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Teaching Law in a Multicultural, Multilingual Context

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I. INTRODUCTION

A diverse group of teachers from the City University of New York (CUNY) School of Law began talking over the summer of 2007 in preparation for submitting a proposal on teaching law in a multicultural/multilingual context for the Twelfth Annual LatCrit Conference. A smaller group of four faculty members actually participated in the conference and facilitated the roundtable discussion. We four were of diverse racial, ethnic, gender, religious, and sexual orientation backgrounds. We also teach across various parts of the curriculum at CUNY Law in the areas of legal research, large classroom, clinic and academic support.

In the workshop, we four Pamela Edwards, Raquel Gabriel, Donna Lee, and David Nadvorney led the discussion of one phenomenon that many law students of color face—they enter law school to become agents of change in their communities, but become indoctrinated by the patterns of white privilege embedded in traditional legal education—and how individual faculty members can use the classroom to ameliorate the effects of this phenomenon. The workshop also addressed how patterns of white privilege play out vis-à-vis faculty of color in the classroom.

Pamela led the discussion on progressive teaching in the large classroom context, Raquel the small classroom context, and Donna the clinical context. David discussed the interstices between the traditional law school classroom and learning theories, and how professors can infuse their teaching with these theories. We initiated the conversation through the use of a hypothetical.¹

¹ The hypothetical was as follows: Alex Lee, a 30-year-old Asian American law professor, teaches contracts to a class of 80 first-year students. The students are primarily white, but there are about 15 students of color. The room he teaches in has stadium seating, and there is a group of six or seven European American, male students who always sit in the back row. They tend to lean back, with their arms sprawled over the backs of their seats. Many wear baseball caps to class. Several of them regularly raise their hands to participate in the classroom discussion. Frequently, the tone used is one of disbelief. Some typical comments are as follows: “I don’t understand why you’re focusing on ABC

The group first deconstructed the hypothetical, seeking to separate the substance of challenges posed by European American male students to a professor of color from the tone of those challenges. Some categorized the interaction as a “behavioral problem.” Others viewed at least a part of the issue as one of needing to change the Socratic, top-down culture of large classrooms to create a more collaborative classroom atmosphere. We also discussed the differences between engaging in public and in private spaces with students who challenge the authority of a professor of color. To the extent that one’s assessment is that the student wants to disagree, but does not know how to disagree without also disrespecting, it seemed better to speak with the student one-on-one. To the extent that a student’s intention is to disrespect, it seemed better to meet the challenge in public.²

Our roundtable discussion was predicated on certain assumptions worth noting. First, in some senses we were “preaching to the choir” since participation in the various concurrent sessions created self-selected groups. Second, although some of us at CUNY Law School complain about the lack of sufficient diversity among the student body and faculty, we are not in the position of some of our colleagues at the LatCrit conference who fall short of the “critical mass” that we are further along in achieving. These essays reflect on the workshop and pose questions for the future.

I. PAMELA EDWARDS / LARGE CLASSROOM

Law professors of color who discuss different perspectives on contract law expose themselves to additional challenges in the classroom, especially if they introduce critical race perspectives on contract law. The contracts casebook that I use contains a small section that discusses many different perspectives on contract law. I assign this section early in the semester and discuss it in class to lay the foundation for further classroom discussion later in the semester. And yes, I have been known to test on this material, albeit in a minimal way. In creating an atmosphere that allows students to explore the theoretical underpinnings of contract law, I hope that students understand how these perspectives can advance their goal of challenging the status quo. Thus, when some students praise the Law and Economics

when it seems to me that EFG is more important,” or “I don’t think that’s right because XYZ exception should apply.” There is nothing about the words used that links these students’ in-class comments to race, but some of the students of color have expressed their concern. From their perspective, this group of white, male students wouldn’t ask questions in the same way to an older white, male professor. Professor Lee experienced these comments as being disrespectful. He received extremely negative teaching evaluations.

