

Imagine

BY ROBYNN MORAITES

Imagine for a moment that you and your firm have an appeal going up to the Fourth Circuit and you are handling oral argument. Imagine the amount of prep work. The research. Writing and rewriting the brief. Fine tuning your arguments. Anticipating every curveball, every factual question, every procedural nuance. Rehearsing practice arguments with colleagues. Fielding tough questions. There is a lot at stake and your client is depending on you. Can you see it? Have you actually been there? How would you feel? Like a warrior? Excited? Honored? Up to the task? Nonchalant because it's just part and parcel of the job? Tough? A teeny bit nervous? Assured? Some of all of the above? You have a real opportunity here. You're so prepared you start to dream about the case.

When the day comes, you're ready to go. Up early. Best suit. Great shoes. If you are a woman, you've done your hair and makeup just right. You are polished. Professional. Confident. Prepared. A little mindfulness practice, a couple of (quick!) slow deep breaths, and in you go. You have given it your all, and all that remains is to give the actual oral argument. The appellant attorney argues his case. The justices asked tough but fair questions. You are then called to the podium.

You put your legal pad on the podium. As you look up and say, "May it please the court," one of the justices swivels his chair 180 degrees so that his back is to you. He remains that way for your entire oral argument. It is only when you thank the court for its time and sit down that he swivels his chair back around to face you.

What would be going through your mind if that happened to you? What in the world would you tell your client?

Now I ask you to imagine a different scenario. Imagine it is a few years ago. You have a business client who specializes in fiberoptic cable and digital wiring solutions. With the new building codes that have been promulgated and the emergence of digital day-to-day office needs, he has a large, new,

highly profitable potential market sector: commercial buildings. Most were built before the rise of the technological tools we use today. Commercial building owners and property managers are realizing that to remain competitive, they need to retrofit wiring solutions into their buildings. He approaches you about how to structure this new offering. You meet with him several times to discuss different contract and work order structures, payment models, potential risk exposure and how to mitigate it. He is excited and asks you to structure the very first deal he has with a well-known commercial real estate property owner/manager. He has set a meeting with them to sit down and have an initial talk about the project and if everyone is amenable, he'd like you to draft the contract. He's asked that the meeting take place in your law office.

On the day of the meeting, your assistant buzzes you to let you know your client arrived a few minutes early as did the commercial real estate team and their lawyer (five people). You ask her to go ahead and show them all to the conference room, that you are on your way. You head to the conference room and through the glass wall you see everyone is animated, laughing and talking to each other. As you come into the room a hush falls over the room. You assume it is just because everyone is going to get down to business. But as you take your seat next to your client, the folks on the other side of the table start looking around at each other nervously. The following conversation takes place:

Client: "Okay. Let's get started."

Head of real estate team, hesitant, awkward: "This is not what we expected."

Client: "What do you mean? We arranged to have an initial talk."

Head of real estate team, again looking at his team awkwardly: "This is not the kind of lawyer we expected."

Client: "Huh? What do you mean? He's fully up to speed on the deal and he knows my line of business."

Head of real estate team, still looking



awkward as he and his entourage stand up and leave the room: "This isn't what we were expecting."

The lone female quickly looks over at you and kind of shrugs an embarrassed, I'm sorry look as they depart.

This all takes place very quickly in a matter of about 30 seconds. You know what is happening, but your client is dumbfounded. He looks at you, "What just happened?"

You explain, "Your deal will happen. It's just not going to happen with me. I can refer you to a couple of other attorneys I know who will do a good job."

Now I ask you to imagine one last scenario. You used to work at the public defender's office. You are now working on the prosecution side. You have been with the DA's office just two weeks. You've called the calendar. An attorney approaches you. He reports that he worked out a deal with another prosecutor for his client, who is on the calendar today. He tells you the details of the deal. It all sounds good and makes sense. He asks you to dismiss the case against his client. Because you don't know this attorney, weren't involved in negotiating the plea, the other prosecutor didn't mention it, and you are so new on the job you don't even yet have a relationship established with the other prosecutor, you ask him to go ahead and pull his case off the calendar and take it to the

courtroom two doors down where the other prosecutor is appearing in court today to have him dismiss it directly.

