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Charles R. Calleros

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Training a Diverse Student Body 
for a Multicultural Society* 

Charles R. Calleros†

I.
INTRODUCTION

With the admission of greater numbers of women and minorities in recent decades, student populations at many law schools have edged closer to reflecting the diversity of the general population.1 Even more recently, gay and lesbian students and faculty have found a sufficiently tolerant atmosphere at some schools to come "out, loud and proud,"2 revealing a new awareness and outspokenness if not greater numbers.

The legal profession and legal education, once nearly exclusively the province of white males, has not remained unaffected by these changes. Diversifying the student body has done more than create academic and professional opportunities for formerly excluded segments of our population. It has also introduced new challenges in teaching students with profoundly different experiences. Finally, the increased diversity of law school student and faculty populations has provided new opportunities for law professors to explore issues from a variety of perspectives in order to prepare all students for the demands of using the law to address the needs and problems of a multicultural society.

This essay explores the benefits of raising issues in culturally diverse contexts in the law school classroom and examines techniques for doing so effectively. It also offers advice for managing difficulties which can

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1. For example, statistics of the American Bar Association show that total enrollment in J.D. programs increased only by slightly more than 13% between the 1977-78 academic year and the 1993-94 academic year. A Review of Legal Education in the United States, 1993 A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR 67 (Fall 1993). By contrast, during the same period, enrollment of ethnic minority students increased by nearly 138%. Id. at 70. Though students of color still constituted less than 20% of total enrollment in the 1993-94 academic year, their numbers and presence are conspicuous at many schools. Id. at 67, 70.

2. I borrow this phrase from Mark E. Wojcik, an openly gay law professor at The John Marshall Law School.
arise when confronting issues of "difference." Throughout this essay, reference is made when helpful to the comments and stories of a group of ten ethnically diverse law students who met with the author to discuss their law school experiences. The information provided by this "Student Group" cannot be equated with the results of a controlled survey of a representative sample, but it serves well to raise questions, provide illustrations, and give a student voice to the issues.

II.

BENEFITS OF CONFRONTING ISSUES OF DIVERSITY

The advantages of raising issues that cut to the heart of gender, race, or other fundamental or perceived differences are at least threefold. First, such issues can be excellent vehicles for developing skills of critical thinking, both because students care deeply about the issues and can challenge each other to analyze the issues from a variety of perspectives. Second, a diverse group of students addressing such issues are likely to educate one another about cultural differences, better preparing all students for professional practice in a multicultural society. Third, by setting issues in the context of different cultures and encouraging the expression of a variety of perspectives, an instructor can reduce the alienation often experienced by students who feel like "outsiders" to the legal profession and an educational system that retains many vestiges of white, heterosexual male traditions.

A. Developing Skills of Critical Analysis

An example from the Student Group illustrates how topics that raise issues of sex, race, or other fundamental or perceived differences among people can be effective vehicles for developing skills of critical analysis. One member of the Student Group, a white woman who will be referred to as "LF," recalled three consecutive class hours in her Criminal Law class during which her instructor led the group in riveting and wrenching discussions of the crime of rape and the defense of consent. The instructor encouraged her students to explore all perspectives.

LF found the discussion to be frustrating, emotionally trying, and occasionally explosive. Questions concerning the scope of the doctrine of consent revealed different perspectives associated with sexually assertive men on the one hand and women who have experienced aggressive sexual advances on the other. Nonetheless, LF found these discussions to be an "incredible learning experience" during which she honed her oral advocacy skills by articulating her arguments for a narrow definition of consent. Equally important, she better understood the "male perspective" and learned that it was not truly gender specific, since a few women as well as many men in the class argued in favor of a broader view of consent.

Interestingly, a different section of Criminal Law in the same semester
did not discuss the crime of rape. The professor had declared the topic "too sensitive" and that he was uncomfortable covering it. A member of the Student Group noted that many students felt "cheated" of the opportunity to confront a difficult issue that could help prepare them for addressing similar questions in practice.

The lesson of this story seemed clear to the members of the Student Group: as painful as they may be to confront, students tend to care deeply about issues of race, sex and other differences, leading to particularly intense and lively class discussion under the direction of an able and fearless instructor. Moreover, a diverse group of students will tend to express a variety of perspectives to the educational benefit of all. For example, LF honed her skills when forced to confront and evaluate the perspectives of others in her Criminal Law class; in turn, other students had the opportunity to benefit from confronting and evaluating her perspective.

B. Preparing for Practice in a Multicultural Society

While some people hope for a truly "color-blind" society, some law students may expect to practice law in a field in which race, gender, sexual orientation, age, religion, physical and mental ability, economic class, and other significant personal characteristics simply do not matter. Thus, a graduate may try to define a narrow legal niche in which he or she can maintain at least the illusion that sensitivity to diverse perspectives is unnecessary for a successful practice of law. However, even those who do not seek to challenge the legal system's claims of objectivity will find it difficult to deny or escape the cultural pluralism of our national identity, because that pluralism often introduces an extra layer of complexity to legal disputes and may create special challenges in representing diverse clients.

For example, LF learned from the example in Section A supra that different perspectives on the issue of rape were not entirely gender


4. Section III of this chapter will address the question whether an instructor should excuse a student from discussing or otherwise confronting an issue about which the student has suffered a traumatic experience.

specific. She also found the discussion to be periodically volatile precisely because the men and women in the class generally had different experiences and interpretations that caused them to draw diverse inferences about the level of consent implied by a given set of circumstances. By exploring the different ways in which men and women experience the world, and the diverse interpretations and perspectives that often arise from those experiences, students can better prepare themselves to understand the nature of the conflict and the issues in criminal or civil suits. For example, such insight may be particularly useful in suits involving rape, sexual harassment and other forms of sex discrimination, some forms of infliction of emotional distress, and indeed any matter in which different groups may approach the dispute from different perspectives. Confronting such potentially conflicting perspectives in law school can help graduates better understand and argue legal questions, such as whether a claim of discriminatory harassment should be based on the perspective of a "reasonable person," or that of a reasonable member of the group targeted for harassment, such as a "reasonable woman" or a "reasonable African-American." Moreover, regardless of the nature of the legal problems they bring to a law office, the clients themselves will be diverse, particularly in a practice that takes seriously its responsibility to represent indigent clients. A student who regularly grapples with legal issues that are set in diverse contexts and that require evaluation of varied perspectives may be better prepared to "communicate, develop trust, and establish rapport" with a wide range of clients representing different economic classes, genders, races or ethnic origins, physical or mental abilities, or other significant personal characteristics.

6. See, e.g., EDWARD O. LAUMANN, THE SOCIAL ORGANIZATION OF SEXUALITY 333-39 (1994) (concluding from study that men perceive sex to be coercive less frequently than do women); Randy Thornhill & Nancy Wilmsen Thornhill, The evolutionary psychology of men's coercive sexuality, 15 BEHAVIORAL AND BRAIN SCIENCES 363, 366 (1992) ("There is strong evidence that the following masculine traits are evolved ones: . . . men are more likely to infer the presence of sexual interest in a potential mate where there is not such interest."); see also Panel Discussion: Men, Women and Rape, 63 FORDHAM L. REV. 125 (1994); Catchpole v. Brannon, 42 Cal. Rptr. 2d 440 (1995) (reversing trial judge's decision in favor of an employer on grounds that the judge displayed gender bias against the plaintiff and her claims of sexual harassment).