² For example, if the student asserts that XYZ exception should apply, the professor could say something like, “I get the sense that you don’t believe me,” surfacing the intent to disrespect, and then say, “On page ___ of the reading, the notes explain that XYZ exception doesn’t apply because. . . .”

perspective in cases, other students can enter the discussion by raising critical race critiques, feminist legal critiques, critical legal studies perspectives, etc. The use of technology, such as clickers, can allow students to express views anonymously that they would not want to share if they had to comment in class.

The traditional first-year contracts course serves as a perfect illustration of the large classroom atmosphere in which the socioeconomic backgrounds of privileged students are consciously or subconsciously reaffirmed as being the societal norm, thus reinforcing these students' self-confidence in class as well as the educational culture David describes in his essay. Contracts professors of any race tend to teach the course in one of two ways: by beginning with contract formation or by beginning with breach of contract including damages. No matter which topic the professor chooses to begin with, whether offer and acceptance, the Objective Theory, or breach of contract, one of the early cases assigned for class discussion is bound to date from the 19th century or earlier. From *Hadley v. Baxendale* to *Hamer v. Sidway*, today's law students have to grapple with arcane terminology and unfamiliar situations in reading contracts cases. As you may remember, or may be trying to forget, *Hadley* established the foreseeability requirement in contracts at common law; consequential damages stemming from a breach of contract, including lost profits, can only be recovered provided they "may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."³ In teaching this concept, law professors cause some of their students to struggle to understand 19th century manufacturing and transportation in Great Britain.⁴ There is an implicit, and sometimes explicit, assumption that students who come to law school without a strong foundation in European history lack a sound education.

The basic facts of *Hamer*, which sets forth the benefit-detriment test for consideration, are easier to understand for modern audiences than the doctrine in *Hadley*; a nephew promised his uncle that he would refrain from smoking, drinking, gambling, and swearing until his twenty-first birthday and, in return, the uncle promised to give the nephew \$5,000.⁵ But the facts surrounding the commencement of the lawsuit are less than clear, especially in the edited versions of the case that appear in some casebooks. The parties to the lawsuit were not the uncle and nephew who made the promises; the plaintiff was a third party who purchased the nephew's rights to the

³ *Hadley v. Baxendale* 9 Exch. 341, 355 (Court of Exchequer 1854).

⁴ The facts in *Hadley* involve a broken gear shaft and efforts to get it fixed. *Id.*

⁵ *Hamer v. Sidway*, 124 N.Y. 538, 544-45 (N.Y. 1891).

\$5,000, and the defendant was the executor of the uncle's estate.⁶ Students whose backgrounds make them familiar with the transfer and assignment of intangible rights have a distinct edge in discussing this case in class, even though one can comprehend the benefit-detriment theory of consideration without this depth of understanding.

One presumption about these students is that they come from lower socioeconomic backgrounds and are the product of the public school system. As both David and I are products of the New York City public school system, we refute the assumption that public school education is by definition inferior, although growing up in a lower socioeconomic area poses certain challenges for some law students.

In those cases in assigned readings where a party in a case comes from a lower socioeconomic background, some students from similar backgrounds have to ignore criticism of the party to understand the doctrine involved in the case. The *Williams v. Walker-Thomas Furniture Co.*⁷ opinion is a prime example of this. This seminal case on the enforceability of unconscionable clauses and contracts provides a fertile ground for showing the far reaching effect of contract law on every aspect of modern human life. The *Walker* case arose in the context of commercial law in low economic status African American communities in the first half of the 20th century. Walker-Thomas Furniture Company operated a store in Washington, D.C. It sold furniture to residents who could not afford to purchase furniture and appliances outright. Instead, they would purchase these goods on a chattel-based secured basis from Walker-Thomas and make installment payments. As a part of each transaction, the consumer would sign an agreement that contained a clause which allowed the furniture store to repossess any goods the consumer ever purchased from the store, even if the item was fully paid off, if the consumer failed to make a payment on any item he or she purchased. Judge Skelly described the transactions in the *Williams* opinion:

