

Changing the Construct: Promoting Cross-Cultural Conversations in the Law School Classroom

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I. Introduction

Promoting cross-cultural awareness should be an important aspect of professionalism training¹ in legal education. Cross-cultural awareness is essential to our students as they prepare to practice in an increasingly diverse domestic and international legal marketplace with competence and confidence. At the very least, faculty should help students avoid becoming the next lawyer or judge to be sanctioned for culturally offensive behavior.² More broadly, early and repeated faculty attention to cross-cultural issues can improve the learning environment for all students while they are still in law school. Although such training can be difficult and uncomfortable for both the professor and the students, it is far better for our students to make mistakes within the safety of the classroom, where the ramifications of their errors will

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1. SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016-2017, at 15 (2016) [hereinafter ABA STANDARD 302(d)] (Standard 302(d), Learning Outcomes, provides that “[a] law school shall establish learning outcomes that shall, at a minimum, include competency in . . . professional skills needed for competent and ethical participation as a member of the legal profession.” Interpretation 302-1 states “For the purposes of Standard 302(d), other professional skills are determined by the law school and may include skills such as . . . cultural competency.” *Id.* at 16.
2. See, e.g., Staci Zaretsky, *Lawyer Receives Stern Benchslap and Amazing Sanction for Sexist Deposition Comment*, ABOVE THE L. (Jan. 14, 2016), <http://abovethelaw.com/2016/01/lawyer-receives-stern-benchslap-and-amazing-sanction-for-sexist-deposition-comment/> [<https://perma.cc/DG2M-G88E>]; *Matter of Teague*, 15 N.Y.S.3d 312, 313 (N.Y. App. Div. 2015) (sanctioning a lawyer for “having made patently offensive racial, ethnic, homophobic, sexist, and other derogatory remarks to attorneys”); Jason Meisner, *Lawyer Draws Suspension from Federal Court; Attorney Accused of Making Vulgar Comments to Rival*, CHI. TRIB., Jan. 20, 2017, at 12.

not be career ending,³ and better if by learning from mistakes students develop cultural competencies that will serve them and their clients in their future careers. In short, promoting cross-cultural awareness is part of our obligation to educate our students in professionalism. Accordingly, this article provides a blueprint for incorporating these valuable but challenging discussions into the law school classroom.

Throughout this article, the term “cultural” refers to groups and norms based on ethnicity, race, gender, nationality, age, sexual orientation, and a variety of other characteristics.⁴ Accordingly, everyone is multi-“cultural” to some degree.⁵ For example, “[t]he law, as well as the legal system within which it operates, is a culture with strong professional norms that gives meaning to and reinforces behavior.”⁶ Cross-cultural awareness involves “the process of learning and developing sensitivity to the characteristics of another culture.”⁷ The term “cross-cultural conversations” as used in this article refers to discussions about and among people of different cultural groups or who adhere to different cultural norms. Furthermore, although this article is focused on general classroom discussion, exploration of diverse perspectives can be accomplished in other ways, including, but not limited to, reflective writing, research projects, negotiations, and small-group (peer-to-peer) discussions.⁸

One way to promote cross-cultural awareness is for professors to strategically include opportunities for students to analyze and discuss legal issues from diverse perspectives. A number of distinguished scholars have written about

3. “It is professional misconduct for a lawyer to . . . engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law.” MODEL RULES OF PROFESSIONAL CONDUCT r. 8.4(g) (Am. Bar Ass’n 2015). “Discrimination and harassment by lawyers in violation of paragraph (g) . . . includes harmful verbal or physical conduct that manifests bias or prejudice towards others.” *Id.* at r. 8.4 cmt. 3.
4. Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 41 (2001). “Cultural groups and cultural norms can be based on ethnicity, race, gender, nationality, age, economic status, social status, language, sexual orientation, physical characteristics, marital status, role in family, birth order, immigration status, religion, accent, skin color or a variety of other characteristics.” *Id.*
5. *Id.* at 40; Andrea A. Curcio, *Addressing Barriers to Cultural Sensibility Learning: Lessons from Social Cognition Theory*, 15 NEV. L.J. 537, 539 n.10 (2015).
6. Bryant, *supra* note 4, at 40. See also Jan L. Jacobowitz, *Lawyers Beware: You Are What You Post—The Case for Integrating Cultural Competence, Legal Ethics, and Social Media*, 17 SMU SCI. & TECH. L. REV. 541, 552 (2014) (noting that “the legal profession is a culture unto itself”).
7. Jacobowitz, *supra* note 6, at 548.
8. See Juan C. Garibay, *Creating a Positive Classroom Climate for Diversity*, UCLA DIVERSITY & FAC. DEV. 8 (2015), https://equity.ucla.edu/wp-content/uploads/2016/06/Creating_a_Positive_Classroom_Climate_Web-2.pdf [<https://perma.cc/7QT2-VXTQ>] [hereinafter *Creating a Positive Classroom Climate*].

multicultural lawyering and cross-cultural awareness in specific courses.⁹ This article focuses on how to promote and facilitate classroom discussions in a variety of law school courses. Almost any course can serve as a forum for discussing legal issues from a variety of cultural perspectives.¹⁰ These discussions give students practice in thinking about legal issues from a variety of cultural perspectives, provide students from various backgrounds the opportunity to see their community reflected in the study of law, and help create a more inclusive classroom environment, in which all students feel safe, valued and respected.¹¹ To increase the likelihood that cross-cultural discussions are productive, professors must take the time to assess the classroom environment, and to prepare the students and themselves. Thoughtful preparation in advance is strongly recommended over an off-the-cuff, spontaneous approach.

Substantively, engaging in the analysis of legal issues from diverse perspectives challenges the viewpoint that “legal analysis involves assessing an ‘objective reality.’”¹² Instead, cross-cultural discussions help students to see that “all legal actors . . . engage in their decision making within a situated perspective.”¹³ Cross-cultural conversations help to reveal the “difficult-to-see,” but sometimes significant influence that “values and beliefs shaped by experience may exert” on the formation and development of the law.¹⁴ On the other hand, cross-cultural discussions may force students to confront unpleasant realities, which may result in student resistance and incivility. Accordingly, professors’ preparation for incorporating cross-cultural discussions in their courses should include some consideration of how to respond to and diffuse classroom tension.

Part II of this article identifies the pedagogical and institutional advantages of infusing legal instruction with discussions designed to promote cross-cultural awareness. Part III discusses how to create an effective and safe classroom environment for conducting cross-cultural discussions by assessing the classroom climate, establishing a respectful and approachable relationship

9. See, e.g., Charles R. Calleros, *Training a Diverse Student Body for a Multicultural Society*, 8 LA RAZA L.J. 140 (1995) [hereinafter Calleros, *Training a Diverse Student Body*]; Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability into Law School Teaching*, 32 WILLAMETTE L. REV. 541 (1996); Bryant, *supra* note 4; Lorraine Bannai & Anne Enquist, *(Un)Examined Assumptions and (Un)Intended Messages: Teaching Students to Recognize Bias in Legal Analysis and Language*, 27 SEATTLE U. L. REV. 1 (2003); Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Awareness*, 11 CLINICAL L. REV. 369 (2005); Antoinette Sedillo López, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client Service Legal Clinic*, 28 WASH. U. J.L. & POL’Y 37 (2008).
10. Calleros, *Training a Diverse Student Body*, *supra* note 9, at 149.
11. *Creating a Positive Classroom Climate*, *supra* note 8, at 8.
12. Curcio, *supra* note 5, at 539.
13. FEMINIST JUDGMENTS: REWRITTEN OPINIONS OF THE UNITED STATES SUPREME COURT 4-5 (Kathryn M. Stanchi, Linda L. Berger & Bridget J. Crawford eds. 2016).
14. *Id.* at 5.

with students, and developing the cultural literacy and emotional knowledge to lead cross-cultural conversations with sensitivity and openness. Part IV explores specific techniques and best practices for promoting cross-cultural conversations that raise or implicate diverse cultural assumptions and expectations. Part V suggests techniques for dealing with student resistance and classroom incivility, and Part VI concludes the article.