8. See, e.g., Bill Ong Hing, Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Courses, 45 STAN. L. REV. 1807 (1993).

C. Reducing Student Alienation

Law school appears to alienate nearly all students to varying degrees.\textsuperscript{10} For most students, the workload is daunting, some classroom instructors can be intimidating,\textsuperscript{11} the concepts and methods are unfamiliar, and much of the language of the law is figuratively foreign and sometimes literally so.\textsuperscript{12} Moreover, even though levels of alienation vary among students, a student's ability to adapt to the law school experience is partly a function of personal circumstances that cut across gender, race and cultural lines. For example, it would not be surprising if the offspring of a corporate law professor felt more comfortable with the law school surroundings than a student raised on a rural farm, regardless of the race or gender of either student.

Other personal circumstances being equal, however, those students least able to identify with the white male traditions of legal education are most likely to experience an elevated degree of alienation. For example, a female law student participating in a panel discussion at the 1986 meeting of the Association of American Law Schools described the way in which the physical setting and the style of instruction at her Ivy League law school posed obstacles to her legal education. She described the debilitating effects of sitting in a classroom decorated with rows of portraits of white male legal scholars and suffering through a male instructor's attempt to make light of a case about a woman battered and murdered by her husband.\textsuperscript{13} White males as well as women and minorities could certainly regret the historic exclusion conveyed by the homogeneous portraits, and men as well as women could find the gratuitous humor about battered spouses to be both distasteful and distracting; however, it would be understandable if more women than men

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\textsuperscript{10} See, e.g., Taunya Banks, \textit{Gender Bias in the Classroom}, 38 \textit{J. LEGAL EDUC.} 137, 141 (1988) (survey of law students suggests that "the classroom environment may be hostile to most law students, although more so for women than men").

\textsuperscript{11} \textit{Id.} (responses of 76\% of students in survey "suggests that students of both sexes continue to be bullied and belittled in law school classrooms").

\textsuperscript{12} See, e.g., \textit{DAVID MELLINKOFF, THE LANGUAGE OF THE LAW} (1963). Of course, students for whom English is a recent second language face a special challenge. I remember a Navajo student who failed to keep up with the pace at law school partly because he spoke and formulated his thoughts primarily in the Navajo language. In class discussion and on examinations, he was compelled to translate the instructor's English into Navajo, formulate his thoughts in Navajo, and translate them back into English.

found that the described atmosphere challenged their sense of belonging in the educational process and the legal system.

Similarly, unless a school makes great efforts to respond to problems of cultural isolation or dislocation, students of color and others who view themselves as outside the mainstream culture may have a more difficult time adjusting to law school. For example, a Native American student raised in a tribal community likely will experience greater adjustments in law school than will an equally bright student raised in a largely Anglo-American, middle-class or upper-middle-class neighborhood since such surroundings typically mirror the environment at most law schools. In addition to encountering what may be a foreign environment, many students may be further alienated by the dearth of minority role models among the faculty, and the lack of multicultural contexts for most cases and problems. Classroom instructors can mitigate the enhanced alienation experienced by such students by diversifying faculty ranks to offer a broader range of role models and to expand teaching perspectives, and by using materials and presenting problems with which each element of a diverse student body can identify at least some of the time.

D. Potential Objection and Response

Before describing multicultural teaching techniques in the next section, a potential objection to such an approach to legal education should be addressed: if most lawyers and law firms address problems and represent clients that reflect mainstream Anglo-American male culture, why shouldn't instructors adhere to traditional materials, thus requiring students to confront and overcome their varying levels of alienation as a means of preparing for a traditional practice? In response, first, the argument must be made that legal problems and clients are in fact culturally diverse. Secondly, disputes that are tightly confined within

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15. For example, the Indian Legal Program at Arizona State University College of Law has recruited and enrolled a “critical mass” of approximately two dozen Native American students and has provided important support systems for those students, leading one Native American member of the Student Group to express sympathy for members of other minority groups at the law school, which did not enjoy such substantial support. Notably, the law school’s art work is nearly exclusively Native American, providing a nontraditional cultural backdrop and a refreshing alternative from the portraits at the Ivy League institution described in the previous paragraph of the text.

This example raises the possibility that some schools maintain different cultural environments that result in varying definitions of membership in outsider groups. For example, the regional population base, faculty composition, and educational programs at one school might create a relatively supportive atmosphere for Native American and Mexican-American students but a hostile one for African-Americans. A different set of circumstances might create an atmosphere especially alienating to Asian-American students or gay and lesbian students.

mainstream culture are not necessarily the best pedagogical tools for developing skills of legal analysis. In developing this response, both explicit and implicit premises of the potential objection are attacked.

The explicit premise of the objection is that the practice of law is not multicultural. As a result, legal education would better serve students and future clients by immersing diverse students into the perspectives of mainstream culture, rather than providing all students with the capability of evaluating problems from alternative perspectives. First, this premise is likely to be rejected by most attorneys who take seriously their responsibility to provide at least occasional pro bono representation to indigent clients. It is perhaps tautological to observe that the dispossessed in our society are disproportionately those outside mainstream white male culture. This list includes single mothers below the poverty line;\textsuperscript{17} persons of color with substandard educational facilities in primary and secondary schools,\textsuperscript{18} and unequal access to employment and other benefits throughout their lives;\textsuperscript{19} immigrants and others who must overcome language barriers;\textsuperscript{20} AIDS patients who have exhausted their resources on medical expenses;\textsuperscript{21} and persons with physical or mental disabilities that limit their earning power.\textsuperscript{22} A legal education that devotes time and attention to the problems and perspectives of members of groups outside the social and economic mainstream will better prepare students to fulfill their professional responsibilities to a broad spectrum of legal service consumers.

