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In Pursuit of Justice Powell’s Vision:
Diversity-Conscious Admissions Is Just the 
First Step

Alice M. Noble-Allgire†

In its recent decision in *Grutter v. Bollinger,*¹ the United States Supreme Court officially endorsed what Justice Lewis Powell espoused a quarter-century earlier—that public universities have a compelling interest in attaining a diverse student body.² With this holding, *Grutter* resolved a split in the federal circuits regarding the applicability of Justice Powell’s opinion in *Regents of University of California v. Bakke*³ to law school admissions policies.⁴ Writing for the majority in *Grutter,* Justice Sandra Day O’Connor acknowledged that lower courts had struggled to determine whether Justice Powell’s diversity rationale was binding precedent.⁵ Ultimately, however, she stated it was unnecessary to resolve that issue because “today we endorse Justice Powell’s view that student body diversity is a compelling state interest that can justify the use of race in university admissions.”⁶

In stating this decision, Justice O’Connor ratified Justice Powell’s view that selection of “those students who will contribute the most to the ‘robust exchange of ideas’ is “of paramount importance” in a university’s mission.”⁷ Justice Powell had

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† Associate Professor of Law, Southern Illinois University School of Law. The author wishes to thank Jennifer Sink for her research assistance and Dean Peter Alexander and colleagues Cheryl Anderson, Christine Jones, Taylor Mattis, Suzanne Schmitz and Wenona Whitfield for their comments on early drafts of this article. I am also grateful to the editors of this law review for edits that strengthened and clarified several important points by giving them context and appropriate language.

2. *Id.* at 2336-37 (citing *Regents of University of California v. Bakke,* 438 U.S. 265, 311 (1978) (plurality opinion) (Powell, J)).
3. 438 U.S. 265 (1978). The Bakke case generated six separate opinions, none of which commanded a majority. Four justices stated that the medical school’s affirmative action program violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, which provides that “[n]o person . . . shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”. 438 U.S. at 328. Four other members of the Court suggested, however, that race-conscious programs were permissible “if the purpose of such programs is to remove the disparate racial impact its [the government’s] actions might otherwise have and if there is reason to believe that the disparate impact is itself the product of past discrimination, whether its own or that of society at large.” *Id.* at 369. Justice Powell cast the deciding vote, agreeing with the latter group that race was a permissible consideration in a properly devised admissions system, but that the admissions system at issue in Bakke was not properly devised. *Id.* at 311-20.
4. In the first of these cases, *Hopwood v. Texas,* the United States Court of Appeals for the Fifth Circuit held the University of Texas Law School’s admissions policy unconstitutional. 78 F.3d 932 (5th Cir. 1996). The Sixth Circuit, however, upheld a similar diversity admissions policy at the University of Michigan Law School. *Grutter v. Bollinger,* 288 F.3d 732 (6th Cir. 2002).
5. *Grutter,* 123 S. Ct. at 2335, 2339 (“[A]taining a diverse student body is at the heart of the Law School’s proper institutional mission.”).
6. *Id.* at 2337.
7. *Id.* at 2339 (quoting Bakke, 438 U.S. at 313).
suggested that the “‘nation’s future depends upon leaders trained through wide exposure’ to the ideas and mores of students as diverse as this Nation of many peoples.”

Justice O’Connor reaffirmed this view, finding that diversity yields a number of substantial educational benefits that have far-reaching implications for American businesses, the military, and society as a whole.

It is important to recognize, however, that the diversity education envisioned by Justices Powell and O’Connor cannot be achieved solely through student diversity. *Grutter* takes only the first step down this path; further efforts are required to ensure that a “robust exchange of ideas” takes place once a diverse student body is enrolled. This article suggests that at least two additional components are required for law schools to fulfill that vision: (1) a diverse faculty committed to raising diversity issues; and (2) a stimulating and safe environment for exchanging different viewpoints.

The need for all three components is illustrated by a real-life event that is described in Section I of this article and analyzed against Justice Powell’s goals in Section II. Section III suggests that law schools can best nurture the diversity dialogue by not only ensuring sufficient diversity in both faculty and students, but by developing a diversity-conscious curriculum and equipping faculty with appropriate teaching techniques to promote an enriched discussion.

This article focuses primarily upon race and ethnicity because the lack of racial diversity is so readily apparent—and controversial—in the legal academy today. Nonetheless, many of the points made throughout the piece are equally applicable to other diversity issues, such as religion, socioeconomic status, gender, sexual orientation, physical or mental disability, age, parental status, and education.

Indeed, many of the techniques suggested in Section III are helpful tools for stimulating discussion on any issue in the law school classroom.

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9. *Grutter*, 123 S. Ct. at 2338-41. Justice O’Connor stated that diversity “promotes ‘cross-racial understanding,’ helps to break down racial stereotypes, and ‘enables [students] to better understand persons of different races.’” Id. at 2339-40 (citing App. to Pet. For Cert. 246a). She found the law school’s diversity claim bolstered by amicus briefs filed by Fortune 500 companies, the nation’s military leaders, and education scholars:

َ[M]ajor American businesses have made clear that the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints. . . . What is more, high-ranking retired officers and civilian leaders of the United States military assert that, “[b]ased on [their] decades of experience,” a “highly qualified, racially diverse officer corps . . . is essential to the military’s ability to fulfill its principle mission to provide national security.”

Id. at 2340.

Justice O’Connor then emphasized the important role that education plays in “preparing students for work and citizenship[,]” with law schools serving “as the training ground for a large number of our Nation’s leaders.” Id. Accordingly, she concluded that “[a]ccess to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.” Id. at 2341.

10. Accordingly, there is room to argue that admissions criteria should include characteristics such as socioeconomic status, work history, extracurricular activities, and other life’s experiences. See, *e.g.*, Hopwood v. State of Texas, 78 F.3d 932, 946 (5th Cir. 1996) (suggesting that such characteristics could be appropriately considered in law school admissions, but that race was an impermissible criteria under the Fourteenth Amendment).
I.
DIVERSITY ISSUES AND A NIGHT AT THE MOVIES

It is movie night at the law school—time for law students to grab a bag of popcorn and take in a contemporary movie featuring a law-related theme. A monthly event at this particular law school, movie nights are a subtle attempt to enrich the curriculum by engaging students in a discussion of law, ethics, and social justice issues in an informal setting.

This month’s selection is “A Time to Kill,” chosen in honor of Black History Month. Based on John Grisham’s first novel, the movie tells the story of an African American man, Carl Lee Hailey, who killed two white men for raping, beating, and lynching Hailey’s ten-year-old daughter. The movie poster in the hallway beckons patrons with the promise of a discussion about “Killing Bias in the Courtroom,” a theme chosen to explore Carl Lee Hailey’s fear that a racially biased judicial system would not administer justice to his daughter’s attackers—or to him.

About two dozen people have come to see the film. The racial composition of the group is roughly similar to that in a regular classroom: there are four students of color and the rest of the audience is white, including the moderator and three other faculty members. The lights are dimmed and the movie begins, drawing participants into Carl Lee Hailey’s story. Near the close of the movie, the audience listens intently as Hailey’s attorney gives his closing argument, which powerfully summarizes the details of the crime and the underlying racial issues:

I set out to prove a black man could receive a fair trial in the South, that we are all equal in the eyes of the law. That’s not the truth – because the eyes of the law are human eyes . . . and until we can see each other as equals, justice is never going to be evenhanded. It will remain nothing more than a reflection of our prejudices. So until that day, we have a duty, under God, to seek the truth. Not with our eyes, not with our minds, where fear and hate are a commonality into prejudice, but with our hearts, where we don’t know better.

Defense counsel then asks the jurors close their eyes as he gives a moving summary of the brutal attack on Carl Lee Hailey’s daughter and how she ultimately was thrown from a bridge into a river bottom some 30 feet below. “Can you see her?” he asks. “Her raped, beaten, broken body, soaked in their urine, soaked in

11. The identity of this law school is irrelevant because, as discussed below, the issues raised by this scenario are not unique to this law school. See infra note 38 and accompanying text.
12. Universities often promote discussion of diversity issues through special lectures or other extracurricular activities scheduled during cultural awareness months, e.g., American Indian History Month, Asian Pacific Heritage Month, Black History Month, Disability Employment Awareness Month, Gay and Lesbian History Month, Hispanic Heritage Month, and Women’s History Month. These events should not be the only venue in which such discussions take place, however, because the optional nature of these activities means that the discussion is likely to be missing many of the voices that need to be heard and ears that need to be listening. To the contrary, the “robust exchange of ideas” that Justice Powell promoted requires that diversity issues be fully integrated into classroom discussions of legal doctrine and public policy. See infra notes 34-37 and accompanying text.
their semen, soaked in her blood, left to die. Can you see her? I want you to picture
that little girl.” After an emotional pause, he chokes back tears and instructs the
jurors: “Now imagine she’s white.”

Shortly after this scene, the movie ends and it is time for pizza and
discussion. The audience is primed for a thoughtful conversation about the issues so
vividly portrayed on the screen. So how does our faculty moderator (Professor A)
begin? How does he stimulate discussion about “Killing Bias in the Courtroom?”

In perhaps the most unusual way—by attacking the fictitious license that
Hollywood took with the trial scenes in the movie.

“You can’t get evidence introduced simply by waving it in the air,”
Professor A tells the students, explaining the need to establish evidentiary
foundations. “And you can’t argue things that were never introduced into evidence
as part of your closing argument.” A second faculty member (Professor B) joins the
discussion. He, too, points to various scenes in the movie to illustrate that
Hollywood never gets it right on these evidentiary matters.

Ten minutes are spent on this topic before a third faculty member (Professor
C) tries to steer the discussion to the theme of the movie by asking: “Does race
matter?” Professor A agrees that race is one theme in the movie; he says the other
theme is revenge. Professor C persists: “Aren’t the two themes tied together?”
Professor A dismisses the idea, saying: “The guy claims to have killed the rapists
because he thought they would get only ten years in prison and that doesn’t have
anything to do with race.” Perhaps he missed the part of the movie where Carl Lee
Hailey expressed his fear that the rapists will go unpunished, the same way that two
white defendants were acquitted of a crime against an African American in a
neighboring county.

Professor A goes on to suggest that the movie is not realistic because the Ku
Klux Klan, which played a significant role in the movie, no longer exists. Professor
C challenged this assessment, pointing out that the Klan had staged rallies in
communities near this law school within the recent past. “They’re just a joke,”
Professor A said, ending that thread of the discussion. Were there others in audience
who had a different view? If so, there was no opportunity for them to express it; the
conversation turned back to issues of evidence and other legal matters unrelated to
racial bias.

II.