The contract further provided that "the amount of each periodical installment payment to be made by (purchaser) to the Company under this present lease shall be inclusive of and not in addition to the amount of each installment payment to be made by (purchaser) under such prior leases, bills or accounts; and all payments now and hereaf-

⁶ *Id.* at 549. In 1875, the nephew wrote his uncle and confirmed that he had fulfilled his promise. The uncle acknowledged that the nephew had done so and that the nephew was entitled to the \$5,000. Both men agreed that the uncle would hold the money for the nephew. Two years later, with the uncle's knowledge, the nephew assigned the right to the money to his wife who, in turn, assigned it to the plaintiff. The uncle died before paying out the money, either to the nephew or to the plaintiff.

⁷ *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965).

ter made by (purchaser) shall be credited pro rata on all outstanding leases, bills and accounts due the Company by (purchaser) at the time each such payment is made.” The effect of this rather obscure provision was to keep a balance due on every item purchased until the balance due on all items, whenever purchased, was liquidated. As a result, the debt incurred at the time of purchase of each item was secured by the right to repossess all the items previously purchased by the same purchaser, and each new item purchased automatically became subject to a security interest arising out of the previous dealings.⁸

Ora Lee Williams, the plaintiff, was receiving government assistance when she made her purchases from the furniture store—a point discussed in Judge Skelly’s majority opinion,⁹ as well as in the dissent.¹⁰ Taking up the argument between the *Williams* majority and dissenting opinions, in many classrooms students—and some faculty—take paternalistic positions about the inappropriateness of “welfare recipients” purchasing “luxury” items such as dishwashers and stereos. In effect, by accepting public assistance, welfare recipients lost the right to purchase anything other than the bare necessities. These individuals further argue that the courts unfairly penalized the furniture store that took the risk of doing business with welfare recipients, ignoring the profits the store earned by charging exorbitant interest rates to their customers. Many students from lower socioeconomic backgrounds feel uncomfortable engaging in this discussion.

II. RAQUEL GABRIEL / SMALL CLASSROOM

My colleagues will share with the reader a background on how multicultural and multilingual considerations should be considered not only in light of the student’s own “academic culture,” but also how such considerations can have an effect in both the clinical and large classroom settings. My reflections are on teaching in a setting that is different from both—that of a small classroom setting in the context of a required first-year course. Collectively, I believe we offer a unique perspective on how a conscious recognition on the myriad of multicultural threads that may be at work in a classroom can assist in achieving a more robust learning experience—even when it’s difficult or simply not obvious on how to tie the experiences of multiculturalism to a particular topic or subject area.

⁸ *Id.* at 447.

⁹ *Id.* at 448.

¹⁰ *Id.* at 450.

At the law school, I teach legal research, a required first-year class that covers both semesters and where we introduce students to the methods encompassing legal research in both print and electronic sources. While we are continually working on ways to improve our teaching and improve the manner in which we teach students the importance of effective research, it is an understatement to say that it is often a challenge to have law students fully engage with us in class as we learn about the tools to assist them in the research process. While I am the first to admit that perhaps the strongest possibility might be due to the nature of the subject,¹¹ at times I find myself struggling to articulate to frustrated students why it is important to pay attention to and engage with material they experience as time consuming, tedious, and worst of all—boring.¹²

However, I am assisted in the fact that due to the law school's unique public interest mission,¹³ and with the intensity of the first-year curriculum,¹⁴ our students tend to be generally predisposed to understanding the ramifications of a multicultural background. Still, the problem of enlivening the world of legal encyclopedias, cases, digests, and secondary sources still remains. I believe that in many ways, legal research reflects the me-

¹¹ Without a doubt, I am fairly sure that a random poll among all first-year law students would yield legal research (or Legal Research and Writing) as one of their most uninteresting first-year subjects. Many students in the first year—and especially the first semester—find it difficult to comprehend why legal research might be important to their future career as they cannot see the critical connection between learning how to *find* the law and how they *interpret* it.