Does this straightforward, professional, reasonable and responsible request warrant anything other than a response of, “Sure. No problem.”?

Instead, the attorney looks irritated, turns and walks away from you. As he walks out the side door of the courtroom a few feet away from you, you hear him say, not quietly, “F*cking n****r.”

These are true stories. If you haven’t yet guessed, the common thread of each of these stories is they happened to Black lawyers. For those of us who are white, we can picture ourselves in each of those scenarios right up until the surprise twist at the very end. These circumstances are unimaginable—unfathomable—to most white lawyers. So much so, we are incredulous. It is hard for us to believe that these things are still going on today.

These events did not happen in 1964. They all happened within the past few years to lawyers who are currently practicing law. I wrote the stories the way I did so that we might spend a few minutes in someone else’s shoes.

I have heard these stories, and many (so many) more like them, over the past eight years at our annual LAP Minority Outreach Conference.¹

Storytelling is one of the most powerful forms of expression and ways to communicate. People can disagree with our politics and policies. People can disagree with our opinions. People can disagree with our beliefs. No one can disagree with our stories. No one can take our experiences away from us.

I have learned so much at the Minority Outreach Conferences by hearing story after story of things that I have never encountered or had to deal with in my life. Situations, events, circumstances, and obstacles that, because they have never happened to me and have not happened in my presence, are essentially invisible to me.^{2,3}

I have been having very open, transparent conversations with Black lawyers I know, love, and trust. I call these “translation conversations” because we each are translating our experience to the other and asking the other about his or her experience. As unfathomable as it is to me to hear some of these stories, it is unfathomable to them how much of this is invisible to whites, even white

allies. I’ve heard a lot of, “Really? ... *Really?*” It is almost as if we live in two different worlds....

We do.

How do we bridge this compassion and understanding gap? I think the answer lies in friendship and love, recognizing we are all part of a system that none of us chose.

As much as I have been talking with Black lawyers, I am having even more conversations with white lawyers, who truly want to understand more and who are trying to see what has been largely invisible to them (myself included) because they (we) have not encountered it directly. I just read an article in *People* magazine penned by 12-year old actor Lonnie Chavis from NBC’s *This Is Us*.⁴ In it, the well known Black actor talks about how even he and his family have had terrifying interactions with the police. I sent it around to some (white) friends. One of them replied, “[Expletive], and I’ve got to stop saying, ‘Hard to believe these stories.’”

This article is not addressing this issue through a political lens. I hope to provide a personal and psychological perspective. But from speaking with our Black and LGBTQ LAP volunteers, I have come to understand that for marginalized people, the political cannot be separated from the personal and vice versa. They do not have the privilege of “leaving politics at the door” like I do. One consequence is that we in the majority interpret their personal statements or reports of their perspective as inherently political instead of personal. For that reason, Black lawyers often cannot share their stories safely with whites because of the established power dynamic and structure. They best not report a justice’s or judge’s gross judicial bias or racism, which totally affects the administration of justice for their clients, because it would be professional suicide. (While that would likely be true for any of us, white lawyers might not ever be in a position to see it or be on the receiving end.) Similarly, they risk losing their jobs at majority white firms if they speak up.⁵ Regardless of the setting, when they do speak up, they are often seen as over reacting. Or they are not believed. They are told what happened did not happen the way they reported it, or that they are being too sensitive, or that they imagined what they experienced—that they took it the wrong way and the underlying motivation of the other person was not based on race. These invalidating responses whereby Black lawyers’

perceptions and experiences are minimized or denied by whites are a form of gaslighting.

In one of his Netflix specials, Dave Chappelle observes, “[It’s all] hilarious, until it happens to you.” Having been criticized for his statement, he had to painstakingly explain that he was commenting on our modern day lack of empathy: the ability to understand and share the feelings of another. One of the hallmarks of narcissism is the inability to see another’s point of view or to empathize with others. There has been much press on the skyrocketing rise of individual and collective narcissism in modern American society.

Gaslighting is a process in the narcissism paradigm where an individual (or society as a whole) denies and denigrates another’s perception and experience through minimization, dishonesty, and dissemblance. To dissemble is telling only part of the truth (whether it is 10% or 75% of the whole story), which serves you in some way, and omitting or denying the rest; it means to hide under or put on a false appearance by concealing facts, intentions, or true feelings under a pretense. It is essentially the manipulation of another by psychological means.

