A critical analysis of anti-discrimination law and microaggressions in academia

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ABSTRACT

This article provides a critical analysis of microaggressions and anti-discrimination law in academia. There are many challenges for faculty claiming discrimination under current civil rights laws. Examples of microaggressions that fall outside of anti-discrimination law will be provided. Traditional legal analysis of discrimination will not end systemic inequality in higher education. Instead, a critical microaggression analysis, based on principles of critical race theory, should augment a legal approach to discrimination. This article provides a conceptual and practice framework to address microaggressions in the academic setting that fall outside of the legal definition of discrimination by encouraging academic communities to recognize that microaggressions permeate institutions of higher education and that both narrative and data are necessary to create a whole picture of the harm microaggressions cause. Additionally, universities and colleges must centralize the response to microaggressions, making faculty and administration accountable to end the unfair use of marginal group status within their institutions.

Keywords: microaggressions/ academia/discrimination/ harassment/hostile environment/critical race theory

INTRODUCTION

   While it is well-established that statuses like race and gender can affect tenure and promotion opportunities (Gardner 2012; AAUP 2010), microaggressions toward targeted faculty often cause ongoing, unrecognized and unresolved harm. According to Derald Wing Sue, microaggressions are "everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional, which communicate hostile, derogatory, or negative messages to target persons based solely upon their marginalized group membership"(17 Nov. 2010). A legal approach to discrimination is insufficient to adequately address the role of microaggressions in the academy because microaggressions often do not rise to the level of prohibited behavior under the law, even though they can cause a racialized, gendered and otherwise oppressive academic environment. In this article, the relationship between microaggressions and anti-discrimination law will be analyzed, examples of microaggressions in academia will be presented and a critical microaggression analysis will be proposed. As Adrienne Wing writes, "By designing programs that operate on multiple levels of consciousness and address multiple levels of need, we will all be able to reach our true potential to the benefit of ourselves, our families, our professions, our country and the world" (1997, 32-33). Using a critical approach to microaggressions, universities can adopt conceptual frameworks that more fully consider the vestiges of racism, sexism and other marginalization in the academic environment, while developing leadership accountable for change in practices and policies.

ANTI-DISCRIMINATION LAW AND MICROAGGRESSIONS

Anti-discrimination law does not create "a general civility code for the American workplace" (Burlington Northern & Santa Fe Railway Co. v. White 2006). By their very nature, many microaggressions are not legally prohibited, because they are "everyday verbal, nonverbal, and environmental slights, snubs, or insults" (Sue, 17 Nov. 2010). This often surprises the targets of microaggressions who may expect that the purpose of anti-discrimination law is to prohibit this kind of harm. As King writes: "[O]ur findings seem to indicate a disconnect between the experiences of targets of discrimination and the legal system in which recourse is sought" (2011, 69). For example, a faculty member might believe that her experience of regularly having her credentials questioned is based on race and gender. She also may believe that this type of behavior would be prohibited if she reported it. In fact, this faculty member would need to prove either a discriminatory act or illegal harassment leading to a hostile environment in order for a legal duty to be created to end the behavior. The bar to prove either of these is high. One of the enduring problems of dismantling oppression in the academic workplace is that microaggressions, though consistently destructive, are not always prohibited under civil rights laws.

Title VII of the Civil Rights Act of 1964 was created to provide essential protections against egregious incidents of employment discrimination—either toward one person or a group of people of a protected status (Chew 2010). Protected statuses include: race, color, sex, age, religion, disability and, most recently, genetic information (EEOC). This federal anti-discrimination law prohibits tangible adverse discriminatory acts such as failing to hire or promote based, at least substantially, on status (Price Waterhouse v. Hopkins 1989). In the faculty environment, claims of disparate treatment in hiring, promoting, and granting tenure would be considered claims of an adverse discriminatory act. Defenses to these tangible claims of disparate treatment most often center on establishing other motivations for the adverse decision (e.g., poor resume, poor job performance, etc.). Even if microaggressions could be used to establish the motive for an adverse discriminatory act, i.e., failure to hire, promote or grant tenure, the focus of the remedy is most often on the failure to hire, promote or grant tenure, not on ending the microaggressions.