WHAT’S WRONG WITH THIS PICTURE? THE NEED FOR RACIAL
DIALOGUE

Based upon the advertisements for this movie, members of the audience
might reasonably have anticipated that night’s discussion to focus on issues of racial
bias in the judicial system. Indeed, it would seem almost inconceivable—
particularly in a law school setting—to have an intellectual discussion of this movie
without addressing the sense of disenfranchisement felt by Carl Lee Hailey and how
the legal system should appropriately respond to such concerns. This was an
opportunity to create the cultural exchange that Justice Powell envisioned in Bakke,
an opportunity to expose future leaders to diverse viewpoints concerning a major
issue facing the United States today. Yet, but for a brief and forced repartee between
two white faculty members, that exchange did not take place.
For someone who believes that society ought to be "color blind," it might seem perfectly appropriate for the moderator to avoid the subject of race and focus students' attention on other legal issues. From this perspective, slavery and racial discrimination are ancient history, emasculated if not eradicated by the Emancipation Proclamation of 1863 and the civil rights laws of the 1960s. Accordingly, there is a belief, as one Louisiana resident remarked in an interview broadcast on National Public Radio, that African Americans should "not belabor the question of what happened in the past" but instead should focus on what they can make of themselves today.

From another perspective, however, the United States is not color blind, and many of its citizens are still feeling the aftereffects of several hundred years of slavery, institutionalized segregation, and other forms of subordination. Although it is now illegal to publicly discriminate on the basis of race, civil rights laws have no legal effect on the racial prejudice and racial stereotypes that still exist in the hearts and minds of many Americans. To this day, there are outspoken white supremacists who unabashedly denigrate other races as inferior, using the Internet as well as public marches and rallies to disseminate their views. Indeed, even whites who have acted to dismantle racial barriers have admitted harboring negative racial stereotypes. More fundamentally, there is a disconnect between what dominant and non-dominant groups perceive as "racist." In these and many other ways,
American society “is as racially separate today as it was before Brown v. Board of Education, before the Civil Rights movement, before the Voting Rights Act, and before the Bakke decision.” 20

Is it any wonder then, that an African American might be concerned about racial bias in the judicial system, as Carl Lee Hailey feared in “A Time to Kill?” Perhaps a white person might feel comfortable in dismissing white supremacists as a “joke,” but how can an African American, Hispanic, or Asian litigant be assured that the judge or jury hearing his case does not secretly harbor racist views, either overtly or subconsciously, that will cloud a fair resolution of the case?

It is this type of dialogue that the sponsors of the movie night wanted to stimulate, based on the premise that communication of differing viewpoints might give participants a better understanding, if not acceptance, of the complexities of these issues. Indeed, as the Supreme Court has recognized, it is particularly important for this type of dialogue to take place in law schools, where future lawyers, judges and legislators are trained—and for citizens of all races and ethnicity to have access to this training. 22 How can our future leaders appropriately enact and enforce the nation’s laws if they lack an understanding of how the laws are perceived by a significant portion of the populace? In a nation founded upon the


Crenshaw suggests that members of the non-dominant group might see things through a different lens—one in which “the search for a particular perpetrator is not as important as seeking to remedy the conditions which render the community in question subordinate to whites.” Crenshaw, supra note 19. Under this model, “intentionality—which is the determinative factor under the discrimination model—is but an additional insult to an already established injury.” Id.


22. See Grutter, 123 S. Ct. at 2341. In addition to recognizing the need for diverse viewpoints, Justice O’Connor’s opinion also emphasizes the need “to cultivate a set of leaders with legitimacy in the eyes of the citizenry . . . .” Id. Thus, she states that “it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. . . . Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.” Id. The Grutter decision, therefore, appears to embrace the view expressed by some legal scholars that “diversity” has two meanings:

[T]he first is the push for restructuring institutions of higher education in a way that undoes their historic domination by white men; the second is a solicitude for encompassing and valuing multiple perspectives, multiple experiences, and multiple methods of teaching and doing research in the higher education environment. The development of the movement reflects the inextricable relationship between power and knowledge. Diversity advocates who are asked whether the movement is about power or about knowledge have to answer, “Both.”

Shane, supra note 19, at 1037; see also Peter Halewood, White Men Can’t Jump: Critical Epistemologies, Embodiment, and the Praxis of Legal Scholarship, 7 YALE J.L. & FEMINISM 1, 15-16 (1995) (discussing the two common arguments as they relate to faculty diversity). This article focuses primarily on the second of these meanings—the need for diverse viewpoints.
principle that government derives its authority from the consent of the governed,\(^\text{23}\) how can we expect disenfranchised members of society to abide by the laws if they do not believe in the fairness and justice of the legal system?\(^\text{24}\) How can minorities feel that they are part of the system when their concerns are invisible to members of the majority, like the movie night moderator?\(^\text{25}\)

Some might argue that discussions of racial issues are a waste of time because it is impossible to change people's racial perceptions. To the contrary, having a dialogue can produce a profound impact because prejudice very often results from ignorance. Newspaper columnist Leonard Pitts Jr., who is African American, illustrated this point well in a story he told about himself:

> [A]s a child, I sometimes heard people use the word “Jew” as a verb meaning to bargain with or even cheat somebody. “He really jewed down the price,” somebody would say. There weren’t any Jewish people in my community, so it wasn’t until I grew up and left the neighborhood that I made the obvious link to the old stereotype of Jews as greedy moneylenders. Until that moment, it would have been entirely possible for me to stand before a Jewish person and make an innocent, ignorant comment about “jewing” somebody.\(^\text{26}\)

23. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) (recognizing certain unalienable rights and “[t]hat to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.”).


The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government. Law so grounded makes justice possible... Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.

25. Several scholars have commented on the feeling of isolation and invisibility that minorities experience in law schools as well as society at large. See, e.g., Pamela Edwards, The Culture of Success: Improving the Academic Success of Opportunities for Multicultural Students in Law School, 31 NEW. ENG. L. REV. 739, 758 (1997) (stating that “multicultural law students often feel invisible in law school classrooms. They feel that their concerns are of little or no importance.”); Linda R. Crane, Forum, Colorising the Law School Experience, 6 WIS. L. REV. 1427, 1428-30 (1991) (commenting that as a law student of color, she very rarely felt that her presence in the classroom made any impact in the class; “[t]he fact is, by and large, I felt invisible”); Allen and Solorzano, supra note 15, at 252 (discussing Asian-American students who felt “racially invisible” when racial discussions focused solely on Black-White relations); cf. J. TIMMONS ROBERTS & MELISSA M. TOFFOLON-WEISS, CHRONICLES FROM THE ENVIRONMENTAL JUSTICE FRONTLINE 205 (2001) (stating that the recent environmental justice cases in Louisiana show “how poor and minority communities can be invisible to planners because they lack representatives on local planning boards and chambers of commerce and in the mayor’s and governor’s office... The needs of these local people are often ignored or misunderstood by decision makers and, many believe, environmentalists.”).

26. Leonard Pitts Jr., We Don’t Have to See Eye to Eye; We Need to Simply See, Miami Herald, Oct. 12, 2000, at 1E. Sometimes, the insulting word or act is less obvious, like the “racist potato” in a Rhode Island tourism campaign that gave rise to Pitts’s column. The campaign featured a Mr. Potato-Head character that was supposed to look like a sun-tanned tourist; the darkened skin and large pink lips, however, came across to some African Americans as blackface. Although Pitts expressed amazement that “someone might not know that blackface makes black folks seethe,” he said the answer is simple: “People don’t know what they haven’t had a chance to learn.” Leonard Pitts Jr., Couch-Potato Attitude to Race Needs Arousing, Miami Herald, Oct. 5, 2000, at 1E.
Similarly, there are well-meaning whites who come from communities that offer little or no opportunity for interaction with persons of color and from schools that offer little, if any, education concerning minority cultures.\textsuperscript{27} It is not surprising, then, that such students grow up believing that racial differences are ancient history or unknowingly use racially demeaning language. However, while they may be ignorant, they are not necessarily malicious or indifferent—as it understandably might seem to a person who experiences prejudice on a daily basis. They simply have had a different experience in life. That is why it is important to share those experiences and consider whether the law is adequately serving the needs of every citizen.\textsuperscript{28}

A survey at the University of California, Berkeley, Boalt Hall School of Law, provides empirical evidence of an ability to learn through such discussions. About eighty percent of the student respondents “reported that discussions with students from different racial or ethnic backgrounds had changed their beliefs about the criminal justice system, conflicts over individual rights, social and economic institutions, and civil rights.”\textsuperscript{29} Seventy percent indicated that such discussions changed their views of “the kind of legal or community issues that you will encounter as a professional.”\textsuperscript{30} Justice O’Connor herself has written of the influence that the experiences of her colleague, Justice Thurgood Marshall, had upon her own views: “I still catch myself looking expectantly for his raised brow and his

\textsuperscript{27} I count myself in this category. Growing up in rural northern Illinois, I learned only the very basics about slavery from textbooks and teachers who focused more on the role that Illinois’s native son, Abraham Lincoln, played in emancipating the slaves than on the lives the slaves led—either before or after emancipation. The Civil Rights Acts were passed when I was still learning to read and, although I later became aware of the institutional segregation and racial turmoil that led to this legislation, I never observed overt acts of discrimination in my neighborhood or schools—mostly because there were only a handful of minority families in my entire school district. Perhaps some of my ignorance is from indifference—that I did not take a more proactive role in educating myself. But as a teacher, I’ve learned that people learn at different times and in different ways. I have been fortunate, therefore, to have an abundantly patient and wise colleague who has corrected my occasional faux pas and enlightened me about African American history and culture. My hope is that others like me can be similarly enlightened by diversity discourse in the classroom.

\textsuperscript{28} Okianer Christian Dark’s experience suggests that sharing perspectives is beneficial. Okianer Christian Dark, \textit{Just My ‘Magination}, 10 HARV. BLACKLETTER L.J. 21 (1993). When Dark presented her article at a faculty colloquy, “no one was unaffected.” \textit{Id.} at 36. The comments of one particular faculty member, however, are instructive:

A senior faculty member remarked that for the first time, he realized that while we (he and I) may be encountering the same event, we are experiencing the event differently for a variety of reasons. In other words, he could no longer assume that his experience was mine or anyone else’s. This point seems simple and obvious, but is it?

\textit{Id.} at 35; see also Peter C. Alexander, \textit{Silent Screams From Within The Academy: Let My People Grow}, 50 OHIO ST. L.J. 1311, 1329 n.70 (1998) (stating that after he had shared a draft of his article with others, several indicated that “they were unaware of how serious these problems were prior to reading my Essay and some of the articles cited in this paper”).


\textsuperscript{30} \textit{Id.}

\textsuperscript{31} Sandra Day O’Connor, \textit{Thurgood Marshall: The Influence of a Raconteur}, 44 STAN. L. REV. 1217 (1992). Although Justice O’Connor had experienced gender discrimination in her own life, she “had no personal sense... of being a minority in a society that cared primarily for the majority.” \textit{Id.} at 1217. Justice Marshall, however, did bring that special perspective to the bench: “At oral arguments and conference meetings, in opinions and dissents, Justice Marshall imparted not only his legal acumen but also his life experiences, constantly pushing and prodding us to respond not only to the persuasiveness of
twinkling eye, hoping to hear, just once more, another story that would, by and by, perhaps change the way I see the world."