To the one on the receiving end, research shows that it creates a trauma-based PTSD response. It is exhausting. All of the PTSD-trauma-based research I found about African Americans centered around poor, crime-ridden communities, with a fair amount of research focusing on gang members. Having listened in on our Minority Outreach Conferences, I can attest to the fact that this trauma-based PTSD is not limited to those populations.

A large part of the healing process in formal trauma treatment and therapy, particularly when treating a narcissistic abuse victim, is to actually listen to someone’s experience. To let them speak. To let them begin to claim the reality of what happened to them. To really see them and to acknowledge and honor what they have been through. To acknowledge the reality of it in an undefended way.

Our neurological structure involving mirror neurons must have this experience of being seen and validated to stay mentally healthy. Newborns and infants who do not receive our loving gaze and our goo-goo-gaa-gaa playfulness with them become developmentally disabled. Their brains do not develop properly without positive mirroring.

What is now understood in neuroscience is that we need positive mirroring throughout our lives in order to remain mentally, emotionally, and psychologically healthy. I talk about this all of the time in LAP's Compassion Fatigue and "Getting Lost in Our Own Lives" CLE presentations.

Our professional reputation as lawyers means everything. It is easy to see why Black lawyers stay silent.

I wanted to give them a voice and share their stories with those who are willing to hear them, because they are so powerful. Also serving that purpose, a companion article appears in this edition of the *Journal* with Black lawyers sharing their experiences directly. Here's what I have learned from their stories over the years:

Black lawyers have had to overcome more obstacles than white lawyers can imagine. The sense of isolation is tremendous. Most Black lawyers today are the first in their family to go to college, much less law school. Many Black lawyers grew up accused by their family and friends of trying to be white because they excelled academically.⁶ As a result, there can be a great sense of isolation for them in their personal lives as "the only one" of their family or community who is a lawyer or a professional. Many Black lawyers who come from rural districts are pressured by their home communities and church groups to do all their legal work for free under the moral mandate that they "give back to the community." They may be judged by their home communities for not working in the social justice field of law. Many Black lawyers who work in larger firms and institutions, even academia, are often the only Black lawyer.⁷ As a result, there can be a great sense of isolation for them in their professional lives as "the only one" of their firm or institution. It would be a rare instance in which a white attorney has experienced any of what is described here.

With that backdrop, for some Black attorneys, full equity partnership at a large majority white owned firm is the only definition of success. Anything less is considered a failure—by them and by their families. I share one last, remarkable story here. When I heard this story at the Minority Outreach Conference, I literally gasped. I have asked him to tell it.

"I graduated from Duke Law School. After a federal clerkship, I took a job in a large, predominantly white firm in Charlotte. I was

the only Black first-year associate. The others were white, all male. It was immediately apparent that to survive in this environment, and in order to make it to partner, you had to have a champion to guide you, provide meaningful work assignments, and advocate for you when the time came to make partner. Very quickly, white male partners were selecting first-year associates to mentor. They didn't call it mentoring. It was not a formal program or anything. It's this automatic association that happens in the power structure. The white associates were being taken to lunch with the big clients, getting introduced around, and getting really good assignments from their champion partners. I knew that if I wanted to succeed, I needed to find a champion. There were four partners in my practice area, but I didn't have much in common with any of them. All of them were white men and I didn't think any of them would naturally become my champion. I found out one day that one of them was a JAG officer in the army reserves/NC National Guard. I asked him about it, and after much research and prayer, I decided that joining his unit would help me forge the relationship that I needed. So, I joined the army. I had never fired a gun or even been camping before, but I didn't see any other viable path forward. I felt that if I failed to make partner, I would be letting down my family and that it might be a long time before the firm hired another Black attorney (at the time the firm only had one other Black attorney in its three North Carolina offices).⁸ Joining his unit gave us something to talk about, something in common, and a way to connect both in the office and when we were in uniform. He became my champion. And largely because he was my champion, I eventually became a partner in that firm. I don't think that would have happened if I hadn't joined his unit. I don't think we would have really gotten to know each other without that. That was years ago. I have since left the firm."