¹² While our teaching format continues to evolve, for several years our teaching modules have followed a specific pattern of lecture in class, sample drills demonstrating the features of specific print or electronic sources, and then handing out a drill that has the students use the source to complete an exercise. We also assign at least one research assignment each semester where students are expected to chronicle their legal research process for a problem that is given to them. Students are asked to show us which legal research tools they used, why they were chosen, and how they got there, as well as perform some limited legal analysis. Key to the success of the assignment is their ability to clearly chart the steps in how they made their decisions each step of the way.

¹³ The CUNY School of Law website states the law school mission in part as: “to train lawyers for public service and public interest practice, and to recruit and train lawyers from historically underserved communities.” CUNY School of Law, Admissions & Aid, <http://www.law.cuny.edu/admissions.html> (last visited Oct. 2 2008).

¹⁴ CUNY's first-year curriculum is heavy on the role of the lawyering seminar and is described: Our First-Year Lawyering Seminar teaches legal reasoning, professional responsibility, legal writing, and other lawyering skills by integrating clinical methodology with substantive, theoretical, and doctrinal material. Using simulation exercises and hypothetical cases, students role-play lawyers, clients, judges, or legislators confronted by legal issues arising from material in their other first-year courses. For example, in conjunction with their Criminal Law course, students may be assigned the roles of lawyers representing or prosecuting persons in a criminal case, or, in Law and Family Relations, they may role-play lawyers representing or prosecuting various parties in a child abuse case in Family Court. CUNY School of Law, The Lawyering Curriculum, <http://www.law.cuny.edu/academics/curriculum/lawyering.html> (last visited Oct. 2 2008).

chanics of the law in a way that is difficult for a first-year student to comprehend, especially when every other course is teaching them concepts.¹⁵ And while the observations I make are based on my personal experiences,¹⁶ I think that with some careful thought, even a conscious awareness of how multiculturalism affects teaching on the part of the instructor can have some carry over effect to one's students.

A. Observations

1. Examine the Composition of Your Classroom

In a small classroom setting, it's easier to do something that perhaps many students have not done since grade school: Introduce themselves. While I haven't always done so, I remember the first few semesters I taught I had students introduce themselves to me so that I could pronounce their names correctly. I also had them give a one sentence blurb on why they came to law school. Doing so relaxes them somewhat, and I always start off with giving a short blurb on my background and how I ended up at the law school. It is a practice I may take up again, but when I forget, or when increasingly it seems that I have too much to cram into too little time that first session, I turn to the facebook that the school puts out to align names with faces, and see what subject degrees they have from other institutions. For me, knowing I have several history majors, one or two math ones, someone with a oceanography degree and then the occasional art or drama major as well as someone from a foreign country, acts as a concrete reminder of their varied backgrounds and a strong reminder that I need to be aware of the different learning styles that may be present in that particular classroom.

¹⁵ For example, I have described legal research as the "nitty gritty" of the law—akin to knowing the requisite steps to starting a car. You put the key in the lock, open the door, position yourself in the driver's seat, put the key in the ignition, and turn the key to start the engine. Understanding and completing the *process* of driving a car is completely different from the *concept* of driving. And while simultaneously in many other first-year courses the difficulty for students lies in comprehending the concept (for example, determining offer and acceptance in contracts), I think that it may be difficult at times for students to realize that in legal research they are also learning the processes that help them comprehend those legal ideas. In many ways law is a new language—and we are trying in the first year to give them the basics in how to read, write, speak, create, and manipulate it all within an academic year.