Federal anti-discrimination law also prohibits harassment that leads to a hostile work environment (Rogers v. EEOC 1971.) On the surface, it would seem that a faculty member who has experienced microaggressions could fairly easily prove illegal harassment. Actually, that is not the case, in part, because the legal system can't reasonably be called upon to resolve every transgression in the workplace. As the United States Court of Appeals in Rogers v. EEOC indicated, only workplaces that are "heavily polluted with discrimination" are the focus of anti-discrimination law (238). In order to show illegal harassment, a person must show that 1-the behavior is directed toward a protected status; 2- not only the target, but also a reasonable person, would have found the behavior to be harassing; and 3- the behavior is pervasive or severe creating a hostile work environment (Faragher v. City of Boca Raton 1998). As Justice Sandra Day O'Connor indicated in Harris: "When the workplace is permeated with 'discriminatory intimidation, ridicule, and insult'… that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment,' …Title VII is violated" (Harris v. Forklift 1993, 21). So, a faculty member who has experienced microaggressions must demonstrate that the microaggressions were intended, not only toward a marginalized group, but specifically toward a protected group. Additionally, a

faculty member must demonstrate that a reasonable person would find the microaggressions harassing.   These are not the only challenges in proving a hostile work environment.

Perhaps most difficult, in the context of microaggressions, is the requirement that the faculty member prove that the microaggressions were pervasive or severe. That is, there is a defense to harassment that the behavior or words were not pervasive or severe but rather that they were "stray" remarks or behavior (Gertner and Hart 2012, 90-91). The United States Supreme Court explained the requirement of "pervasive and severe" in Harris v. Forklift where it was made clear that the purpose of anti-discrimination law is not to prohibit a "mere offensive utterance" (1993, 23). Likewise, in Faragher, the Supreme Court concluded that "'simple teasing,' off hand comments, and isolated incidents (unless extremely serious) will not amount to a discriminatory…" hostile work environment (1998, 788). Lower federal courts have implemented this direction of the United States Supreme Court. In Rogers v. EEOC, the Fifth Circuit Court of Appeals found that the "mere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee" would not sufficiently alter terms and conditions of employment to violate Title VII" (1971, 238). Using even stronger language, the Eighth Circuit Court of Appeals indicated that in order to find illegal harassment there would have to be proof that the behavior or words were "so intimidating, offensive or hostile that it 'poisoned the work environment'" (Crutcher-Sanchez v. County of Dakota 2012, 986). The problem, in terms of microaggressions, is that these stray, incidental, offensive utterances diminish the workplace significantly, including college and university workplaces, but they often are not prohibited because they are not sufficiently severe or pervasive to establish illegal harassment.

There are additional challenges to faculty claiming that microaggressions create a hostile environment. Because of the centrality of academic freedom to the academic endeavor, claims of harassment discrimination, and specifically hostile environment, rightly must take into account academic freedom.   This regard for academic freedom often results in deference to university and colleges as employers (Chase 2007). Consider the case of Rodriquez v. Maricopa County Community College (2010). In that case, a professor sent out controversial emails about race and national origin in a sort of spam fashion to those on the emailing list for the district. The plaintiffs were not specific targets of the emails but rather found offense reading them. They argued that the emails created a hostile work environment—this would make for a weak case no matter the setting since the behavior targeted no individual. Given the additional import of academic freedom, the plaintiff's case failed. The Ninth Circuit Court of Appeals recognized the centrality of academic freedom in shielding the Maricopa administrators from an obligation to stop the emails when they wrote that:

> Intellectual advancement has traditionally progressed through discord and dissent, as a diversity of views ensures that ideas survive because they are correct, not because they are popular. Colleges and universities—sheltered from the currents of popular opinion by tradition, geography, tenure and monetary endowments— have historically fostered that exchange. But that role in our society will not survive if certain points of view may be declared beyond the pale (708).

While Rodriguez may have been decided correctly under current anti-discrimination law and given the circumstances of general emails in the academic setting, it does not address the dilemma of ongoing microaggressions, like the emails described in Rodriguez, in a work environment that has academic freedom at its center.

The problem with universities limiting their response to microaggressions to a legal determination of wrongdoing is that they can choose not to address behaviors that diminish and threaten vibrant, intellectual academic communities because the behaviors fall outside of what they are legally required to address. Recommendations to expand the statutory definition of discrimination will be insufficient to end these microaggressions.   Some have argued to expand the list of statutorily protected statuses; as Percia explains: "In their attempt to achieve legal acknowledgment of their experiences of discrimination, plaintiffs of different 'classes' are now lobbying for explicit reference to their 'category' in various pieces of equality legislation" (2011, 115). Others have argued to expand the definition of harassment discrimination to manage workplace bullying. In other words, harassment would not be based on status but rather center on the severity of the behavior (Tepper and White 2011).   Although statutory changes may widen the circle of legally legitimate discrimination claims, those changes alone will not respond to the core issues concerning microaggressions. The outcome, unfortunately, of restricting questions to even an expanded legal analysis is that there will be remnant behaviors and language (microaggressions) that fall outside of the legal standards, but that clearly are destructive to academia.

