at 181. [A variation of Tonglen practice] See Joanna Macy’s example. And the “Taking and Sending” described by Chodron and [ ].

b. “Just like me” Practice<sup>189</sup>

In this practice, students are paired and instructed to look into one another's eyes as the instructor intones a series of phrases which underscore the similarity that exists across or in spite of any apparent or presumed differences.

Settle in, bring your awareness to your breath and to your body sitting, and gently take in the person sitting before you. Notice any tendency to look away. Now consider that the person before you has known love. Inwardly recite the phrase “Just like me, this person has loved, and has been loved.”<sup>190</sup> And, “Just like me, this person has known pain and loss.”

Through these practices, students experience in real time the sense of identity with another that has the potential to dissolve the sense of social distance or even enmity that may exist as part of the “story” of our racialized differences, or of the lived-experience of students in that space together prior to the engagement in such exercise.

c. Lovingkindness Practice<sup>191</sup>

Lovingkindness practices have become more important to the practice of mindfulness in America over the coming few decades.<sup>192</sup> The lovingkindness practice is one of the four abodes of mindfulness – compassion, lovingkindness, sympathetic joy and equanimity.<sup>193</sup> Lovingkindness is a practice of meditation incorporating visualization, with the specific goal of increasing positive feelings toward self and others.

Instructors invite participants to inwardly recite such traditional phrases as the following:

May you be filled with lovingkindness  
May you be well in body and mind  
May you be safe from inner and outer dangers  
May you be truly happy and free.

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<sup>189</sup> *Id.* at 180.

<sup>190</sup> *Id.* Buddhist Teacher and ecological philosopher Joanna Macy has developed a similar practice for activists called “Learning to See Eachother,” described in detail here: <http://www.joannamacy.net/engaged-buddhism/spiritual-practices-for-activists.html> (website last visited by author on January 2, 2015).

<sup>191</sup> *Id.* at 178.

<sup>192</sup> The work of Insight Meditation Society founder Sharon Salzberg may be largely credited for this development. *See* Sharon Salzberg, *Lovingkindness*:

<sup>193</sup> The abodes, or brahmaviharas, arise with meditation. *See*....

In classes in which I have offered these practices, students have reported experiencing a greater sense of well-being, compassion, safety in the space, and trust amongst one another.<sup>194</sup> These feelings of safety have contributed to the expansion of space within which to practice taking risks to express, to question, to explore together thoughts, sensations and emotions around race that are otherwise often kept underground.<sup>195</sup>

d. Finding Common Ground with “Enter the Circle” Practice<sup>196</sup>

This practice encourages an embodied recognition of connections we may have with others around dimensions of shared life experience that are not obvious. It invites a public acknowledgment, in a non-threatening exercise, of aspects of who we are that one cannot see, and which may be relatively hidden (intentionally or unintentionally) in social discourse.

There are many variations of the practice, but what they share is an invitation to stand together, typically in a circle, and to “step into the circle” if the statement spoken by the facilitator applies to him or her.<sup>197</sup> In my experience, students visibly relax, smile and soften with one another’s experience and humanity as this practice supports them in experiencing themselves and one another more fully as individuals-in-community with others.

e. “MLK’s Equanimity” Practice<sup>198</sup>

The practice is suggested by Arthur Zajonc in his book entitled, *Meditation as Contemplative Inquiry: When Knowing Becomes Love*, and it invites participants to reflect on the story of how King quelled a crowd intent on revenge. The reflection practice to follow invites participants to think of a situation in which they are feeling rage, and image accessing a higher self that might assist them in seeing both (or more) sides of the dispute from the vantage point of the whole, and to discuss, first in dyads and then in a large group, what insights arose in that inquiry. It’s a practice that not only builds the capacity for balanced holding of experience but also of grounding oneself in such balanced holding of mixed and emotionally-charged realities as a prelude to making mindful, wise judgments.<sup>199</sup>

f. Gratitude Practice<sup>200</sup>

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<sup>194</sup> See mid-course evaluations, *Introduction to Race and Law: Practices, Policies and Professionalism*, Spring 2015 (on file with author).

<sup>195</sup> [cite Green, *Racial Emotion*]

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<sup>197</sup> Maurianne Adams, Lee Anne Bell, and Pat Griffin, *TEACHING FOR DIVERSITY AND SOCIAL JUSTICE*, 161 (2d ed. 2007) (Describing a variation of this exercise called “Exploring Differences and Common Ground”).