Second, this explicit premise is not fully valid, even with respect to conventional commercial practices that almost exclusively serve well-heeled clients. It matters not whether a trusts and estates lawyer is representing a financially secure AIDS sufferer coming to terms with impending death, or whether a corporate lawyer is attempting to negotiate

\begin{footnotes}

\footnote{18. See, e.g., JONATHAN KOZOL, SAVAGE INEQUALITIES (1991).}

\footnote{19. See, e.g., Ian Ayres, Fair Driving: Gender and Race Discrimination in Retail Car Negotiations, 104 HARV. L. REV. 817 (1991) (reporting race and gender discrimination in sales prices of automobiles in Chicago area); id. at 861 (citing to studies of housing discrimination and segregation).}

\footnote{20. See, e.g., Kenneth v. Noble, Initiative on Aliens Suffers Its Biggest Setback Yet, N.Y. TIMES, Dec. 15, 1994, at A18 (reporting federal district court's preliminary injunction against enforcement of California Ballot Proposition 187, "which would deny most government services to illegal immigrants"); Yniguez v. Arizonans for Official English, 42 F.3d 1217 (9th Cir. 1995) (holding that state constitutional provision requiring government officials to conduct official business only in English violated the first amendment), reh'g granted, 55 F.3d 1084 (9th Cir. 1995), aff'd, 1995 WL 583414 (9th Cir. Oct. 5, 1995).}


\footnote{22. See BONNIE P. TUCKER & BRUCE A. GOLDBEIN, LEGAL RIGHTS OF PERSONS WITH DISABILITIES 1:5 (1992) (showing that studies in the late 1980's found continuing employer bias resulted in underemployment of disabled workers).}
\end{footnotes}
a settlement on behalf of a corporate client charged with invidious discrimination. Under either circumstance, the lawyer will be better prepared to create constructive solutions in the conference room or do battle in the courtroom if he or she has confronted different perspectives and experiences in the classroom.

Finally, the relevance of this explicit premise depends on the implicit assumption that a topic, perspective, or set of course materials does not advance the education of law students unless it directly relates to a problem that a typical graduate will encounter in practice. In fact, however, no law school course can anticipate and address every issue in a practice area that a graduate may encounter. Accordingly, law faculty are quick to contend that coverage of selected, representative issues is a means of introducing students to the general outlines of a field of law. Professors select some topics for discussion because those topics are central to the jurisprudential foundations of the field of law, others because they relate to issues that graduates will likely encounter in practice, and still others because they simply are good vehicles for developing general skills of analysis applicable to any legal problem.

Indeed, many law professors identify their primary goal in first-year courses to be the development of critical thinking skills rather than the development of doctrinal knowledge. The cases, statutes, and other materials introduced may be relevant to a specific practice, but they primarily serve as instruments for developing skills of case analysis, statutory interpretation, policy consideration, and sensitivity to client relations and professional responsibility. For example, a professor may elect to address particular venue issues in a civil procedure class in order to provide an excellent opportunity to develop skills of critical statutory analysis, even though most graduates are unlikely to encounter those particular venue problems in practice. Similarly, for reasons stated earlier, academic subjects set in multicultural contexts that raise issues of difference in our society are worthy mechanisms for acquiring critical thinking skills. Indeed, they may be superior vehicles for developing the ability to approach a problem from multiple perspectives and enhancing sensitivity to potential client relations problems.

III.

TECHNIQUES OF CONFRONTING ISSUES OF DIVERSITY

Clinical courses can provide students with the most direct exposure to multicultural legal issues and clients. In other courses, faculty can help students confront issues of diversity by acknowledging diversity, setting problems and examples in multicultural contexts, and directly addressing issues that raise questions about important differences among people.

A. Clinical Education

“Live client” clinical offerings can best introduce students to
multicultural legal issues and clients. Casebooks or simulation exercises cannot easily or accurately replicate the experience of working under the supervision of expert faculty to represent clients whose economic class, ethnicity, sexual orientation, physical or mental ability, or other significant personal characteristics may differ markedly from those of the student. In such a setting, clinical students not only develop general practical skills of legal representation, they also increase the breadth of their knowledge about culturally diverse clientele located outside the social and economic mainstream. In many cases, such representation provides an excellent vehicle for developing a sensitivity to general problems of client relations and professional responsibility.

My own semester-long experience as a clinical instructor confirmed the value of clinical education as a means of introducing students to diversity issues. In one case, a monolingual Anglo student conducted an intake interview with an exclusively Spanish-speaking client. Although he obtained assistance from an office translator, the interview was laborious, and he failed to establish a strong bond of trust with the client.

In future meetings with this client, the Anglo-American student was paired with a Mexican-American clinical student who spoke Spanish as her first language. This student had struggled in my advanced writing seminar, which requires a high degree of proficiency in written English. The interaction between these three individuals was instructive. The Mexican-American student quickly helped establish a constructive rapport between the client and the clinic. Her invaluable bilingual contributions throughout the representation gave her a new sense of confidence that had often eluded her in the classroom. Partly because of her intervention, the client developed a successful working relationship with both student representatives. In addition, the Anglo-American student likely increased his regard for his fellow student, and his appreciation for the challenges of working with a translator and establishing a rapport with a client from a different cultural background. He presumably is now better equipped to face those or similar challenges with clients who demand special skills or attention, even in the absence of a colleague to help bridge the cultural gap.

In another case, a student representing a young woman with a mental disability unconsciously developed questionable assumptions about the client's goals. The student misdefined the client's goal as maximizing her potential government benefits. Consequently, the student viewed full-time job opportunities for the client as an obstacle to that goal, because compensated employment beyond a statutory maximum number of hours jeopardized the client's eligibility for benefits. Under questioning by her supervisor, the student realized that she had constructed that goal without adequate attention to the client's own priorities. In fact, statements and actions by the client suggested that the client placed greater value on her opportunity to work full-time than she did on her eligibility to receive government benefits, a set of priorities that ran contrary to the student's assumptions of the client's goals. Undoubtedly, this experience not only exposed the student to the challenges of representing a client with special

23. See generally Hing, supra note 8.
needs, but also generally heightened her sensitivity toward the problem of identifying the client's goals in any legal representation.24

B. Simulations, Legal Writing, and Traditional Courses

Unfortunately, the necessarily low student-teacher ratios in live-client clinical programs typically restrict the availability of clinical experiences to a modest percentage of students. Accordingly, more traditional course offerings must be made to play an important role in exploring issues of diversity. Almost any course can serve as a forum for raising such issues or examining problems from a variety of perspectives, and some courses, like Constitutional Law or Civil Rights Legislation, can hardly avoid such an inquiry. However, it is legal writing courses that provide especially rich opportunities to work intensively on realistic problems with fully developed characters. Moreover, first-year legal writing is typically part of the required curriculum and thus, will reach more students than clinical offerings or other elective courses.

In any course, instructors can reduce student alienation by recognizing that every student comes to law school with a distinct "schema" or a framework of knowledge and experience through which the student interprets and organizes new information.25 When building on this framework, a student can retain working memory and can mentally manipulate only a limited number of discrete units of data at one time.26 However, the student can engage in ever more complex manipulations of information by taking previously unrelated bits of input and integrating them into a higher-level concept, a process which then opens up additional mental capacity to work with multiple higher-level concepts.27

For example, building on a pre-existing schema, a law student can work with several bits of new information to develop a concept of what the "holding" of a case is and how to distinguish it from "dictum." Building on this newly expanded schema, the student can integrate the concept of "holding" with others, such as those of jurisdiction and incremental case law to form a concept of "precedent." In turn, the student can integrate the concept of "precedent" with those of analogy, distinction, and policy considerations regarding fairness, stability, and social change to form a concept of "stare decisis."