MICROAGGRESSIONS IN ACADEMIC FALLING OUTSIDE THE PURVIEW OF ANTI-DISCRIMINATION LAW

It is well-established that the history of academia in the United States is often one of exclusion. (Stockdill and Danico 2012) The faculty experience tends to be different depending on race, gender, sexual orientation, class, etc. Essentially, academia mirrors society's marginalization of groups. Overall, faculty ranks consist of 45 % white men, 32% white women, 10% men of color and 8% women of color (NCES 2011).   The contrast in these percentages is more pronounced the higher the academic rank.   White male faculty have the plurality at all academic ranks except the lowest academic rank--instructor. While white men see an increase in the percent of their membership as academic rank increases, other groups experience a decreasing trend.   Regarding the highest academic rank, women of color are 4 %, men of color are 10%, white women 24% and white men are still 60% of the full professors in the United States (NCES). These trends contrast the fact that women and men of color earned a combined total of more than half of all doctoral degrees since 1999.

One way this historical marginalization plays out today is through microaggressions. This is no surprise to the marginalized groups. While it would be hoped that there would be more progress at this point, Stockdill and Danico write:

> Our experiences were not and are not unique. When we participated in and organized conference panels that addressed inequalities in higher education, attendees commonly expressed surprise, solidarity, appreciation, and encouragement. They were not surprised by the experiences described, but rather that we were willing to name in public forums the inequalities within our own departments and institutions. There were audible signs of relief from those who realized they were not alone, but instead part of a collective who shared experiences of being tokenized, alienated, and exploited (5).

Similarly, Kolodny describes asking colleagues around the country if stories she collected concerning "antifeminist intellectual harassment" seemed legitimate. The disturbing responses came back that "… every correspondent was convinced that one or more of the anecdotes was based on events at her or his campus" (1996, 20).

Microaggressions in academia often connect to efforts to delegitimize faculty. So, adapting Sue's definition, microaggressions toward faculty are "everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional" which delegitimize faculty "based solely upon their marginalized group membership" (Sue 17 Nov. 2007). The ongoing marginalization of faculty continues to be based on the majority's assumptions of inferiority and that faculty status "was unmerited, and was thus nothing more than a grant of their grace" (Russell 1991). As Wing explains, "Although [women of color] have achieved the rarified heights of the professorate, they are still viewed as undeserving and inferior by some of their colleagues and their students" (69). Lester describes the exhausting work of faculty who experience these daily stereotypes explaining that "[i]ndividuals not only have to deal with the anger and frustration of their stigmas, but they also have to perform in ways that are often incongruent with their identities" (2011, 177). This stress of discrimination, of course, can cause significant and chronic health issues (Carter and Scheuermann 2012, 8-10). Institutions of higher education will never adequately address student issues of marginalization or achieve what hooks calls "radical pedagogical practices", until there is a reckoning of the unjust use of status yet today in the structure and practices of academia (1994, 10). Without a doubt, these pokes at faculty in academia represent abuse of power, systemic marginalization and often result in physical and psychological fall-out.

The following are examples of microaggressions in academia that, alone, would not be prohibited by anti-discrimination law:

- James writes of a common theme among African American women faculty: "We seem to be asked more routinely, almost reflexively, if we have a Ph.D." (2010, 342).
- Steinpres, Anders and Ritzke found that women faculty that engage in assertive or self-promoting behavior are viewed more negatively than men professors that engage in the same behavior (1999): "It is about humiliation of women and intimidation and resentment because we are moving into a formerly male world. The purpose is to undercut our professionalism and credibility" (Blank and Slipp 1994, 155-156).
- Conway-Jones describes being asked repeatedly to offer her opinion on legal issues involving race despite the fact that her expertise is in government procurement, intellectual property and internet law (2006).
- Tingle describes the struggle concerning economic and social class in the faculty environment: "Working class academics struggle against assumptions about our qualifications, confront others who feel we have no right to be academics, and are consistently caught up in a battle to prove ourselves worthy, to show our loyalty, never letting our guard down for a minute" (2005).
- Stockdill writes of his experience attempting to challenge homophobia: "Posted at the entrance to the departmental office, the flyer's message equating homosexuality with incest and pedophilia appeared to be the department's official position…I told the secretary that the flyer was hateful, bigoted, and fostered a hostile work environment for students, staff, and faculty. And I got in trouble" (167).