Perhaps in the end, as with many debates of our time, participants in a discussion of diversity issues might end up agreeing that they disagree on many points. But along the way, each participant will gain a greater understanding of others' viewpoints. This creates the potential for compromise or conciliation, but more importantly, even if one of those views ultimately triumphs in our legal system, other views are at least recognized with dignity and respect.

III. HOW LAW SCHOOLS CAN FACILITATE DIVERSITY DISCOURSE

Law schools can, and should, play a significant role in promoting diversity discourse, as Justice Powell envisioned in B kke and Justice O'Connor in Grutter. Good lawyering requires knowledge of the issues and the development of skills to effectively represent a diverse client population. More importantly, an analysis of the law through the lens of diversity helps to illuminate ways in which current doctrines and policies may have a disparate impact on minority populations or, conversely, confer privilege upon the dominant population. Thus, diversity training has an appropriate place in the curriculum alongside the basics of reading, writing, and analyzing the law.

It is clear, however, that the legal academy is failing to capitalize on the opportunity it has to promote diversity dialogue. The movie night scenario described at the outset of this article provides one vivid example of this missed opportunity, but it is certainly not an isolated case. Students surveyed at two prominent public law
schools reported that professors were unwilling to discuss race even when a case directly addressed the issue. When race was discussed, students expressed frustration with how it was handled. There were complaints that the issue was emphasized too much or not enough, that particular views dominated the conversation, and that the discussions were hampered by a lack of diversity in the student body. On the latter point, one white student said it was “interesting that we were talking about White flight and what kind of happens when too many minorities live in the area, and . . . that our class didn’t have that many minorities to flesh out the issue.” Minority students, on the other hand, are frustrated by the stereotypical assumption that each of them has experienced such a discriminatory situation and can readily articulate the “minority view.”

This evidence suggests that law schools are failing to achieve two elements that are crucial to achieving Justice Powell’s goal: (1) sufficient diversity in the student body and faculty so that diverse viewpoints can be exchanged; and (2) a learning environment that stimulates and facilitates that exchange. As explained further in Part A below, the Supreme Court has taken the first step in recognizing the need for a diverse law school body to ensure that an enriched discourse takes place. Part B emphasizes, however, that it is equally important to have a diverse faculty, and Part C suggests that achieving a diverse population is meaningless unless law faculties introduce diversity issues as part of the curriculum and use a teaching methodology that will ensure a variety of viewpoints are presented.

A. Diversity in the Student Body

Productive discourse on racial issues requires knowledgeable and meaningful participation from a wide variety of viewpoints. To understand this requirement, one need only imagine a discussion of feminist issues in an all-male classroom or a conversation among females about the effects of a medical condition suffered exclusively by men. At the outset, it is questionable how likely this discussion would take place at all, given the low priority these topics would have in terms of interest or relevance to members of the opposite gender. Assuming the subject is raised, however, the discussion is likely to be less enlightening than one that engages participants of the other gender. Certainly, there are men who can adequately represent the feminist viewpoint, but their arguments lack the depth and credibility that a woman’s first-person testimony can bring. Similarly, a woman can describe what she has seen, heard, or read about a male medical condition, but her statements, too, lack the power of first-hand experience.

38. Moran, supra note 29, at 2284-85, 2290-91 (discussing survey at Boalt Hall Law School at the University of California, Berkeley); Allen & Solorzano, supra note 15, at 279-80 (survey at University of Michigan Law School).


40. Id. at 2288-89.

41. See infra notes 48, 54 and accompanying text. A former student shared a similar frustration as a representative of the National Tribal Environmental Council. The lawyer said he is often asked to provide “the tribal view” on environmental matters—an impossible task given the varying backgrounds, goals, and perspectives of the more than 100 different tribes that he represents.

42. Cf. Moran, supra note 29, at 2271-72 (finding that law schools have failed to achieve Justice Powell’s vision of a diversity-oriented student body because “nontraditional perspectives remain marginalized[,] . . . [f]aculty have not altered the formal or hidden curriculum, and administrators have not done enough to create opportunities for interracial contact”).
The same is true of controversial legal issues with a racial component. After the movie night event described in Section I, for example, the faculty moderator said that he felt compelled to focus on the evidentiary issues in the movie because the errors were so glaring. This statement, coupled with the moderator's reluctance to discuss racial issues at all, gives the impression that the evidentiary issues were either more important or more interesting than the actual subject of the movie. To the extent that racial issues were addressed later during the forum, the conversation took place entirely between two white faculty members. Neither had first-hand knowledge of what a person of color experiences when confronted by white supremacists or how a person of color perceives a legal system dominated by white judges and jurors. The conversation, therefore, lacked the depth and quality that could have been provided by participants of color who have experienced these situations or other forms of discrimination.

This is not to suggest that white people have never experienced prejudice, that they cannot empathize with those who have, or that they cannot be forceful advocates for a minority viewpoint. Rather, this argument suggests that conversations about a racial issue—racial profiling by law enforcement agents, for example—are enriched by the perspective of a student or faculty member who has been stopped by the police using this technique, much the same way that the effects of sexual assault are better understood through the testimony of a person who has experienced that trauma. As one Latina student explained, "[E]xperiencing discrimination for yourself is an incredibly different viewpoint than... never having actually experienced it... I think that's a subtle thing.

Some have attacked this argument on the ground that it presumes there is one "minority" viewpoint. To the contrary, the goal of increasing the non-white student population is to debunk racial stereotypes by demonstrating that there are a wide variety of views and experiences among persons of color—just as there are a wide range of views and experiences among whites. Nonetheless, there is a substantial probability that minorities of all cultures, generations, and classes have

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43. Cf. id. at 2282 (quoting a Latino student who observed that "[w]ithout students of color bringing it up, the chances of [recognizing racial issues] are very, very slim"); Devon W. Carbado & Mitu Gulati, What Exactly is Racial Diversity, 91 CAL. L. REV. 1149, 1159 (2003) (citing personal experience in their own classrooms, the authors suggest that discussion of racially motivated police actions "is more likely to be discussed with a Black presence in the classroom than without it").

44. The same would be true of a conversation that lacked the input of whites who hold opposite views. Thus, in a discussion of affirmative action, for example, it is equally enriching and important for whites to share their feelings about reverse discrimination.

45. White students in the Boalt Hall survey said they resented the insinuation that they could not truly understand racial issues. See Moran, supra note 29, at 2283-84.


47. Moran, supra note 29, at 2283.


49. Grutter, 123 S. Ct. at 2334 (discussing expert testimony that "when a critical mass of underrepresented minority students is present, racial stereotypes lose their force because nonminority students learn there is no 'minority viewpoint' but rather a variety of viewpoints among minority students"); id. at 2341 ("[D]iminishing the force of such stereotypes is both a crucial part of the Law School's mission, and one that it cannot accomplish with only token numbers of minority students.").
experienced life in vastly different ways from the majority and, therefore, have formed views that are substantially different from those of their white colleagues. Justice O'Connor acknowledged this fact in *Grutter*, stating: "Just as growing up in a particular region or having particular professional experiences is likely to affect an individual's views, so too is one's own, unique experience of being a racial minority in a society, like our own, in which race unfortunately still matters.'

Minority students, therefore, may enrich the legal dialogue by not only sharing their unique experiences, but their critique of the laws and legal system as a whole. As Kimberle Williams Crenshaw explains:

Blacks are likely to be somewhat aware that law has played a role in maintaining racial privilege. Whites, although aware that racial subordination is a problem, are unlikely to view racism as a constant or central feature of American life. As a consequence of these conflicting views, while Black students are likely to be concerned with the impact of the laws on the Black community, white students are unlikely to think about the impact of laws upon the Black community unless and until the question is raised by Black students. Even when the potential impact is raised, white students are likely to balance these concerns with other interests and values. Moreover, they probably view the Black students' concerns as racial and specially interested, while the other values or world views that are routinely invoked are not viewed as racial or self-interested, but as general—or even universal—values.

Accordingly, minority voices have the potential to enrich a classroom discussion on every issue in the law school curriculum.

Increasing minority enrollment is also crucial for avoiding the negative effects of tokenism. Many students of color have expressed discomfort in being

50. See PATRICIA WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 256 (1991) ("I do believe that the simple matter of the color of one's skin so profoundly affects the way one is treated, so radically shapes what one is allowed to think and feel about this society, that to generalize from such a division [between black and white] is valid."). Here again, however, this generalization is not valid in every case. Because of the effectiveness of integration efforts in the past four decades, some young persons of color have not experienced the overt and pervasive discrimination that their parents endured — just as many young women today have not experienced gender bias. As a result, these students may be among those who believe that discrimination is ancient history and may be surprised by the prevalence of racism and sexism that still exists within the legal academy and the profession.


52. Crenshaw, *supra* note 19, at 35 n.4; cf. Compelling Need, *supra* note 20: This is not to say, of course, that members of any racial group are somehow preordained to hold some particular set of opinions or beliefs. . . . It is simply to say that whatever one's opinions and beliefs may be, they are affected by one's experience—including the experience, for example, of being black, or of being white.

53. These negative effects include alienation and isolation, as well as increased pressure to perform because token individuals are in the position of representing their ascribed category. See Rosabeth Moss Kanter, Some Effects of Proportions on Group Life: Skewed Sex Ratios and Responses to Token Women, 82 AM. J. SOC. 865 (1977). These factors often have a detrimental effect upon student achievement as well as student attitudes and relationships. Kanter suggests that token individuals are likely to respond to these pressures in two ways: some will try to work harder than their peers and strive
asked to “testify” in classroom discussions about the minority experience as “the spokesperson of their race.” Increased student diversity will allow students of color to voice their own individual viewpoints rather than attempting to represent an entire race—or perhaps many races. The University of Michigan Law School’s admission plan attempts to address this need by admitting a “critical mass” of underrepresented students, which is described as “a number sufficient to enable under-represented minority students to contribute to classroom dialogue without feeling isolated.” Numerosity alone, however, will not ensure that students of color are meaningfully engaged in the dialogue. Although women represent about 50 percent of law students today, for example, there is some evidence that they still do not participate in class discussions at some law schools as frequently as men. This suggests that factors other than sheer numbers play a role in determining whether one feels comfortable enough to speak.

To some extent, there is a natural reticence about expressing a minority viewpoint because of a fear of ostracism and sometimes a fear of physical harm; thus some students and faculty have chosen silence as a means of protection and comfort. Silence may also be attributable, however, to a sense of resignation. Even the most outspoken conservative is likely to wonder whether it is worth the effort to explain and support her views to a roomful of unreceptive liberals. Similarly, three African Americans in a room with 20 white people—as in the movie night described in Section I—might wonder what difference it would make if they share a belief or an experience to which the others cannot relate or do not want to hear. Columnist Pitts acknowledged this feeling that one has “been there, done that,” but he suggests that “maybe we need to go back and do it again. Because if

for the highest levels of achievement, while others withdraw as a means of minimizing conflicts and risks. Kanter, supra note 53, at 971-75; see also Allen and Solorzano, supra note 15, at 283 (discussing students of color who choose to be silent in the classroom “as a form of protection, as an avoidance of conflict mechanism, and as a form of comfort”).

