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Communicating the Unspeakable and Seeing the Invisible

Wilhelmina M. Reuben-Cooke†

There is no such thing as a NEUTRAL educational process. Education either functions as an instrument which is used to facilitate the integration of the younger generation into the logic of the present system and bring about conformity to it, OR it becomes "the practice of freedom," the means by which men and women deal critically and creatively with reality and discover how to participate in the transformation of their world.¹

When my periods of reflection and cynicism intersect, I never fail to be amazed and tantalized by the fact that my academic area of interest and my field of specialization in private practice is telecommunications. I currently teach courses on the role and regulation of the American media. Accordingly, I spend my time examining an industry which depicts social, political, and cultural phenomena which shape our views and images. Far too frequently this industry characterizes Black women, in particular, and often American women, in general, as being of marginal importance in almost every area of life except the domestic arena. In addition, African-American women suffer from media-created images which, intentionally or unintentionally, define them as unattractive (or at least comparatively less attractive than their European-American counterparts), unfeminine, intellectually deficient, obstreperous, and often simply invisible.² As an African-American woman professor, I am often struck by the irony and challenge of my assuming the role of an authority

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¹ Robert Shaull, "Introduction" in Paulo Freire, *Pedagogy of the Oppressed* 15 (trans Myra Bergman Ramos) (Continuum, 1984).

² See Donald Bogle, *Toms, Coons, Mulattoes, Mammies, & Bucks: An Interpretive History of Blacks in American Films* (Continuum, 1989) (discussing the stereotyping of Blacks in the film industry); James L. Hinton, John F. Seggar, Herbert C. Northcott & Brian F. Fontes, *Tokenism and Improving Imagery of Blacks in TV Drama and Comedy: 1973*, 18 *J Broadcasting* 423 (1974) (noting the conspicuous stereotyping of Black women or their glaring invisibility).

on the legal, social, and political ramifications of this powerful phenomenon which, whether by design or "benign" neglect, silences African-American women and other women of color.³

Recent trends in feminist scholarship have recognized that gender-based discrimination and oppression may manifest themselves differently according to ethnic and class identities. In addition, modern feminist scholarship is increasingly attentive to the unique concerns of women of color. However, there has been a significant lack of progress regarding women of color in mass communications research because it has focused predominantly on white women. Specifically, explorations of mass media and race have dealt with African-American people as a composite group, typically focusing on African-American men, without appropriate and necessary attention to the unique circumstances of African-American women.⁴ It has become clear to me that my original fascination with media issues and regulatory policies reflected a subconscious rejection of the media's denial and marginalization of persons who shared my ethnic and/or gender identity. As a result, my decision to study and to specialize in the area of telecommunications was motivated by my desire and need to exercise some influence over this phenomenon.

My objectives, goals, and perspectives as a law teacher have been shaped in large measure by the experiences that motivated me to become a lawyer and by my experiences in private practice. I grew up in Sumter, South Carolina during the days of *de jure* segregation and the accompanying "white" and "colored" signs for water fountains and bathrooms. These were the days of lunch counters when one might be allowed to place a carry-out order but never to sit at the counter. These were the unforgettable days when itineraries for our annual journeys from South Carolina to New York were formulated with thoughtful reference, not to

³ See generally US Comm'n on Civil Rts, *Window Dressing on the Set: Women and Minorities in Television* (US GPO, 1977); US Comm'n on Civil Rts, *Window Dressing on the Set: An Update* (US GPO, 1979) (to the extent that television serves as the creator or reinforcer of ideas about status, occupational prestige, and authoritative presence, it plays a negative role with respect to people of color and women, with women of color being in the least favored position). See also Linda Lazier-Smith, *A New "Generation" of Images to Women*, in Pamela J. Creedon, ed, *Women in Mass Communication: Challenging Gender Values* 247, 252-59 (Sage, 1989) (comparison of major advertiser stereotype/role research studies of sexism in the 1970s and 1980s led to the conclusion that the advertising images of women in the 1980s were not significantly different despite women's increased social status).