¹⁶ A word about classroom "size". While first year seminars at the law school often hold no more than 22 students, due to staffing shortages and scheduling issues, Legal Research faculty—who are also reference librarians—often find themselves teaching their two assigned seminars at the same time. Therefore, over the years, my classes have ranged from 17 students to 40, and I realize that for many schools, a class of 40 still qualifies as a "small" classroom.

2. Explain and Connect Your Subject to the Practice of Law

I have alluded in the Introduction how difficult it is to connect legal research to other subjects in law school. It is often easier for students to understand how important legal research is when I connect it to a “real world” situation that shows them how legal research can assist them as a future attorney. For those from a variety of backgrounds, there are some frustrations of daily life that can be found as common ground and can usually elicit a unanimous understanding of the situation.¹⁷

3. Work on Connecting to Other Classes and Your Colleagues

Whenever possible, the Legal Research faculty tries to make contact with the other teachers in the lawyering seminars, given that we have the same exact students. We give them our schedule of assignments and due dates to assist them in planning their own assignments for the semester. Almost always, I consult the lawyering seminar teacher when constructing their major assignment(s) for the semester, making sure that I won’t assign something that will conflict with another course. If it will be a subject area other than what’s covered in the smaller course, I consult that teacher to let them know what I will be doing, and that I am willing to change my assigned problem if the other teacher deems it a topic they think they will teach a particular way and working on the problem as I have constructed it will cause some confusion. I do not believe that this is making law any “easier” for our students, but I have never believed that unnecessarily confusing them is a good learning practice either. It takes little effort on my part to ensure that I am not going to be asking them to research a concept that will be covered in another class. I think that in doing so, I am trying to consider the multicultural backgrounds of my students who may be hesitant in expressing their confusion to either me or another teacher if a conflict comes up between subjects, which benefits all of them in the long run.

¹⁷ For example, parking is usually an issue around our crowded campus. I often ask if anyone has gotten a parking or speeding ticket, and when the hand inevitably goes up, I ask them what steps they would take if they wanted to challenge that ticket. While some students often jump the gun and state that they would go to court and challenge it, I then ask them on what legal basis are you going to base your argument on? When someone suggests that perhaps they would read the ticket (an obvious first step), it opens up an opportunity to talk about the statute they have violated, how they would find out more about that particular statute, and the steps they would take to locate it. And while every student may not have gotten a parking ticket, almost all of them would understand the concept of running afoul of governmental authority and being sanctioned for it.

4. Be Open to Contact with Students and be Open to Learning from Them

As a whole, the legal research faculty members have an open door policy—as long as our door is open, any student is free to come and ask us for assistance. I make an extra effort to state that I am available—by phone, by appointment, by email, or by catching me walking out the door of the building—to any student in my class. Depending on their background, students may approach me directly, but very often they are hesitant to do so, especially when we give out some of our drills that they should do at home because we have also given them examples of how to carry them out, and some are afraid to admit their confusion. I try to announce to each class that I understand that there are different learning styles and the particular way we communicate in a particular drill may not be the best way for them to learn it, so if they need another way to seek me out for assistance. I state that it is not a “big deal” in terms of time or effort on my part and that I would be happy to explain it to them no matter how confused they may be. Students then feel less timid about seeking me out, and in individual sessions, whether they last two minutes or twenty, I inevitably get a better understanding of the student’s strengths and weaknesses in not only learning that particular point, but what they may have trouble with in the future. Time and again, after talking to a student, it underscores to me the absolute vital importance of appearing both available and approachable to students of all backgrounds. With students from multicultural backgrounds who are having particular difficulty, I firmly believe that their success in legal research as well as in law school will depend on their perception that we are partners in their learning experience.