- Lester describes the following expectation of women faculty: "The first way that the women faculty managed impressions is to play the traditional women's role by performing in maternal and emotional ways, while also completing more of the service work (165)…The women faculty were expected to perform the role of social organizers and maintain a 'pleasing' demeanor (that is not to be authoritarian)" (166).
- Chavella describes how African American faculty were assigned different work than their white colleagues: "Furthermore, African American faculty were often assigned high numbers of African American advisees, diversity-related committee work on top of other required service obligations, and teaching loads higher than those of their White peers" (82)
- Constantine and her colleagues name isolation as another destructive tool of marginalization: "…Black faculty members describing the 'cold shoulder' treatment, loneliness, and feelings of betrayal within institutions of higher education where they are employed" (349)
- The Modern Language Association concluded that women professors tend to find themselves cast in the role of servant. A 2009 survey on the Status of Women in the Profession found that women tend to be in more nurturing and less valued service roles such as advising and mentoring students. In contrast, men tend to move into leadership roles. One survey respondent noted that male faculty at her institution often only accepted service assignments if they were "seen as adding to his reputation or influence" (22).
- Gutiérrez y Muhs writes: "Being a college professor is difficult enough for any woman because women are still, to this day, not seen as prone to reason or even possessing intelligence; in fact, many people continue to regard them as volatile creatures dominated by their feelings, their 'hearts' (2012, 45).

Actions and words directed at status have a particularly profound effect in the educational setting (Gutiérrez y Muhs et al. 2012; Huckaby 2006; Margolis and Romero 1998; Greene 1997; Ker Conway 1994). Civil and fair environments are at the core of a strong academic setting and provide for vigorous thought, pursuit of knowledge and full participation of faculty for higher education's ultimate beneficiaries—students. Unfortunately, academia is not immune from systemic issues of inequality (Mayock and Radulescu 2010). Neither is academia immune from the tendency to create bulwarks or fail to respond at all to incidents of the unjust use of race, gender and other statuses (Tepper and White). Unfortunately, too many examples of microaggression continue unchecked because of a legalistic approach that only addresses pervasive and severe oppression. Considering the problem of a racialized, gendered, classed and otherwise oppressive academia through the critical lens of microaggressions is what is needed to augment anti-discrimination law.

A CRITICAL MICROAGGRESSION ANALYSIS FOR THE ACADEMY

The question for academia should shift so that administrators and faculty accept their legal duty to end discrimination but, in addition, ask: How do microaggressions in our university community affect the quality of the academic environment? There is a model of analysis that can be useful in thinking about these microaggressions. Critical race theory (CRT) provides a foundation for analysis, questions and systemic change that extends far beyond a legal

discrimination analysis because, as critical theorists argue, a legal analysis will never be sufficient to end systemic injustice (Delgado and Stefancic, 2000, xvi).   In fact, "formal equal opportunity rules and laws…can …remedy only the more extreme and shocking forms of injustice, the ones that do stand out. It can do little about the business as usual forms of racism that people of color confront every day and that account for much misery, alienation, and despair" (Delgado and Stefancic, xvi). CRT provides a framework for thinking and action that recognizes that racism permeates our society and institutions, narrative is important in fully understanding inequity, and critical action is required to diminish injustice. As Adrienne Wing explains: "A primary method of analysis of critical scholars is deconstruction, which entails analyzing supposedly neutral concepts to show the true nature of the contingent power relationships they mask and conceal" (2).   The task of academia is to deconstruct microaggressions that mask and conceal inequitable power relationships and structures within academia. Built on the CRT principles then, a critical microaggression analysis would 1-acknowledge that microaggressions permeate academia and are normalized, 2-gather both data and narrative to identify the harmful effects of microaggressions, and 3-encourage critical thinking and action as a response to microaggressions.

Microaggressions Permate Academia

The starting place, of a critical microaggession analysis, is for university administrators and faculty to recognize that microaggressions persist in higher education. Percia has advocated for a conceptual framework that "unambiguously names bad ideology, not simply bad actors and differential treatment, as…equality's nemesis" (113). There is some irony in the notion that the very institutions that so deeply value the life of the mind often fall short in the kind of reflection necessary to analyze academic environments for vestiges of the patriarchy. "While enjoying a general reputation of being open, progressive and democratic, the academy often fails to acknowledge an inability to recognize the injustice…within the ivory tower" (Diggs et al. 2009, 313). As Stockdill and Danico argue: "The academy is often imagined as an idyllic place, neutral and untarnished by the ugly inequalities that mar the 'outside world.' Yet the 'ivory tower' is a part of the world and, like other institutions, is a site of oppression, resistance, and transformation" (1). A critical microaggression analysis requires that universities and colleges acknowledge how microaggressions support unfair hierarchies. Academic communities can engage their strengths of intellectual inquiry, academic freedom, and evidence-based decisions to identify injustices within the ivory tower, rather than pursuing a pretense that such microaggressions do not exist or are not important.