II. Pedagogical and Institutional Advantages of Promoting Cross-Cultural Awareness

Teaching students to consider the cultural context of legal analysis has both pedagogical and institutional advantages. Each law student brings multiple social group identities to the learning environment, identities to which society has ascribed meaning and given status.¹⁵ Regardless of their identities, beliefs, attitudes, or mindsets, when our students graduate, they will be practicing law in a world that is diverse.¹⁶ In addition to giving all students practice in thinking about legal issues from a variety of cultural perspectives, this approach offers students from various backgrounds the opportunity to see their communities reflected in the discussion. This helps to create a more inclusive classroom environment. Furthermore, cross-cultural discussions are a way to increase engagement in the law school classroom and to help the law come alive for students. Finally, cross-cultural classroom conversations remind students of the “diversity of the society that is served, or should be served, by the legal system.”¹⁷

A. Pedagogical Advantages of Cross-Cultural Classroom Conversations.

The primary pedagogical advantage of cross-cultural analysis is that such discussions provide an excellent avenue for critical thinking. From the earliest days of first-year orientation, we tell our students that we will be training them to “think like lawyers.” Students may assume that thinking like a lawyer is limited to unbiased, logical, and rational analysis. However, thinking like a “culturally sensible lawyer” requires an understanding that “we all have multifaceted cultural backgrounds, experiences, and biases that affect how we perceive and analyze legal problems and how we interact with clients and colleagues.”¹⁸ “Probing what cultural assumptions underlie an opinion or an individual argument fosters the critical thinking characteristic of good legal

15. *Creating a Positive Classroom Climate*, *supra* note 8, at 3.

16. See Bryant, *supra* note 4, at 39 (“[L]awyers and clients inevitably will interact with those who are culturally different.”); Dark, *supra* note 9, at 553 (asserting that exploration of diversity issues will better prepare students for a multicultural society).

17. Calleros, *Training a Diverse Student*, *supra* note 9, at 150.

18. Curcio, *supra* note 5, at 538.

analysis.”¹⁹ Students will have a broader and deeper understanding of case law, for example, if they can recognize the cultural assumptions that cases may contain. Moreover, “students who are able to recognize the fundamental flaws in arguments that rely on unexamined assumptions will be more effective writers and advocates.”²⁰

Furthermore, because the law is an expression of social values, students need to be aware that those values may be culturally biased. “[S]tructural biases in the law” may be obscured by neutral language in judicial opinions and application of the doctrine of *stare decisis*.²¹ Helping students to examine the law from different cultural perspectives reveals “the limits of legal doctrines and, in some cases, how the doctrine itself undermines the overriding purpose or goals of the law.”²²

Adopting a multiple-perspectives approach has numerous advantages. Students preparing for practice in a multicultural society need to become “culturally competent” and sensitive to different cultural perspectives about what is fair or persuasive.²³ A multiple-perspectives approach will enable students to develop effective arguments on behalf of their clients.²⁴ Furthermore, effective representation of a client from a different culture should include being wise to the prejudices and biases of others that may affect how a client has been or will likely be treated.²⁵ Moreover, a stronger sense of multiple cultural perspectives will better prepare students for legal careers that are more likely than ever before to include international work.²⁶ In addition, students benefit from the opportunity to gain experience in and comfort with talking about issues of cultural diversity within the safety of the classroom. Engaging in frank discussions of cultural differences with people who belong to other cultural groups can be awkward. However, learning

19. Bannai & Enquist, *supra* note 9, at 4. See also Calleros, *Training a Diverse Student Body*, *supra* note 9, at 141 (“[S]uch issues can be excellent vehicles for developing skills of critical thinking, both because students care deeply about the issues and can challenge each other to analyze the issues from a variety of perspectives.”).

20. Bannai & Enquist, *supra* note 9, at 5. “Helping students to recognize how cultural assumptions or individual bias can be expressed in legal analysis will, first, strengthen their understanding of cases and other authorities and, second, aid them in constructing and evaluating arguments . . .” *Id.* at 23.

21. FEMINIST JUDGMENTS, *supra* note 13, at 4.

22. Dark, *supra* note 9, at 544.

23. Bannai & Enquist, *supra* note 9, at 6-7.

24. Dark, *supra* note 9, at 553-54.

25. *Id.* at 554 (suggesting that cross-cultural awareness may help students “identify and respond to lawyers who employ conscious, purposeful discrimination as a strategy for success”).

26. Susan P. Liemer, *Many Birds, One Stone: Teaching the Law You Love*, in *Legal Writing Class*, 53 J. LEGAL EDUC. 284, 286-87 (2003).

to become comfortable with such discussions is essential to effective cross-cultural lawyering after graduation.²⁷

B. Institutional Advantages of Cross-Cultural Classroom Conversations.

Pursuant to ABA Standard 302(d), encouraging cultural competency across the curriculum provides a means for law schools to help students develop the “professional skills needed for competent and ethical participation as a member of the legal profession.”²⁸ Ethical rules prohibit attorneys from engaging in harassment and discrimination, including “harmful verbal or physical conduct that manifests bias or prejudice towards others.”²⁹ Improving students’ cultural competency through classroom discussion helps them to connect issues of diversity with the day-to-day practice of law. Cross-cultural discussion helps to raise students’ awareness, equips them with the ability to recognize potential pitfalls created by cultural insensitivity, and helps them to avoid embarrassing mistakes, which in turn protects and elevates the reputation of the legal profession.

In addition, infusing legal education with cross-cultural awareness training is a means for reinforcing a law school’s overall diversity initiative. Most law schools have a stated diversity policy published on their websites. However, despite the best of intentions, such a policy means little if it is rarely applied to our students’ actual law school experience—meaning the classroom experience, not just extracurricular activities, such as affinity groups. Addressing issues of bias throughout the curriculum supports a law school’s diversity policy by “freeing the voices of students with diverse perspectives,” and enriching the classroom discussion by including “the perspectives of female students, students of color,”³⁰ LGBTQIA³¹ students, religious minorities, students with disabilities, students of various national origins, and others. Inviting a variety of perspectives can reduce the alienation experienced by non-traditional students who may sometimes feel like outsiders,³² which encourages them to

27. See Dark, *supra* note 9, at 553 (stating that students preparing for twenty-first century practice will “have to find a way to talk about diversity issues”); Bryant, *supra* note 4, at 56–57 (observing that “[s]tudents with a capacity to talk about issues of difference will be better able to reflect with and learn from others”).

28. ABA STANDARD 302(d), *supra* note 1.

29. MODEL RULES OF PROF’L CONDUCT r. 8.4(g) cmt. 2.

30. Bannai & Enquist, *supra* note 9, at 5.

31. LGBTQIA is defined as Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, and Asexual. Wellness Resource Center, *Student Guide to LGBTQIA Life at Temple University, Academic Year 2016–2017*, TEMPLE U. 4, http://wellness.temple.edu/sites/wellness/files/2016%20LGBTQIA%20Resource%20Guide-1102_0.pdf [<https://perma.cc/3NEK-WWN4>].

32. Calleros, *Training a Diverse Student Body*, *supra* note 9, at 141. “[S]tudents may be . . . alienated by . . . the lack of multicultural contexts for most cases and problems.” *Id.* at 145. See also Charles R. Calleros, *In the Spirit of Regina Austin’s Contextual Analysis: Exploring Racial Context in Legal Method, Writing Assignments and Scholarship*, 34 J. MARSHALL L. REV. 281, 290 (2000) [hereinafter Calleros, *In the Spirit of Regina Austin’s Contextual Analysis*] (describing how assignments set in

succeed in law.³³ When students engage in cross-cultural dialogue, they are also more likely to educate one another, “better preparing all students for professional practice in a multicultural society.”³⁴

III. Priming the Classroom Environment for Cross-Cultural Conversations

Engaging in cross-cultural analysis challenges the heteronormative propertied white male viewpoint³⁵ as the default perspective on the law. Viewing the law from diverse perspectives counters the “pervasive belief within legal education as well as amongst the bench and bar that legal analysis involves assessing an ‘objective reality.’”³⁶ Instead, “all legal actors—judges, juries, litigants, lawyers—engage in their decision making within a situated perspective that is informed by [their culture—] gender, race, class, religion, disability, nationality, language, and sexual orientation.”³⁷ Cross-cultural conversations help to create a more inclusive environment and reveal to students how “values and beliefs shaped by experience may exert a significant, if difficult-to-see, influence on the . . . interpretation and application of the law.”³⁸

Furthermore, a classroom environment that is inhospitable to cross-cultural discussions may have a broader impact than silencing the voices of diverse students. It may altogether inhibit learning for some students.³⁹ Students who feel uncomfortable or conspicuous in class may have difficulty focusing on the study of law because they have become distracted by feelings that their viewpoint, or even their very presence, is unwelcome. On the other hand, well-meaning attempts may fall flat if either the professor or the students are not prepared to engage in cross-cultural discussions. To maximize student engagement in cross-cultural conversations, students must feel safe, valued and respected in the classroom environment, which is “necessary for students

various multicultural contexts allow students who may normally feel like outsiders at law school become the experts on factual matters).