LAP volunteers regularly share their stories of depression, anxiety, alcohol, or other problems, and their recovery therefrom in this quarterly LAP column. The reason we do that, the "strategy" if you will, is that by sharing personal stories, a reader might identify and say to themselves, "Wow. Me too. I feel or have felt like that." And our hope is that the reader's response ranges from feeling less alone, to finally picking up the phone and asking for help. Once a lawyer

comes into the fold, they are welcomed with open arms. They are told by our active participants, "Welcome. You are not alone. You belong." And this incredible community and kinship forms.

If you are not Black and you are wondering, "What can I do to help?" start by listening to your Black colleagues. Make some Black friends, real friends. Educate yourself.⁹ Check out the Black Lives Matter collection on Netflix for a different perspective. I was particularly taken with the documentary *13th*. If you are in a large predominantly white firm, champion a Black associate.¹⁰ Challenge your white colleagues or friends when they make snide or racist remarks, either overtly or covertly. If you are in an organizational leadership position, engage substantive long-term racial training for your organization and deeply examine the structure of your policies through a lens that has been informed by racial bias training.¹¹ If you are not in an organizational leadership position, challenge those who are to obtain such training and examine policies. Start a book club and discussion group at work or home to discuss and examine these issues. Most of all, leave your ego, and your need to defend it, at the door so that you can really listen and hear.

If you're reading this article and you are Black and wondering, "How can they (especially white allies) not see this? It's so obvious." Please know that it is not obvious because by and large most of us who consider ourselves white allies have not encountered what you have encountered. We have certainly seen things over the years aired on television, but until recently it felt distant and removed from our day-to-day personal experience. It is for this reason why many of us were genuinely stunned to see the recent years' surge of overt white supremacy. Based on our personal experience prior to 2015-2016, it seemed more of a fringe element that would probably never be fully eradicated. If we have seen a racially based exchange in person, we have seen that one instance. We don't see that for the person who is the target, that they may be experiencing five or ten of those exchanges a day. I do not write any of this as a defense to anything; it is simply an explanation based on conversations I have had, illuminating my and others' (white friends' and colleagues') day-to-day experiences and conversations.

I think to really heal we all must acknowledge that we are all products of a

society that is a legacy derived from decisions that were made +/- 400 years ago, based on a mindset and framework that existed long before those decisions were made and that still exists.

“Mother Teresa diagnosed the world’s ills in this way: we’ve just ‘forgotten that we belong to each other.’ Kinship is what happens to us when we refuse to let that happen.”¹²

My hope is that this article inspires some of us to reach out to our Black or white counterparts and begin to understand we are all products of this system that none of us chose. It isn’t us versus them. It needs to be all of us understanding each other, forming a true kinship, so that together, hand-in-hand, we reshape a broken system and build something new.

The dinosaurs did not become extinct by killing each other off. The environment and landscape changed enough to make their survival impossible. Kinship, love and empathy—real understanding of how these biases operate and a willingness to take different action—is the environment we need today to make individual and institutional racism, like dinosaurs, a relic of the past. ■

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The North Carolina Lawyer Assistance Program is a confidential program of assistance for all North Carolina lawyers, judges, and law students, which helps address problems of stress, depression, alcoholism, addiction, or other problems that may impair a lawyer’s ability to practice. For more information, go to nclap.org or call: Cathy Killian (Charlotte/areas west) at 704-910-2310, or Nicole Ellington (Raleigh/down east) at 919-719-9267.

Endnotes

1. Disclaimer: I am a white, cisgender, straight woman. Anything I write or observe is told based on my experience and that perspective. I want to share some of what I have learned with other white attorneys. I obtained permission from each of these lawyers to share these stories, and the lawyers involved had a hand in drafting them with me for purposes of this article. Further disclaimer: I may offend some readers with choice of language or phrasing. It is not my intention, so I hope readers can read through any inartful articulations to hear the underlying message and intent.
2. At our Minority Outreach Conferences, I have benefitted so much from hearing people’s stories and being given a framework. I have learned about micro-aggressions and implicit bias. For instance, one panelist shared that she had attended a fundraiser at her child’s school. She was the only Black mom there, and the only one with an

advanced degree. She was put in charge of the cash box, and one of the moms explained to her how to make change! Stories like this seem preposterous to me as a white female lawyer, and yet my Black colleagues encounter this kind of stuff day in and day out.