In academia, there are specific pockets of power within an organizational structure that can make identifying issues of ingrained marginalization quite challenging. Issues concerning systemic equality become particularly acute and complex due to a culture and structure unlike any other workplace (Tepper and White, 20). While the power structure on its face may seem neutral, Tepper and White address the "decentralized" nature of the power structure in many universities and identify it as a central problem (95). When there is an egregious incident of discrimination, there are policies and procedures in place to consider the issue (this is not to suggest that all universities and colleges engage these policies fairly). Faculty might believe that similar procedures and policies are in place for microaggressions, but that is rarely the case. When a microaggression affects a faculty member, questions emerge concerning authority, responsibility, response, and boundaries. Who is responsible for the university environment:

human resources, administration, the board, faculty committees, faculty colleagues or chairs? Who should respond, for example, when the microaggression is from a faculty member toward another faculty member? The decentralized nature of higher education allows faculty to be somewhat divorced from supervision (Tepper and White). While there are benefits to this decentralization (e.g., academic freedom), this same decentralization often allows the vestiges of patriarchy to lurk yet today, unacknowledged, in university systems and cultures, resulting in still racialized, gendered and otherwise oppressive environments.

Both Data and Narrative are Necessary to Identify the Harmful Effect of Microaggressions in Universities and Colleges

Faculty governance committees, departments and administrators should assess the harm of microaggressions within the university by seeking out not only the quantitative extent of the harm, but also the stories of those who have been targeted. Too often, faculty who are the targets of microaggressions conclude that they must remain silent. As Brake explains:

> The ideology of individual responsibility 'turn[s] the word victim into a synonym for failure or irresponsibility.' This belief system creates an aversion to being perceived as a victim of discrimination, especially when one's victim status is linked to membership in a social group whose members are stigmatized and devalued (2007, 690).

There is a significant toll on faculty who view themselves as qualified, intelligent and capable to have to present themselves as a victim of marginalization (Brake 2007). Faculty who have reached the pinnacles of the academy must choose whether to put themselves in the position of identifying their treatment as a target or victim, instead of the strong standing they should have in the academy. It is often a writhing decision for a faculty member to determine whether or not to identify oppression within the university, because to do so often is demeaning in itself, and if the university focuses primarily on a legal definition of discrimination, the faculty member may well fail in any request to end the microaggressions. Instead, faculty claiming microaggressions may "be accused of being…oversensitive or paranoid or told that their emotional outbursts confirm stereotypes about minorities" (Sue 2007, 279). The faculty member then is left with a reputation of being angry, emotional, and over-reactive (Stockdill and Danico). Derrick Bell writes that " [a] major function of…discrimination is to…deny us access to benefits and opportunities that would otherwise be available, and to blame all the manifestations of exclusion-bred despair on the asserted inferiority of the victims" (767). Such behavior also "contributes to stress, depression, shame, and anger in its victims", as well as "self-doubt, frustration, and isolation" (Sue, et al., 279).

Narratives can communicate the toll on faculty that goes far beyond this initial decision to confront microaggressions (Cole, 2009). There is an additional harm in that faculty who have been targeted know that well-intentioned individuals often respond by trivializing the harm, silencing the conversation or dismissing it completely:

> The most detrimental forms of microaggressions are usually delivered by well-intentioned individuals who are unaware that they have engaged in harmful conduct toward a socially devalued group. These everyday occurrences may on

the surface appear quite harmless, trivial, or be described as "small slights," but research indicates they have a powerful impact upon the psychological well-being of marginalized groups and affect their standard of living by creating inequities in health care, education, and employment (Sue, Nov. 2010).

Most often, faculty targets are faced with the terrible truth that if they do not address the microaggressions, that the behavior will continue not only toward that faculty member, but against others (Smith). Percia writes of the challenge of taking on the job of addressing gender injustices; similarly, microaggressions have "the power to discipline and restrict individual's abilities to contribute to society, access resources, and fulfill their potentials…we are not capable of simply imagining ourselves out from under this ideology—that we must instead do the hard work of disassembling it—is disempowering, overwhelming, even depressing" (Percia, 145).

Narratives have the power to expose uncomfortable power relationships in higher education—that is not always welcome among faculty and administrators. As Stockdill and Danico write: "We experience quite viscerally a central paradox of the academy: Critical thinking was promoted only to the extent that it did not call into question biases and bigotry within the department, the classroom or the university" (3). How can academia change this paradox? Delgado and Stefancic call narrative the "cure for silencing" (2012, 49).   Critical questions must be asked through a variety of formats, including anonymous surveys, informal conversations, focus groups, narrative requests, faculty committee charges, annual reports, analysis of policies:

- What experiences of microaggressions do faculty face in the institution?
- Do faculty fear reporting microaggressions?
- What "neutral" norms are masking microaggressions?
- How are administrators, departments, human resources, faculty committees, chairs and individual faculty accountable to respond to microaggressions?
- What training is there for faculty and administrators to learn that silence is not neutral in the face of microaggressions and, indeed, can be as harmful as more blatant behaviors?
- In what ways are faculty and administrators creating "neutral" explanations for behavior that is based on race, gender, orientation, class, national origin, etc.?
- Do privileged faculty and administrators generally maintain silence in the face of microaggressions?
- How do faculty hold each other accountable for "the poisoning of the well" microaggressions that casually question another faculty member's legitimacy?
- How is academic freedom engaged equally? In other words, how is academic freedom understood to protect not only the rights of the faculty member who has used a microaggression, but also to protect the faculty member who is a target of that behavior?
- How can faculty create expectations of each other to confront microaggressions without fear of reprisal?
- Who is accountable to understand the effect on the individual and the institution of microaggressions?
- How do faculty work groups reflect on and change group norms, including purposeful analysis of avoiding microaggressions in assigning everyday faculty work?