54. See Allen and Solorzano, supra note 15, at 277-78 (“many students indicated being racially singled out to explain how all people of their race think about a certain issue”). As one Asian-American student explained: “I don’t want to get into a debate with that guy [b]ecause if I lose, then that’s very damaging to both myself and the minority viewpoint.” Id.

55. Grutter v. Bollinger, 288 F.3d 732, 747 (6th Cir. 2002); see also Allen & Solorzano, supra note 15, at 299-300 (stating that it is important for law schools to retain a “critical mass” of women and students of color because these students “depend on peers like themselves for social, organizational and emotional support”).

Some schools have attempted to define “critical mass” in terms of a certain percentage. Boalt Hall, for example, relied upon social science research to conclude that once students of color reached a critical mass of 10 percent, their academic performance improved and “they were better able to bring the qualities of voice and perspective” that diversity was designed to promote. Moran, supra note 29, at 2254. The law school determined that students’ perceptions of proportionality were also important; thus, for example, because women make up 50 percent of the general population, they might feel under-represented if their numbers were significantly lower than 50 percent of the student body. Id. It is questionable, however, whether these types of fixed-percentage plans can survive constitutional scrutiny. See Grutter, 123 S. Ct. at 2339, 2342 (emphasizing that the University of Michigan’s program does not seek to ensure “some specific percentage of a particular group merely because of its race or ethnic origin” but instead considers race as a “‘plus’ factor in the context of individualized consideration of each and every applicant.”).


57. See Allen & Solorzano, supra note 15, at 283.

58. Columnist Leonard Pitts Jr. discussed this phenomenon in the context of a Midwestern mayor who was discouraged by his efforts to convene a meeting of blacks and whites regarding racial
black people don’t teach white people about the things that concern us, who will? If all the white mainstream ever hears of us is complaint without context, it becomes easier for that mainstream to stop listening. \(^{59}\)

For these reasons and others, \(^{60}\) there is a compelling need for student diversity in law schools, as the Supreme Court recognized in \textit{Grutter}. To the extent that individuals have had different experiences with prejudice and hold differing opinions, the argument for increased diversity is strengthened. Law schools need the voices of many persons of color from varying backgrounds, as well as white students from a wide spectrum of experience.

\section*{B. Diversity Among Faculty}

A critical mass of minority faculty is equally as important as the need for diversity in the student body. Like students of color, minority faculty bring unique experiences and viewpoints that can enrich any legal discussion. \(^{61}\) More importantly, however, faculty members set the agenda, both in the classroom through their role as a teacher and in the legal community at large through their scholarship. They also serve as role models and mentors.

1. Faculty participation in diversity discourse

The movie night discussion in Section I demonstrates the power that a law teacher has to determine whether a particular topic is discussed and what viewpoints will be heard. These decisions are largely informed by the interests, experiences and values of the instructor, provided that the instructor remains within the general confines of the course description. One constitutional law teacher, for example, might devote considerable classroom time to studying the various theories of constitutional interpretation, while another might consider it more important to examine the historical underpinnings of the document. \(^{62}\) These same values and interests are also likely to influence the faculty member’s scholarship—in the subject matter, as well as the viewpoint the faculty member brings to the debate. Thus, it is

\textit{...}
important to have wide diversity among the faculty members engaged in both the classroom and scholarly forums.

Increased diversity on law faculties may also lead to greater participation by minority students themselves. Students of color may feel empowered to speak in a classroom led by a minority faculty member. Moreover, if they gain experience speaking among their peers in that setting, perhaps that sense of empowerment will carry over to their other classes as well. Minority faculty can also help enlighten their non-minority colleagues, which may have a beneficial impact within the non-minority teachers' classrooms and perhaps their scholarship. Some of this education may occur in a formal way, through faculty forums or brown bag lunches in which minority faculty discuss their legal scholarship. More frequently, however, it will come through informal interaction in the faculty lounge, during faculty meetings, or at social events—particularly if a faculty member of color is willing to directly educate his or her peers about how various issues may be perceived by members of the minority community. Leonard Pitts, for example, encouraged African Americans generally to invest some time "at the water cooler, on the front porch, at the church, in the town meeting, reaching and teaching, sensitizing and educating" about racial issues. Angela Harris has identified this task as "education work." "Education work" is admittedly wearying and risky—particularly for faculty members without tenure. Like many students, minority faculty feel the

63. Elizabeth Mertz et al., What Difference Does Difference Make? The Challenge for Legal Education, 48 J. LEGAL EDUC. 1, 3 (1998) (empirical study finding "that students of color participated more in the classrooms of teachers of color and in several of the classes in which there was a larger percentage or cohort of minority students").

64. Donna Young has questioned this premise. Donna E. Young, Two Steps Removed: The Paradox of Diversity Discourse for Women of Color in Law Teaching, 11 BERKELEY WOMEN'S L.J. 270, 288 (1996) ("I am not at all optimistic that the knowledge majority colleagues gain from the presence of minority faculty members will find its way into their classrooms or scholarship."). However, while I agree that some of my colleagues will not share their knowledge in this way, I can say that the "education work" my minority colleagues have done with me has certainly helped to improve my teaching, allowing me to challenge perceptions and illuminate different perspectives in my predominantly white classes. It has also informed my scholarship, as evidenced by this article and another work in progress.

65. As discussed earlier, minority faculty bring a wide range of experiences and perspectives to their scholarship, whether it focuses on critical race theory or takes an economics perspective.


67. Id.

68. Harris, supra note 66, at 125 n.3. Harris explains how she chose this term, after rejecting others as inadequate:

At the plenary session of the 1990 Annual Meeting of the Association of American Law Schools, Regina Austin spoke about "educating white people" and the toll this takes on the educators. The word "education" expresses both the asymmetrical quality of the interaction and the depth of the changes sought. I added the word "work" to emphasize the difficulties and risks I associate with this activity.

69. See Halewood, supra note 22, at 27 (recognizing that "it is wearying for women always to
pressures of token status,71 and numerous articles attest to the disrespect and subordination that many faculty of color have experienced.72 Minority faculty have been the victims of overt acts of hostility,73 as well as more subtle forms of subordination. Some have reported that students are more apt to challenge their statements in the classroom74 and their attempts to raise issues of diversity.75 There are also reports of a lack of support from administrators and colleagues in the face of student complaints.76 Some minority faculty also feel unfairly challenged by colleagues who devalue the nature and credibility of their scholarship, particularly

70. Harris, supra note 66, at 128. “Collegiality is often a factor in the tenure decision. . . . Minorities in academia sometimes feel themselves to be a threat to collegiality not only in their actions but in their very existence.” Id. Thus, to minority faculty members, “‘Collegiality’ often feels like a command to assimilate at all costs.” Id. n.10.

71. See, e.g., Linda S. Greene, Tokens, Role Models, and Pedagogical Politics: Lamentations of an African American Female Law Professor, 6 BERKELEY WOMEN’S L.J. 81 (1990-91) (discussing “tokenism” and its effects on African American female law professors).


73. See, e.g., Russell, supra note 72, at 259-60 (describing a National Geographic magazine cover of a gorilla that was placed in her mailbox); Dark, supra note 28, at 28 (describing how she and another colleague had left a note on some books in the library, asking that the materials not be disturbed; an unknown party subsequently penned the words “the dykes” beneath the professors’ signatures); Young, supra note 64, at 283 (describing student newsletter parody referring to minority women professors in derogatory manner).

74. See, e.g., Dark, supra note 28, at 24-25, 35-36. Dark observes that “[e]veryone faces challenges in the classroom. The question is what kind of challenges, for what reasons, and how frequently.” She posits this explanation for how minority and women’s “authority experiences” differ from those of white males:

[I]f a faculty member is a person from a group that has traditionally been viewed as Outsider and acquires authority solely by virtue of his or her faculty position, then students interact with that knowledge and experience in mind. If the faculty member is from the dominant culture in the larger society, then his holding a faculty position within the law school is no surprise and viewed as quite natural. The students’ interactions with that faculty member will also reflect that knowledge and experience. In other words, while we are all faculty members, we are not all faculty members without regard to the present or past historical and societal context.

Id. at 35-36.


76. Robinson, supra note 72, at 177-80. Derrick Bell’s experience at Stanford University School of Law illustrates how faculties and administrators effectively undermine minority faculty through their responses to student complaints. In teaching a constitutional law course, Bell spent considerable time developing the historical context, including the history of race in the United States. When students complained that the course focused too heavily on racial issues, the faculty responded by organizing “a series of ‘enrichment lectures’ intended to supplement coverage of [Bell’s] course.” Bell described the incident in the law school’s student newspaper. Bell, supra note 75.
when the minority faculty member writes in a different style or espouses a view that undermines the dominant legal culture. In these and many other ways, faculty of color are discouraged from sharing their unique viewpoints, contrary to the vision espoused by Justice Powell in *Bakke*. Jerome McCristal Culp, Jr., described the situation this way:

> All black professors face a common problem. We are asked to play a role that is assigned to us because of our race, and we then are asked to remove our blackness when we play the role. This role is to be black and to be a law professor without retaining any visible signs of our black experience.

Education work may also be perceived as demeaning. Donna Young observes that projecting this role upon minority faculty suggests that they “are merely a resource for enriching the teaching experience of majority faculty members. It fails to consider whether women of color could, should, or would want to make ourselves available as pedagogical resources on issues of race, ethnicity, or gender.” Writing from the perspective of a woman of color, Young notes that “education” discussions with white faculty “clearly benefit them more than they benefit us.”

Unwilling to research these issues on their own, they [majority colleagues] expect their colleagues to educate them. The majority colleagues seem to presume that we naturally have all the answers to these complex matters because of our race and gender. Assuming that race and gender are matters of legal and scholarly importance, it cannot be the sole responsibility of women of color on the faculty to provide instruction on these matters.

Angela Harris similarly observes that “[m]ajority members of the institution often treat education work as their right but our duty.”

These points are well-taken. The burden of education work—both in the classroom and without—should not fall solely on minority faculty. As suggested in Part C below, all faculty members should research these issues as they relate to their own teaching and scholarship. It is extremely helpful, however, if faculty members of color can help to expose the issues and suggest avenues of research—just as a constitutional law professor might assist a colleague who intends to educate property students about constitutional theories that played a pivotal role in a zoning case. In that sense, all faculty members are resources for one another. However, as Young

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77. See, e.g., Delgado & Bell, supra note 72, at 357.
79. Young, supra note 64, at 287.
80. Id.
81. Id. at 288.
82. Harris, supra note 66, at 134.