26. Anton E. Lawson, What Teachers Need to Know to Teach Science Effectively, in TEACHING ACADEMIC SUBJECTS TO DIVERSE LEARNERS 31, 42 (Mary M. Kennedy ed., 1991) (citing G.A. Miller, The Magical Number Seven, Plus or Minus Two: Some Limits on Our Capacity for Processing Information, 63 The Psychol. Rev. 2, 81-97 (1956) (arguing that one can mentally manipulate only about seven "chunks" of information at one time)).

27. Lawson, supra note 26, at 42-43.
Instructors can help new law students begin school efficiently and reduce their level of alienation by constructing fundamental legal concepts from the students’ existing schemata. In some cases, professors can perform that task simultaneously for all students by using problems or examples that recognize a schema that they are all likely to bring with them to law school. For example, students can be introduced to the concept of stare decisis with the story of hypothetical parents struggling to maintain and apply rules that rationally limit the amount of time their teenage son and daughter can spend on social activities. The parents develop their rules incrementally as they react to specific events, always with an eye toward protecting the health and safety of their children and promoting their studies. Along the way, they confront sexism in their own rules and are forced to modify or abandon other aspects of the rules to adapt them to unforeseen circumstances.

Although this example is based on actual family rules that an African-American colleague from another school developed for his own children, it recognizes a schema that should be nearly universal. Whether they grew up in wealth or poverty, with a single parent or an extended family, or with inattentive or demanding guardians, virtually all law students have had some experience, either as children or parents, with the development and enforcement of family rules of behavior. By using familiar family rules rather than unfamiliar formal laws, the hypothetical allows students to focus on the legal method explored in the example and to integrate that with their existing schemata. This technique can help reduce alienation among all students.

In many respects, however, the life experiences of new students will be anything but universal. Instead they will vary depending upon each student’s race, gender, sexual orientation, age, physical abilities, and other personal characteristics. Thus, a diverse group of students will bring a variety of schemata to the classroom, and instructors should seek, within reason, to build upon each. Professors can do this by exploring issues of diversity in a variety of problems and examples, each of which targets a different schema, thereby expanding the intellectual horizons of all students and avoiding the alienation of "outsider" student groups.

In any course, issues of diversity can be raised at one or more of three levels:

1. Acknowledging Diversity

At the most superficial level, we can acknowledge the diversity of the legal world and the classroom by taking care to refer to diverse populations in our course materials, lectures, hypothetical questions, and written problems. A simple thing like including feminine pronouns and ethnic names in problems can begin to help students from diverse backgrounds feel represented and remind all students of the diversity of the society that is served, or should be served, by the legal system.
Occasionally, efforts to acknowledge diversity can produce mild distractions. Stanford Law Professor Barbara Babcock recalls that early in her teaching career, her practice of referring to judges as female in her classroom examples led one male student to query whether "judges are ever male." In my own legal writing textbook, I adopt the approach of alternating between male and female characters in examples, sometimes referring to a male law clerk and a female supervising attorney, and other times to a male law student and a female judge. Among those students who have accepted male pronouns as generic references to both male and female characters, a few confess that they are momentarily distracted by this generous use of female pronouns. This distraction, however, may lie more in unconscious assumption than grammar. Both Professor Babcock's practice and my own are intended to challenge assumptions among some listeners and readers that an otherwise unidentified attorney, judge, or business client must be male. As stated in the preface to my textbook:

This approach may distract readers at one time or another, perhaps because it catches readers assuming that a judge or senior partner is male. If so, perhaps the distraction is constructive: It may help us to envision a profession so well integrated that feminine pronouns and ethnic names will sound natural and commonplace.

Moreover, failing to acknowledge obvious advances in diversity in our profession produces distractions of its own. One of the older textbooks on legal writing is otherwise excellent but generates complaints from students, especially female students, because it portrays the legal profession as dominated exclusively by male attorneys while women are relegated only to secretarial positions. As between the two approaches which each give readers and listeners pause, the one that looks forward to a fully integrated profession is advocated.

2. **Multicultural Contexts**

At a slightly more sophisticated level, instructors can set a problem, illustration, or hypothetical example in a cultural setting outside of the normally dominant mainstream. For example, my legal writing textbook briefly compares Anglo-American systems of government and legal method with those of Native American tribal communities. This serves to inform students that American political and lawmaking systems consist of more than federal, state, and local governments. Quasi-sovereign

29. *E.g.*, *id.* at 161 (referring to female supervising attorney).

30. *Id.* at xxiv.

31. *Id.* at 11, 31.
Native American tribes also maintain legislative, executive, and judicial bodies, before which some students will practice. It also communicates to Native American students that their culture is relevant. Law school should strive to meet their legitimate educational needs, or in the least, acknowledge them.

In both my Advanced Writing Seminar and my Contracts class, I ask students to analyze a claim for damages for emotional distress in a problem based on an actual contract dispute over failure to deliver gowns for a Quinceanera, an event of social and religious significance to young women reaching the age of fifteen in traditional Latino communities.\(^3\)

As with the reference to Native American tribal institutions, the factual context of this problem allows students from a minority culture a chance to be the "insiders," to identify with a problem rather than feel alienated from it.

The Quinceanera problem also helps other students appreciate the diversity of cultural contexts in which disputes may arise. To maximize their educational experience, instructors using the problem may want to supplement it with materials that illuminate the cultural context and bring the problem to life. Indeed, the Quinceanera problem is taken from an actual arbitration in which I represented the plaintiffs. In that arbitration, the plaintiffs' first witness was an Arizona State University doctoral student from Mexico who, as an expert witness, explained the cultural, religious, and social significance of a Quinceanera.\(^3\) In the conclusion of her testimony, she helped the Anglo-American judge understand the significance of a Quinceanera by comparing it to a formal Catholic wedding, an event with which the judge could more easily identify. Although that testimony was not preserved, an instructor could supplement the problem with a simulated transcript of similar testimony or with an excerpt of a book, article, or video that describes or illustrates the cultural significance of a Quinceanera.\(^4\)

Ideally, instructors should develop, collect, and share many problems that expose students to a variety of cultural contexts for legal issues. If incorporated into a course, such a diverse array of problems can provide excellent vehicles for developing skills of critical analysis. Additionally, they can prepare all students for a practice which serves a diverse population and permit those students not traditionally a part of the legal mainstream to participate, at least occasionally, as "insiders."

These first two techniques of acknowledging diversity and creating

\(^{32}\) Id. at 500-07, 533-34.


\(^{34}\) See, e.g., Linda Helser, Quinceanera: Girl to Woman, ARIZONA REPUBLIC, Oct. 9, 1994, at E1 (describing the Mayan cultural roots of the modern Quinceanera and the particular Quinceanera of a young girl in Phoenix).
diverse contexts for problems, however, should be viewed as no more than starting points. Standing alone, they represent superficial approaches which merely admit issues of difference. Members of the Student Group consulted for this essay were hungry for more than contextual diversity. They were eager to wade into cases or problems that directly raised questions concerning competing claims or values among diverse populations. Professors can respond to such needs by introducing diverse cases, problems, and materials that confront issues of difference at a more substantive level.