⁴ See Jane Rhodes, *Overview and Theoretical Framework* in Pamela J. Creedon, ed, *Women in Mass Communication* at 112 (cited in note 3). Rhodes notes that the exclusion of women of color in research literature may be attributable to their marginal status in society and calls for a research agenda which would begin to address such questions as the following:

If mass media are a prime force in the transmission of culture and societal values and norms, why have Black women been systematically excluded from this process? What is the interplay among advertising, marketing, public relations, and media content that enables the communications industries to pay scant attention to Black women as a group? Have the mass media deliberately or unintentionally contributed to the political and economic forces in America that have perpetuated Black women's low status?

Id at 115.

the availability of hotels, motels, and restaurants, but rather to the availability of rest stops at the homes of friends and relatives. Some of these persons we knew previously, others we met for the first time on that trip—all were bound by a cordiality and hospitality forged out of an appreciation of mutual need and an understanding grounded in an all-too-common experience.

These memories are accompanied by recollections of my mother's quizzical and amused voice as she led me away from the decrepit little water spout for Blacks located under the stairwell of our local J.C. Penney store to the big water fountain for whites on the main floor—"Who ever heard of colored water? Let's get some from over here." There are memories of my Uncle Rufus' proud rejoinder, "And when she said, 'we don't serve colored people here,' I said, 'Good, 'cause I don't eat them,' and I walked away." I remember my father telling me that it was about time I thought about whether there was any movie worth paying the same admission price as white people to go up a side or back entrance to sit in the balcony—even if the balcony seating was better, if the truth be known. Simply put, I learned from my elders to recognize the absurdity in irrational and unfair edicts, legal or otherwise, and to question and, as appropriate, to oppose the logic (or illogic) and perpetuation of institutions, laws, systems, relationships, and images which seek to oppress, to demean, to disempower, and to dominate minority groups.⁵

These experiences created and perpetuate a tension in my understanding of and approach to the law and to life. I learned from first-hand evidence that the law is not some sterile, objective, or neutral jurisprudence. Rather, the law is a way of ordering and protecting social, legal, political, and economic relationships. It is not text carved in stone, but rather a dynamic, evolving (albeit slowly) response to perceived societal imperatives. It is a function of time and constantly different circumstances.⁶ I learned that the law can be changed to accommodate new experiences, new knowledge, and new needs.

Growing up as an African-American in this country meant that I

⁵ I have chosen to reflect on experiences shared with family members Anna Mays, Daniels Reuben, Rufus Jacob Daniels, and Odell Richardson Reuben, Sr., but the lessons learned were replicated by other adults in our community, particularly in our church and school environments. I was struck by the similarity of our experiences when I read bell hooks' essay relating her experiences growing up in a segregated society with Black teachers who, in challenging Black students to think critically about any system which sought to limit and to denigrate them, essentially provided initial lessons in what hooks calls "oppositional thinking." bell hooks, *Talking Back: thinking feminist, thinking black* 49 (South End Press, 1989).

⁶ Sumter County, my childhood community, was adjacent to Clarendon County, where the South Carolina plaintiffs in *Brown v Board of Education*, 347 US 483 (1954), resided. Clarendon County had the reputation of being one of the most repressive counties in the state, and I can recall hearing adults talking about the NAACP's challenges there. They believed that if change could come to Clarendon County, it was just a matter of time for change to come to the rest of the state and to the South. See Richard Kluger, *Simple Justice* 4 (Knopf, 1976) (discussing oppressive conditions in Clarendon County which led to political organization of the Black community).

also experienced the law as a weapon used to silence, to humiliate, and to oppress. At the same time, my family, like other African-Americans, probably survived because we were staunch adherents to what is now described as "rights discourse";⁷ we had a deep and abiding belief that the *de jure* segregation which existed throughout this country represented an aberration, a molestation of the law which could not and would not be forever tolerated. We believed strongly that there were certain unyielding principles of equal justice and equal rights that would ultimately prevail. Thus, I also knew that law could empower, protect, and ennoble.