33. Nantiya Ruan, *Inclusive Excellence in Lawyering Process: How LRW Faculty Can Lead in Law School Inclusive Education*, U. OF DENVER STURM C. OF L. 1, <http://www.law.du.edu/documents/lawyering-process/2015-annual-report/Ruan-Nantiya-Inclusive-Education-Fellowship.pdf> [<https://perma.cc/JK99-RVXS>].
34. Calleros, *Training a Diverse Student Body*, *supra* note 9, at 141.
35. *See id.* at 153 (proposing that “a ‘reasonable person’ standard, although nominally objective, in fact masks a white male centered view of legal rights and responsibilities”).
36. Curcio, *supra* note 5, at 539.
37. FEMINIST JUDGMENTS, *supra* note 13, at 4-5.
38. *Id.* at 5.
39. A negative classroom environment can be an “obstacle to learning.” *Creating a Positive Classroom Climate*, *supra* note 8, at 3. “A negative climate may impede learning and performance, but a positive climate can energize students’ learning.” SUSAN A. AMBROSE ET AL., HOW LEARNING WORKS: SEVEN RESEARCH-BASED PRINCIPLES FOR SMART TEACHING 157 (2010).

to achieve and demonstrate their full potential.”⁴⁰ Furthermore, professors should take the time to plan ahead for these discussions rather than raising them as an afterthought.⁴¹ Ultimately, the goal is to achieve the classroom environment that is most conducive for encouraging productive cross-cultural discussions.

A. Assessing the Classroom Environment

Classroom climate is determined by interacting factors, including “faculty-student interaction, the tone [professors] set, instances of stereotyping or tokenism, the course demographics (for example, relative size of racial and other social groups enrolled in the course), student-student interaction, and the range of perspectives represented in the course content and materials.”⁴² Researchers studying the experiences of LGBT college students devised a continuum from “centralizing” to “marginalizing,” to measure whether an LGBT perspective would be included and welcomed in the course or excluded and discouraged.⁴³ Four definitions emerged: 1) explicitly marginalizing classroom environment; 2) implicitly marginalizing classroom environment; 3) implicitly centralizing classroom environment; and 4) explicitly centralizing classroom environment.⁴⁴ This continuum is useful for thinking about classroom climate in the broader sense of promoting a cross-cultural learning experience, and is not limited to teaching undergraduate students or addressing LGBT issues.⁴⁵

An explicitly marginalizing climate is at the negative end of the classroom environment spectrum. An explicitly marginalizing classroom environment is defined as “hostile, unwelcoming, or discriminatory, [in which] instructors and/or students openly express demeaning attitudes about particular, especially marginalized, groups.”⁴⁶ Moving along the continuum, implicitly marginalizing climates “exclude certain groups of people, but in subtle and indirect ways.”⁴⁷ Implicitly marginalizing messages may even come from well-

40. *Creating a Positive Classroom Climate*, *supra* note 8, at 3.

41. Dark, *supra* note 9, at 573.

42. AMBROSE ET AL., *supra* note 39, at 170.

43. *Id.* at 171 (citing Christopher J. DeSurra & Kimberly A. Church, *Unlocking the Classroom Closet: Privileging the Marginalized Voices of Gay/Lesbian College Students* (Nov. 1994) (presented at the annual meeting of the Speech Communication Association) (ED379697), <http://files.eric.ed.gov/fulltext/ED379697.pdf> [<https://perma.cc/R8V8-6NJ2>]).

44. *Id.* at 171-72.

45. Other classroom climate studies, known collectively as the “chilly climate studies,” have documented marginalization on the basis of gender, race, and ethnicity. *See id.* at 173. Further studies show that “perception of a chilly climate was negatively associated with self-reported gains in writing and thinking skills.” *Id.*

46. *Creating a Positive Classroom Climate*, *supra* note 8, at 3.

47. AMBROSE ET AL., *supra* note 39, at 171. DeSurra and Church found the implicitly marginalizing climate to be the most common in college classrooms. *Id.* at 172.

meaning professors.⁴⁸ For example, when professors request that students not use race or ethnicity in a particular analysis or discussion, they send the message that racial or ethnic experiences are not valid in intellectual discussions.⁴⁹ Another example of behavior that creates an implicitly marginalizing classroom environment is a professor calling on a “student from a historically marginalized group to represent the perspective of the entire group.”⁵⁰

Moving toward the more inclusive end of the continuum, in an implicitly centralizing classroom climate, “unplanned responses that validate alternative perspectives and experiences occur.”⁵¹ An example of an implicitly centralizing environment is a student raising a perspective from a historically marginalized group without knowing how the contribution will be received, and the professor building on the student’s contribution in a “productive and validating way.”⁵² The environment is implicitly centralizing because the student does not know how her contribution will be received; she is taking a risk by bringing up an alternative perspective.⁵³ On the other hand, in an explicitly centralizing classroom climate, “marginalized perspectives are . . . intentionally and overtly integrated into the content.”⁵⁴ This is the most desirable classroom environment for promoting cross-cultural discussions, and it is “characterized by obvious and planned attempts to include a variety of perspectives.”⁵⁵ These courses often “contain written ground rules for discussion and course policies to foster inclusivity and sensitivity to the experiences and perspectives of all students.”⁵⁶

Finally, professors should be aware that different students might have different perceptions of the same classroom environment. A classroom environment that is perceived as comfortable and welcoming by one student, may be viewed as unwelcoming and discouraging by another student. The classroom environment does not have to be “blatantly exclusive or hostile in order to have a marginalizing effect on students.”⁵⁷ Although students may be able to handle isolated incidents of subtle marginalization, numerous

48. *Id.* at 171.

49. See *Creating a Positive Classroom Climate*, *supra* note 8, at 3.

50. *Id.*

51. *Id.*

52. AMBROSE ET AL., *supra* note 39, at 172.

53. *Id.*

54. *Id.*

55. *Id.*

56. *Creating a Positive Classroom Climate*, *supra* note 8, at 4.

57. AMBROSE ET AL., *supra* note 39, at 173.

microaggressions⁵⁸ may have a cumulative negative effect on learning.⁵⁹ Research has shown that leaving microaggressions unaddressed can have as much of a negative impact as the microaggression itself.⁶⁰

B. Preparing the Students.

Priming the students for cross-cultural discussions is as much for the students' benefit as it is to the professor's advantage. Cross-cultural conversations involve some degree of risk that the discussion will devolve in a way that damages the classroom environment, hurts the feelings of individual students or groups of students, and casts the professor in an unfavorable light. To offset these risks, a wise professor spends some time early in the course creating allies among the students,⁶¹ which serves as a form of insurance against the risk of a discussion going poorly and diminishes the likelihood that the professor will have to deal with an incident of student incivility.⁶² "Investing time and energy into developing [and maintaining] a solid, respectful, and approachable relationship with students . . . will put the teacher in the best position"⁶³ to successfully engage in discussions of diverse issues.

One aspect involved in creating an explicitly centralizing classroom environment for cross-cultural discussions is psychosocial.⁶⁴ First-year law students are especially unsure about what to expect in law school, and they need time to build a level of comfort.⁶⁵ To encourage the discussion of potentially controversial topics, students must feel safe and need to become acclimated to the classroom environment. However, building trust takes time.

58. "Microaggressions are the everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional, that communicate hostile, derogatory, or negative messages to target persons based solely upon their marginalized group membership." *Creating a Positive Classroom Climate*, *supra* note 8, at 13.

59. AMBROSE ET AL., *supra* note 39, at 173.

60. *Creating a Positive Classroom Climate*, *supra* note 8, at 13.

61. *See* Dark, *supra* note 9, at 560 (commenting that students may offer solutions that are appropriate responses to the potential negative risks of engaging in the discussion of controversial topics).

62. *See* Part V, *infra*.

63. Dark, *supra* note 9, at 559-60.

64. The psychosocial—how students feel and are treated in the classroom—is an element of the learning environment. *Creating a Positive Classroom Climate*, *supra* note 8, at 3.

65. With regard to 2Ls and up, this process can be accelerated because students are basically acclimated to law school. However, some time should be allowed for students to become comfortable in the course, with that particular professor, and with those specific students. The exception would be seminars that focus on the law affecting a specific culture, such as "Gender and the Law," "Elder Law," etc. In those courses, the professor should be able to jump right in. The trust-building approach is needed only for courses that do not overtly involve cross-cultural issues.