3. Confronting Substantive Issues of Diversity

On a third level are problems that directly ask students to analyze the law and policy relating to such questions as the proper scope of constitutional or statutory civil rights and civil liberties, or the development of common law theories to redress wrongs such as sexual harassment or sexual orientation discrimination. Some problems might ask students to adopt a feminist or race-critical approach in examining the premises of existing law, such as one that asks students to argue for or against the proposition that a "reasonable person" standard, although nominally objective, in fact masks a white male centered view of legal rights and responsibilities.

Diversity issues may be lurking in the background of other problems or materials. For example, as illustrated by the law school experience described in section IV.A. infra, an appellate decision might raise an issue of race by its very silence on the question of prejudice playing a role in a violent encounter between an Anglo-American police officer and an African-American suspect. Similarly, although the ethnic context of the Quinceanera problem described in the previous subsection should be obvious to all students, a few students may also see gender issues embedded in these cultural celebrations. Thus, some students might argue that such a celebration perpetuates the subordination of young women by presenting them as "prizes" that are now socially available to men rather than as educated young adults ready to contribute to the community as independent agents. If so, these students' critique may raise the question whether disappointed expectations in such an event warrant a departure from the normal rule against awarding damages for emotional distress in a contract action.


37. See supra note 7.
Whether the issues of diversity are the central point of a problem or are raised only indirectly, they tend to excite, or at least provoke, students and thus can be effective vehicles for developing skills of expression and critical analysis. Although politically diverse students may vary greatly in their ability to identify with a particular hypothetical client and his or her claims, they will all benefit from the opportunity to exchange ideas and think deeply about issues of difference in our society and in the legal system.

Some courses, like Constitutional Law, Employment Discrimination, or Civil Rights Legislation, address such issues routinely.\textsuperscript{38} The instructor’s primary challenge is one of ensuring that students confront the tough issues in adequate depth, and with candor and civility. Members of the Student Group advised that instructors can help ensure full exploration of provocative issues by supplementing traditional casebooks and textbooks with briefs or articles that advance nontraditional perspectives\textsuperscript{39} or that otherwise encourage students to critically assess their premises and engage in full discussion and debate. Techniques for exploring such issues include class discussion, individual written assignments, and negotiations or other group projects.\textsuperscript{40}

As suggested in the earlier discussion of the Quinceanera problem, such supplementary materials need not be limited to legal sources. Santa Clara University Law Professor Samara Marion has used literary materials to enrich a riveting legal writing problem exploring the defense of rape trauma syndrome raised by an African-American lesbian criminal defendant. The problem is based on an episode from Gloria Naylor’s novel, \textit{The Women of Brewster Place}, an excerpt of which Professor Marion distributes to her students.\textsuperscript{41} To further immerse her students in the homophobic and misogynistic context of the problem, Professor Marion screens the corresponding episode from the television movie adaptation of \textit{The Women of Brewster Place}. With this contextual background, students are better prepared to address matters such as the biases a juror may feel toward the defendant because she is a woman, a

\textsuperscript{38} E.g., Frances Lee Ansley, \textit{Race and the Core Curriculum in Legal Education}, 79 CAL. L. REV. 1511, 1526 (1991) ("Race is and should be recognized as central to the Constitution, which is, of course, central to the law school curriculum.").

\textsuperscript{39} One student specifically recommended the works of Georgetown University Law Center Professor Mari Matsuda. Of course, a nontraditional casebook mitigates the need for such supplementation. It naturally spawns debate by presenting a perspective that diverges from the more mainstream perspective of the typical law student in most schools. See, e.g., DERRICK A. BELL, JR., \textit{RACE, RACISM AND AMERICAN LAW} (3d ed. 1992) (critically examining American law through a racial perspective); Calleros, supra note 28 (using multicultural contexts or issues in many exercises, assignments, and examples); Carl Tobias, \textit{The Case for a Feminist Torts Casebook}, 38 VILL. L. REV. 1517 (1993) (discussing feminist tort theory of Professor Leslie Bender).

\textsuperscript{40} See David Dominguez, \textit{Beyond Zero-Sum Games: Multiculturalism as Enriched Law Training for All Students}, 44 J. Legal Educ. 175 (1994) (describing group negotiation assignments).

\textsuperscript{41} Samara Marion, \textit{People v. Lorraine Nelson}, Moot Court Problem (1994) (available from Professor Marion at Santa Clara University Law School or from the Legal Writing Institute, 950 Broadway Plaza, Tacoma, Washington 98402). The inspiration for Professor Marion’s moot court problem was a presentation by Widener University School of Law Professor Phyllis T. Bookspan at a SALT teaching conference, in which she explained how she used Gloria Naylor’s novel in her course \textit{“Woman and the Law.”}
lesbian, or an African-American.

Once again, legal writing courses are particularly salient vehicles for confronting issues of diversity, both because they permit students to immerse themselves in a sophisticated problem with fully developed characters, and because the instructor has unusual freedom to select the topics and issues that will serve as the vehicle for developing skills of critical analysis and expression. Indeed, Santa Clara University Law Professor Nancy Millich has collected a number of such legal writing problems, which are available from the Legal Writing Institute.42

In other courses, instructors retain considerable academic freedom to select specific topics as instruments for developing critical thinking skills, but they inevitably will feel some constraints based on reasonable parameters of the subject matter of the course. Moreover, unlike in Constitutional Law, Civil Rights Legislation, or related courses, issues based on clashing claims, values, or perspectives of members of diverse groups will not be self-evident in every course. Instructors of such courses who are interested in addressing issues of diversity may need to dig beneath the traditional surface of the course for issues that invite analysis from diverse perspectives. The Society of American Law Teachers has held three teaching conferences in recent years in which professors teaching a wide variety of courses shared ideas about introducing issues of diversity into those courses.43 Alternatively, one can simply take heed and inspiration from instructors such as University of Wisconsin Law Professor Beverly Moran, who regularly raises issues of race and gender in her Federal Income Tax course.44

Thus far, these recommendations have not presumed that any set of personal characteristics of the instructor are essential to a full exploration of multicultural issues in the classroom. Indeed, the next section discusses ways in which instructors can address the inevitable difficulties faced in raising perspectives with which they have no inherent identification.

Nonetheless, it is intuitively obvious that a member of an "outsider" group, such as a teacher of color, particularly a member whose life experiences give her an authentic "outsider" perspective, will be well suited to explore nontraditional perspectives with her students.45 Although the instructor will not necessarily have special expertise in raising nontraditional perspectives outside her own experience, she will at least complement other instructors on a diverse faculty, each member of which may have particular insights into one or two perspectives and can learn to productively lead discussion with others.

42. See supra note 41. The Institute can provide a brief description of the available problems and will provide a copy of any problem for a copying and handling fee.

43. Lists of those panel members, as well as additional information about the teaching conferences, are available from Joyce Saltalamachia, SALT Archivist, at the N.Y. Law School Law Library, N.Y. Law School, 57 Worth St., New York, N.Y. 10013; see also Ansley, supra note 38.