3. I know two Black lawyers (one now a judge) who were appointed to represent members of the KKK who were involved in lynching of an African American. Law school does not prepare us for the emotional impact of that kind of situation. I am hard-pressed to think of a white equivalent experience that would not result in the lawyer having to recuse for conflict of interest.
4. people.com/human-interest/voices-against-racism-lonnie-chavis.
5. While many firms have diversity and inclusion policies, it is unclear if they go so far as to directly address racist remarks or behavior. And while a firm may have a nice policy on paper, adequately effectuating it is a different matter.
6. I was an elementary school teacher prior to attending law school. We were trained specifically about this form of bias for our Black students and trained to encourage them academically. With the knowledge that it might isolate them socially from their home communities, we were also trained on how to try to form communities within their academic circles. We are social creatures. We need community; it is hardwired into our brains for survival. Many Black students from economically disadvantaged areas eventually turn away from school to remain part of their community. It is not a conscious choice. It is an unconscious instinctual survival strategy.
7. There is an implicit bias phenomenon whereby whites evaluate Blacks based on stereotype instead of in their individual capacity. Based on the behavior of one Black individual, whites unconsciously generalize the behavior of other Black people. In such a role, there is tremendous pressure on Black lawyers to be the representative example of all Black lawyers. We (whites) do not do the same for whites. This implicit bias stereotyping is deeply embedded in our culture and media for historic and sociological reasons that are the subject of many excellent, scholarly books and documentaries.
8. Per the implicit bias described in endnote 7, a single Black lawyer’s failure to make partner can reinforce unconscious biases and stereotypes in white firm leaders’ minds that does not occur if a white lawyer fails to make partner. The white lawyer is seen and evaluated on an individual level, whereas the Black lawyer could be effectively closing the door for the firm’s willingness to recruit future Black lawyers. Imagine that kind of additional pressure (if you are white) on top of the baseline pressures we all (Black and non-Black) feel as lawyers.
9. A Google doc containing a list of resources was recently turned into a website. justiceinJune.org. There is a growing list of actions contained at whiteaccomplices.org. If you do a Google search with terms “white ally” or “white education about racism” you will find many resources.
10. As Farad Ali, former member of the Durham City council, notes in this fabulous panel discussion on leadership and race hosted by Enlightpreneurs, having a majority-privileged sponsor or champion and an introduction and access to their networks changes the game for minorities. View panel discussion at youtu.be/ba26mp8LF6s.
11. Reputable resources abound. The Racial Equity Institute in Greensboro is highly regarded: racialequityinstitute.com. For both individual workshops as well as organizational consulting, Karen Geiger, a Charlotte-based consultant, is highly recommended.

karengeiger.com An example of a Diversity & Inclusion 360 Degree Association Scan is at kgdiversity.com/assessment.

12. Quote taken from Richard Rohr from the Center for Action and Contemplation daily mediation, June 4, 2020.

Upcoming Appointments to Commissions and Boards

Anyone interested in being appointed to serve on any of the State Bar’s boards, commissions, or committees should email Lanice Heidbrink at lheidbrink@ncbar.gov and express that interest, being sure to attach a current resume. The council will make the following appointments at its meeting in October 2020:

Client Security Fund Board of Trustees (five-year terms)—There is one appointment to be made. Calvin Murphy is not eligible for reappointment.

Board of Law Examiners (three-year terms)—There are two appointments to be made. George R. Hicks and Roger A. Askew are eligible for reappointment.

Board of Continuing Legal Education (three-year terms)—There are three appointments to be made. Robert C. Kemp III is eligible for reappointment. Linda McGee and J. Dickson Phillips III are not eligible for reappointment.

NC LEAF (one-year term)—There is one appointment to be made. William Purcell is eligible for reappointment.

Board of Paralegal Certification (three-year terms)—There are two paralegal appointments and one lawyer appointment to be made. Lakisha Chichester and Sarah H. Kaufman (paralegal members) and H. Russell Neighbors (lawyer member) are eligible for reappointment.

NC Judicial Standards Commission (six-year terms)—There are two appointments to be made. Forrest Ferrell and William H. Jones Jr. are not eligible for reappointment. ■