Professors should lay some groundwork first, rather than engage in potentially difficult discussions on the first day of class.⁶⁶

Further, students need opportunities to “grapple with their own biases and stereotypes, as well as the influence [that] cultural factors and systemic racism” have had upon the United States legal system.⁶⁷ Students benefit from understanding that everyone has biases and that each person’s cultural experiences influence how they “perceive and assess facts, attitudes, legal problems, and legal processes.”⁶⁸ For example, exposure to social cognition theory would help law students “understand how deeply rooted our biases are, and . . . dispel the belief that legal training in rational and ‘objective’ thinking trumps lifelong cognitive processes.”⁶⁹

Students also need an opportunity to get to know their professor as someone who is fair, respectful, and supportive. These traits are essential to building the kind of rapport that students need to open up, to become willing to take risks in the classroom, and to trust the professor as “a compassionate mentor” who will help them navigate issues of cultural diversity in the safety of the classroom, before they experience those issues in practice.⁷⁰ With regard to fairness, students need to be able to trust that the professor will not

66. See Calleros, *Training a Diverse Student Body*, *supra* note 9, at 163. Professor Calleros recounts a contracts professor’s experience in assigning and discussing a study of gender and race discrimination in retail car negotiations on the first day of class. Several students of color complained to the professor because they were already anxious about law school and were “keenly aware of their minority status.” *Id.* They found it “unsettling” to discuss “the apparent lack of sophistication within the black community” on the first day of class. After hearing the students’ feedback, the professor decided that she would no longer discuss the study on the first day of class. *Id.*
67. Curcio, *supra* note 5, at 538. “Stereotypes are cognitive schema in which we group people based upon our experiences as well as information from friends, family, neighborhoods, the media, etc. At its core, a stereotype ‘is a faulty generalization about a group or its members.’” *Id.* at 545 (quoting Katharine L. Bartlett, *Making Good on Good Intentions: The Critical Role of Motivation in Reducing Implicit Workplace Discrimination*, 95 VA. L. REV. 1893, 1908 (2009)). “Biases and prejudices are generally defined as attitudes based upon applying stereotypes to individuals or social groups, and the terms are often used interchangeably.” *Id.* The need for professors to confront their biases and stereotypes is discussed in Part III.C, *infra*.
68. *Id.* at 539. “Everyone” means everyone. “[M]embership in a group that is subjected to biases and stereotypes does not protect one against subconscious endorsement of those stereotypes.” *Id.* at 550.
69. *Id.* at 545. “Social cognition theory tells us that we all have stereotypes, biases, and prejudices that affect our perceptions and interactions.” *Id.* Professor Curcio recommends exposing students to social cognition theory “as it relates to subconscious biases and their implication for lawyering during law school orientation, or shortly thereafter.” *Id.* at 562. As part of their prelaw school reading list, “students could be assigned selected reading about the impact of various subconscious biases on interactions and legal decision making.” *Id.* For example, MAHZARIN R. BANAJI & ANTHONY G. GREENWALD, *BLINDSPOT: HIDDEN BIASES OF GOOD PEOPLE* (2013) “provides a quick, digestible and comprehensive explanation of implicit bias, its manifestations in the justice system, and strategies for avoiding unintended discriminatory conduct.” Curcio, *supra* note 5, at 562 n.173.
70. Calleros, *Training a Diverse Student Body*, *supra* note 9, at 163.

punish them for their opinions or for disagreeing with the professor's point of view. Students must be able to perceive that the professor will evaluate each student's analysis objectively, even when a student takes a position that varies from the professor's views on an emotionally charged subject.⁷¹ Professors should "create an atmosphere of open discussion and inquiry in which all students understand that the professor is not asking them to endorse a particular viewpoint, but is asking them to be open to, and respectful of, different experiences and viewpoints."⁷²

Professors should attempt to convey their respect for students in various ways. In gauging whether a professor is respectful, students will watch carefully to see how the professor responds to students when they participate in class. Students will observe how the professor communicates with students, the level of "hospitality," and the general range of "inclusion and comfort" that students experience.⁷³ They will observe how students are treated when they respond to the professor's questions and how the professor treats students who ask questions. Are students belittled and hung out to dry? Are questions handled patiently and with kindness? Does the professor insist that students respect him or her in return?

A supportive classroom environment is one in which the professor works to minimize the students' anxiety. Some professors create a classroom environment in which students are "kept on their toes" through fear or embarrassment; however, the tension created by this type of classroom environment does not translate into an atmosphere in which most students will feel safe to take risks.⁷⁴ Professors should work toward an environment that is less judgmental toward students.⁷⁵ This does not mean agreeing with everything that students say,⁷⁶ diluting the rigor of the course, refraining from cold calling, or any other practice that boosts the intellectual challenge presented by the material. Instead, a supportive environment "is important because it lowers resistance to learning and helps students deal with what can often be [the] very challenging experience" of developing cultural competence.⁷⁷ Ultimately, the more students feel that the professor is fair, respectful, and supportive, the more likely they will forgive the professor's mistakes.⁷⁸

71. Calleros, *In the Spirit of Regina Austin's Contextual Analysis*, *supra* note 32, at 293.

72. Curcio, *supra* note 5, at 561.

73. AMBROSE ET AL., *supra* note 39, at 176.

74. Sarcasm, denigration, and ridicule by faculty are some of the reasons students abandon a course of study. *See id.* at 177 (discussing a 1997 study on why undergraduates leave the sciences).

75. Bryant, *supra* note 4, at 58.

76. Dark, *supra* note 9, at 564-65.

77. Bryant, *supra* note 4, at 58.

78. *See* Calleros, *In the Spirit of Regina Austin's Contextual Analysis*, *supra* note 32, at 292 (observing that many students are grateful for efforts to diversify the curriculum and are willing to forgive minor imperfections in the assignment).

Students also need time to get to know one another's personalities and to form relationships with one another. One way to help students to build relationships among their classmates is to incorporate group work into the course.⁷⁹ Students will form opinions about their classmates based on their behavior in and out of class.⁸⁰ They will begin to find out about their classmates' personalities. This knowledge of one another helps to provide context for controversial discussions. Also, the professor is less likely to lose favor with the class if a student, especially one known to the class as a troublemaker, acts out and has to be corrected.⁸¹ A classroom atmosphere of trust and mutual respect will result in students who are more likely to listen, and to give one another and the professor the benefit of the doubt when cross-cultural discussions result in the occasional "awkwardly worded or inappropriate comment."⁸²

C. Preparing the Professor

While each professor must first decide whether the substance of a course provides sufficient opportunities to explore relevant issues of diversity, some courses naturally lend themselves to such discussions. When a professor avoids discussion of obvious cross-cultural issues in class, students may feel shortchanged and resentful.⁸³ Even the "natural fit" classes can build in more

79. See Dark, *supra* note 9, at 566-67 (suggesting group role play and discussion groups as options). The author assigns a group research assignment during the first week of legal research and writing to ease students into law school life and to encourage them to build relationships among their classmates.

80. The interacting factors that determine classroom climate "can operate outside as well as inside the classroom." AMBROSE ET AL., *supra* note 39, at 170.

81. See Part V, *infra*.

82. Dark, *supra* note 9, at 567.

83. See Calleros, *Training a Diverse Student Body*, *supra* note 9, at 149 (commenting that courses like constitutional law or civil rights legislation can "hardly avoid" issues of diversity). A professor suffers a "loss of credibility . . . when he or she too obviously avoids opportunities for fruitful inquiries on matters of diversity." *Id.* at 157. The author interviewed a student who relayed several instances in which she was disappointed because a professor failed to address obvious issues of diversity raised by the material: 1) "In Criminal Law, we spent about six weeks discussing rape without ever addressing gender. Our casebook even contained an excerpt we had to read from a study—conducted by two women—about how frequently women say no when they really mean yes, thus sending confusing messages to men about consent. I found it very troubling that this was the only systematic training sixty future lawyers got about this critical issue. Another criminal law professor's exam contained a graphic rape fact pattern. Whether or not my classmates go on to practice criminal law, they have been taught a desensitized, victim-blaming approach to sexual violence that will most certainly affect their interactions with people in their professional or personal lives." 2) "We also did cases about Huey P. Newton and Bernard Goetz without addressing race. Newton was charged with murder after he shot a cop—the case was about unconsciousness as a defense to murder. The Goetz case came about after he shot four black teenagers on the train who allegedly asked him for money—it was about reasonableness, applying an objective standard for determining whether a defendant charged with murder reasonably believed the use of deadly force was necessary to protect against death or serious bodily injury, kidnapping or rape. My professor taught these cases while categorically refusing to discuss race because it was 'a distraction' to 1Ls learning the law. It absolutely blew my

opportunities for cross-cultural discussions by discussing landmark cases from perspectives other than those of the judge(s) or justices that originally decided a case.