44. Professor Moran welcomes questions and conversation about her teaching techniques. Her electronic mail address is BIMORAN@FACSTAFF.WISC.EDU.

Correspondingly, members of the Student Group warned that a law school faculty could not fully diversify its curriculum without first diversifying its own ranks. Although issues of faculty hiring are beyond the scope of this essay, 46 obviously these recommendations can be implemented most easily, naturally, and authentically by a diverse faculty that itself represents a variety of perspectives.

IV. PROBLEMS AND CHALLENGES

Most law teachers find that effective classroom teaching is a challenging enterprise, which daily success depends on a variety of factors, some not completely within the instructor's control. This perceived lack of control may cause some instructors to become hesitant and wary of complicating their professional lives further by taking affirmative steps to introduce topics and materials relating to diversity beyond those fundamental to the course.

This leads to two potential problems, which although warranting discussion, can be successfully overcome. First, there is the danger of creating assignments or leading discussions that present members of marginalized groups in inaccurate or stereotypical roles or contexts. Second, a well-crafted problem will succeed partly by stimulating thought and debate on socially and politically provocative issues, thus placing demands on the instructor to lead discussion in a manner that invites a constructive exchange of ideas reflecting a full range of perspectives.

A. Stereotyping

If faculty begin to address issues reflecting a variety of differences in culture, gender, sexual orientation, age, and the like, a newfound appreciation for diversity will emerge. The question to be considered is whether it is possible to create problems or lead discussions about lives that faculty have not experienced and still avoid stereotyping. 47 Might they do it so poorly that the very group sought to be enfranchised will feel demeaned or further alienated?

The danger of stereotyping is not trivial, but it is a risk worth taking. Thoughtful preparation that takes advantage of recent strides in diversifying faculty and student bodies at many schools, as modest as those strides are, may serve to mitigate such dangers. By conferring with

46. For an informed discussion on this issue, see Richard Chused, The Hiring and Retention of Minorities and Women on American Law School Faculties, 137 U. PA. L. REV. 537 (1988).

47. See, e.g., Carl A. Grant, Culture and Teaching: What Do Teachers Need to Know?, in TEACHING ACADEMIC SUBJECTS TO DIVERSE LEARNERS 237, 250-52 (Mary M. Kennedy ed., 1991).
students, colleagues, or members of the community with different personal characteristics and experiences, faculty can educate themselves about diverse groups and increase the authenticity of classroom problems, materials, and examples. Moreover, as law faculty develop effective problems and materials that raise issues of diversity, instructors should pool academic resources and research materials.48

Finally, instructors should recognize that occasional mistakes and missteps are inevitable. By learning from them, effective teaching on these issues will steadily advance. Members of the Student Group commented that they liberally excuse imperfections in assignments or other materials that otherwise reflect a genuine attempt to generate a thoughtful discussion about diversity. Moreover, any risk of stereotyping is offset by the loss of credibility that an instructor suffers when he or she too obviously avoids opportunities for fruitful inquiries on matters of diversity. Indeed, members of the Student Group were particularly critical of instructors who failed to address a diversity issue that was conspicuously raised in the standard course materials. Several members of the Student Group recalled with disappointment and even bitterness their Property instructor's decision not to fully explore the opening case in the casebook, Johnson v. M'Intosh.49 In M'Intosh, the United States Supreme Court decided that, through "discovery" of American lands and subsequent conquest of Native Americans, the conquering European nations acquired rights to the land superior to those of the original inhabitants. One teacher of Property has described the significance of questions of race to the pedagogical value of the case:

The case ... is a fascinating vehicle for the introduction of notions of occupancy, possession, chains of title, the stark juxtaposition of positivist and natural law ideas of authority, and the relationship between property and sovereignty. It also, however, reminds and informs us of the racial displacement and usurpation that attended the arrival of European settlers and the birth of the nation. It is for this latter lesson that I believe the case is most valuable and irreplaceable.50

To the disappointment of several members of the Student Group, their instructor focused only on the technical holding of the case, neglecting to generate any discussion of the theme of racial and cultural superiority upon which much of the decision was premised. Three Native American

48. I propose that faculty use the Society of American Law Teachers (SALT) as a clearinghouse in light of its extensive work in this area. I invite all those who wish to share problems or materials to send them to the SALT Archives, in care of Joyce Saltalamachia at N.Y. Law School Law Library, N.Y. Law School, 57 Worth St., New York, N.Y. 10013.

49. 21 U.S. (8 Wheat.) 543 (1823), reprinted partially in JESSE DUKEMINIER & JAMES E. KRIER, PROPERTY 4 (2d ed. 1988); see also Ansley, supra note 38, at 1521-23 (discussing M'Intosh and citing to other casebooks that present it).

50. See Ansley, supra note 38, at 1521-22.
students found the perfunctory discussion to constitute a missed "opportunity to culturally enrich students" and a "culturally offensive" event that they were "still mad about" nearly a year later. Another member of the Student Group, an African-American woman from the Bronx, conceded that she had never considered Native American perspectives before attending law school, and she regretted that her Property instructor had missed an opportunity to examine that aspect of our legal history. These students' sense of deprivation may have been heightened by their awareness that the faculty member teaching the other section of Property, herself a Native American, spent two class hours exploring the premises of *M'Intosh* and inviting an examination of the Native American perspective.

As a first-year student roughly twenty years ago, I experienced a similar missed opportunity in my first-year Criminal Law class. During class discussion of the criminal prosecution of a police officer charged with unlawfully battering an African-American suspect, one of a handful of African-American students summoned his courage and invited the instructor to address the question of the role that the suspect's race may have played in the officer's use of force. The white liberal instructor, normally quite open-minded, dismissed the invitation by stating that he could see no evidence that race played a role in the incident. Even though the student persisted, the instructor steadfastly refused to address the matter, instead asking the student "to see me after class" to discuss it privately. Twenty years later, after the highly-publicized beating of Rodney King, it would be difficult to discuss such a case without considering race. Even though all the students, including the African-American student who raised the issue, remained on positive terms with the popular instructor, his disinclination to confront the question of difference was particularly glaring when the course materials seemed to invite such an exploration.

Thus, fear of stereotyping or other imperfections should not prevent faculty from confronting multicultural issues, particularly those that are conspicuously raised in course materials. At the least, instructors should be willing to raise the tough questions and be prepared to learn from students' responses.51

B. Participation, Pain, and Politics

Within the second set of potential objections lies the challenging task of directing student participation. This includes stimulating full participation, dealing with student sensitivities to offensive comments or subject matter and avoiding political indoctrination while stimulating critical thought.

51. See Dominguez, *supra* note 40, at 181 (discussing that with respect to multicultural legal education, "[w]e make trouble for our students if not by design, then by default").
1. Participation

Most professors assume that "participation by all students rather than silence in the classroom is preferred." Instructors should not assume too quickly, however, that silence necessarily leads to educational deprivation. When queried to address the question of differential participation patterns among male and female students in law school courses in general, one woman in a Civil Rights Legislation course responded to the following effect:

Don't worry about us. We're listening. We dominate law review, class ranking, and advocacy competition awards. It won't necessarily help us to be talking all the time.