<sup>198</sup> Arthur Zajonc, *MEDITATION AS CONTEMPLATIVE INQUIRY: WHEN KNOWING BECOMES LOVE* (2009) AT \_\_\_.

<sup>199</sup> See, e.g., Jennifer Nedelsky, *Receptivity and Judgment*, 4 *Eth. & Glob. Pol.* 231, \_\_\_ (2011) (Describing the role of mindfulness in recognizing bias, opening to difference perspectives and judging more effectively).

<sup>200</sup>

Research is confirming the value of gratitude practice for increasing well-being. However, what are not as well-known are findings that indicate that such practices increase our sense of capacity to give and support others. Simple practices such as daily identification of three things for which one is grateful; or, writing a letter of gratitude to a teacher or other person who has assisted us in our lives.<sup>201</sup>

Thus, asking students to think back over the prior week or day, and identify three things for which he or she is grateful assists in creating the sense of positivity, optimism and generosity that can assist students in feeling capable of turning toward difficult topics such as racism and pervasive bias.

## 7. Values Clarification

Our work to examine issues of social identity is not done in a vacuum, nor engaged in without purpose. Like all societies, our own engages simultaneously in projects aimed at reinforcing or increasing hierarchy, and those aimed at leveling or diminishing it.<sup>202</sup> Instructors working on examining the operation of social identity in our lives and discussing related issues are aided, then, by explicitly considering their own values and objectives in pursuing this work, and in assisting students in doing the same. Studies indicate that supporting students in reflecting on and identifying their values can assist them in improving their performance.<sup>203</sup> My own experience indicates that doing so helps provide receptivity to the challenging work of turning toward the study of race and racism in law and in our own lives.

### a. Mindful Journaling<sup>204</sup>

While journal writing assignments are commonplace among educators, mindful journaling invites reflections that include not only cognitive or discursive thought, but also reflections on thought, sensations and emotions. Students are invited to reflect on various dimensions of experience as they arise as a prelude or a post-script to a more traditional assignment such as reading or watching a video.

Mindful journaling may be assigned as part of preparation in advance of class, or as an in-class intervention and support. In my own work, such writing exercises assist students in processing the thoughts, sensations and emotions that arise in themselves in response to learning about racism and oppression in our lives.

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<sup>201</sup> See, e.g., Grant A. M., et al., *A Little Thanks Goes a Long Way: Explaining Why Gratitude Expressions Motivate Prosocial Behavior*, *J. of Personality and Soc. Psych.*, Vol. 98, No. 6, pp. 946–55 (2010). [See also...]

<sup>202</sup> See Sidanius and Pratto, *Social Dominance Theory...*

<sup>203</sup> Miyake, A., Kost-Smith, L. E., Finkelstein, N. D., Pollock, S. J., Cohen, G. L., & Ito, A. (2010). Reducing the gender achievement gap in college science: A classroom study of values affirmation. *Science*, 330, 1234–1237.

<sup>204</sup> Aviva Katz, Stephanie J. Czech, Susan M. Orsillo, *Putting Values Into Words: An Examination of the Text Characteristics of Values Articulation*, 2014, *Journal of Contextual Behavioral Science*, Vol. 3, 16-20.

b. Dyadic Inquiry Practice

This practice permits students to apply listening and speaking mindfully practices (discussed below) to the specific project of exploring their values. In pairs, students take turns responding to prompts that aim to assist her in clarifying her values. The speaker is supported in delving beneath first thoughts by successively inquiring as to what else might be underneath the statements of value already made, until arriving at a more fundamental or essential level of truth regarding values held. It is through the reflection on one's own values in this way, held in the nurturing support of the combination of one's own and a partner's compassionate awareness that a personal, mindful ethics may arise.<sup>205</sup>

8. Listening and Dialogue Practices<sup>206</sup>

a. Mindfulness of Sound<sup>207</sup>

Our capacity to receive sound without judgment is may also be a subject of contemplative practice. For example, along with breath and the body generally, mindfulness of sound is a key practice within M.B.S.R. [cite Jon Kabat-Zinn, FCL]. Bringing mindful awareness to sound, without rushing to interpret sound and seek to create meaning is another practice that may be adopted to heighten focus and attention and to calm the mind. As a prelude to dialogue practices, it assists us in attuning to the voice of another in ways that may lead to more presence to the deeper meanings conveyed by others.