5. Know Resources Within Your School and When to Seek Assistance

Finally, perhaps one of the most important observations I have about teaching in a small classroom setting is knowing where to go for help. When I have a student I can’t seem to connect with, I reach out to my colleagues who teach legal research for ways in which to teach the student. I talk to the lawyering seminar teacher to see if their perceptions are the same as mine and see what methods he has used to assist them. I turn to David Nadvorney,¹⁸ truly an invaluable asset, and suggest to him the student may

¹⁸ In addition to being a co-author on this piece, David Nadvorney is the Director of the Legal Skills Center, which provides a wide array of services and support to students who may need assistance transitioning and/or succeeding in law school. Among his many duties such as running a Summer Skills Institute, David and his staff also run weekly skill sessions, exam review sessions, and offers individual

be in need of his guidance if the student hasn't reached out already. However, there are not only academic concerns that may stress students, so knowing who to refer to in terms of discussing personal, financial or other issues is also critical to ensuring that students of multi-cultural backgrounds access the resources available to succeed in law school.¹⁹

While many of my observations seem beneficial no matter what one's background or the composition of one's classroom, recognizing that it should be filtered through an understanding of the multicultural/multilingual background highlights the attention paid in each area. Perhaps as a first generation Asian American, my awareness and sensitivity to such matters is second nature to me, living my entire life in the duality of being an "American" as well as "Asian."

But remembering and appreciating the multicultural backgrounds of my students not only comes from their appearance, but from my interactions with them and my colleagues in exploring the richness of their experiences they had *before* law school and while they are there learning what we have to teach them. It is a conscious effort made easier by our institutional mission, student body, and faculty that reflects a diversity not often found in other law schools.²⁰

In that respect, I consider myself lucky that I have a work environment where it is relatively easy to see students and colleagues who share more of my background and personal experiences than any other place of employment. My goal is to assist students in feeling that same openness to expression of their individual backgrounds and to help them in comprehending the tools they will need to become lawyers.

III. DONNA LEE / CLINICAL SETTING

As a first-time participant in a LatCrit Conference, I enjoyed and felt comfortable asking questions and sharing observations that in other contexts I might have self-censored. I chose to participate in conversations

assistance when requested, David also attends first-year classes regularly and is familiar with the teaching styles and subject matter within the *entire* first-year, curriculum. Therefore, when students are confused about a concept or not sure what the teacher may have been trying to communicate, very often it's David who they are comfortable consulting for further clarification, especially during that critical first semester of law school.

¹⁹ I am not sure if it's because I am also a "librarian", which carries with it a certain stereotype of assistance, or my personal "style", or even the fact it's well known that I have a student accessible free stash of candy in my office, but I often find students consulting me about problems with other students, faculty, or the stress of law school in general. While I am honored by their confidence, knowing the areas in which I can assist them – as well as those I cannot – is assisted by knowing what resources we have at the law school.

²⁰ Though as noted previously, we still have far to go in terms of ensuring a permanent diversity across the faculty and student body.

about substantive topics that intrigued me, with colleagues whose opinions I trusted. In a sense, the conference itself modeled the environment that I aspire to create with my students. Teaching in a clinic requires teaching in multiple fora that split broadly along case work and seminar work lines.²¹ Case work related teaching occurs during supervision meetings with students, as well as during supervision in court, meetings with administrative decision-makers, and client meetings.²² Seminar-related teaching occurs during simulations, lectures, classroom discussions, and rounds discussions.²³ I primarily teach in the Battered Women's Rights Clinic²⁴ and share my reflections from the perspective of a clinician. We also are fortunate, from my perspective as a clinician, to have an amazingly diverse client population which presents many opportunities for students to move beyond a perspective of a public interest lawyer's role as one of "saving" a client to a perspective of engaging together with clients and communities to try to achieve justice in individual cases and effect change more broadly.

As mentioned above, we had prepared to discuss multicultural/multilingual teaching in a clinical context, depending on the type of teaching done by the majority of roundtable attendees/participants. We ended up focusing primarily on classroom teaching. This section summarizes some of my thinking about multicultural/multilingual teaching in a clinical context.

