

MIRROR, MIRROR: ANTI-BLACKNESS AND LAWYERING AS AN IDENTITY

*Brandon Greene**

Anti-Blackness manifests itself in a myriad of ways, not all of which are intentional. That is what makes this work so challenging, so draining, so exhausting. Particularly if you, like me, see yourself as an impacted person first, and a lawyer second because to survive and thrive, the most important, most visceral parts of your identity – Black, male, child of a formerly incarcerated person – must take a back seat to the least important part of your identity – lawyer. After all, being a lawyer pays the bills, and the trauma, gravity, and import of being the Black son of a formerly incarcerated person is often a bit too much for people to handle in a profession like mine, where there are so few people with similar experiences.

That all of these parts of my identity come across as being a little too heavy, a little too real, a little too extra is made plain in various ways. At the same time that I am representing clients who look like me and share many aspects of my background, the reality is that, according to the natural order of the world I see around me, people like me, like us, are to be advised, not listened to. Black Lives Matter is a slogan for folks to rally around and sticker their desks with, and Kendrick Lamar’s “We Gon’ Be Alright” is great for folks to listen to, but the import of both is lost in the spaces I occupy.

My earliest memories of anti-Blackness entering my life were in preschool. While I did not understand the full extent of what was going on at the time, it became much clearer when, decades later, my preschool teacher ran into my mother and told her how she had been afraid of me, the four-year-old Black boy in her class. It seemed that my whole academic career was spent being removed from class or having parent teacher conferences, in spite of the fact that I excelled academically. In middle school, I, like other kids my age who were consumed with hip-hop, wanted a starter jacket. When my mother told me that she could not afford one, I – never one to accept limitations – decided to save my lunch money toward the purchase. That Christmas, my mother and grandmother combined their money with the money I had saved and purchased me a Charlotte Hornets jacket. Not two months later, I found myself in the principal’s office accused of stealing the jacket. This would

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not be the last time I was falsely accused of wrongdoing. By the time I exited high school, I was convinced that I was cursed. I thought that maybe degrees would insulate me, but this never bore out the way I had anticipated. More money, degrees or access would not provide me the comfort of safety.

I did not realize it when it happened, but in hindsight, the jacket incident was a perfect example of how capitalism will not save Black people. Hard work would not stave off anti-Blackness. A penny saved or a penny earned will not insulate me from harm and in fact, the pursuit of increased access or increased financial stability may exacerbate the harms. We are likely to be seen as alien, even when we believe we have arrived. The trauma and conditions of the great paper chase may be too much for us to bear and that the gains may not match the losses.

I remember interviewing for a position at the public defender's office and explaining how criminal justice work is deeply personal to me, how serving as a public defender would allow me to obstruct the system and to defend folks like me. I explained how, as a child and as a young adult, prison felt like it was not only a possible reality but at times an inevitable destination. I explained how my own experiences have demonstrated for me from a very young age that I was always, both literally and metaphorically, one wrong turn away from facing incarceration. I explained how, as a college student in my first semester, my friends and I were pulled over. In the car surrounded by flashing lights, we sat in a dazed state as infrared beams penetrated our vehicle. After some time, we were told to exit the car and we were held by officers at gunpoint. No immediate explanation was given, but when we were finally able to get a response, we were told that two Black kids had pulled a gun on a white lady and fled in a black car. There we were, five of us, in a white car, but close enough as far as the officers were concerned. This was not my first or last time "fitting the description." Several years later, as I was driving in my neighborhood, I was pulled over three times in less than ten minutes. The third time, I was handcuffed as an additional squad car pulled up with a witness inside. The witness said that I "sort of" looked like I could be the person who had committed the crime, but that I seemed maybe a little young. If her answer had been different, I would have been facing an armed robbery charge. I detailed these experiences because I wanted those interviewing me to know what was on the line for me, that I had skin in the game. That the color of my skin meant I was inextricably and forever trapped in the game, even if I did not want to play, and that with that knowledge, I saw no option but to do my best to defend others who, like me, were trapped.