The practice involves simply sitting, bringing awareness to breath and then noticing any sounds that occur. We simply label them as sound, noticing perhaps when they arise and fall away, and any impact on the body, or tendency to go into a story about what the sound represents. By developing this capacity to hear sound with less judgment, we enhance our capacity to hear words with an ear for the multi-dimensionality of the messages they convey. Such capacity may assist us in maintaining a sense of well-being when sounds (including words) might otherwise threaten to overwhelm or disrupt our sense of equanimity. It may also assist us in the work of listening to another in the practice known as Insight Dialogue.

b. Insight Dialogue<sup>208</sup>

Buddhist teacher Gregory Kramer teaches an approach to mindful communication based on traditional approaches and teachings.<sup>209</sup> With the simple instructions to pause; relax; open;

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<sup>205</sup> See Russell Kolts and Thubten Chodron, AN OPEN-HEARTED LIFE: TRANSFORMATIVE METHODS FOR COMPASSIONATE LIVING FROM A CLINICAL PSYCHOLOGIST AND A BUDDHIST NUN (2015).

<sup>206</sup> Barbezat and Bush at 137-47.

<sup>207</sup> *Id.* at 139-142.

<sup>208</sup> Gregory Kramer, INSIGHT DIALOGUE (2007).

<sup>209</sup> *Id.* at \_\_\_.

trust awareness; and, speak the truth, the Insight Dialogue approach supports bringing communication as a practice of mindfulness in its own right.

Insight dialogue is an important inspiration for ColorInsight Practice. Communication is an important site for the practice of ColorInsight, as so much of the challenge of addressing race more effectively manifests in difficulty simply talking about the issue in mixed company. Insight dialogue promotes a framework for opening to ways of bringing mindfulness to each of the dimensions of the dialogue process. We pause, allow thoughts to settle and open to the wisdom and honest truth that might support deepening connection, while trusting in the process of bringing awareness into the experience of being with another. Only then do we speak. Meanwhile, the listener settles into presence and invites the speaker to presence in a safe container in which the truth may be spoken. The speaker listens not merely for the words spoken, but also, for the body language through which deep meaning is most often conveyed.

## 9. Acknowledgment and Reconciliation

### a. Mindful Narrative Practices<sup>210</sup>

Storytelling – an ancient art form and valuable human form of narrative expression<sup>211</sup> -- may be employed in many different ways in the classroom. Personal narrative practices in particular may be infused with mindfulness to assist members of a learning community in coming together to share the particular experiences that inform their lives and views.<sup>212</sup> “Our experiences hearing and telling stories create the capacity for us to engage in perspective taking, empathy, critical thinking and nuanced ways of understanding the world.”<sup>213</sup> This is so in part because of the way our brains typically work – creating schemas, biases, and pre-figured understandings, based in part on the stories we have been told and retell to ourselves. Hearing and telling new stories, then, has the potential to assist in creating new neural pathways, increasing or decreasing bias.<sup>214</sup>

Bringing mindfulness together with storytelling results in mindful narrative or storytelling practice. Such a practice involves inviting the storyteller and the listener to interact, bringing attention and awareness to the telling and the listening to one another's stories. The

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<sup>210</sup> James D. Pennebaker and Janel D. Seagal, *Forming a Story: The Health Benefits of Narrative*, 1999, *Journal of Clinical. Psych.*, Vol. 55, Issue 10, 1243-54; Barbezat and Bush at 135 (describing storytelling practices). See also Chimamanda Ngozie Adichie, “Danger of a Single Story,” TED Presentation, transcript available at: [http://www.ted.com/talks/chimamanda\\_adichie\\_the\\_danger\\_of\\_a\\_single\\_story/transcript?language=en](http://www.ted.com/talks/chimamanda_adichie_the_danger_of_a_single_story/transcript?language=en) (last visited by author on December 8, 2014).

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<sup>212</sup> F. Michael Connelly and D. Jean Clandinin, *Stories of Experience and Narrative and Inquiry*, *Educational Researcher*, Vo. 19., No. 5, (1990).