While I was taught that each of us had a responsibility to ensure that this latter vision of the law would prevail, it was always clear that lawyers were those special persons who gave voice and defense to cries of injustice and inequality. Upon reflection, I understand that two primary factors motivated me to become a lawyer. First, I wanted to be a voice that could challenge this nation's system of racial oppression. Second, as a Black American growing up in a society in which Black lawyers were a rarity, I sought to provide an alternative to the advocacy of the rights and needs of African-Americans by non-Blacks.⁸ I cannot remember a

⁷ The Critical Legal Studies (CLS) critique of legal rules and reasoning focuses on the indeterminate and manipulable nature of rules and their operation to legitimize unfair and inequitable power, as well as economic arrangements and distributions in society. Accordingly, distinctive and exceptional rules denominated as "rights," act to limit the amount of injustice to a bearable level. In this way, the status quo is not endangered. The truly powerful boldly proclaim and redistribute rights and then, through crafty legal reasoning and processes such as "strict construction," "all deliberate speed," and erratic or non-enforcement, effectively nullify those rights. Thus the hierarchical system is legitimized as fair and the challenged oppression remains unchanged. CLS scholars argue that "rights discourse" protects independent fiefdoms and encourages alienation rather than creating cooperation and interdependence among persons. In the alternative, CLS scholars believe that informal arrangements based on mutual trust, need, and respect should be the models for a communal and participatory society. See generally Duncan Kennedy, *Form & Substance in Private Law Adjudication*, 89 Harv L Rev 1685, 1766-74 (1976); Gerald E. Frug, *The City as a Legal Concept*, 93 Harv L Rev 1057 (1980); *Symposium: A Critique of Rights*, 62 Tex L Rev 1363 (1984).

Although the CLS critique of rights as indeterminate and susceptible to expediency and manipulation resonates with the experiences of people of color in this country, the CLS disparagement of rights has been subjected to considerable criticism by many scholars of color. These scholars believe that the CLS critique of rights fails to recognize and, therefore, to value the distinctive experiences of people of color in this country. In our experience, rights have been a source of protection, a statement of legitimacy, a limitation on abuse of power, and a rallying point for communal action. These scholars of color understand that assertion of rights is a means to the elimination of social, legal, and economic oppression and not the end itself. For minority critiques of the approach of the CLS movement to rights discourse, as well as recognition of the historical, pragmatic, and ideological importance of rights discourse to people of color, see generally Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 Harv CR-CL L Rev 301 (1987); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 Harv CR-CL L Rev 323 (1987); Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals From Deconstructed Rights*, 22 Harv CR-CL L Rev 401 (1987).

⁸ I have always perceived the importance of the oppressed or exploited group articulating its own condition and its own demands in order to insure the integrity of the definition, particularly where the competing interests of the dominant and dominated groups collide. Initially, this perception was just a pragmatic conclusion, born of the natural distrust engendered by life in a segregated society. It is now clear to me that this "coming to voice" is in itself an act of

time when I did not know that I wanted to be a lawyer; but then, I cannot remember a time when I was not aware of racial injustice and discrimination.⁹

My career in telecommunications law and subsequently as a law professor has not been entirely by design; however, it has not, as it has evolved, constituted a major deviation from my early idealistic (yet very real) commitment. It does not seem to have been much of a leap from civil rights lawyer to telecommunications lawyer and communications law professor. Indeed, anyone who lived through the 1960s is aware of the importance of the media in shaping events, deciding what stories to tell and how, and mobilizing public opinion.

Media courses were almost nonexistent when I was a law student in the early seventies. My introduction to communications law as a specialization occurred when I was employed as an associate with a large Washington, D.C. law firm that had a substantial and prestigious communications practice. In that environment, I learned the technical and substantive aspects of the practice of communications law as I worked on cases and regulatory proceedings with major policy implications. I also advised licensees as they sought to implement or to circumvent various regulations. Although certain situations or problems might dictate a particular course of action (for example, there are specific rules regarding candidate access during political campaigns), most of the questions that were referred to counsel were those in which there was some ambiguity or flexibility in the interpretation of the rules. These latter situations also tended to present the more interesting questions. For example, whether a licensee was required to seek out and broadcast additional views on a particular subject, or what would be an appropriate

resistance, a liberatory stance, a refusal to be ignored or marginalized, a demand that engagement take place from positions of mutual respect.

⁹ My earliest recollection of talking with anyone outside of my family about my decision to become a lawyer occurred when I was eight years old. When I was eight I spoke with Edith Sampson, a pioneering Black woman attorney, who served as a United States delegate to the United Nations. At that time, Ms. Sampson was the guest for Negro History Week at Morris College, a historically Black college in Sumter, South Carolina. I had the opportunity to talk with her on several occasions during that week. I will never forget the seriousness with which she treated a little girl's dream and the encouragement she provided through example and dialogue. Perhaps the most important legacy and obligation that she unknowingly left me was an understanding of the importance and reciprocal obligation of taking the dreams of other people seriously.