Fortunately, I got the job. My understanding was that I was the first Black male hired in a decade. I was a unicorn of sorts. It was not long before I really grasped what that meant for me. Some folks, even those on the same side, even fellow public defenders on my own team, viewed my interactions with judges and other parties very differently than they viewed their own. When I felt I was being treated unfairly by a white male judge, it turned out that in this particular court house, this white male judge was the judge that everyone, except me, believed to be the

most reasonable. One day, as I attempted to detail how a bailiff, also a white male, had disrespected me, this judge took it upon himself to respond by saying that folks were having a conversation about my behavior at lunch and that he had heard a different tale. He then attempted to accuse me of unprofessional behavior, in front of my colleagues. While a couple of them stood up for me, one later suggested that the disparate treatment I was receiving was because I was not deferential enough, that I pushed back too much. This was despite this particular individual having a well-earned reputation for arguing with judges. For the same behavior, she had been labeled a zealous advocate; I had been labeled disrespectful.

Incidents like this were not rare and made me question what I was doing in this line of work. Was I really making an impact? And even if so, was it worth the stress? Of course, it did not help that we were being paid substantially less than our district attorney counterparts and that we did not receive any benefits. The pressures of being the first in my family to make it as far as I have while consistently feeling as though I was on the cusp of financial ruin was a sort of dissonance that made the racialized elements of the work that much harder to handle. My office mate at the time, a white male several years younger than me, was staying rent-free at his parents' house; no doubt we had different concerns. However, the breadth of the gulf between us became more clear when my older cousin was arrested. I was driving home preparing to celebrate winning a trial when the call came in, so did the embarrassment of knowing that I did not have the financial means to help, that my cousin would likely have to remain incarcerated while his case was resolving, which almost certainly meant that he would have to take a plea. At this time, I was making more money than I had ever made and it still was not enough to help those closest to me. This in turn made me question the point of it all.

I began to feel like a cog in a wheel. I felt that, regardless of how many motions or trials I won, I would just have a new stack of cases waiting for me in my mailbox. There did not seem to be much value in my being the only Black male in court who was not actively being prosecuted for a crime.

Eventually, I decided to leave and pursue work that felt more oriented toward systems change. This decision was extremely difficult for me to make and as I am wont to do, I consulted with several people before making it. One of those people, a friend and felony attorney in the office, attempted to convince me to stay. I am certain that he did not and likely still would not view his pitch as anti-Black, but I did. Specifically, he implored me to stay by asking me to think about what other place I could get paid six figures to represent poor people. Perhaps this is a true sentiment; still, it felt gross. We represented mostly Black people, and despite being an office that took a high rate of cases to trial, many of our cases pled. We were, despite our best perceptions of ourselves, a part of a system that disproportionately harmed people like me. Despite this reality, the best pitch he could come up with to convince me to stay was one that would force me to think about how I personally could profit from this system. I declined.

Currently, I make less money than I did then, albeit with benefits now. I would be lying if I did not admit that I sometimes think about the pitch my friend made for me to stay and question if I made the right decision. I live in one of the most expensive areas of the country and could have used that extra money to pay for my son's preschool instead of taking out a loan. In a perverse way, the moneyed interests positioned me and the interests of my family against my morals and the interests of my broader community. This push and pull is not without potential consequences: According to a recent Forbes article, "Black and Latino families with a member holding a four-year degree own just a fifth of the wealth of equivalent white families. In fact, they own less wealth than a white family whose head has just a high school diploma."¹ A recent post from the Brookings Institute declares that Black children from middle class homes are downwardly rather than upwardly mobile: "Even black Americans who make it to the middle class are likely to see their kids fall down the ladder."²

In other words, even when capitalism seems to work for us, it does not. A recent piece by Tiana Clark, titled "This is What Black Burnout Feels Like," detailed the stresses of capitalist pursuits:

Am I burned out because I'm still subconsciously wanting the American dream to be true, despite the odds stacked against my skin color? Do I want to be the exceptional black person who actually makes it out of my circumstances? Or am I wanting to be something I will never be: a rich, white man – seemingly carefree, with a sizeable Roth IRA, unafraid to walk to his car at night without his keys Wolverine-d in his hands? But if the American dream isn't even possible for upwardly mobile white people anymore. . . then what the heck am I even striving for? Where do I actually see myself?³

I now help run a legal clinic focused on the decriminalization of poverty and I train law students. We are able to directly represent people and allow that representation to also inform our policy work. In many ways, it is the antithesis of the public defender's office. Yet still, I remain the only Black male attorney, the only one in my office and most of the coalitions of which we are a part. This is important. At a recent community clinic, a colleague, a Black woman, and I left to get coffee. When we returned, we were denied reentry by two Latino men who were repairing the door. These same men had previously seen us enter, but refused to open the door for us. One of our white male students witnessed this and got up from a table that we had set up outside to invite folks in to the clinic.

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1. Josh Hoxie, *Blacks and Latinos Will be Broke in a Few Decades*, FORBES (Sept. 19, 2017), <http://fortune.com/2017/09/19/racial-inequality-wealth-gap-america/>.
 2. Edward Rodrigue and Richard v. Reeves, *Five Bleak Facts on Black Opportunity*, BROOKINGS (Jan. 15, 2015), <https://www.brookings.edu/blog/social-mobility-memos/2015/01/15/five-bleak-facts-on-black-opportunity/>.
 3. Tiana Clark, *This is What Black Burnout Feels Like*, BUZZFEED NEWS (Jan. 11, 2019), <https://www.buzzfeednews.com/article/tianaclarkpoet/millennial-burnout-black-women-self-care-anxiety-depression>.

Immediately, the door was opened. This incident bothered the student so much that he spoke about it with his supervisor. Later, there was a debrief session where the incident was discussed. I was not present for this discussion. However, though the incident was discussed, not a single person followed up with my colleague and me, even as story after story about Black folks being policed in public were dominating the news cycle. The incident was not surprising. I faulted myself for wearing our organizational t-shirt instead of a suit. I knew better. During my first legal job, I always wore a suit, even as others wore jeans. At one point, the communications director asked my why; I told him quite honestly if I were to walk outside and say I am a lawyer but not look the part, folks would not readily believe me.

I still often have a hard time grappling with the ways anti-Blackness rears its head – how it is inescapable, even as I take very seriously my role of teacher and I do my best to use data, client stories, and personal experiences to enable my students to gauge what it is like to walk through the world in our shoes. I am uncertain if I am successful in this. Recently, I taught a seminar on race and poverty and one of the student evaluation responses crystalized for me my dilemma. The response was as follows:

Brandon is a really great guy, with a super interesting (and unique, as far as Berkeley instructors go) perspective. He seems like he's sometimes too cool for school though, as if he can't be seen putting in an effort, even though it's clear he does in fact care. And honestly, the most interesting part of the class was when he would go on a monologue of some crazy shit he'd seen either as a PD, attorney at EBCLC, or in his pre-attorney life.

Reading this, I cannot help but wonder what does “too cool for school mean” in this context? Why was the most interesting part of the class my sharing of real world, painful experiences, and was “interesting” meant as informative, or just a description of me being seen through a performative lens? Student evaluations are anonymous so I could not ask. But it does beg the question, how can I or should I engage students to think about the ways in which anti-Blackness results in not only policy and practices that harm folks like me but in ways that create an almost parallel universe of pain and trauma – a universe many of them will never inhabit? More importantly, should I endeavor to engage students on this topic without sharing any anecdotes about my own experiences? Lately, I have taken to asking students how many of them have ever been pulled over – not handcuffed or arrested, but just pulled over. The responses, while unsurprising, have been jarring. Most of the students I encounter have not been pulled over. The reality of cops flashing lights behind them and triggering the inevitable nervous reactions so central to my lived experience is foreign to them. Their reality is so far from what I, and people like me, experience that when I shared this anecdote with a family member, he laughed out of shock.