This student recognized both the value of developing her ability to listen and the false progress represented by glib students, mostly male, who were inclined to interrupt the statements of others without first absorbing their messages.

Alternatively, all students will benefit from the greater variety of perspectives likely to be expressed by a fully participating class. Moreover, though the merits of voluntary, calculated silence may be debatable, one can hardly argue with the proposition that a student and her classmates are deprived of full educational benefits if the student secretly desires to share her views but remains silent because of fear, anger, or alienation. To coax the full range of perspectives from students on provocative issues, instructors must lead discussions with sensitivity and open minds. Instructors will encourage participation from marginalized students by providing materials, topics, and assignments addressing issues of diversity. Beyond that, faculty need to set an example for the class by admitting limitations of their own knowledge and by acknowledging the value of listening to and considering diverse perspectives, even if initial reaction is to strongly disagree with them.

A member of the Student Group recalled an incident early in the first year during which a Native American student tried to express a cultural perspective that ran counter to the values and experiences of the non-Native American instructor and other students in her Criminal Law class. The students dismissed her contribution as meaningless, and the instructor followed suit. According to the member of the Student Group, the Native American woman never volunteered another thought in class throughout the remainder of the year.


53. See Gerry Spence, Art of the Argument: Beyond the Shouting, A.B.A. J. 68 (Jan. 1995) (identifying "the ability to listen" as "the most essential of the many skills that make up the art of argument"); Jill Schachner Chanen, The Heart of the Matter, A.B.A. J. 78 (Mar. 1995) (discussing the importance of listening as an element of effective communication with a client).

54. See, e.g., Wildman, supra note 52 ("Yet silence may be a valid expression of alienation or hostility.").
In such a case, the instructor might have validated the student's contribution by at least recognizing the value of considering a different cultural perspective. Even if the instructor ultimately rejected the perspective or felt the need to advise the class that Anglo-American courts and legislatures almost certainly would not adopt it, he nevertheless could have gone a long way towards fostering a sense of cohesion and appreciation for other viewpoints by simply exhibiting an interest in learning more about it. Similarly, the instructor could have encouraged further discussion by asking the student to expand upon her analysis or provide additional examples.

Of course, not every student comment will be relevant to the topic at hand or will advance discussion in a way that furthers the instructor's pedagogic goals. Accordingly, instructors inevitably and frequently make quick judgments about the value of pursuing an idea or question further with the entire class, responding to it privately after class, or explaining immediately that it has no significant bearing on the topic. Nonetheless, in making those judgments, professors should be aware of the biases and limitations of their cultural perspectives and should carefully consider the potential merits of a fresh perspective before rejecting an invitation to explore it further. Indeed, for reasons outlined earlier in this essay, instructors should strive to create an atmosphere that welcomes a variety of political, social, and cultural perspectives.

Members of the Student Group, however, cautioned against the practice of repeatedly calling upon students of color or other "outsiders" to articulate the perspective of groups that they apparently represent. Many students who take pride in bringing diverse perspectives to the law school classroom nonetheless view themselves as unique individuals with a complex array of experiences and views rather than as spokespersons for larger groups. Although on many occasions they may express a perspective that is shared by a larger group, instructors should not assume that a student has a special perspective on any given topic simply because her personal characteristics differ from those of the majority of her classmates.

Members of the Student Group recommended that instructors create an atmosphere that encourages full participation and welcomes a variety of perspectives. Using a direct approach, instructors might announce an invitation to receive a variety of perspectives on a topic, while refraining from presuming which students will present particular views. If only a limited viewpoint is represented in class discussion, professors may then wish to play "devil's advocate" by presenting an extreme view of that limited perspective, thus provoking a response. Alternatively, and as recommended by the Student Group, instructors can create a safe space for a nontraditional point of view by introducing the perspective themselves, either through class materials or in discussion, and asking students to explore it further.

55. See also Ansley, supra note 38, at 1584; Crenshaw, supra note 16, at 6-9.
2. Pain

Discussions about difference will encourage students to confront difficult issues about their identities and deeply held values. Additionally, they force students to listen to classmates with vastly different perspectives -- classmates who may say things that are offensive or even outrageous to some students. Thus, the very qualities that make these issues particularly good vehicles for developing critical thinking skills frequently make them painful to explore.

Instructors can define the parameters of class discussion by limiting the topic under discussion and encouraging students to express their views in a professional manner rather than in the form of name-calling or other personal attacks. This approach still leaves students ample room, however, to express substantive views that may offend others. Accordingly, to protect students from excessively painful exchanges, professors may be tempted to declare that some responses to politically or culturally sensitive questions are simply "wrong" or otherwise unwelcome in the classroom. Yet, once instructors begin to label political positions in the classroom as acceptable or unacceptable, they risk squelching the very diversity of perspectives that they hope to foster.

Of course, instructors have their own voices and should feel free to disagree with, raise questions about, or encourage responses to any views expressed by students. Recognizing the educational goal of developing professionals with effective advocacy skills, professors should require students to refrain from the rhetorical equivalent of street fighting and to articulate their views in the civil, intellectual terms that would be appropriate in a courtroom, legislative hearing, or public meeting. Beyond those limits, however, efforts to restrict substantive views are likely to spark resentment among students and may even silence those students whose nontraditional views are most in need of a voice. Members of the Student Group cited examples of views that minority students tried to advance that the instructor and other students thought were outrageous and summarily dismissed. Moreover, the diverse members of the Student

56. See Hing, supra note 8, at 1830.

57. See Ansley, supra note 38, at 1555 (emphasizing how discussions of race produced "hurt feelings, outrageously insensitive remarks, suspicion and distrust, and, yes, some real breakthroughs from all directions").

58. Hing, supra note 8, at 1823-35 (commenting that multicultural discussion sometimes leads to disagreement, hurt feelings, and dissatisfaction with the discussion); Ansley, supra note 38, at 1585 (discussing how class that consciously focuses on race raises "undeniable difficulties, pains, and dangers").


60. See, e.g., Ansley, supra note 38, at 1555-58 (describing negative student reaction to instructor's statement that apparently required students to accept the conclusion that all persons are racist or sexist, rather than making that a topic for exploration and debate).
Group were united in their opposition to measures to protect them from the offensive ideas of others.

Above all else, these students were eager to address issues about difference and values, to be acknowledged for the value of their contributions, and to voice their diverse perspectives free from the fear that their expression of political or cultural values will be officially dismissed as "wrong" or "out of bounds." Similarly, these students welcomed views on diverse topics from their classmates, including views that were found to be racist, sexist, or otherwise offensive. In a safe classroom atmosphere, these views could be responded to productively and without fear of reproachment.