<sup>213</sup> Rachel Godsil and Brianna Goodale, *Telling Our Own Story: The Role of Narrative in Racial Healing* at 2-3 (2013) (citing Ochs, Taylor, Rudolf and Smith, *Storytelling as a Theory-Building Process* (1992)).

<sup>214</sup> *Id.* at 13.

practice is structured as a "looping"<sup>215</sup> exercise in which each person takes a turn, and is given 3 minutes as Speaker, with uninterrupted time to share, with the other mindfully listening for the words and watching the body language through which deeper meaning might be conveyed; the second party then reflects for 2 minutes on what impacted them about their partners story, focusing on reflecting key words, phrases and gestures. The original Speaker then has 2 minutes to "close the loop" by amplifying intended meaning or sharing ways they felt heard. The parties then switch role. Afterwards, they are given a final few minutes for cross-talk and expressions of gratitude, before coming back together as a group to discuss insights that arose during the experience.

Careful facilitation of a discussion of these stories may assist in exploring the role of bias, perception and conditioning in shaping the stories we tell, and in moving participants toward an expanded sense of the story of their lives, of the self, and of the complex multi-dimensionality and relative nature of experience. Mindfully reflecting together on how our perspectives and conditionings shape our interpretations of experience and the stories we tell and retell, the practice assists us in creating space between our stories and the inner witness, a space within which more of the truth may more fully enter one's consciousness and understanding.

b. "Weaving our Stories Together" Practice

"Our brain serves a social purpose, connecting us as creatures in a larger community through interwoven stories."<sup>216</sup> This practice evolved out of the experience of teaching diverse groups of students and meditating on the ways the experiences of each interconnect with the experiences with the others, revealing a wholeness that underscores how experience of race and gender and other social identities builds off of experiences of so-called others.

The practice begins with a meditation on the concept of a mosaic or a rhizome, in which new entity emerges when we see the interconnected nature of previously disconnected parts. Members engaged in narrative/storytelling practice in dyads, share out their stories within a large group, and after a break, the "Weaving our Stories Together" practice may be introduced. The invitation is to allow members to examine ways in which aspects of their experiences in some ways might be seen as intersecting.

For example, students interview family members to learn where family members were raised and settled. Looking at the details of such neighborhoods, including their economic and social makeup, the students are then given to understand how themes of history intersect with and link the experiences of others in their own lives. Through personal investigation and reflection, interpersonal sharing, and then large group discussion, participants are more able to sense and deeply understand the links between their own personal experiences, opportunities and/or deprivations and the similar or divergent experiences of others. Eventually, this practice supports the felt understanding of the notion of interdependence, and even of inter-dependent co-arising, of experiences in the social world, such as whiteness and blackness, privilege and

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<sup>215</sup> Gary Friedman, *Inside Out* (2014)

<sup>216</sup> *Id.* at 10.

subordination. They may also be supported in sensing into the positive, even joyful consequences of acknowledging our fundamental interconnectedness.

## 10. Circle and Group Healing and Celebration Practices

### a. Sitting and Standing Together with Suffering

Sitting together in awareness of our diverse backgrounds and integrated community is a practice drawn from the experience of being in religious or spiritual communities. Many of us hail from communities and traditions in which holding hands or sitting together in silence is a part of our experience of contemplative community. This practice adapts such practices to the secular classroom setting.

In sitting or standing together with suffering, we invite or call to mind an example of an injustice or instance of suffering, creating the space together in which to experience our collective suffering and individual suffering together. The guided instructions move from contemplating a given incident to sensing into whatever arises within each of us as a result, in terms of thoughts, sensations, emotions or imagery. Together, we bear silent witness to and honor the suffering that ripples from this incident. In the course of this practice, we promote individual and collective healing, and increase our capacity to create spaces for such wounding growth as incidents occur in our lives and communities.

### b. Forgiveness Practice<sup>217</sup>

Given that the incidents that make up oppression – micro- or macro-assaults, aggressions and invalidations -- so often leave lasting wounds, forgiveness of self and others may be important aspects of in the healing process. Forgiveness practices invite reflection on various dimensions of experience to which forgiveness may be directed, including forgiveness of self and forgiveness of others.