This obligation is an important aspect of my teaching and advising, especially for African-American students (from elementary school onward) who are referred to me because they have expressed an interest in becoming lawyers. I am quite certain that this mentoring activity is undertaken with a special commitment by my sister law professors as well. However, this mentoring activity is not limited to Black students; other students from my classes, which are mostly white and overwhelmingly male, will also stop in to talk or to ask for advice. I am more likely to be sought out in this regard by students from my communications courses in which I use the participatory instructional techniques discussed later in this paper, rather than by those in my large Administrative Law and Estates and Trusts classes. Perhaps by acknowledging my "voice" in the communications classes, I create opportunities and encouragement for other "voices" to emerge.

response to community groups advocating more pro-social children's programming throughout the week. Other examples are civil rights groups challenging a particular station's employment profile or the adequacy of its coverage of the various ethnic communities. It became increasingly clear to me that the response of these entities to the various issues which confronted them often depended heavily on the kind of counsel which they obtained. There were times when my experience as a person of color provided me with a source of knowledge about various ethnic organizations, publications, and educational institutions that I believed made a positive difference in the way in which a client served its community. However, there were also times when my sympathies and personal beliefs—but not my advice—were in far closer agreement with the issues raised by the challengers than with my client's objectives. These latter times were not frequent, but when they occurred, they were most troubling.

My understanding and perception of the media's capacity to protect and to perpetuate itself grew during this period. I became increasingly cognizant of the media's capacity to resist both external and self-regulation and to influence and control its own world as well as my world. Notably, I came to understand and to appreciate communications as a business enterprise as well as a social phenomenon. Thus, while many in the industry would, all things being equal, "do the right thing," the pressure to attract audiences, to achieve positive ratings and to be profitable often defeated their more altruistic or socially motivated instincts. As a consequence, I grasped that regulations or policies in conflict with profit or other corporate objectives are likely to be ignored or compromised if left to self-regulation for enforcement. The roles of the public as watchdog and the government as regulator emerged from my observations as essential to the development of socially responsible media policies.

The critical role of the media as a powerful vehicle for social change became clear during my experience as an attorney with Citizens Communications Center (CITIZENS), a public interest communications law firm located in Washington, D.C.¹⁰ My advocacy activity on behalf of citizens and community groups throughout the country provided me

¹⁰ Civil rights and civil liberties issues were the driving forces behind many of the policy decisions interpreting the scope and meaning of the public interest clause of the Communications Act. For example, the landmark case, *Office of Communication of United Church of Christ v FCC*, 359 F2d 994 (DC Cir 1966), which established standing for listeners and viewers in Commission proceedings for renewal of licenses, arose from the efforts of Black Mississippi citizens to secure fair and unbiased broadcast treatment of racial issues. Further, a recent Supreme Court discussion of affirmative action and equal opportunity transpired in the context of communications policy. See *Metro Broadcasting v FCC*, ___ US ___, 110 S Ct 2997 (1990) (holding that the FCC could award preferences to minority owners in comparative licensing proceedings). Questions of fair portrayals of, access for the presentation of views of, or specialized programming for ethnic, religious, handicapped, lesbian, and gay groups, often provide the context of major policy decisions in communications law and in administrative law generally.

with opportunities to see how political and socio-economic issues within various communities can be ignored, reformulated, embraced, validated, and even advocated by the media.¹¹ Many of the concerns voiced to me in the course of my advocacy—employment discrimination, eliminating and/or limiting both negative or stereotypical sexual and ethnic images, coverage and fair discussion of issues of importance to communities of color—manifested a “merger of voices” of client and advocate heretofore silent or marginalized. This merger symbolized a liberating, empowering, and integrating force in my personal and professional life.