It is unfair that minorities must do the work both of assimilating to and altering the community. This is particularly true because our exclusion is not our fault but rather the fault of the community that excluded us in the first place. Why is it that minorities are held responsible for both our own salvation and for that of our oppressors?
and Harris suggest, we must avoid abusing the courtesy, keeping in mind that there is a distinction between merely seeking advice or guidance and expecting a colleague to prepare a detailed memo covering all points and authorities. More importantly, we must not assume that every faculty member of color has personal experience or knowledge of minority issues or “the minority viewpoint.”

Notwithstanding the burdens, however, it is imperative for minority faculty to bring some issues to the forefront on their own initiative or face the risk that such views will be ignored. From a practical perspective, there is little incentive for a member of the dominant culture to consider the subordinating effects of certain actions—or even legal regimes—unless the negative perceptions are brought to his or her attention. People of color, on the other hand, often have the advantage of knowing both the dominant view as well as the minority perspective. As Harris puts it: “People who are multicultural, happily or not, find themselves with multiple ways of knowing. People who belong to the dominant culture only gain access to these different worlds with difficulty.” Accordingly, Harris characterizes her “education work” as “an attempt to do battle with subordination not by redistributing power, but by redistributing knowledge.”

2. Faculty as role models and mentors.

In addition to participating in the academy’s exchange of ideas, minority faculty serve as role models for their students—white and non-white alike. Their position at the front of the classroom signifies professional success and, therefore, establishes an image that students will seek to emulate. Moreover, faculty members hold a position of respect and authority in the law school setting. Therefore, lack of diversity on the faculty sends a powerful, unspoken message about who is entitled to such respect and authority within the law school and within the legal profession as a whole.

Students also need access to faculty of color as counselors and mentors. Minority students, for example, may feel more comfortable with a minority professor and may consider that professor’s advice more credible, particularly on racially related issues. However, minority faculty’s competence in mentoring is not limited
to students of color; white students also seek out faculty of color on a wide variety of issues.\textsuperscript{90} Similarly, the argument for additional faculty diversity does not presume that white faculty are incompetent to mentor students of color. Indeed, it is beneficial for white faculty to be aware of the unique problems that students of color face and to help them consider solutions.\textsuperscript{91}

To be effective in these roles, minority faculty must have the support of their colleagues. Serving as a role model implies that minority faculty are treated with proper respect and that the law school reinforces, rather than undermines, their authority. Unfortunately, as suggested in the preceding section, minority faculty are not always accorded the respect they deserve, which, in turn, establishes a poor model of professionalism for students. As Young writes: "If the woman of color professor is still victimized by racist/sexist oppression, she is in no position to be a role model for others."\textsuperscript{92} Accordingly, deans and law faculties should critically assess whether this is occurring in their schools and take steps to improve the situation.\textsuperscript{93}

The legal academy also must recognize that faculty of color often shoulder a greater workload than their peers because they are expected to accomplish many diversity-oriented tasks in addition to their regular teaching and scholarship duties.\textsuperscript{94} These administrative tasks require time away from teaching and scholarship, the two primary activities upon which promotion, tenure, and salary increases depend.\textsuperscript{95} Obviously, non-minority faculty engage in some of these service activities as well,
but faculty of color carry a disproportionate burden because there are so few of them in comparison to the demand for the "special viewpoint" they bring to these tasks. It should go without saying that these responsibilities are too great to place upon only one or two faculty members of color.

C. The Need For Diversity In The Curriculum And Teaching Styles

The preceding discussion has illustrated the importance of stimulating diversity discourse within law schools and ensuring that a wide variety of minority views are heard. The manner in which these discussions take place, however, is just as important as the diversity of the participants in that discussion. Thus, law teachers need to integrate diversity topics into the curriculum and develop better ways of promoting discourse on these issues.

The importance of creating the appropriate environment is illustrated by the movie event described in Section I. After the event ended, three students of color shared their impressions with a white faculty member. One expressed disappointment that there was so little discussion about the issues of prejudice in the movie. A second asserted that a discussion of that sort could never occur in a predominantly white law school like the one in which they viewed the movie. The third student disagreed with the second, however, stating that such a discussion could take place under the right conditions.

Experience at a prior movie night at that same law school demonstrates that it is possible to find an appropriate balance. The featured movie that night was "The Chamber," based upon John Grisham's novel about a man facing the gas chamber for a racially motivated law office bombing that killed two young boys and injured their father. Afterward, students engaged in a candid and forthright discussion of the death penalty, with students calmly and intelligently sharing opposing views— including some powerful revelations about very personal experiences that led to those views. In deciding the appropriateness of the death penalty in this case, the students also explored whether any consideration should be given to the defendant's upbringing, i.e., his indoctrination to hatred at a tender age as part of a family with generational ties to the Ku Klux Klan. This type of exchange was exactly what the coordinators had in mind when they began the movie series.

What are the right conditions for stimulating such a discussion? There is no talismanic formula, but articles by a variety of law teachers suggest the following combination of factors that can help foster diversity discussions.

96. Delgado & Bell, supra note 72, at 364 (noting that minority faculty are asked to serve on virtually every committee "because the institution wants the 'minority point of view' represented on as many committees as possible.")

97. This view has been expressed for many years. See Dark, supra note 28, at 32 n.22; Richard H. Chused, The Hiring and Retention of Minorities and Women on American Law School Faculties, 137 U. P A. L. Rev. 537, 539-40, 555 (1988) (finding that "tokenism" is still rampant and urging law schools to make a commitment to aggressively recruit, hire, and tenure minority faculty); Portia Hamlar, Minority Tokenism in American Law Schools, 26 HOW. L.J. 443, 557, 564 (1983).

1. Embrace diversity issues in the curriculum.

New lawyers need to be trained in diversity issues; indeed, Margaret Russell suggests that it is a necessary component of "learning to think like a lawyer." This does not mean that every law teacher should apply critical race theory to every aspect of every course. What it does suggest, however, is that law teachers should introduce and develop specific diversity issues that are relevant to the particular subject matter — just as one might expose students to a law and economics approach applicable to a contracts dispute, a feminist perspective of sex crimes, or cultural or religious views that affect aspects of family law.

Although diversity issues can be raised in specialized courses, such as "Gender, Race and the Law," or in a special forum like the movie night scenario described in Section I, it is important that these issues not be ghettoized in the curriculum or taught only by minority faculty. Instead, they should be embraced throughout the curriculum for several reasons. One is that students are likely to devalue this training if it is provided only in certain courses or by certain professors. Second, it takes pressure off minority faculty members to focus so heavily on such issues within their own courses, which inevitably leads to the criticisms described earlier in Part B. Third, it is important for these dialogues to take place in classes with non-minority professors, who have their own unique experiences and viewpoints and can empower non-minority students to share theirs as well.

For many faculty members, this type of discourse requires a significant departure from the traditional focus on teaching abstract legal principles; they must put aside the mindset that "a student’s background and experience are a distraction to be overcome, rather than a resource to be developed through the instructional process." They must also be willing to risk criticism from students, many of whom want to learn only the black-letter law required to pass the bar examination, rather than engaging in a discussion of the philosophical and social underpinnings of

99. See supra notes 35-37 and accompanying text.
100. Margaret M. Russell, Beginner's Resolve: An Essay on Collaboration, Clinical Innovation, and the First-Year Core Curriculum, 1 CLINICAL L. REV. 135, 141-42 (1994) (suggesting that "the teacher of even the most 'mainstream' of first-year courses . . . faces a growing body of jurisprudence which . . . simply cannot be taught thoughtfully and analytically without reference to the impact of 'outsider' perspectives, experiences and scholarship on the formulation of its underlying concerns"). As Russell observes:

Surely, if “learning to think like a lawyer” connotes acquiring basic literacy of and facility with significant and sophisticated modes of legal analysis, law schools should endeavor to provide students with the fundamental “skills” knowledge necessary to think critically about the function of subordination on the basis of race, gender, sexual orientation, class, age, and disability.

Id.; see also Lisa Chiyemi Ikenko, Some Tips on How to Endanger the White Male Privilege in Law Teaching, 19 W. NEW ENG. L. REV. 79, 83 (1997) (suggesting that incorporating diversity issues into the classroom makes teaching more accurate).

101. Id.

102. See Julie Davies, Teaching Diversity Skills in Law School: One School's Experience, 45 J. LEGAL EDUC. 398, 413 (1995) (discussing the value of mini-courses on diversity issues offered at the William Mitchell College of Law, but acknowledging “[t]he downside to such an approach may be that it seems to segregate issues relating to diversity rather than integrating them into the curriculum”).

103. See supra notes 75-77 and accompanying text.
104. Moran, supra note 29, at 2331.
that law. But law teachers face this complaint any time they challenge students to think outside the confines of the holding of a specific case; thus, from an administrative perspective, complaints about “wasting time” on diversity issues should be viewed in the same light as complaints about teaching free market economics.

One way to head off this criticism is to explain to students—early and often—that learning to be a lawyer means more than just learning black letter law. They must learn to think critically, which requires them to understand that “[c]ourt-created doctrine or legislatively enacted statutes ultimately reflect some resolution of competing interests and values.” Although law teachers often refer to these underpinnings as “public policy,” students need to understand that these policy statements reflect the values of the decisionmaker (or the decisionmaker’s perception of society’s values). Thus, in critically examining a court decision or legislative enactment, students must evaluate whether the decisionmaker properly weighed all of the competing interests and values.

2. Educate yourself on the issues.

Effective teaching requires that the instructor be well-prepared to ask the right questions and fill in the gaps in student knowledge. Few law teachers would enter the classroom without first educating themselves on the substantive issues to be discussed that day. Similar preparation is required to teach diversity issues effectively. The movie night scenario discussed in Section I illustrates the frustration that both the students and teacher may feel if the teacher is inadequately prepared: students may feel that their viewpoints were not presented or were devalued, while the teacher may experience great discomfort treading into unknown territory or lack the knowledge to challenge stereotypical views. Worse yet, there is a possibility that the instructor may inadvertently reinforce stereotypes.

105. See id. at 2287 (describing students who felt they were inadequately prepared for the bar exam because a Property teacher used class time to develop racial issues presented by the substantive doctrine); see also Robinson, supra note 72, at 181 (suggesting that he was penalized because he brought a racial perspective to his course); Dark, supra note 28, at 23 (quoting student evaluation complaining that Torts professor “goes off on too many tangents. We don’t just discuss the law because she wants to talk about gender, class and race . . . .”); cf. Allen & Solorzano, supra note 15, at 280-81 (discussing students who criticized a female professor for raising a feminist perspective, saying “She really needs to get out of that feminist crap, and we need to get back to learning property.”).

106. I experienced such complaints in a professional responsibility course. Although some students applauded class discussions in which we examined the underlying philosophies for the rules and the personal impacts on the clients and the lawyers themselves, I still had a couple of student evaluations that suggested those discussions could be cut from the course so that greater attention be devoted to reviewing the rules that would be tested on the Multistate Professional Responsibility Exam.