Because cross-cultural discussions can involve difficult and controversial issues, a professor should consider how to make the discussion as “safe, positive, and useful as possible.”⁸⁴ One of the reasons professors hesitate to discuss controversial issues is fear of saying the wrong thing and offending students or appearing insensitive. They may also be concerned about maintaining the focus of classroom discussions or losing control of a discussion to the extent that the classroom environment is undermined. Professors may also hesitate to broach subjects about which they are uncertain or unsure.⁸⁵ One undergraduate institution decided to overcome this natural reticence by organizing an equity and justice retreat, in which professors “learned how to have controversial conversations in the classroom and how to encourage inclusive classrooms.”⁸⁶ The goal was to “teach professors a skill set” for leading difficult conversations.⁸⁷ Such skills include developing “emotional knowledge,” empathy, and recognition, honing listening skills, and conveying authenticity and honesty.⁸⁸ Ultimately, to “coax the full range of perspectives from students on provocative issues, instructors must lead discussions with sensitivity and open minds.”⁸⁹

Professors also have the responsibility to “confront their own prejudices [and] develop their racial literacy.”⁹⁰ Professors, just like anyone else, also “have deeply seated biases, formed by their life experiences and absorbed

mind. I came to law school in pursuit of justice, so it made for a disenchanting adjustment to my first semester.” Email from anonymous student to author (Apr. 16, 2017, 5:05PM EDT) (on file with author).

84. Bannai & Enquist, *supra* note 9, at 9.
85. Dark, *supra* note 9, at 558–59. *See also* Bannai & Enquist, *supra* note 9, at 33–34, 37 (discussing professors’ insecurities about leading cross-cultural conversations due to lack of personal experience or expertise on diversity issues).
86. Ellen Wexler, How to Talk About Diversity in the Classroom, *INSIDE HIGHER EDUC.* (June 28, 2016), <https://www.insidehighered.com/news/2016/06/28/juniata-college-encourages-professors-talk-about-race-class-while-acknowledging> [<https://perma.cc/V9HS-D9BY>].
87. *Id.* *See also* Bryant, *supra* note 4, at 38 (observing that cross-cultural competence is a skill than can be taught); Courtney N. Wright, *Framing Classroom Incivility*, *INSIDE HIGHER EDUC.* (Oct. 4, 2016), <https://www.insidehighered.com/advice/2016/10/04/identifying-and-understanding-classroom-incivility-essay#> [<https://perma.cc/VU7G-YALV>] (stating that faculty members need resources and skills training to “create learning environments that embrace diverse identities and effectively manage conversations about sensitive topics”).
88. Wexler, *supra* note 86. *But see* Dark, *supra* note 9, at 543 (stating that the most critical skills teachers need to handle a discussion about diversity may be referred to as “‘good teaching’—the ability to listen, to demonstrate respect for the student, to model professionalism in the level of preparation and treatment of the material, and to not take yourself so seriously.”).
89. Calleros, *Training a Diverse Student Body*, *supra* note 9, at 159.
90. Wright, *supra* note 87.

from their culture.”⁹¹ The work of confronting and at least beginning to resolve those biases is a prerequisite to helping students develop cultural competency. This process of “self-identification”⁹² requires professors to think about their own cultural background, how they first became conscious of diversity and difference, and how their attitudes and experiences may affect their teaching and their students’ responses. Moreover, professors must strive to understand the various social identities represented in their classroom to develop inclusive learning environments for all students. Fortunately, the Internet provides a deep well of highly accessible online resources dedicated to issues of diversity that anyone can use as a starting point to increasing personal awareness.⁹³

Professors should also consider their assumptions about student learning behavior before incorporating cross-cultural discussions into a course. When faculty hold incorrect assumptions, a negative learning environment may result, which undermines student learning.⁹⁴ Some of the incorrect assumptions that may negatively affect a cross-cultural conversation include the following: 1) students who are affiliated with a particular group (gender, race, ethnic, sexuality) are experts on issues related to that group and feel comfortable being seen as information sources to the rest of the class and the instructor who are not members of that group; 2) European-American students do not have opinions about race or ethnicity and members of other groups do have opinions about these issues; 3) all students from a particular group share the same view on an issue, and their perspective will necessarily be different from the majority of the class who are not from that group; and 4) students from certain groups are more likely to be argumentative or confrontational during class discussions, or to not participate in class discussions, or to bring a more radical agenda to class discussions.⁹⁵ Most of us have adopted at least one of these incorrect assumptions as part of our thinking. Instead, faculty should prepare to lead cross-cultural discussions by pledging to treat each student as an individual.⁹⁶

91. Bannai & Enquist, *supra* note 9, at 3-4.

92. See *Creating a Positive Classroom Climate*, *supra* note 8, at 5.

93. A few suggested Internet resources for increasing personal awareness include TED, <https://www.ted.com> (last visited Aug. 1, 2017) (search for speakers under topics such as race, disability, LGBT, religion, gender, etc.); *Diversity*, HUFFPOST, <http://www.huffingtonpost.com/news/diversity> (last visited Aug. 1, 2017) (offers articles and videos about trending issues (primarily pop culture) affecting diverse communities); Peter Brunette, *LGBT Issues in Higher Education Guide*, AM. LIBR. ASS’N (Apr. 2016), <http://www.ala.org/rt/sites/ala.org/rt/files/content/professionaltools/LGBT%20Issues%20in%20Higher%20Education%20Guide.pdf> [<https://perma.cc/2279-9VHE>] (provides an annotated list of texts that focus on LGBT issues in higher education); FOUND. FOR ETHNIC UNDERSTANDING, <http://www.ffeu.org/> (promotes understanding between ethnic or religious communities). Many other resources, such as books, articles, videos, and blogs, are available and can be discovered by conducting a simple Google search.

94. *Creating a Positive Classroom Climate*, *supra* note 8, at 12.

95. *Id.*

96. *Id.*

IV. Techniques for Promoting Cross-Cultural Conversations

Cross-cultural conversations are most likely to be successful when professors plan ahead to incorporate discussions of diverse perspectives that are relevant to the legal subject matter and consistent with the pedagogical objectives of the course. This will require planning at the syllabus drafting stage to incorporate course materials that ensure a deeper dimension of cultural diversity. In leading cross-cultural discussions, rather than telling students what to think or presuming to have all the answers, students are best able to engage in critical thinking when the professor adopts the role of neutral moderator. To keep students engaged and to include many different student perspectives throughout the course, make an effort to discuss a variety of cultures. In addition, to manage students' expectations about course content, and to communicate the professor's expectations for professionalism and civility, include a diversity policy in the course syllabus, as well as a set of ground rules for positive and productive class discussions.

A. Best Practices for Encouraging Participation in Cross-Cultural Conversations

Encouraging an explicitly centralizing classroom environment⁹⁷ begins with course materials that acknowledge the value that the professor places on diversity. Professors should consider including a diversity statement in the course syllabus,⁹⁸ as well as a set of ground rules for classroom discussions. This is a clear means of informing students about the professor's expectations for positive and productive cross-cultural conversations, as well as a means of building trust by informing students of what they can expect from the professor and the course. Policies should be framed using positive language, and professors should offer a pedagogical rationale for course policies.⁹⁹ Students should be reminded that learning occurs through sharing and actively listening to different viewpoints. The course ground rules should also acknowledge the importance of respect for diverse views and require that students treat one another with respect.¹⁰⁰

97. See Part III-A, *supra*, for definition of "explicitly centralizing classroom environment."

98. For example: "I consider it part of my responsibility as [a professor] to address the learning needs of all of the students in this course. I will present materials that are respectful of diversity: race, color, ethnicity, gender, age, disability, religious beliefs, political preference, sexual orientation, gender identity, citizenship, or national origin among other personal characteristics. I also believe that the diversity of student experiences and perspectives is essential to the deepening of knowledge in a course. Any suggestions that you have about other ways to include the value of diversity in this course are welcome." *Creating a Positive Classroom Climate*, *supra* note 8, at 4.

99. See AMBROSE ET AL., *supra* note 39, at 176-77 (stating that "offering a pedagogical rationale" for a course policy sets a more encouraging tone, than a course in which policies are phrased using punitive language).