My experiences at CITIZENS also stimulated my thinking about the critical relationship of education to the law process. I began to think more closely about both the substantive content and the socialization process involved in legal education. This occurred when I was assigned the responsibility of conducting CITIZENS’ internship program. Students were selected from law schools nationwide and usually spent a summer and a semester in residence at CITIZENS for which they received one semester’s worth of credit. Almost without exception, all of our students were very capable individuals from highly-ranked law schools who, after a year or more of law school, usually had lost their initial enthusiasm for the law. They had begun to question their capability and competence to make a difference and to be successful lawyers. Most of the students could not envision career options which would permit them the opportunity to enjoy an intellectually exciting law practice in the context of social commitment and people-oriented policy.

The feelings which the students disclosed were not unlike those which I experienced as a law student. In law school, for the first time in my educational experience, I began to sense a lack of self-confidence and self-esteem. I observed Black students being curtly and impatiently questioned or simply ignored by professors who carefully and sensitively cultivated the analytical skills of white males, many of whom were conspicuously less able students. Later I came to understand that while some of these interactions reflected overt racism, a more subtle but equally pernicious phenomenon was at work. More specifically, notions of misguided benevolence and liberalism based on subconscious beliefs that we really did not belong or would not get the answer, or would be embarrassed by our ignorance, led professors to think that they were really being kind and sensitive to us.¹² In contrast, my early teachers

¹¹ One might recall the controversy over the use of ALAR, a pesticide, on apples. The Natural Resources Defense Council (NRDC) had been fighting with the EPA for years about the adverse health implications of the use of ALAR. Within weeks of a CBS “60 Minutes” broadcast in 1989 about the ALAR controversy, the industry and the government had moved to eliminate the threat. See Lorianne Denne, *Apple Commission Won’t Join “60 Minutes” Suit*, Puget Sound Bus J 9 (Jan 21, 1991).

¹² My research assistant read this section and wrote the following note in response, which I share unedited (with understandable deletions of particular names) because it speaks with such elo-

pushed us and told us that we had to be better to overcome life's unfairness and to succeed. They did so because they had a basic confidence in our abilities. I realized that this unfeigned affirmation of confidence on the part of my early teachers was the prerequisite for a pedagogy of challenge and critical thinking. I discerned that communicating to my students my confidence that they could work through difficult and novel legal questions or problems creatively and thoughtfully was more than a pedagogical technique: it was a pedagogical imperative.

The student interns at CITIZENS thrived in this atmosphere, and not surprisingly, my confidence in them produced results that kindled and sustained my emerging opinions about legal education and my participation in that process. It was intensely gratifying to see these students develop self-confidence and a sense of self-esteem and pride, a sense of accomplishment and purpose, and a sense of personal competency as they produced persuasive and well-written memoranda or briefs and provided useful counsel to real clients. It was most exciting to see them begin to interrogate premises and previously-held assumptions as they set about the task of using the law not only to achieve their clients' goals, but to secure the implementation of communications policies fashioned to further the public interest. It was this inclination, capacity, and self-confidence to engage in critical interrogation which seemed to me to differentiate between the student who began the internship program and the student who departed at the end of the semester.

Not every student who came to CITIZENS departed as a communications law advocate for community groups or even became a public interest lawyer. Indeed, I doubt seriously that every student even agreed with all of the various arguments and positions put forth by CITIZENS. We often had rousing debates regarding what constituted "the public interest" and whether it was unduly arrogant to assume that we were "public interest" lawyers. Some students came to CITIZENS knowing that they wanted to practice communications law from an industry perspective, either as corporate counsel or as outside legal counsel. And that was fine. What mattered most was that each student, whatever her or his motivation, had been exposed to different perspectives through our dialogues and debates, through exposure to a client base richly diverse in

quence of the feelings of marginality that are present for many currently in the law school environment.

I feel, possibly to a lesser extent, the same thing happening here, to women in general. In addition, my first year, maybe even now, I felt a "chill." Women's opinions weren't as valuable as men's. For example, [Mr.—] asks some pretty stupid questions and he won't let go when he's wrong, or if he doesn't understand something. But, if a woman does it, say [Ms.—] or somebody, she's "stupid" or tiresome and she is subtly encouraged to keep quiet. Also, there is *much* less respect for "older" women in law school, as compared to men. Men are seen as changing careers, making a positive choice, while women are seen as incompetent—they couldn't cut it where they were, so they have to run back to a "safe" academic haven. Or they are seen as frivolous: tired of staying home with the kids—go to law school.

ethnicity, objectives, and socio-economic status, and through the experience of working closely with fellow interns whose selection also took into consideration diversity of backgrounds.¹³ For me, the challenge of teaching has been to attempt to replicate the learning possibilities which were inherent in and, to a significant degree, achieved in that situation.