107. Dark, supra note 61, at 556.

108. Id.

109. Taking this one step further, law teachers need to help students understand the practical benefits, i.e., how they can use their analysis of these underlying values and interests to attack unfavorable precedents or to persuade a decisionmaker to rule in their favor. Hopefully, students then will see that critical thinking—and a knowledge of various viewpoints, values, and interests—are more important than simply memorizing black letter law. Unfortunately, however, some students do not see any immediate benefits from these skills (or the need to learn them) because they generally are not tested in the final examination or on the state bar examination, as is black letter law.

110. See Dark, supra note 61, at 559 n.64 (“If there is no careful thought given as to how to conduct the discussion to facilitate a thoughtful discussion of the issues, there can be disastrous long-term
Teaching diversity issues may be more difficult in the areas in which the instructor is personally privileged—such as an instructor from an upper-class background teaching poverty issues—because it requires a little more effort to learn about the non-dominant values and viewpoints. Still, just as men are able to teach feminist legal theory, so can non-minority faculty effectively raise issues of race, ethnicity and culture.

Educating oneself on the issues need not be an onerous task. Many textbook authors purposefully raise diversity issues through the selected cases or the note material. The teacher’s manual, therefore, may suggest discussion questions or provide links to background articles on the subject. In addition, numerous law teachers have written articles discussing creative ways to raise diversity issues in traditional courses. Instructors can also get ideas from workshops and programs sponsored by the Association of American Law Schools, the Society of American Law Teachers, or the Institute for Law Teaching.

3. Create a safe environment.

The classroom teacher plays a pivotal role in controlling the pace, tone, length, and nature of the discussion. It is important, therefore, for law teachers to develop teaching techniques for developing a safe environment in which those discussions can take place. What appears below is a list of suggestions compiled from a number of excellent articles by experienced law teachers.

*Educate yourself on what makes students uncomfortable.* There a number of good articles that identify classroom dynamics that alienate students, particularly women and minorities. Some of these problematic situations include: abuse of the Socratic method, turning it into an opportunity to belittle students rather than testing and developing their analytical skills; racist, sexist, or homophobic comments or assumptions; and a failure to respect alternative points of view. Where issues of race are involved, instructors might find it especially helpful to read the student commentary that Frances Lee Ansley published from her course on discrimination.
The comments are enlightening not only because they reveal the students’ reactions to the course, but also shed considerable light on their prior level of knowledge and experiences with discrimination issues.\textsuperscript{116}

Establish a rapport with the class. Show interest in your students as individuals\textsuperscript{117} and realize that they are interested in you as a person as well.\textsuperscript{118} Learn your students’ names and acknowledge them both inside the classroom and out.\textsuperscript{119} Show that you are sensitive to their responsibilities to other classes and personal conflicts.\textsuperscript{120} Cultivate an appropriate sense of humor, which can create goodwill with the class as a whole and, when used appropriately, ease the tension of an awkward moment.\textsuperscript{121} Find a happy medium between remaining aloof (which creates a power imbalance between professor and students) and being too friendly and approachable (which can undermine your authority).\textsuperscript{122}

Model and demand excellence. Demonstrate professionalism by being thoroughly prepared, starting and ending class on time, and establishing clear expectations.\textsuperscript{123} Let students know what level of preparation you expect from them, how you intend to call on them during class, how you will grade them, and what goals you are trying to accomplish in the course.\textsuperscript{124} Push yourself to do your best; admit your mistakes and promptly correct them.\textsuperscript{125} Expect the same of your students. ("reflection papers" assigned during the course and student evaluations written afterward).

\textsuperscript{116} \textit{Id.}

\textsuperscript{117} See Mary Kate Kearney & Mary Jane Keamey, \textit{Reflections on Good (Law) Teaching}, 2001 DET. C.L. MICH. ST. U. L. REV. 835, 836-37 (2001); Dark, \textit{supra} note 61, at 559-60, 565 ("[T]eachers who pay attention to and work on developing positive, respectful and open relationships with their students on individual and group levels will have classroom environments in which students can and will take risks.").

\textsuperscript{118} See Kearney & Kearney, \textit{supra} note 117, at 837 ("The student-teacher interaction is a two-way street"); Kent D. Syverud, \textit{Taking Students Seriously: A Guide for New Law Teachers}, 43 J. LEGAL EDUC. 247, 247 (1993) ("Your students will know whether you like and respect them, and if they know that you do not, you will fail as a teacher."); Douglas K. Newell, \textit{Ten Survival Suggestions for Rookie Teachers}, 33 J. LEGAL EDUC. 693, 697 (1983) ("Students seem to be more comfortable with a teacher who has bills to pay, house and cars to repair, children who go to the orthodontist and so on."). Professors can undermine the class, however, by overzealously interjecting their personal lives into the classroom or using the forum as a means of pursuing their own personal agendas. Finding an appropriate balance is critical.

\textsuperscript{119} See Syverud, \textit{supra} note 118, at 248-49. Some professors use seating charts to match up names and faces. Kent Syverud suggests pasting students’ pictures on flash cards and drilling yourself until you have memorized their names. I use a combination of the two systems. I ask students to conform to a seating chart for a few weeks but also push myself to memorize names through periodic drills with flash cards that contain not only the students’ names and photos but also a biographical paragraph I ask them to write for me during the first week of class. See Kearney & Kearney, \textit{supra} note 117, at 836 (suggesting that instructors invite students to introduce themselves during the first class by telling at least one interesting thing about themselves that is not law-related). One way to gather information about students without taking up class time is to have students post something about themselves on a class website, such as through The West Education Network (TWEN) or Lexis-Nexis’s Virtual Classroom.

\textsuperscript{120} See Syverud, \textit{supra} note 118, at 250.

\textsuperscript{121} See Dark, \textit{supra} note 61, at 572. "By the use of humor, this writer does not mean the use of off-color remarks or jokes about racial/ethnic groups. Rather, it is more an attitude that the discussion is serious, but we need not take ourselves so seriously." \textit{Id.}

\textsuperscript{122} See Kearney & Kearney, \textit{supra} note 117 at 837-38. Find a teaching style that fits your own personality. See \textit{id.} at 841; Syverud, \textit{supra} note 118, at 247. Enjoy yourself – "[E]nthusiasm is contagious." Newell, \textit{supra} note 118, at 693; Kearney & Kearney, \textit{supra} note 117 at 842-43.

\textsuperscript{123} See Syverud, \textit{supra} note 1188, at 248-49.

\textsuperscript{124} See \textit{id.} at 249.

\textsuperscript{125} See Newell, \textit{supra} note 118, at 702; Kearney & Kearney, \textit{supra} note 117, at 839 ("we
students. As Mary Kate Kearney observed: "When teachers allow students to 'get by,' they send one of two undesirable messages: either classroom performance is irrelevant to being a good lawyer, or mediocrity is acceptable in the practice of law."¹²⁷

**Demonstrate and cultivate respect.** Listen respectfully to various viewpoints, acknowledge them through appropriate words or body language, and discourage disrespectful conduct by others.¹²⁹ Demonstrating respect does not require the teacher to agree with every view; instructors can, and should, ask students to critically examine the basis for their views.¹³⁰ It is important, however, to do so in a tactful and even-handed manner.¹³¹ Recognize—and remind students—that reasonable people can reasonably disagree.

**Avoid demeaning or stereotypical language and examples.** Don’t make assumptions about your students’ experiences, e.g., comments that assume all students are heterosexual, middleclass, or sports fans.¹³² Develop hypotheticals that put women and minorities in dominant, rather than subordinate, roles. “Try to draw case studies, examples, and anecdotes from a variety of cultural and social contexts.”¹³³

**Be a moderator, rather than a lecturer.** Law teachers must bear in mind that their presence in the classroom is not as one among equals but as an authority figure. As illustrated by the movie night experience described in Section I, the faculty member’s views can have a chilling effect on a student’s willingness to express an alternative viewpoint.¹³⁴ Accordingly, many law teachers purposefully should demand excellence in the law classroom. This means setting high expectations for ourselves and our students and not settling for anything less.”

¹²⁶ Kearney & Kearney, supra note 117, at 839-40.
¹²⁷ Kearney & Kearney, supra note 117, at 840.
¹²⁸ See Allen and Solorzano, supra note 15, at 254 (discussing student’s observation that faculty members’ tolerance of racist views in class discussions “further marginalizes students of color”).
¹²⁹ It is important to keep in mind, however, that a faculty member may not always perceive the bias that a person of color views as inherent in a particular statement or comment. Thus, faculty members cannot be counted on to identify and discredit these views until they themselves have been enlightened.
¹³⁰ Students learn to “think like a lawyer” when they are asked not only to explain and examine the reasoning behind their own viewpoints, but are also challenged to think of the opposing viewpoint and the rationale for it. Alternatively, the teacher can invite others (co-equals of the person who expressed a minority view) to evaluate and comment on the thoughts that have been expressed so far. Better yet, the teacher can invite the speaker to critically evaluate his or her own opinion, which not only avoids the appearance of pitting one student against another, but encourages students to develop their own analytical skills.
¹³¹ The teacher must resist the temptation to dismiss opposing viewpoints summarily and must avoid the appearance of allowing the class to gang up on an unpopular view. Thus, whether a student’s statement represents a majority or minority view, the teacher can challenge the student to critically examine both views, e.g., by asking the student what facts or policies support the view and whether contrary facts or policies might suggest an alternative view. At some point in the discussion, the teacher may want to reveal that one view is predominately held, but in doing so, it is not necessary to denigrate the value of opposing views. To this extent, discussing diversity and other controversial issues is no different from discussing the majority and minority views on any rule of law that has produced a split of authority.
¹³² See Hing, supra note 35, at 1833.
¹³³ Id.
¹³⁴ When asked about racial issues in the movie, the faculty moderator responded with definitive statements of his own viewpoints, i.e., that racial issues had not motivated the movie’s central character and that the Ku Klux Klan is “a joke.” Making a contrary statement under these conditions
conceal their own views or, as Michael Olivas puts it, tries "not to represent [them] as the only truth."135 To do so, it is helpful for the teacher to maintain a role as a moderator, rather than a lecturer, in diversity discussions. Using this device, the faculty member is not required to discuss his or her own personal views, but merely to encourage and facilitate discussion among the other participants. The instructor can play the role of "devil's advocate" or use similar techniques to raise additional viewpoints without declaring ownership of them.136

Avoid forcing students to "testify" about minority experiences. Students of color are understandably uncomfortable when expected to serve as spokesperson for the minority viewpoint.137 Instead of asking a student of color to provide this viewpoint, instructors can challenge non-minority students to identify this perspective, just as an instructor might ask a prosecution-minded student to develop the defense perspective. When the instructor does call on a minority student, it may help to preface the question by saying, "Ms. Smith, you can't speak for all people of color, but what are your thoughts on this issue?" This alerts the entire class that the instructor expects only the student's personal views and that there are likely to be other minority viewpoints on the issue.