100. Suggestions for ground rules are presented in no particular order, and include the following: a) Respect the opinions of others in class discussions. When you disagree, make sure that you use arguments to criticize the idea, not the person; b) Be an active listener even if you do not agree with what is being asserted. If you decide to object or make a comment, it should be clear that you were listening; c) Avoid generalizations; d) Do not interrupt; e)

Learning the law and developing legal skills are the foremost objectives of law school courses. Therefore, cross-cultural issues must be raised within the context of the overall course of study. The focus should be on how and why such issues appear in what the students are studying and should not devolve into rambling discussions of the professor's personal political views. Resist the urge to use the classroom podium as a "bully pulpit" or as an opportunity to regale a captive audience with the professor's personal political or sociological views that are unrelated to the course materials. Typically this means the professor should assume the role of neutral moderator, rather than as the proponent of a particular point of view.¹⁰¹ In the law school classroom, the goal is not to indoctrinate the students in a particular viewpoint. Instead, the goal is to help students learn how to include cross-cultural awareness among the many tools they should use for effective legal analysis. Furthermore, professors are encouraged to emphasize "the value of learning about how the most effective lawyers understand the role culture, and our own cultural biases, play in the lawyering process."¹⁰²

Successfully leading a diverse classroom conversation involves honestly admitting that the professor does not have all of the answers¹⁰³ and that

This classroom is a safe space for disagreement. The goal of class discussion is not that everyone agree, but that everyone in the class gain new insights and experiences; f) When offering an opinion or answering a question, support your assertion with arguments and evidence, not generalizations; g) Do not attempt to dominate the discussion. Be open to the ideas and experiences of others in the class; h) If a statement is made that offends you or you think might offend others, speak up and challenge it, but always show respect for the person who made it; i) Speak from your own experience. Use "I," not "we" or "you"; j) Students whose behavior is disruptive either to the professor or to the students may be asked to leave the classroom; k) Name-calling, jokes, innuendos, verbal attacks, sarcasm, accusations, and other negative exchanges will not be tolerated; l) Comments should be limited to the topic under discussion; m) No profanity; n) Express views in a professional manner, using civil, intellectual terms that would be appropriate in a courtroom, legislative hearing, or public meeting. See *Creating a Positive Classroom Climate*, *supra* note 8, at 8-9; Bannai & Enquist, *supra* note 9, at 38; Dark, *supra* note 9, at 567-68; Calleros, *Training a Diverse Student Body*, *supra* note 9, at 161.

101. See Calleros, *Training a Diverse Student Body*, *supra* note 9, at 164. On the other hand, "some argue that instructors ought to reveal their political views on topics so that students can use that information in critically evaluating questions posed, comments, course materials, and lesson plans, as well as test their own political views." *Id.* The latter approach works well for upper level courses and the author sometimes chooses to share her point-of-view in her employment law seminars and in appellate advocacy.
102. Curcio, *supra* note 5, at 560.
103. See Wright, *supra* note 87. Professors need to develop "communication skills (e.g., empathy, perspective taking) and an understanding of diverse experiences that we do not inherently possess." *Id.* "[F]aculty need to set an example for the class by admitting limitations of their own knowledge and by acknowledging the value of listening to and considering diverse perspectives." Calleros, *Training a Diverse Student Body*, *supra* note 9, at 159. "A professor can admit that everyone, including the professor, continues to learn about these issues." Bannai & Enquist, *supra* note 9, at 38.

“occasional mistakes and missteps are inevitable.”¹⁰⁴ Students should feel confident that the professor is “interested in developing [their] skills of expression and analysis rather than in compelling them to adopt particular political beliefs.”¹⁰⁵ Rather than tell our students what to think, sometimes it is best to facilitate a conversation in which the students work out their own answers. With regard to the substance of the analysis, considering various perspectives can help students better understand and argue legal questions, such as “whether a claim of discriminatory harassment should be based on the perspective of a ‘reasonable person,’ or that of a reasonable member of the group targeted for harassment, such as a ‘reasonable woman’ or a ‘reasonable African-American.’”¹⁰⁶ One way to vary the perspective when discussing race, for example, is to acknowledge that many groups are affected by racial issues; avoid solely focusing on a black and white dichotomy.¹⁰⁷ Furthermore, encouraging students to engage in cross-cultural discussions provides opportunities for the professor to learn from the students’ perspectives.

Another best practice is to provide a trigger warning before engaging in a discussion of an issue that may cause a student to relive a traumatic event.¹⁰⁸ A “trigger warning” has been defined as an “advance content notice . . . to alert [students] to potentially disturbing course content.”¹⁰⁹ Trigger warnings give students the opportunity to prepare themselves emotionally for discussions that are personally difficult, employ effective anxiety management techniques when necessary, or, in some instances, to opt out of the discussion altogether.¹¹⁰ A trigger warning may consist of prior notice in the syllabus or by email that the classroom discussion on certain days will be about a potentially traumatizing topic; the syllabus may also provide information about available support resources on campus.¹¹¹ Students should not be made to feel conspicuous

104. Calleros, *Training a Diverse Student Body*, *supra* note 9, at 157.

105. *Id.* at 164.

106. *Id.* at 143.

107. *Creating a Positive Classroom Climate*, *supra* note 8, at 7.

108. *See* Calleros, *Training a Diverse Student Body*, *supra* note 9, at 162.

109. Kim D. Chanbonpin, *Crisis and Trigger Warnings: Reflections on Legal Education and the Social Value of the Law*, 90 CHI.-KENT L. REV. 615, 616 (2015). Some faculty consider mandated trigger warnings to be a threat to academic freedom because they infringe on a faculty member’s autonomy and discretion to select and arrange course materials to meet learning objectives. *Id.* at 616, 625.

110. Kate Manne, Op-Ed, *Why I Use Trigger Warnings*, N.Y. TIMES, Sept. 20, 2015, at SR5. One method for alleviating the difficulty of sharing a sensitive narrative with minimum personal vulnerability, suggested by Professor Okianer Dark, involves permitting students to respond in writing to a question that elicits a personal story, then moving them to small groups for discussion about the student writings; and finally moving them into the large classroom, where the kernels of those narratives can be discussed. Dark, *supra* note 9, at 571.

111. Chanbonpin, *supra* note 109, at 626, 629–32, 637. Some of the legal topics that may have an emotional impact include rape/sexual assault; domestic violence (partner/spousal or child abuse, incest); and hate crimes (gay-bashing, lynching). *Id.* at 629–31.

or marginalized if they need to opt out of a discussion. Note that trigger warnings are not a panacea; it is impossible to predict exactly what legal topics may trigger trauma, and some students may struggle to handle certain class discussions despite the warning.¹¹²

B. Deep Research Approach

To ensure a deeper dimension of contextual diversity in the classroom discussion, professors may choose to include course materials that confront issues of difference at a substantive level.¹¹³ Professors can lay the groundwork for these discussions by researching the background stories of the law (constitutional provisions, cases, statutes, etc.) that they plan to discuss in class. This will involve research in sources (sometimes nonlegal¹¹⁴) that analyze ideas from diverse perspectives, such as books,¹¹⁵ magazine and newspaper articles, blogs, podcasts, documentaries, etc.¹¹⁶ One way of inviting cross-cultural conversations is to assign readings that address constitutional or statutory civil rights and civil liberties, or common-law theories to redress wrongs. Discussions may also be based on instances in which a judicial opinion is silent about the role of prejudice or discrimination in the events that led to the underlying lawsuit.¹¹⁷ Uncovering the relevant facts may require professors to research the “back stories” of cases in preparation for leading the class in a discussion of policies motivating the court’s ruling. Such discussions of relevant case law are valuable “[w]hether the issues of diversity are the central point of a problem or are raised only indirectly.”¹¹⁸

Professors who teach courses in which “clashing claims, values, or perspectives of members of diverse groups [are] not . . . self-evident” will need to “dig beneath the traditional surface of the course for issues that invite analysis from diverse perspectives.”¹¹⁹ For example, environmental law professors may choose to introduce the concepts of environmental racism and environmental injustice—the idea that the “burdens associated with environmental issues . . . are disproportionately thrust upon low-income communities and

112. *Id.* at 632.

113. Calleros, *Training a Diverse Student*, *supra* note 9, at 153.

114. *Id.* at 154 (describing the use of a novel and a film used as supplementary materials in a legal research and writing course).

115. For example, in *FEMINIST JUDGMENTS*, *supra* note 13, at 16, many of the authors reviewed the record that was before the United States Supreme Court at the time of the original opinion and uncovered facts that had been “overlooked, dismissed as legally irrelevant, or otherwise deleted from the narrative on which the decision was ultimately based.”