A primary goal in my teaching is to create a context for the emergence, testing, and articulation of new and different ideas and perspectives. Our worlds and those of our students reflect experiences, actual and vicarious. Our actual experiences tend, in large measure, to be a function of our respective racial, social, economic, and educational opportunities, exposures, and access. My sister professors have written with power, incisiveness, and sensitivity about the challenges and anguish as well as of the richness of the multiple consciousness of being female and a person of color in this society.¹⁴ This experience of multiple consciousness is a reservoir of strength and a resource that African-American women law professors can draw upon and use to enlarge the experiences and critical stances of our students.

I attempt to do this in a number of different ways. There are times when I directly articulate unraised questions in the classroom. I find this serves the purpose of bringing these issues to the surface for discussion and thought. In addition, it validates the concerns of students who, to varying degrees, also experience multiple consciousness or who are working to understand and to appreciate the experiences of others.¹⁵ How-

¹³ CITIZENS' clients ran the gamut in terms of ethnic demographics and included organizations which focused on issues relating to Blacks, Asian-Americans, Hispanics, Latinos, socially disadvantaged or underrepresented groups such as the disabled, gays and lesbians, and children. The legal staff ranged in age from about 25 to 45, with one African-American male who was executive director, two white male attorneys, and myself. The support and professional staff was similarly diverse.

¹⁴ See, for example, Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U Chi Legal F 139 (1989); Angela Harris, *Race and Essentialism in Feminist Theory*, 42 Stan L Rev 581 (1989); Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 Women's Rts L Rptr 7 (1989); Judy Scales-Trent, *Black Women and the Constitution: Finding Our Place, Asserting Our Rights*, 24 Harv CR-CL L Rev 9 (1989); and Angela Davis, *Women, Culture and Politics* (Random House, 1984). When I think of the unique perspective that the experience of being Black and female in this society produces, I am reminded of the following insightful observation by bell hooks:

Black women with no institutionalized "other" that we may discriminate against, exploit, or oppress often have a lived experience that directly challenges the prevailing classist, sexist, racist social structure and its concomitant ideology. This lived experience may shape our consciousness in such a way that our world view differs from those who have a degree of privilege (however relative within the existing system). It is essential for continued feminist struggle that black women recognize the special vantage point our marginality gives us and make use of this perspective to criticize the dominant racist, classist, sexist hegemony as well as to envision and create a counter-hegemony.

bell hooks, *Feminist Theory: from margin to center* 15 (South End, 1987).

¹⁵ For example, in my Regulation of Media course, most students begin from the position that first amendment freedom should be expanded and maintained as much as possible. We then look at accepted restrictions on speech such as defamation and copyright, and the rationales for balancing first amendment and individual rights in those situations. Once we begin to

ever, I recognize the danger that some students may dismiss or marginalize certain views and positions. A student who expects to hear certain positions from particular people may not give them credence or may develop an immunity to that particular point of view as a result of hearing it so often from the same kind of person.¹⁶ Obviously, the preferred course is to have students acknowledge and identify many of these ideas and perspectives themselves. In this way they begin to "own" the legitimacy of those views, and often respond emphatically to them. I use three modes of teaching which are useful in creating a dynamic of responsible and responsive learning.¹⁷

A. Role-playing

The use of roles which are assigned in the context of a problem or hypothetical case creates the opportunity for students to "try on" new ideas and to advocate heretofore unembraced positions as well as to think more critically and profoundly about positions that they hold.¹⁸

For example, a particular problem set involves an exploration of the Federal Communications Commission's decision to revise its multiple-ownership rules, which limited broadcast station ownership to seven AM, seven FM, and seven television stations, to permit ownership of twelve stations in each category. As the Commission moved from its seven-station rule to its proposed twelve-station rule, there was a great deal of discussion by the Commission and Congress about the total elimination of all multiple-ownership restrictions. The records of attendant congressional hearings and legislative debate are replete with lobbying

understand (1) that the process of assigning values to different interests determines the kinds of protections we are willing to accord those interests, and (2) the kinds of restrictions we are willing to put on speech, we then look at reasons for imposing or not imposing restrictions in areas such as hate speech or pornography, and examine the questions of values and competing interests involved in those situations.