My wife, also a lawyer, is white. She sees how the world reacts to our children. Her fear of the dangers of driving while Black has led her to take a prophylactic approach to my safety by not allowing me to drive on

long trips, under the auspices that if pulled over, I may face less danger with her behind the wheel, or perhaps we will not be pulled over at all. (Time will tell if this strategy will work.) The difference between my wife and some of my students is proximity. She sees and feels anti-Blackness in a deep way in her day-to-day life by watching the way it circles around her husband and children.

Yet and still, even close proximity is not always enough to make clear to the non-Black community the pervasiveness and insidiousness of anti-Blackness, as evidenced by my experiences at the public defender's office. Proximity certainly is not enough to eradicate complicity. This is evidenced by the story of Frank Somerville, as presented in the National Public Radio Podcast, *Invisibilia*.⁴ In the episode titled "The Culture Inside," Mr. Somerville, a Bay Area reporter, discussed his realization that anti-Black bias also lived in him, despite his self-described progressive views.⁵ The incident Mr. Somerville described was one in which he felt the need to observe and potentially protect a middle aged white woman as she was being approached by a Black man with his "cap down. . . dressed kind of streetish."⁶ What Mr. Somerville failed to notice initially was that this Black man was just walking down the street with his toddler son.⁷ There was nothing nefarious about him.⁸ This reality of his anti-Black bias shocked and even disgusted Mr. Somerville, who had recently had a conversation with his adopted Black daughter about how her race may impact the way people profile, approach, and interact with her.⁹ This conversation came in the wake of the murder of Mike Brown.¹⁰ Fueled by disappointment, Mr. Somerville declared that he would never allow his bias to flare up again.¹¹

The problem is, Mr. Somerville is not alone – anti-Black bias can infect us all. Even Black folks. This is also made clear in the *Invisibilia* episode, through the story of Sergeant Ray Rice, a St. Louis police officer.¹² In the episode, he detailed how he was on the receiving end of anti-Black bias through several instances of police profiling both as a teenager and as an adult.¹³ However, it was not until Mr. Rice went through an implicit bias training that he realized that he too, a Black male, was complicit in anti-Black bias.¹⁴ Not even proximity and lived experiences together could insulate him.¹⁵

4. *Invisibilia: The Culture Inside*, NAT'L PUB. RADIO (June 8, 2017), <https://www.npr.org/templates/transcript/transcript.php?storyid=532955665>.

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

The NPR piece discusses a strategy known as “detect, reflect, and reject.”¹⁶ First, you detect the negative bias when it arises, then you reflect on where that bias comes from, then you reject it as unfounded and replace it with a different response, as in the example of the Black man approaching the white woman, realizing he may just be a father walking with his son.¹⁷ This strategy has been shown to work. The strategic issue is how to institutionalize this when those in power may not so readily accept their own biases and opt in.

All of this leaves me to wonder: Can the pain of anti-Blackness be taught, through proximity or otherwise? Does personal experience even matter, if even those of us who experience anti-Black bias regularly can also be complicit in perpetrating it? What is the cost of it all? Even if we are somehow able to successfully navigate the racist waters we swim in, are we still suffering by virtue of our complicity and participation in a financial system that subjects us to drawing lines between our needs and our community’s? I don’t know the answers to these questions, but I do know that they are ones that we must grapple with as we endeavor to change systems controlled mostly by folks who won’t have had the visceral life experiences that could easily demonstrate the harm of the current system. In the short term, I believe that we have to find some peace with our decisions and the roles that we can play and resources that we have at our disposal. The offensiveness of my friend’s suggestion aside, I believe that I was fighting the good fight as a public defender. The answer to my cousin’s issue with the criminal justice system wouldn’t have been for me to make more money; it is for me to engage in work that will change the system so that other people’s cousins are impacted positively. The answer to making spaces I occupy more welcoming for folks like me is to use whatever privilege I have to open doors for others. The answer to others knowing the harms of anti-Blackness is for me to be authentically me and boldly challenge perceptions systems that thrive off of anti-Blackness.

16. *Id.*

17. *Id.*