Each institution will have a unique approach to microaggressions, but all should have a system to gather information about these key questions concerning microaggressions. Then, there must be a response.

There is a Responsibility in Academia to Engage in Critical Action to End Microaggressions

When it is clear from gathering data and stories that microaggressions exist, there is a corresponding responsibility to identify and eradicate those injustices, even though the behaviors and systems that emanate from the behavior are not always prohibited by law. A critical microaggression analysis, then, requires transformation. When there is reluctance of academia to address subtle discrimination, oppressive cultures and discrimination fatigue among faculty, harm will result to the learning environment for students. What is required is that which higher education regularly asks of students: critical thinking and action. Because the stakes are so high when race and gender or other group status are used unjustly, university administrators, faculty, governance systems, and human resources must centralize the policy and practice response and be held accountable for responding effectively.

Institutions can expand the ring of accountability within the university to counter the decentralization norm for uses of microaggressions in the academic setting. Creating system-wide responses to microaggressions relieves the faculty member from being the sole voice (or perceived trouble-maker), as the offense is experienced not only as an individual but also as an academic institution. Instead of a no-accountability system, administrators and faculty should set out clear roles to address microaggressions, with responsibility and accountability clear in administration, faculty governance, departments and human resources. Strategic plans should call for the creation and ongoing assessment of these systems of accountability. In addition, scholarship that analyzes existing structures and creates more equitable structures should be honored at universities and colleges for promotion and tenure purposes. Essentially, the burden of responding to microaggressions should not fall completely on the shoulders of marginalized faculty--this is a burden that must be shared.

Institutions can encourage incident-induced or environment-induced conversation concerning microaggressions, no matter the discomfort created. In the spirit of true and fair academic freedom, the targets of microaggressions should never be expected to maintain silence. Although there may be short-term discomfort, there is a benefit for an organization in naming something that is a microaggression, as such. Of course, there must be care to protect due process rights of individuals who may have caused harm. However, too often, the focus of universities is on protecting the faculty member who has caused harm, at the expense, yet again, of those who were the target. Having public dialogue about microaggressions changes the nature of the university for the better. Conversations and facilitators must balance the rights of all involved. What must be avoided, however, is the avoidance of the conversation. Faculty must work against the very human tendency to just want the conversation to conclude so that their sense of obligation also concludes. A hallmark of a healthy academic system is the ability to discuss these difficult and sometimes embarrassing situations.

Institutions can create expectations about confronting faculty bystander behavior. As Sue writes, "Modern forms of bias, especially the unconscious kind, are most likely to be manifested in a failure to help rather than a desire to hurt" (2010, 50). Many conflicts in the academic

setting are framed up as faculty versus administration issues; however, in the area of microaggressions, the experience is clear. Faculty often experience microaggressions from other faculty. Then, faculty colleagues, too often, stand by when they know that a situation is unjust because they fear compromising their own futures, confronting those faculty with more power (formal or informal) or have fear about going against the grain. Just as we need to teach our students to think about their role in society, faculty must support and encourage one another to speak out about injustices within their ranks. There is this notion of what Press calls "beautiful souls." He writes that there is a "…mystery of what impels people to do something risky and transgressive when thrust into a morally compromising situation: stop, say no, resist…(2012,5)" He goes on to identify the quandary faced in difficult situations; these situations are familiar to most faculty:

> We've all arrived at junctures where our deepest principles collide with the loyalties we harbor and the duties we are expected to fulfill, and wrestled with how far to go to keep our consciences clean. As far as necessary to be true to ourselves, a voice inside our heads tells us. But there are other voices that warn against turning on our community, embarrassing our superiors, or endangering our careers and reputations, maybe even our lives and the lives of our family members (5).

We need structures and policies in place that reward beautiful faculty souls, those courageous enough to confront injustice within the academy. How else will faculty culture be changed?