¹⁶ For example, the expectation that I would support affirmative action or minority ownership or take a feminist position on certain issues may cause students to discount my thoughts on the subject. Several students of color at the law school have indicated that they resent being called on to present the "Black" or "Latino" view. Although a major objective of diversity within law school populations is to enrich the learning experience by enlarging the discussion to address the different legal experiences of various groups, there is the danger that students of color are marginalized when they are seen as experts in race but little else.

¹⁷ I use the term "responsible and responsive learning" to characterize the belief that student and teacher occupy interactive and shifting roles. Therefore, the person denominated as "student" in the traditional paradigm should also assume responsibility for learning in an active manner. In many of these exercises, the student must do a great deal of critical thinking in order to produce the work product. At the same time she or he has an opportunity to learn vicariously by playing the role of a participant in the process.

¹⁸ To this end, I alternate between two methods of assigning students roles. In one method, I assign particular roles based on my perceptions of students' positions, in an attempt to reinforce, to challenge, or to allow an opportunity for exploration of those positions. Other times I simply randomly assign roles. I find that both means of selection are important parts of the pedagogical process for students and for myself. I am often surprised and forced to reject preconceived and untutored notions of where students' abilities and positions actually lie.

and rule-making comments drafted by members of the industry, citizens, and independent producer organizations which saw their interests threatened (or potentially enhanced) in some way by the Commission's decision.

These various roles are assigned to students in an attempt to enable them to understand first-hand the way in which policies may affect the discrete interests of particular groups. In addition, the students will understand the way in which groups, in order to achieve their goals, engage in coalition-building (sometimes with previous opponents), and the extent to which successful advocacy often means shaping arguments and activities for various different political and administrative arenas.

The utilization of role-playing allows me to achieve two teaching objectives which I articulate for the class and, subsequently, reinforce in the context of the role-playing. First is the dynamic of multiple consciousness and multiple objectives which may be the result of life experiences which differ from those of the majority or dominant group. For example, several students may be assigned the role of members or counsel to the National Association of Black Broadcasters (NABOB), which is a trade organization and lobbying group for Black broadcast owners. In this role, students must grapple with the conditions under which NABOB, unlike other members of the National Association of Broadcasting (NAB), might resist increases in permissible levels of ownership because of concerns about the availability of capital in a market of quick turnovers of stations and rapid appreciation of station prices. They must also deal with the ways in which NABOB's interests diverge from those of other owner organizations with respect to other forms of media regulation. Students typically begin to notice that NABOB's position resembles more closely that of public interest groups rather than that of other industry organizations or, at least, reaches a mid-point between these two extremes. The exercise usually brings about a better understanding of the nexus between NABOB's historical antecedents and the goals of public interest groups which lobby for both minority access and ownership and equal employment within the broadcast industry.

Second, I want the students to understand and to see how history and facts are recast and rewritten in order to further and justify current political, philosophical, and economic goals. This is particularly important in the area of broadcasting which for the past decade has been characterized by a fervent deregulatory zeal and "marketplace philosophy." In this particular role-play exercise, students have access to actual sets of comments written during the rule-making proceedings, as well as citations to other documents and proceedings which they may use in order to prepare their presentations. As a result of their research they have a historical context against which to measure current discussions of the rationales for and the success of the challenged regulation. Although the

degree to which a student views the background of current orders as revisionist history or simply editorial crafting may be the result of the particular role that the student assumes in that particular exercise, it is clearly apparent that all students begin to look at decisions and opinions of the Commission in a more critical and analytical light. For example, students begin to ask why certain issues are ignored or downplayed or articulated in certain suspect modes. Is it simply editorial discretion or is there some other objective or tactical device at work?