116. See Dark, *supra* note 9, at 555 (suggesting a multidisciplinary approach to incorporating cross-cultural materials).

117. Calleros, *Training a Diverse Student Body*, *supra* note 9, at 153 (explaining that “an appellate decision might raise an issue of race by its very silence”).

118. *Id.* at 154.

119. *Id.* at 155.

communities of color.”¹²⁰ In his antitrust and business law courses, Professor Alfred Dennis Mathewson treats culture as a “factual and pedagogical norm in legal discourse”; “the subject matter drives the analysis,” and race is visibly interwoven into the conventional course content.¹²¹ According to Professor Mathewson, race is relevant to the discussion of business law because it is “an ordinary part of life and society, and therefore it is [as] appropriate for discussion as economic implications.”¹²²

To lead a cross-cultural conversation when discussing case law, a professor should begin with the legal principles that are directly relevant to the course of study, and then introduce the diversity issue. For example, to encourage a discussion of explicit and implicit bias in a criminal law course, the professor may begin by assigning a case in which the litigants are racially diverse. During the discussion of the legal principles presented by the case, students may have assumed that all of the litigants are white, or that a criminal defendant is black, or any number of other possibilities. However, the professor may ask the class about whether the court mentions race/ethnicity, and if so, how it broaches the subject. If the court does not mention race/ethnicity, the students may be asked to consider why not.¹²³ Is race/ethnicity still a factor in the court’s decision even if the judge did not mention it in her opinion? Finally, the professor may ask the students what the court’s silence says about its reasoning and whether that reasoning is sound. Alternatively, professors may use the feminist legal method technique of asking “the woman question: ‘identifying or challenging those elements of existing legal doctrine that leave out or disadvantage women and members of other excluded groups.’”¹²⁴

These road maps may be followed when leading similar discussions in any course.¹²⁵ The author has used this approach in discussing California family law

120. Jeanne Marie Zokovitch Paben, *Green Power & Environmental Justice—Does Green Discriminate?*, 46 TEX. TECH L. REV. 1067, 1070–71 (2014). See also Keith Sealing, *Dear Landlord: Please Don’t Put a Price on My Soul: Teaching Property Law Students That “Property Rights Serve Human Values”*, 5 N.Y. CITY L. REV. 35 (2002) (discussing specific texts and cases that can be used to introduce cross-cultural discussions into a first-year property course).

121. Alfred Dennis Mathewson, *Race in Ordinary Course: Utilizing the Racial Background in Antitrust and Corporate Law Courses*, 23 ST. JOHN’S J. LEGAL COMMENT. 667, 671 (2008).

122. *Id.* at 675–76.

123. For example, the Court does not mention that the police officer was white and that two of the three suspects were black in *Terry v. Ohio*, 392 U.S. 1 (1968). Suggestions for discussing this case are provided in Bannai & Enquist, *supra* note 9, at 29–30.

124. FEMINIST JUDGMENTS, *supra* note 13, at 17 (quoting Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 831 (1990)).

125. See Calleros, *Training a Diverse Student*, *supra* note 9, at 157–58 (discussion of property case); Bannai & Enquist, *supra* note 9, at 23–25, 24 nn.101–02 (discussion of *Jones v. Star Credit Corp.*, 298 N.Y.S.2d 264 (1969) and *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965)). Another case to consider is *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), which can be used in a civil procedure course to introduce students to the role that implicit biases based upon racial and ethnic stereotypes may have on judicial decision-making. Curcio, *supra* note 9, at 563.

cases that were relevant to a legal research and writing assignment involving an in vitro fertilization mix-up between two families—one Puerto Rican/Catholic and the other white/Jewish.¹²⁶ Several of the relevant cases involved explicit and implicit cultural diversity issues, including race, gender, and sexual orientation.¹²⁷ For example, *Johnson v. Calvert*¹²⁸ involved Anna Johnson, a gestational surrogate, who had petitioned the court to be named the legal mother of a child whom she had agreed to carry for a married couple, Mark and Crispina Calvert. The California Supreme Court, which ruled in favor of the genetic father, never mentioned the ethnicity of the litigants. However, media reports disclosed that Mrs. Johnson was black, Mr. Calvert was white, and his wife, Mrs. Calvert, was Filipina.¹²⁹ Over several weeks of discussing and applying the legal principles in class, the author made no mention of the litigants' ethnicity. However, as the students began to work on drafting briefs and preparing for oral argument, the author disclosed the ethnicity of the litigants in *Johnson* and asked the students if they thought the court had considered race in its decision.¹³⁰ This discussion was in the context of inviting the students to consider whether race should be a factor in the arguments they would make on behalf of their Puerto Rican or white client. In other words, in deciding the best interests of the child, would the court care about race,¹³¹ even though the *Johnson* court was silent about this issue? And if so, what were the correct ways to make those arguments both in writing and during oral argument?

The reason for encouraging a cross-cultural conversation when discussing legislation is to help students see beyond the plain language of a statute and to consider its effects upon diverse communities. In preparation for such a discussion, students could be assigned to research the statute's legislative history to find out who the authors were, what motivated the legislation, and what public policy was involved.¹³² Depending upon when the legislation was

126. Legal research and writing assignment written by Professor Susan DeJarnatt, Temple University Beasley School of Law.

127. Two same-sex parentage cases, *K.M. v. E.G.*, 117 P.3d 673 (Cal. 2005) and *Elisa B. v. Superior Ct.*, 117 P.3d 660 (Cal. 2005), were also relevant to the analysis and opened the door to discussing different possible family configurations. Could the court, for example, decide that both women could be named the legal parents of the child in question? Why was this outcome likely or not likely based on the assignment's facts?

128. 851 P.2d 776 (Cal. 1993).

129. Lisa C. Ikemoto, *The In/Fertile, the Too Fertile, and the Dysfertile*, 47 HASTINGS L.J. 1007, 1023-24, 1023 n.57 (1996).

130. See Curcio, *supra* note 5, at 564 (stating that "students can be asked to explore how cultural factors inform the development and analysis of the factors used to determine whether something is in the best interests of the child in all types of child placement decisions").

131. Another colleague at Temple taught a variation of this assignment in which one of the couples seeking legal parentage of the child in question was a same-sex couple.

132. Technique for leading cross-cultural discussions of statutes suggested by Professor Rebecca L. Scalio (retired), Widener University Delaware Law School.

passed, a professor may need to include an overview of relevant historical events to place the discussion into perspective for students who may be unfamiliar with background facts that the professor may have learned, read about, or lived through. Students will not be able to fully participate in such discussions without contextual knowledge. The goal is to help students identify the “competing interests and values”¹³³ that the legislation was meant to serve. Examining public policy from diverse perspectives helps students to consider the law as a means for promoting the interests that are important to or valued by society, and helps them to identify which interests are not valued.¹³⁴ For example, tax professors may choose to engage their students in a cross-cultural conversation examining the potentially disparate impact of taxation on different taxpayer demographics, such as race, ethnicity, gender, sexual orientation, or gender identity.¹³⁵

To generate ideas for cross-cultural discussions, professors may also consult casebooks or other supplemental materials that present the law from different cultural perspectives.¹³⁶ For example, one useful casebook to consider is *Feminist Judgments*,¹³⁷ a collection of twenty-four United States Supreme Court cases that