CONCLUSION

In the academy, more than in any other workplace perhaps, critical thinking, intellectual honesty and social action should be engaged, especially by those privileged enough to be part of the professoriate. There are painful, destructive, ongoing stories across academia concerning the unfair use of marginalized status. Microaggressions in academia are not isolated incidents that can be adequately addressed legally. We need beautiful faculty and administrative souls willing to go beyond comfort, privilege, a false sense of meritocracy and elitism to take risks, speak the truth, and provide leadership to transform university culture. Finally, we need structures of accountability and leadership in place, so that addressing the unjust use of microaggressions is the responsibility of all in academia to assure that all faculty have equal chances to thrive.

RERFERENCES

American Association of University Professors (AAUP). 2010. "Experiences and Challenges of Women Combining Academic Careers and Motherhood." Presented at the AAUP Conference, Washington DC, 11 June 2010.

Bell, Derrick. 2000. "Property Rights in Whiteness: Their Legal Legacy, Their Economic Costs." In Critical Race Theory: The Cutting Edge, ed. Richard Delgado and Jean Stefancic, 71-79. Philadelphia, PA: Temply University Press.

Blank, Renee and Sandra Slipp. 1994. Voices of Diversity. New York: Amacon.

Brake, Deborah L. 2007. "Perceiving Subtle Sexism: Mapping the Social-Psychological Forces and Legal Narratives that Obscure Gender Bias." Columbia Journal of Gender and Law 16:679-723.

Burlington Northern & Santa Fe Railway Co. v. White. 2006. 548 U.S. 53.

Carter, Robert T. and Thomas D. Scheuermann. 2012. "Legal and Policy Standards for Addressing Workplace Racism: Employer Liability and Shared Responsibility for Race-Based Traumatic Stress." University of Maryland Law Journal of Race, Religion, Gender and Class 12:1-100.

Chase, Michelle. 2007. "Gender Discrimination, Higher Education, and the Seventh Circuit: Balancing Academic Freedom with Protections under Title VII." Wisconsin Women's Law Journal 22:153-176.

Chavella, T. P. 2012. "Racial Microaggressions: The Narratives of African American Faculty at a Predominantly White University." The Journal of Negro Education 81(1): 82-92.

Chew, Pat K. 2010. "Seeing Subtle Racism." Stanford Journal of Civil Rights and Civil Liberties 6:183.

Cole, Barbara Ann. 2009. "Gender, Narratives and Intersectionality: Can Personal Experience Approaches to Research Contribute to 'Undoing Gender'?" International Review of Education 5/6:561-578.

Constantine, Madonna G., Laura Smith, Rebecca M. Redington, and Delila Owens. 2008. "Racial Microaggressions Against Black Counseling and Counseling Psychology Faculty: A Central Challenge in the Multicultural Counseling Movement." Journal of Counseling & Development 86(3): 348-355.

Conway-Jones, Danielle. 2006. "Being All Things to All People." In From Oppression to Grace, ed. Theodorea R. Berry and Nathalie D. Mizelle, 121-30. Sterling, VA: Stylus Publishing, LLC.

Crutcher-Sanchez v. County of Dakota, Nebraska. 2012. 687 F. 3d 979.

Delgado, Richard and Jean Stefancic. 2000. Critical Race Theory: The Cutting Edge. Philadelphia: Temple University Press.

Delgado, Richard and Stefancic, Jean. 2012. Critical Race Theory: An Introduction. New York: New York University Press.

Diggs, Gregory, and Dorothy Garrison-Wade, Diane Estrada, Rene Galindo. 2009. "Smiling Faces and Colored Spaces: The Experiences of Faculty of Color Pursing Tenure in the Academy." Urban Review 41(4):312-333.

Equal Employment Opportunity Commission (EEOC). "Prohibited Employment Policies/Practices". Accessed 1 May 2012. <http://www.eeoc.gov/laws/practices/index.cfm>.

Faragher v. City of Boca Raton. 1998. 524 U.S. 775.

Gardner, Susan K. 2012. "'I Couldn't Wait to Leave the Toxic Environment': A Mixed Methods Study of Women Faculty Satisfaction and Departure From One Research Institution." NASPA Journal about Women in Higher Education 5(1):71-95.

Gertner, Judge Nancy and Melissa Hart. 2012. "Employment Law: Implicit Bias in Employment Litigation." In Implicit Racial Bias Across the Law, 80-94. Cambridge: Cambridge University Press.

Greene, Linda S. 1997. "Tokens, Role Models, and Pedagogical Politics: Lamentations of an African American Female Law Professor". In Critical Race Feminism: A Reader, ed. Adrien K. Wing, 89-95. New York: New York University.

Gutiérrez y Muhs, Gabriella, Yolanda Flores Niemann, Carmen G. Gonzalez and Angela P. Harris, eds. 2012. Presumed Incompetent: The Intersections of Race and Class for Women in Academia. Boulder: University Press of Colorado.

Harris v. Forklift. 1993. 510 U.S. 21.

hooks, bell. 1994. Outlaw Culture: Resisting Representations. New York: Routledge.