Forgiveness practice is not easy, nor guaranteed to relieve the sense of woundedness to which it is addressed. For this reason, the instructor may best have participants begin with a “small harm” and invites tackling more serious or deep woundings only in time and after more extensive practice or sense of capacity to turn to more difficult harms and challenges. Students are to be reminded that non-judgment and non-shaming are important attitudes underlying ColorInsight practices. Again, compassion for self is critical as such practices are explored, whether alone or in a group, class setting.

### c. Contemplative Group Reading<sup>218</sup>

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<sup>217</sup> See, e.g. JACK KORNFELD, *A PATH WITH HEART* (2---) at \_\_\_.

<sup>218</sup> Maria Arias and Victor Goode (collective reading of MLK’s Letter from a Birmingham Jail); see also CONTEMPLATIVE PRACTICES at 113 (referred to as *Lectio Devina*, the name given this practice within Catholicism).

This practice, which I've referred to as "reading ourselves whole," is a simple exercise that may be used to assist a group in experiencing the oneness of the whole. Adapted from the practice developed by Ignatius of Loyola for Jesuits, it involves collectively reading a single piece of writing, with a line read in turn by each member of the group until completed. Poems, inspiring quotes or other pieces may be selected for this practice. The practice embodies inclusion, and effectively weaves together individuals into a whole working together to bring a piece of reading to life. A well-chosen piece can indeed make a group of individual readers nearly "sing" as one.

An example of this took place recently at an event at which I offered the following quote be used to support a Contemplative Group Reading by members of a reception party honoring the contemplative path to absolute inclusivity and welcoming, numbering in the range of 80 people:

*"In a real sense all life is  
inter-related.*

*All men are caught in an inescapable  
network of mutuality, tied in a single  
garment of destiny.*

*Whatever affects one  
directly, affects all  
indirectly.*

*I can never be what I ought to be  
until you are what you ought to be,  
and you can never be what you ought to be  
until I am what I ought to be...*

- *Dr. Martin Luther King, Letter from a Birmingham Jail*

Following the reading of this text together, the group of "individuals" experienced a genuine shift in their awareness of one another and of our interconnected-differences. Such a practice, engaged within a context of compassion and lovingkindness, assists us in seeing one other more effectively, and sets the stage for more effective working together.

## 11. Practicing and Working Together with Intention

### a. “Working With Supported Oneness”

In this practice, which evolved from work in the classroom and the desire to incorporate ways of moving from independent leadership development and a sense of its particular importance in a given community, I invite students to deepen their own capacity by sensing into the multiple strands of experience which support them in the work. Specifically, students either stand or sit, bringing awareness to the fullness of their experience (vertically, horizontally, and depthfully), and to reflect on all of the lives and experiences, known and unknown, who together meet in their particular embodied expression of life in this moment. I invite them to breathe into the sense that these experiences that exist in their own experience for the work of dealing with difference more effectively. Students reflect on the various supporters and inspiring teachers in their own pasts, as well as the strengths they bring to the work of dealing with difference in diverse communities.

### b. Engaged Project Practices<sup>219</sup>

To explore the practices of ColorInsight in their systemic dimensions, Engaged Project Practices may be part of the culmination of the experience of the learning community. Such practices engage groups of students of 5 or more, up to the size of the class as a whole, in developing a teaching and learning project incorporating ColorInsight Practices.

For example, students may be given an assignment to work together on an issue at the intersection of race and law in the news in their particular locale. In a city facing the revelation of racist email exchanges among police officers, students might be asked to consider how to gather relevant facts, analyze the relevant issues, and suggest reform measures that a supervising agency might take. In all of this, they would be asked to work with one or more partners, incorporating ColorInsight practices among themselves, and considering what practices they would suggest be considered to assist others in dealing with this issue – including members of the police force themselves. They may be asked to take a particular legal issue, and discuss the analysis of that issue according to the applicable law and policy, and then consider what ColorInsight Practices might assist in deepening understanding or capacity to understand or address the relevant issues.<sup>220</sup>

## 12. Concluding Practices<sup>221</sup>

### a. “Letting Go” Practice

Throughout a given course, a variety of letting go practices may be explored, from the minor, everyday invitation (e.g., to pause during our mindful dialogues, taking in the comments

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<sup>219</sup> CONTEMPLATIVE PRACTICES at 183.

<sup>220</sup> See Appendix A for an exemplar of such an assignment.