With respect to the conversation we didn't explicitly have regarding multicultural/multilingual teaching in a clinical context, we had prepared another hypothetical.²⁵ This hypothetical presented a gender and racial dy-

²¹ At CUNY Law School, another important component of students' clinical experience involves project work. Projects range from community education, to legislative advocacy, to conference planning, and often involve partnering with community-based groups. The theory behind this work is to reinforce our social justice mission by exposing students to the synergistic roles lawyers can play in conjunction with individual client representation, providing training in a broader array of skills such as community collaboration and media advocacy, and inculcating professional values that encourage client empowerment.

²² See, e.g., Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. OF L. & SOC. CHANGE 109, 117 (1993) (about supervision). In some clinical programs, professors absent themselves from client meetings on the theory that students will experience more difficulty taking on the role of lawyer if the supervisor is in the room. Such programs rely on videotaping or student self-reporting to assist with after-the-fact reflection.

²³ See, e.g., Paul S. Ferber, *Adult Learning Theory and Simulations—Designing Simulations to Educate Lawyers*, 9 CLINICAL L. REV. 417 (2002) (about simulations). Susan Bryant & Elliott S. Milshtein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195 (2007) (about rounds).

²⁴ More information on the Battered Women's Rights Clinic can be found on our website: <http://www.law.cuny.edu/clinics/clinicalofferings/BatteredWomen.html> (last visited Oct. 1, 2008).

²⁵ Jessica López, a Latina student, and Harry Sprizzo, a European American student, were clinic partners in their law school's immigration clinic. Last week, they represented a student leader from Myanmar in an asylum interview. The students both believed that their client's asylum claim was strong

dynamic between clinic partners as well as a racial and language dynamic between the law students, the client, and the administrative decision-maker. The precipitating factor in the hypothetical is the heavily accented English of the administrative decision-maker, which seemed to cause the client to blow his asylum interview. The European American male clinic student wants to complain about the decision-maker, who has a Latino name and spoke with a Spanish accent. It is less clear what the Latina clinic student wants to do. It is a clinic student partnership that seemed fine prior to the asylum interview.

Our hope was that the hypothetical would raise many questions. How might a clinician support and empower her Latina student to express her opinions openly and freely? How might the European American student, who likely views his stance as being that of a zealous advocate, be pushed to broaden his view of how his actions might be interpreted? Might one want to reconsider the decision not to use an interpreter for the Burmese client? How might one reflect on the pros and cons of using an interpreter in this context? How should the fact that the administrative decision-maker has not yet rendered a decision impact case strategy? In what ways might the client be included in a strategic decision-making process? Another layer of complication stems from the lines of similarity and difference between the clinician and the two students, the client, and the decision-maker.²⁶

and put together a compelling affidavit with a lot of information regarding country conditions. They seemed to work well together. The client was soft spoken, but relatively fluent in English, and the students had met with him several times to prepare for the interview. The asylum officer who interviewed their client was named José Pérez. He spoke with a heavy accent, and the client, the students, and their clinical supervisor had difficulty understanding his questions. The client became flustered and agitated during the interview, and then seemed to give up. He began answering, "I don't know," and "I don't understand," to questions that the students had specifically practiced with him. In response to other questions, he spoke at length about issues that seemed peripheral to his asylum claim and that were not in his affidavit. During their supervision meeting following the interview, Harry was harshly critical of Pérez and wanted to write a letter to his supervisor, complaining about Pérez's "inability to speak English." Jessica seemed uncomfortable, but simply nodded her agreement.