In special cases, an individual student may wish to be excused from discussing a topic or analyzing a problem that forces her to relive a profoundly traumatic experience. Upon raising this possibility in a recent workshop for classroom instructors, two participants, both of them female, debated the propriety of excusing a rape victim from an assignment requiring analysis of rape.

One participant argued that some students who had suffered such a trauma would be incapable of addressing the problem in a constructive manner and could experience renewed emotional distress that would severely hamper their general educational progress. Further, she argued that such a student could rationally decide to engage in a limited practice of law that excluded any cases dealing with sexual assault, thus minimizing any educational loss inherent in avoiding such issues in law school.

The other participant argued that any attempt to shield a student from painful issues in school, law practice, or life was futile. As an instructor, she felt a responsibility to help such students confront the difficulties of the assignment and to overcome the inevitable pain and emotional obstacles.

These presentations were equally compelling, leaving this question without a decisive answer. It may be a matter best left to the discretion and teaching style of individual instructors, as applied on a case-by-case basis to unique circumstances.

I believe that I would exercise my discretion to encourage a student to address even a painful assignment in all but extreme circumstances. However, I would also entertain a healthy skepticism about my own ability to counsel a troubled student, particularly if the student had suffered a trauma that I had never experienced and was unable to fully appreciate. In all but the most trivial of cases, I would encourage the student to seek professional counseling from our university's counseling service while the student confronted the issues of my class assignment. With some courage and perseverance on the student's part, with able counseling to help the student over the rough parts, and with sensitivity and flexibility on my part, the student might well be strengthened by the educational experience. On the other hand, if the counselor advised me that such an exercise would be destructive to the student, I would readily defer to that professional judgment and assign an alternative problem to the student.

In some cases, the problems will be subtler and can be remedied with relatively minor adjustments. For example, Santa Clara University Law Professor Carol Sanger begins her first-semester Contracts course with
three topics or cases that raise interesting policy questions and diverse perspectives about contract formation and enforcement. When she initially used this approach, she spent the first day of class discussing Ian Ayres's study of gender and race discrimination in retail car negotiations and reserved the second day for a discussion of the "Baby M" case.

After the first day of class, several students of color complained to Professor Sanger about their assignment for that day. Professor Ayres's study reveals that car dealers in Chicago tended to offer to sell cars at substantially higher prices to black testers posing as customers than to similarly situated white testers. His article attempted to explain the price discrimination partly on the basis of dealers' searches for the few "sucker" buyers who are willing to contribute disproportionately to dealers' profits by purchasing cars at or near sticker prices. Citing a survey in which nearly twice as many black consumers as white assumed that sticker prices were not negotiable, Ayres conjectured that dealers might well target black customers as a productive source of "sucker" buyers.

The complaining students explained that they approached their first day of law school with particular anxiety. They were keenly aware of their minority status at the law school and decided to prove their value to themselves and to their peers. These students found it unsettling to confront an account of the apparent lack of sophistication within the black community in a reading assignment required to be completed before they even set foot in the classroom. Professor Sanger appreciated their position but was disinclined to sacrifice an opportunity to discuss a significant question of race in contract formation. With apparent success, she addressed the problem in subsequent years simply by assigning the "Baby M" case for the first day of class and the Ayres article for the second day, after students had tested the waters of class discussion and developed a minimal level of security.

In sum, raising provocative issues of diversity is likely to generate occasional pain or anxiety, as well as intellectual excitement. However, a sensitive instructor can take steps to avoid unnecessary pain and can help students to constructively address the unavoidably troublesome aspects of difficult questions. An upset student will benefit from working through a painful issue under the direction of a compassionate mentor before colliding with the issue under less controlled circumstances in practice.

61. Ayres, supra note 19.


63. Ayers, supra note 19, at 827-33. The study also showed price discrimination against white females, although of lesser magnitude, as compared to the treatment of white males. Id.

64. Id. at 854-56.

65. Id. at 856.
3. Politics

Although some instructors strive to perform the role of class moderator with absolute neutrality, most are incapable of completely masking their own biases and perspectives during discussion of controversial topics in the classroom. Such advocacy, whether overt or implicit, will not tread on students' academic freedom so long as professors welcome other views. Indeed, some argue that instructors ought to reveal their political views on topics so that students can use that information in critically evaluating questions posed, comments, course materials, and lesson plans, as well as test their own political views.

Regardless of teaching styles, most students will develop a sense of an instructor's political leanings, both in general and on specific topics. Consequently, as professors strive to explore provocative issues relating to diversity, some students may fear that they will be ostracized or berated if they express political or cultural perspectives that diverge from that of the instructor. A few professors may even seize upon this student anxiety as grounds for avoiding issues of diversity or for refraining from inviting nontraditional perspectives.

However, problems such as these are inherent in everything taught. Pure objectivity or neutrality in any academic course is a fiction. In order to effectively respond to instructors' demands, students are constantly seeking to discover professors' biases, whether doctrinal, stylistic, or political, on every subject from federal taxation to legal writing to feminist theory. For their part, professors must assure students that they are interested in developing students' skills of expression and analysis rather than in compelling them to adopt particular political beliefs. Although instructors may implicitly or overtly advocate a particular political view, and though they may even hope to win converts through reason and persuasion, ultimately, professors must invite a full range of political perspectives and grade students on the basis of the quality of analysis and expression rather than on the political content of their views. If instructors can accomplish these goals, they can hardly be faulted for raising politically and culturally sensitive issues.

66. Calleros, supra note 59, at 1274.

67. See, e.g., Policy on Academic Freedom: Teachers' Freedom and Responsibility and Due Process in Higher Education #60(a), POLICY GUIDE OF AMERICAN CIVIL LIBERTIES UNION (ACLU, New York, N.Y.); Ansley, supra note 38, at 1579 (all courses reflect at least an unacknowledged point of view, which may be more pernicious than an acknowledged or committed one).


69. See Ansley, supra note 38, at 1578-79; Crenshaw, supra note 16, at 6 (espousing that the apparent "perspectivelessness" of many courses is "simply the illusion by which the dominant perspective is made to appear neutral, ordinary, and beyond question").

70. I discuss these matters in greater depth in Calleros, supra note 59, at 1263-89, 1301-1313.
Problems, assignments, materials, and discussions relating to issues of diversity provide excellent tools for developing skills of critical thinking. They also help prepare students for practice in a multicultural society and help reduce alienation within a diverse student body. Although live client clinical courses probably provide the best opportunities for confronting issues of difference, an instructor of any course can address such issues by acknowledging diversity, setting problems and examples in multicultural contexts, and directly raising legal issues that pose questions or conflicts about diverse persons and perspectives.

Confronting issues about fundamental differences among people can be both scary and painful. The emotional intensity of the questions raised in such a multicultural approach may present the instructor with fresh challenges relating to class participation, the pain of exposure to extreme views, and the politics of directing and controlling class discussion. However, the potential benefits to all students justifies the extra work and risks of occasional failures. If instructors take advantage of new and existing networks to share efforts in this direction, they can avoid reinventing the wheel and can learn from one another’s mistakes and triumphs.