<sup>221</sup> *Id.* at 50.

of others, letting go of the thoughts at some point and allowing the other to take her turn) to the more significant challenges of releasing strong emotions and attachments.

This practice ultimately includes letting go of the experience of the class community itself, and turning toward the open door of the next moment, the next opportunity to connect, to grow and to learn together. In the "Passed Treasures" practice, each student is asked to bring something to class that has had true meaning and value to them, but with which they are ready to part. In class next, students are invited to share their wrapped gift by circulating it in class, acknowledge and share with one another ways they have been impacted by one another and their hopes for the recipient of their passed treasure, and then to support one another in turning toward to larger world, with the benefit of the collective well wishes of their classmates, and of the particular support intended to be conveyed by the give they've received. As a culmination of this practice, I pass, to each student, a treasure selected as appropriate for the members of our class, whether an etched stone (with words such as "Breathe," "Wisdom," or "Gratitude") or a small amethyst geode (the symbol both of intuition).

#### b. Integration Practices for Ending and Beginning Again

Thich Nhat Hahn, a renowned teacher of Buddhism with a focus on its potential to transform injustice in the world, describes the practice of ending violence and promoting inclusivity as requiring an ongoing, daily commitment to compassion and understanding that extends to every part of one's life.<sup>222</sup> In the spirit of this teaching, I end each semester's class with one or more of several practices aimed at supporting the ongoing infusion of one's life and work with the commitment to compassionate, inclusive understanding. To support this commitment, I guide students in practices that remind them of their deep values; of what and how they have learned over the course of the semester; and of how regular practice assists them in keeping engaged in the daily work necessary for transformative change. We may light a candle to represent the transmission of the light generated in and by this learning community to and through the light we'll represent in the world.

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<sup>222</sup> THICH NHAT HANH, *CREATING TRUE PEACE: ENDING VIOLENCE IN YOURSELF, YOUR FAMILY, YOUR COMMUNITY AND THE WORLD*, \_\_ (2004) ("Exclusion, getting caught in our views, is a deep-seated habit that arises from fear and misunderstanding of others. To transform our habit of excluding others, we must practice and develop understanding and compassion in all parts of our life.")

## **Appendix B:**

### **Some Resources for Additional Study, Skill-building and Practice**

#### **Mindfulness Practice and Teacher Training:**

University of Massachusetts Center for Mindfulness, Oasis Teacher Training

Engaged Mindfulness Institute, <http://engagedmindfulness.org/training/faculty/>

Spirit Rock Meditation Center, Woodacre, California

New York Insight Center, New York, New York

Warrior One Teacher Training Program

#### **Mindfulness Books (General and Identity-Focused):**

JON KABAT-ZINN, FULL CATASTROPHE LIVING: USING THE WISDOM OF YOUR BODY AND MIND TO FACE PAIN, STRESS AND ILLNESS (2013 REVISED ED.)

DONALD MCCOWN, DIANE RIEBEL, AND MARC S. MCCOZZI, RESOURCES FOR TEACHING MINDFULNESS: A CROSS-CULTURAL AND INTERNATIONAL HANDBOOK (FORTHCOMING, 2016)

ZENJU EARTHLYN MANUEL, THE WAY OF TENDERNESS (2014)

#### **Resources for Incorporating Mindfulness Into Higher Ed Classrooms:**

Center for Contemplative Mind in Society, [contemplativemind.org](http://contemplativemind.org)

Daniel Barbezat and Mirabai Bush, CONTEMPLATIVE PRACTICES IN HIGHER EDUCATION (2013)

Beth Berilla, INTEGRATING MINDFULNESS INTO ANTI-OPPRESSION PEDAGOGY (2015)

#### **Resources on the Pedagogy of Race, Identity-Safety and Inclusivity**

MAURANNE ADAMS, LEE ANN BELL, PAT GRIFFIN (EDS.) TEACHING FOR DIVERSITY AND SOCIAL JUSTICE (2007)(2d ed.)

Stephanie Wildman, Margalynn Armstrong, *Teaching Race, Teaching Whiteness: Transforming Colorblindness to Colorinsight*, 635 N.C. L.Rev. 86 (2008)

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“Three Practices for Teaching for Diversity”

<http://www.middlebury.edu/academics/writing/teaching/three-practices-for-teaching-for-diversity-and-social-justice>