Huckaby, M. Francyne. 2006. "Watching, My Other Education." In From Oppression to Grace, eds. Theodorea R. Berry and Nathalie D. Mizelle, 34-43. Sterling, VA: Stylus Publishing, LLC.

James, Joy. 2010. "Teaching Theory, Talking Community." In Academic Repression, eds. Anthony J. Nocella, Steven Best, and Peter McLaren, 337-46. Oakland, Edinburgh,Baltimore: AK Press.

Ker Conway, Jill. 1994. True North. New York: Alfred A. Knopf.

King, Eden B. et al. 2011. "Discrimination in the 21st Century: Are Science and the Law Aligned?" Psychology, Public Policy and Law 17:54-72.

Kolodny, Annette. 1996. "Paying the Price of Antifeminist Intellectual Harassment." In Antifeminism in the Academy, eds. VeVe Clark, Shirley Nelson Garner, Margaret Higonnet, and Ketu H. Katrak, 3-33. New York: Routledge.

Lester, Jamie. 2011. "Acting on the Collegiate State: Managing Impressions in the Workplace." Feminist Formations 23(1):155-181.

Margolis, Eric, and Mary Romero. 1998. "`The Department is Very Male, Very White, Very Old, and Very Conservative': The functioning of the Hidden Curriculum in Graduate Sociology Departments." Harvard Educational Review 68(1):1-32.

Mayock, Ellen C., and Domnica Radulescu. 2010. Feminist Activism in Academia: Essays on Personal, Political and Professional Change. North Carolina: McFarland.

Modern Language Association(MLA). 2009. "Standing Still: The Associate Professor Survey." Accessed 15 June 2012. < http://www.mla.org/pdf/cswp_final042909.pdf>.

National Center for Education Statistics (NCES). 2011. "Digest of Education Statistics." Accessed 17 June 2012. <http://nces.ed.gov/programs/digest>.

Percia, Veronica. 2011. "Sex Equality's Unnamed Nemesis." Michigan Journal of Gender & Law 18:113-146.

Press, Eyal. 2012. Beautiful Souls: Saying No, Breaking Ranks, and Heeding the Voice of Conscience in Dark Times. New York: Farrar, Straus and Giroux.

Price Waterhouse v. Hopkins. 1989. 490 U.S. 228.

Rodriquez v. Maricopa County Community College. 2010. 605 F.3d 703.

Rogers v. EEOC. 1971. 454 F.2d 234.

Russell, Diane. 1991."Fay Stender and the Politics of Murder." Accessed 15 June 2012. <http://www.ontheissuesmagazine.com/1991spring/Russell_spring1991.php>.

Russell, Jennifer M. 1997. "Introduction on Being a Gorilla in Your Midst, or, the Life of One Blackwoman in the Legal Academy." In Critical Race Feminism: A Reader, ed. Adrien K. Wing, 110-117. New York: New York University.

Smith, Pamela J. 2000. "Forging our Identity: Transformative Resistance in the Areas of Work, Class, and the Law." University of California Davis Law Review 33:1057-1073.

Steinpres, Rhea E., Katie A. Anders and Dawn Ritzke. 1999. "The Impact of Gender on the Review of the Curricula Vitae of Job Applicants and Tenure Candidates: A National Empirical Study." Sex Roles 41(7/8):509-28.

Stockdill, Brett C. and Mary Yu Danico. 2012. Transforming the Ivory Tower: Challenging
        Racism, Sexism, and Homophobia in the Academy. HI: University of Hawaii Press.
Sue, Derald Wing, and Christina M. Capodilupo, Gina C. Torino, Jennifer M. Bucceri, Aisha M.
        B. Holder, Kevin L. Nadal, Marta Esquilin. 2007. "Racial Microaggressions in Everyday
        Life." American Psychologist 62(4):271-286.
Sue, Derald Wing. 2010. Microaggressions in Everyday Life: Race, Gender and Sexual
        Orientation. New Jersey: Wiley.
Sue, Derald Wing. Nov. 17, 2010. "Microaggressions: More than Just Race."
        Accessed 10 May 2012. <http://www.psychologytoday.com/blog/microaggressions-in-
        everyday-life/201011/microaggressions-more-just-race>.
Tepper, Robert J., and Craig G. White. 2011. "Workplace Harassment in the Academic
        Environment." St. Louis University Law Journal 56:81-110.
Tingle, Nick. 2012. "Working Class Academics" (Speech, Youngstown Ohios, May, 2005).
        Accessed 1 June 2012.
        http://www.writing.ucsb.edu/faculty/tingle/firstpage/Working%20Class%20Academics.ht
        m
Wing, Adrien K., ed. 1997. Critical Race Feminism: A Reader. New York: New York
        University.