B. Empirical Analyses

The importance of critical interrogation and the search for the absent, or at least the meaning of the absent, is particularly important in the context of media law and regulation. The extent to which I value this search as a pedagogical objective is directly related to my experiences as an African-American woman. I urgently want students to consider the messages that the media gives about who we are and what our relationships are to each other. I want them to consider the extent to which television is an agent of social control or simply reflects prevailing values and attitudes in society. I want them also to think about the extent to which they simply accept without question the portrayals offered by the media. In addition, I hope students will consider the extent to which the various media are necessarily constrained (by technical and other limitations) in the information which they are able to present. In other words, students must deal with the very real possibility that the news which they receive, and often accept as reality, is less a function of truth than of the need to accommodate the technical format limitations or perhaps even the market objectives of the particular medium.

I have found that it is important to create a context in which students approach these questions with informed and open minds if they are to examine critically the role of the media and to evaluate and propose regulatory policies. This year the students in my Regulation of Electronic Communications course will be required to compile data from one week of television commercials and programming which reports information such as the number of different minority groups which are represented; the ratio of minority to majority actors and the types of roles which are assigned and the kind of interaction which is portrayed; the ratio of men to women; the use of female versus male voice-overs in commercials (particularly in commercials selling female products) and in what types of commercials; what roles men and women most frequently play; what roles minority men and women most frequently play; what characteristics best describe minorities and men and women in TV presentations; and how closely TV roles parallel the lives of people that

students know.¹⁹

The students' data will be shared with all members of the class and will be submitted at a point in the semester when we have explored questions of content regulation and marketplace dynamics. Hopefully, with this information, the class should have an accurate depiction of television over a substantial period of time. It is my hope that this background information will enrich our discussions about policy decisions relating to media regulation and the role of media as a uniquely powerful social, economic, and political force in our lives.

C. Reflections

Throughout the semester I ask the students to write short reflective essays on the assigned reading.²⁰ Aside from the obvious pedagogical value of ensuring thoughtful, analytical, and integrated reading of assigned text, the use of such reflections provides additional learning opportunities. First, it allows students to speak in their own voice with their own emphasis about issues and questions which are important to them in the context of the assigned subject matter. Second, because the assigned readings are the point of departure for the reflections, I find that students very often relate the reading to experiences or previous discussions that are actually going on in their lives rather than being bound to the lives and experiences presented in the text. This affords them a rare opportunity to make the law real in their own lives.

This melding of theory and practice is extremely important to me as an African-American female law teacher.²¹ The advent of this shared personal voice creates an interesting class dynamic: expressing what they think and believe as opposed to interpreting what has been said by others creates in students a vulnerability often not present in other classes. An unspoken rule seems to develop—while reflections may (and often do) engender critical and engaged discussion and debate, the reflections and the author are always treated with respect.

¹⁹ The students will be creating what is known in the trade as a "composite week," in which the days are drawn from various weeks. Because of the difficulty of watching television and keeping up with other homework assignments at the same time, the students will be permitted to compile the week out of a six-to-seven-week period and to choose two hours of prime-time television viewing, excluding movies and sports events. This period will also include Saturday morning television in order to compare children's television to prime-time television.

²⁰ In October 1989 I attended a conference on Minority Teachers and the Law, sponsored by the Association of American Law Schools. The use of reflective essays as a pedagogical tool was one of the many useful examples that Harvard Law Professor Derrick Bell shared with the group.

²¹ See generally hooks, *Feminist Theory* (cited in note 15) on the importance of bridging theory and practice.

Conclusion

I view my teaching as an opportunity to create the cognitive dissonance which is an essential prerequisite for true learning and transformational thinking. In order for this to occur, I must create a safe environment in which, paradoxically, students can be at risk. My teaching style—which I hope is both encouraging and challenging—reflects this belief and my personal experience. This is not to say that I seek my students' comfort. On the contrary, I would prefer that to the degree that there is anxiety in the classroom, it result from the uneasiness of old thoughts being challenged rather than the fear of not knowing "the answer."

Both students and professors need to break through the tidiness of our respective worlds. We need to look at our worlds both critically and analytically and raise questions about their construction. This is an important and lifelong task, and the study of the media is an important situs for this discipline and praxis since the media, particularly television, influence our cultural learning and our social, political, and economic institutions. To the extent that I, as an African-American woman law professor, engage in and facilitate this process, I consider my self-imposed and communal obligation to be about the business of transforming society, not simply transmitting facts and rules about the law. And this is why I chose the law as my profession and teaching as the situs of its practice.