A practice that students of color find even more objectionable is calling on them only when the instructor wants "testimony" about the minority experience, i.e., "how it feels to live in a ghetto, to go to segregated schools, to be harassed by police, or to risk being stigmatized by affirmative action."138 Instructors may think they are giving minority students "an opportunity to speak about something within their area of expertise" but Kimberle Williams Crenshaw suggests that

[u]sually the effort to illicit the minority perspective is a cue that the discussion is a policy – as opposed to a doctrinal – discussion. The racial conflict, if any, is seen as occurring outside of the classroom while the objective of the discussion is apparently to determine how best to address the problem. To the extent that the minority student can participate in this debate, she is viewed as a biased or specially interested party and thus, her perspectives are probably regarded as being too subjective to have a significant bearing on the ultimate solution.139

Crenshaw suggests that instructors correct the problem by "altering the way racial issues are framed, by presenting racism as a serious societal problem, and by

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136. Cf. Calleros, supra note 111, at 164 (stating that "[p]ure objectivity or neutrality in any academic course is a fiction[,]" but instructors "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").
137. See supra note 54 and accompanying text.
138. Crenshaw, supra note 19, at 40-41.
139. Id. at 41.
explicitly deprivileging dominant perspectives.\textsuperscript{140} Thus, instead of asking a minority student to testify about how it feels to live in a ghetto, Crenshaw suggests that the instructor illuminate the racial subordination issue by asking students "to discuss how landlord-tenant law or banking practices perpetuate the maintenance of substandard dwellings in minority communities."\textsuperscript{141} If an instructor nonetheless finds it desirable for the class to understand what conditions are like in a ghetto, the instructor can provide that information through other means, such as photographs, videotape or writings by individuals outside the classroom.

**Focus on concrete examples, rather than merely abstract ideas.** Use stories from the newspaper, interviews or trial transcripts of real-life events. Television shows and movies can also bring these issues to life, as illustrated by the movie night program described in Section I. As Bill Ong Hing observes, "[v]ivid, concrete examples can help make a simulated clinical or discussion class more meaningful because students are better able to relate to something real and to see the complexities of what actually happens."\textsuperscript{142}

**Turn lemons into lemonade.** Even if a student is well-prepared, anxiety may cause him or her to give an incorrect response or experience a brain freeze. Douglas Newell observes that a positive reaction from the instructor is critical to the student's self-esteem and continued participation—"[o]ften a halting, potentially disastrous student performance can be turned into a success by simple patience, support and reinforcement."\textsuperscript{143}

4. Engage a wide variety of participants.

Encouraging a "robust exchange of ideas" requires input from a wide spectrum of viewpoints and experiences, but many students are intimidated by the thought of speaking in class, particularly under the pressures of the Socratic method. In addition to creating a safe environment, as discussed in the preceding section, law teachers need to take pro-active measures to encourage non-speakers to join the discussion. Several of these methods are discussed below.

**Identify non-speakers and draw them into the discussion.** Okianer Christian

\textsuperscript{140} Id. at 43.

\textsuperscript{141} Id.

\textsuperscript{142} Hing, supra note 35, at 1831.

\textsuperscript{143} Newell, supra note 118, at 699. When a student freezes, Kent Syverud suggests that the instructor has several options:

[Y]ou can move on to someone else, you can feed answers to the student, or you can recount your own terror the first time you were called upon. Your objective should be to make sure the student that very day leaves class on the shoulders of cheering classmates. You should get that student to contribute something positive and profound that very day. Why? Because if you fail to do so, you will put a monkey on that student's back, a monkey that will grow heavier each day the student fails to be rehabilitated before his peers.

Syverud, supra note 118, at 251. Similarly, Syverud suggests that instructors take the high road in dealing with students who are mentally misbehaving in class, such as doing a crossword puzzle or reading the newspaper. Instead of shaming the student before his or her peers—which would alienate many students in the class—Syverud suggests making the following statement at the next logical break in the material: "Look, I know this seems boring and unimportant... It was the sort of topic that made me want to do a crossword puzzle in class. But as it turns out, [this material] really is terrifically important, and here's why..." Id.
Dark observes that “effective teachers realize that they must acquire an ability to listen simultaneously to the speaker and to the non-speakers, the rest of the class.”

This requires paying attention not only to the spoken words, but non-verbal signals as well. Invite non-speakers into the discussion by asking, “How do the rest of you feel about that?” or “Does anyone who hasn’t spoken care to react to Joe’s conclusion?” It may simply require calling on students by name — a practice that may be as uncomfortable for the professor as it is for the student, but a necessary component of the student’s training.

To help reduce the stress of this event, the instructor might give reluctant speakers advance warning of when they will be called upon in class, thereby allowing them to be especially well-prepared to answer questions that day.

Invite reluctant speakers to “take up space.” Students who are intimidated by public speaking often give short answers or will simply say, “I don’t know.” Encourage them to expound on their comments by saying, “I think you’re on the right track; tell me more about that” or “explain what you mean by that.” Rather than moving on from a student who claims to not know an answer, Stephanie Wildman suggests that instructors can help the student by rephrasing the question.

“If the continued questioning is not done in a terrorizing manner, but rather by encouraging her to forget herself and play a role—for example, ‘what would you argue if you were defendant’s lawyer?’—she often answers the questions and does well.” Complimentary feedback, either in the classroom or privately outside of class, can further ensure a positive experience, which may help break the student’s silence and encourage him or her to speak more frequently.

Employ a variety of teaching methods. Many different teaching techniques are available to engage a wide variety of participants in class discussion. This article highlights three techniques that are frequently mentioned in teaching workshops and literature—the “free write” exercise, small group discussions, and

144. Dark, supra note 61, at 569-70; see also Stephanie M. Wildman, The Question of Silence: Techniques to Ensure Full Class Participation, 38 J. LEGAL EDUC. 147 (1988).
145. Dark, supra note 61, at 569.
146. Hing, supra note 35, at 1832.
147. Many instructors are reluctant to use this tactic out of a “humanistic concern that someone who does not want to engage in discussion should not be forced to do so[,]” but Stephanie Wildman suggests that it is a disservice to students to not call on them. Wildman, supra note 144, at 151 n.21.
148. Some instructors use this technique with the entire class, e.g., calling on students in alphabetical order or by row. The risk of giving advance warning on a routine basis like this, however, is that many students will prepare for class only on their assigned days. Thus, fewer students are available to enrich the class discussion with an informed perspective.
149. Wildman, supra note 144, at 151.
150. See Newell, supra note 118, at 700.
151. Wildman, supra note 144, at 151.
152. Id. at 151-52.
153. See id. at 152.
155. See Dark, supra note 61, at 566-67; Hing, supra note 35, at 1832; Wildman, supra note 1444, at 152-54.
role plays—but instructors may find other methods more suitable for their particular courses or classrooms.156

“Free write” exercises are a good prelude to a large group discussion. The instructor begins by posing a question and giving students several minutes, working individually, to write a response; after the free write period has concluded, the instructor invites students to share their responses with the class as a whole.157 This exercise has several benefits: First, it encourages every student in the class to actively think about the question, rather than simply waiting for someone else to provide an answer. Second, it gives students time to analyze their thoughts more carefully. This leads to better responses from the class as a whole, but is particularly helpful to students who need time to process their thoughts before they are comfortable sharing them aloud.158 Thus, the class discussion is enriched not only by the quality of the comments but also by a wider variety of students who are willing to speak.

Small group discussions similarly invite participation by reluctant speakers.159 Students are likely to feel more comfortable sharing their thoughts with a handful of their peers, rather than an entire classroom.160 They are also more likely to feel as if they are engaged in an exchange of ideas rather than a command, solo performance.161 As a result, small group discussions elicit a much wider variety of viewpoints, which can then be shared with the entire class by having a group spokesperson report back to the class as a whole.162 After one or two groups have

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156. See David Dominguez et al., Inclusive Teaching Methods Across the Curriculum: Academic Resource and Law Teachers Tie a Knot at the AALS, 31 U.S.F. L. REV. 875 (1997) (discussing free writes, role-playing and small group discussions among a variety of techniques presented in a teaching workshop at the Association of American Law Schools annual meeting). For examples of other teaching techniques, see Wildman, supra note 1444, at 152-54 (offers six different teaching techniques to encourage wider student participation in class discussions); Paula Lustbader, Teach in Context: Responding to Diverse Student Voices Helps All Students Learn, 48 J. LEGAL EDUC. 402 (1998) (describing other experiential, writing, and collaborative exercises); David Dominquez, Beyond Zero-Sum Games: Multiculturalism as Enriched Law Training for All Students, 44 J. LEGAL EDUC. 175, 180 (1994) (describing a “negotiable learning” program that utilizes “constructive troublemaking, affirmation before challenge, and shared-responsibility/shared-risk projects”).

157. See Dominguez et al., supra note 156, at 885 n.24, which describes the free-write exercise as follows:

Free-writing is a technique in which writing is used for thinking and processing purposes. The writer uses the writing instrument (pen, pencil, computer keyboard) to answer a question without pausing or lifting the instrument for a period of time. It is a form of free association that enables the individual to use writing to enhance learning.

158. Students who demonstrate a preference for “introversion” in the Meyers-Briggs analysis, for example, generally desire time to think and reflect before acting or speaking. See Vernellia R. Randall, The Meyers-Briggs Type Indicator, First Year Law Students and Performance, 26 CUMB. L. REV. 63, 81-82 (1995-96).

159. Okianer Christian Dark calls these “buzz groups”—groups of no more than five or six students who work collectively on a given problem or question. Dark, supra note 61, at 567. Dark suggests this technique can work even with a large class because students need not move from their seats; they can form a group with their nearest neighbors in the room. Id.

160. See Hing, supra note 35, at 1832 (“Many students who are hesitant to participate in a larger classroom appreciate the opportunity that small groups afford.”).


162. Many instructors have students take turns serving as the group’s spokesperson when the
reported, the instructor can highlight the variety of viewpoints by asking other spokespersons to focus on how their discussions differed from what has already been reported.163

One side benefit of small group discussions is that group reports focus attention on the ideas that are expressed, rather than on the identity of the speaker.164 Small group discussions can also break the ice and facilitate more discussion over the course of the entire semester. By using small group discussions early in the semester, the instructor sends a message that student exchanges are valued. This not only encourages formerly silent students to speak more frequently,165 but can also counter the peer pressure that sometimes exists to discourage class participation. As a final benefit, research suggests that students learn better from small group exercises.166

Role-playing is another common technique that focuses attention on ideas rather than on the speaker. Using this technique, the instructor sets up a hypothetical scenario and asks students to play the roles of various parties who might be engaged in that scenario, e.g., attorney, client, legislator, or judge. Playing a role allows the student to express the opinions of the character, rather than his or her own personal views. As a result, students feel more comfortable expressing different views.167 More importantly, however, role-playing may also help them identify and understand different views in context,168 particularly if the instructor is careful to avoid stereotypes when assigning the roles.169

5. Develop techniques to deal with uncomfortable situations.

From a faculty member's perspective, classroom discussions on controversial issues present a double-edged sword: on one side, there is a concern that the discussion will flop because participants will not engage in the conversation; on the other, there is a fear that if participants really did express themselves, the discussion might get out of control and disrupt the learning process. Instructors can avoid disaster, however, by anticipating these events and developing techniques to

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full class reconvenes. This technique helps reluctant speakers build their verbal skills by requiring them to talk before the entire class on occasion, but may make the experience more palatable because the student has the moral support of others who shared that view in the small group or because the student is required to report only on the group's discussion, rather than declaring ownership of a particular point of view.