²⁶ We had prepared a third hypothetical to surface issues that arise among faculty along differences in race primarily, but which would likely also be relevant to differences along other axes like class, gender, sexual orientation, etc. Our thinking was that it is easy to push the discussion of racial difference onto students as opposed to examining our own interactions with our law professor colleagues. This hypothetical is as follows: Cynthia Bradford, an African American candidate for a tenure-track position received an invitation to come to the law school for the day to meet with groups of faculty and students, and to give a job talk. She had graduated from an elite law school and had done a federal court clerkship. She did a one-year public interest fellowship and since then has worked for two years at a law firm. Her job talk was based on an article about a prisoner's rights case she had worked on during her fellowship year. At the faculty meeting the following day, the discussion focused on her job talk presentation. Several senior faculty members raised concerns about Ms. Bradford's public speaking abilities and her lack of a well-developed, scholarly agenda. They asserted that her presentation was

IV. DAVID NADVORNEY /ACADEMIC SUPPORT

When law professors (and others) speak or write about what it means to teach in a “multicultural” context, they usually are thinking of culture as relative to race, ethnicity, or economic or social class. While it is critical to consider our role in regard to these cultural identities, such a construct leaves out the academic experience and training of our students, which have at least as significant an effect on their success in law school. The question becomes whether we recognize what has become referred to as academically “under prepared” or “at-risk” students as really representing a different culture, one that needs to be addressed in a direct, effective manner if we are really to work toward diversity in admission, retention, and practice in the profession.

Very briefly, we are suggesting that law faculty, whatever their other cultural identities, share the characteristic of having succeeded academically themselves in law school. Whatever other obstacles faculty of color faced in law school—including the many other aspects of culture that law schools neither honor nor accommodate—few faculty members speak of their own academic skills as among them. That makes sense, of course, given the academic focus of the hiring process: law schools identify and rank candidates based on how much (and where) they have already published, their law school transcripts (particularly their participation in competitive activities like moot court and law review), and prior academic-like experience such as appellate court clerkships. Law teaching is not particularly focused on pedagogy (i.e., learning theory or teaching methods), and interviews for law faculty positions rarely include much more about teaching than a look at a candidate’s student evaluations. Couple that with law schools’ increasing obsession with ranking and the “quality” of entering students—based almost entirely on LSAT and undergraduate GPA—and interest in at-risk students all but disappears.

If you look at those students, you see a cluster of characteristics that resembles our notion of culture. Those characteristics, if not identified and addressed in a most timely manner, often translate into almost insurmountable obstacles. Think about the students who do not succeed in your school: how would you characterize the reasons (beyond the outcome-based fact that they failed or did poorly on final exams)? Students are acculturated in many ways, not least among them from the messages they received

poorly organized and that she did not squarely address and answer the faculty members’ questions about her thesis. Other faculty members stated that they thought her presentation was strong, and that she did a good job of responding to questions. The vocal members of the faculty were about equally divided between proponents and opponents of Ms. Bradford. The faculty voted 3:1 not to extend an offer.

throughout their schooling. Consider the following examples: students who do not respond appropriately to the questions we ask (for example, answering a question about the facts of a case with doctrine, or vice-versa), or who routinely come to class late or unprepared, or have outside commitments that make the kind of attention law school requires virtually impossible, or who sit in class without their books (or with books completely devoid of any markings indicating that they read and struggled with the material), or who ask us to “just give them the rule,” or who hand in “first drafts” of memos and briefs that appear to be actually the first version they put on paper. These students are displaying a basic misunderstanding of the culture of our classrooms, and we are left with the choice of whether and how to address their behavior. I am in no way suggesting a return to the abusive stereotype of the so-called Socratic law professor, but responding to inaccurate answers with, “anyone else?” does nothing for those students or for any others in the classroom.

The fact is that learning theory and pedagogy have come a long way, and have a clear role in law schools. A substantial number of law schools now have dedicated academic support programs whose staff are trained in the kinds of methodologies and curricular development that our diverse student body needs to succeed. If we are to make our schools and profession truly diverse, we must support a far broader access mission (which many say they do) with a far more focused and effective repertory of teaching methods and strategies. The responsibility is on concerned faculty to meet our students at least half-way, understand the academic culture from which they come, and devise ways to help them succeed in ours.