163. Some questions to elicit this information might include: "Were there any different views discussed in your group?" or "Does your group have anything different to add?"

164. This may help address Kimberle Williams Crenshaw's concern that white students tend to discount the value of a minority viewpoint as biased. See Crenshaw, supra note 19, at 36. When a group spokesperson gives the report, other students will not necessarily know who expressed what viewpoints within the group.

165. Wildman, supra note 144, at 153 ("[S]maller size often helps some formerly silent students participate, and they then find it easier to continue participation in the larger section.").

166. See Hing, supra note 35, at 1832 ("students working in small groups tend to learn more of what is taught and retain it longer than when the same content is presented in other instructional formats") (citing Barbara Gross Davis, Collaborative Learning: Group Work and Study Teams, in TOOLS FOR TEACHING 85).

167. See supra note 152 and accompanying text.

168. Students, being largely competitive, generally want to make the best arguments they can for whatever side they have been asked to represent. Thus, role-playing encourages them to think outside their own experiences and viewpoints by taking on the persona and problems of their character.

169. See Dark, supra note 61, at 566.
guide the discussion through awkward moments. What appears below are suggestions for dealing with some common situations.

Disruptive or disrespectful behavior. Instructors can help themselves by establishing ground rules early in the semester or at the outset of a controversial discussion. The instructor should make it clear, for example, that students must not interrupt other speakers, but instead must wait to be recognized by the instructor before beginning to speak. This rule allows the instructor to keep disruptions to a minimum while preventing dominant personalities from monopolizing the discussion. Similarly, the instructor should set forth an expectation that students treat each other’s viewpoints with civility and respect.

When minor transgressions occur, a gentle reminder of the rules may be all that is required to correct the behavior. If the behavior continues or escalates, however, the instructor may need to confront the offender more aggressively with verbal warnings or, in the worst case scenario, asking the student to leave the room.

Personal attacks and derogatory comments. Instructors should be particularly vigilant in responding to personal attacks, racial stereotypes, and derogatory comments—even if made in a joking manner. Failure to take action may alienate students within the class who are offended by the remark or may reinforce stereotypes. Conversely, the instructor should not overreact by preventing students from raising "politically incorrect" viewpoints. All viewpoints deserve to be heard so long as they are presented in a respectful and professional manner.

In responding to inappropriate remarks, Bill Ong Hing suggests that instructors explain why the remarks are offensive or insensitive. One way to do so, Hing suggests, is for the instructor to say: "What you said made me uncomfortable. Although you didn’t mean it, it could be interpreted as saying . . . " Similarly, when students make arguments based upon polarized assumptions—e.g., that everything is racially motivated or, conversely, that race is irrelevant in today’s society—Hing urges them “to see the complexities involved in interpersonal relations and how we can neither overgeneralize nor exaggerate them.” Addressing student comments in this direct, but tactful, manner minimizes the risk of silencing the student who made the remark as well as other students who could easily envision themselves in that student’s position.

Emotional responses. Despite the instructor’s best efforts, there is a significant risk that controversial discussions will provoke anger or tears from a member of the class. Of the two emotions, anger may be the easier to manage because the instructor can give the student the opportunity to vent his or her feelings with the stipulation that it be done in a respectful and professional manner. If the anger results in name-calling or other personal attacks, the instructor might gently

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170. Dark, supra note 61, at 567-68; Hing, supra note 35, at 1833.
171. Dark, supra note 61, at 568.
172. Calleros, supra note 111, at 161 ("[O]nce instructors begin to label political positions within the classroom as acceptable or unacceptable, they risk squelching the very diversity of perspectives that they hope to foster.").
173. Hing, supra note 35, at 1833.
174. Id.
175. Id. at 1823-24.
176. See Dark, supra note 61, at 569.
acknowledge and validate the feelings, but explain that personal attacks do not help others understand what caused the student’s anger.\(^1\) The instructor can then encourage the student to explain what he or she is feeling and why, which would allow others in the class to remedy the situation if they can.

Unexpressed anger is more problematic because the instructor cannot provide a productive outlet if the instructor does not know the anger exists. One way to address these undercurrents is to have students keep weekly journals or write “reflection papers”\(^2\) after the discussion. Frances Lee Ansley’s experience with this technique in a discrimination course suggests that students are more likely to express these feelings in writing—even if the thoughts are later shared anonymously with the class.\(^3\)

Tears present a special problem for the instructor because of the professional stigma attached to this emotion. As with anger, it is important for the instructor to acknowledge and validate the emotion, but the professor should also try to help the student regain composure and renew the effort to express his or her thoughts verbally.\(^4\) In doing so, the professor can model techniques that lawyers can use when faced with emotional responses from a client or from a witness in the courtroom. In some cases, however, the student may be unable to proceed, and the instructor should offer the student a graceful exit from the discussion. Charles Calleros acknowledges that instructors have differing views on when this is necessary.\(^5\) Ultimately, he suggests, “[i]t may be a matter best left to the discretion and teaching style of the individual instructors, as applied on a case-by-case basis to unique circumstances.”\(^6\)

Silence. It is rare for a classroom discussion to flop completely because the

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177. For example, the instructor might say, “This conversation is obviously making you uncomfortable and that is understandable. But name-calling is counterproductive because it puts others on the defensive, making it difficult for them to listen to what you are really saying.”

178. Reflection papers encourage students to reflect upon their readings or class discussions and “integrate their personal experiences into their doctrinal analyses . . . .” Derrick Bell et al., Racial Reflections: Dialogues in the Direction of Liberation, 37 UCLA L. REV. 1037, 1041-42 (1990) (crediting Professor Charles Lawrence with developing the technique).

179. See Ansley, supra note 115, at 1561-62, 1570-71. Ansley reports that “[m]any students were raising issues, making arguments, and expressing feelings that they did not want to raise publicly in class; they were telling stories that were too long or too personal for the larger group.” Id. at 1561-62. Although Ansley permitted students to designate their papers “not for publication,” most students allowed Ansley to share edited versions of the papers with the class as a whole—minus names and other identifying information. Id. at 1570-71.

180. The instructor may say, for example, “This is obviously very difficult for you to talk about right now. Would it help if we let someone else talk and then come back to you?”

181. During a workshop for classroom instructors, Calleros observed two schools of thought on whether a student should be excused from discussing an issue that relates to a traumatic event, such as rape, that the student experienced:

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 . . .

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.

Calleros, supra note 111, at 162.

182. Id.
entire class refuses to participate altogether.\textsuperscript{183} It is not uncommon, however, for students to be somewhat hesitant about plunging into a discussion about controversial issues. Often, the students will respond to a little light-hearted coaxing, such as “I find it hard to believe that no one in this room has an opinion on this.” For a little tougher crowd, the instructor might challenge the class by stating one potential viewpoint\textsuperscript{184} and inviting students to comment on it.

Although uncomfortable at times, silence need not be a negative educational experience. Charles Calleros observes that students may be silent because they are listening and learning.\textsuperscript{185} Recognizing this fact, Okianer Christian Dark purposefully blends periods of silence into the discussion to encourage further reflection.\textsuperscript{186} Moreover, Dark suggests that even awkward silence has its place as “a useful reminder to students that there are many reasons why discussion of these issues is uncomfortable and difficult for them.”\textsuperscript{187}

6. Recognize that perfection is impossible.

The purpose of the preceding subsections is to present a variety of suggestions for teachers who accept the challenge of raising diversity issues in their classrooms. Following these recommendations, however, is no guarantee of success. Indeed, many of the law teachers who shared these ideas report that they rarely achieve the standards they set for themselves.\textsuperscript{188} Yet, while occasional missteps are regrettable, Charles Calleros reminds us that they also present an opportunity for us to learn and develop as teachers.\textsuperscript{189} The good news is that students can be quite forgiving of periodic imperfections if they sense that the instructor is making “a genuine attempt to generate a thoughtful discussion about diversity.”\textsuperscript{190}

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{183} If this happens, it is likely because the instructor has failed to create a safe classroom environment or does not routinely encourage participation from a wide variety of viewpoints. See supra notes 114-143 and accompanying text.
\item \textsuperscript{184} Giving a non-dominant viewpoint might be helpful because it may embolden students who share this view while sparking disagreement from students whose dominant views have been unexpectedly challenged.
\item \textsuperscript{185} Calleros, supra note 111, at 159.
\item \textsuperscript{186} Dark, supra note 61, at 572.
\item \textsuperscript{187} \textit{Id.} Dark observes that classroom silence draws a student’s attention to the discomfort he or she caused through a poor choice of words or the stereotypical assumptions implicit in the student’s statement. \textit{Id.} at 568-69 (discussing nervous laughter and silence that followed a student’s intemperate remarks about HIV-infected persons). She also suggests that classroom silence helps prepare students for the silence they may experience “in court, at a negotiation, or with a client when they feel it is appropriate to raise an issue concerning diversity on behalf of the client. They must learn not to fear it, but to use it.” \textit{Id.} at 572.
\item \textsuperscript{188} \textit{See, e.g.,} Calleros, supra note 111, at 157 (“instructors should recognize that occasional mistakes and missteps are inevitable”); Syverud, supra note 118, at 247 (describing the advice in his article as “what I aim for in teaching but rarely achieve”); Dominguez et al., supra note 156, at 880 n.19 (stating that the teachers selected to lead an AALS workshop were committed to teaching and had experienced “high moments” but were also “painfully aware that we seldom meet all our goals, and each of us could no doubt, construct a list of ‘low moments’ as well”).
\item \textsuperscript{189} Calleros, supra note 111, at 157.
\item \textsuperscript{190} \textit{Id.}
\end{enumerate}
\end{footnotesize}
CONCLUSION

Law students are being groomed for critical roles in our legal system. To instill public confidence in that system, law schools must produce lawyers, judges, and lawmakers who have been exposed to differing viewpoints and experiences as they relate to the major legal issues of the day. The movie night scenario described in Section I of this article demonstrates that law schools are unlikely to provide that exposure on diversity issues unless they address three critical elements. First, they must have sufficient diversity in their student bodies to bring a diversity of viewpoints to be shared and examined. This requirement has been expressly recognized by both Justice Powell in *Bakke* and Justice O’Connor in *Grutter*. But attaining a diverse student body is merely the first step. A second critical component is to ensure that law schools have sufficient diversity in members of the faculty, who control the classroom agenda and bring their own experiences to the discussion. Third, law schools must facilitate an exchange of those viewpoints by encouraging faculty to raise diversity issues in the classroom and to develop teaching methods that ensure that differing viewpoints are not only presented, but heard and respected. All three components are necessary to developing the “robust exchange of ideas” that Justices Powell and O’Connor have sought to foster in their vision of diversity.