133. Dark, *supra* note 9, at 556.
134. *Id.* at 556. For example, a professor could lead students in a discussion of the Violent Crime Control and Law Enforcement Act of 1994 (VCCA), Pub. L. No. 103-322, 108 Stat. 1796 (codified as amended in scattered sections of 42 U.S.C.). The VCCA was sponsored by Representative Jack Brooks (D-TX), and signed into law by President Bill Clinton. The intent of the VCCA was to reduce crime by funding thousands of police officer and drug courts nationally, banning certain assault weapons, and including the “three-strikes provision,” which mandated life sentences, without the possibility of parole, for anyone convicted of a violent felony after two or more prior convictions. However, the effect of the VCCA exacerbated the trend of increased incarceration of African-American men, a trend that began in the 1970s. The VCCA also included a provision affecting state prison populations “requiring that people convicted of violent crimes serve at least 85 percent of their sentences.” Robert Farley, *Bill Clinton and the 1994 Crime Bill* (Apr. 12, 2016), <http://www.factcheck.org/2016/04/bill-clinton-and-the-1994-crime-bill/> [https://perma.cc/SB8V-YQ2S]. Along with provisions in the VCCA that created incentives for states to build prisons, the VCCA contributed to a racially disparate impact of increased incarceration. Tessa Berenson, *Hillary Clinton Struggles to Defend 1994 Crime Bill*, TIME (Apr. 14, 2016), <http://time.com/4295463/hillary-clinton-struggles-to-defend-1994-crime-bill/>.
135. See Nancy J. Knauer, *Critical Tax Policy: A Pathway to Reform?*, 9 NW. J. L. & SOC. POL’Y 206, 209-10 (2014).
136. For example, a short, nonexhaustive list of books to consider includes: A. LEON HIGGINBOTHAM, JR., *SHADES OF FREEDOM: RACIAL POLITICS AND PRESUMPTIONS OF THE AMERICAN LEGAL PROCESS* (1996); DERRICK BELL, *RACE, RACISM AND AMERICAN LAW* (6th ed. 2008); ERIC K. YAMAMOTO ET AL., *RACE, RIGHTS AND REPARATIONS: LAW AND THE JAPANESE AMERICAN INTERNMENT* (2d ed. 2013); *DISCUSSIONS ON DISABILITY LAW AND POLICY* (Patricia C. Kuszler & Christy Thompson Ibrahim eds., 2014); MELISSA L. TATUM & JILL KAPPUS SHAW, *LAW, CULTURE & ENVIRONMENT* (2014); F. MICHAEL HIGGINBOTHAM, *RACE LAW: CASES, COMMENTARY, AND QUESTIONS* (4th ed. 2015).
137. *FEMINIST JUDGMENTS*, *supra* note 13. Forty-eight authors were selected to write the twenty-four opinions and matching commentaries. The authors are “diverse in perspective, expertise, and status as well as race, sexuality, and gender.” *Id.* at 8-9.

have been rewritten using feminist methods and perspectives. Each rewritten opinion is accompanied by an expert commentary that describes the original decision, places it within its historical context, assesses its continuing effects, and analyzes the rewritten feminist judgment, emphasizing how it differs both in process and effect from the original opinion.¹³⁸ The rewritten opinions and commentary may be directly assigned to students or the professor may use the opinions and accompanying commentary as a background resource to help the class consider the original opinions from a different analytical perspective.

C. Diverse Context Approach

Another way to promote cross-cultural discussions is by choosing to infuse course materials, written problems, illustrations, lectures, and hypotheticals with diverse characters and “cultural setting[s] outside of the normally dominant mainstream.”¹³⁹ Incorporating diverse characters and settings into the course materials helps students to see that a legal decision-maker’s perspective on the narrative or “the story of the case” influences his or her ultimate decision.¹⁴⁰ Coursework will also be more relevant to students who “view themselves as outside the mainstream culture” when professors deliberately include some cases and problems with diverse cultural contexts.¹⁴¹ Professors will reduce feelings of alienation by including course materials with which each member of a diverse student body may identify and reinforce an explicitly centralizing classroom,¹⁴² at least some of the time. To help students understand the relevance of the decision-maker’s perspective on the narrative, ask students to consider “how the decision maker sees the story, what that person sees as relevant and irrelevant,”¹⁴³ how another person (of a different gender, sexual orientation, age, etc.) might see that same story, and how the decision-maker’s perspective might shape the legal outcome.

To build in authenticity and to ensure that the fact pattern has the intended effect, confer with colleagues or community members who have different personal characteristics and experiences.¹⁴⁴ Review the facts to ensure that you have not inadvertently stereotyped any characters or scenarios. Even the “subtle activation of stereotypes” can negatively affect learning and performance.¹⁴⁵

138. *Id.* at 8.

139. Calleros, *Training a Diverse Student Body*, *supra* note 9, at 150–51.

140. FEMINIST JUDGMENTS, *supra* note 13, at 15. “[F]eminists and other critical legal scholars have embraced narrative as a distinctive method of subverting and disrupting the dominant legal discourse. Feminist narrative method seeks to reveal and oppose the bias and power dynamics inherent in the law’s purported neutrality by including and asserting the relevance of facts that are important to those outside the mainstream account in law.” *Id.* at 15–16.

141. Calleros, *Training a Diverse Student Body*, *supra* note 9, at 145.

142. See Part III-A, *supra*, for definition of “explicitly centralizing classroom environment.”

143. FEMINIST JUDGMENTS, *supra* note 13, at 15.

144. Calleros, *Training a Diverse Student Body*, *supra* note 9, at 156–57.

145. Stereotypes can be offensive and alienating and can produce a toxic classroom environment.

When using descriptive labels for cultural groups in course materials and during in-class discussions (for example, black vs. African-American or sexual preference vs. sexual orientation), students and the professor “need to be aware of the bias embedded in word choices.”¹⁴⁶ “To appreciate why different people prefer different labels, students may need to research the historical and political roots of . . . terms.”¹⁴⁷ Note that the onus is on the person using the language, not on someone from that particular culture to bear the burden of teaching everyone else in the classroom the “right thing” to say. Rather than single out individual students as “spokespersons” for their culture,¹⁴⁸ encourage participation from all students in the class. Just as attorneys are expected to update the law before relying on legal authorities, we are all responsible for updating our own cultural knowledge.¹⁴⁹ The goal “is for students to realize that they cannot select terminology unthinkingly. They need to know which terms precisely convey their intended meaning, and they need to know if any term is controversial, potentially offensive, or preferred by the members of a given group or the individual being named.”¹⁵⁰

V. Dealing with Resistance and Classroom Incivility

Professors are challenged with ensuring that classroom discussions are conducted with candor and civility¹⁵¹—a difficult balance to strike. Not every student will be on board with cross-cultural classroom discussions, and professors may fear that students will react negatively to attempts to engage the class in these discussions. Cross-cultural discussions may force students to confront unpleasant realities, which may “trigger resistance to cross-cultural education efforts.”¹⁵² Indeed, some students may resist such conversations because they perceive them as tangential or unnecessary. Other students may

AMBROSE ET AL., *supra* note 39, at 174. “Stereotype threat . . . refers to the tension that arises in members of a stereotyped group when they fear being judged according to stereotypes. This sense of threat can negatively affect these individuals’ performance on tasks (regardless of their abilities), their level of preparation, their self-confidence, or their own belief in the stereotype.” *Id.*

146. Bannai & Enquist, *supra* note 9, at 12–13.

147. *Id.* at 14.

148. Professors commonly make this mistake. See *supra* Part III-A—discussion of implicitly marginalizing classroom environment. See also Calleros, *Training a Diverse Student Body*, *supra* note 9, at 160 (author cautions against “the practice of repeatedly calling upon students of color or other ‘outsiders’ to articulate the perspective of groups they apparently represent”); Bryant, *supra* note 4, at 57 (describing the “unfair burden” placed on students of color to educate the class in diversity training programs). On the other hand, just as we expect our students to be self-aware, we must also “recognize and address the areas in which we ourselves perpetuate incivility in the classroom—which is understandably . . . uncomfortable.” Wright, *supra* note 87.

149. Bryant, *supra* note 4, at 55.

150. Bannai & Enquist, *supra* note 9, at 12.

151. Calleros, *Training a Diverse Student Body*, *supra* note 9, at 154.

152. Curcio, *supra* note 5, at 559.

more openly oppose or undermine cross-cultural objectives through offensive comments and hostile behavior.¹⁵³ Rather than be caught off-guard, professors who plan to engage in difficult discussions would be wise to also devise a plan for defusing classroom tension.¹⁵⁴

A. Understanding Student Resistance

Students may not overtly express their resistance to engaging in cross-cultural discussions. Instead, they may suffer in silence during class,¹⁵⁵ but save their complaints for the student lounge, the hallways, or their course evaluations.¹⁵⁶ Nevertheless, even when students do not voice their reluctance, professors may be able to perceive resistance based on the students' attitude, body language, or even their silence.¹⁵⁷ To encourage students' engagement in cross-cultural discussions, professors may benefit from considering possible reasons for their reluctance.¹⁵⁸

Some students resist cross-cultural conversations because they do not consider issues of diversity to be generally relevant to the study of law.¹⁵⁹ They do not see the connection between the study of doctrinal subjects and the development of analytical skills. Instead, these students are interested in learning only as much of the law as they perceive will prepare them to pass the bar. On the other hand, many professors identify their primary goal in teaching to be the development of critical thinking skills, rather than the development of doctrinal knowledge. The cases, statutes, and other materials discussed in class primarily serve as instruments for developing skills of case analysis, statutory interpretation, and policy consideration.¹⁶⁰ In attempting to proactively offset resistance based on the relevance of cross-cultural conversations to the study

153. *See id.* (noting that students may “resist uncomfortable material via overt challenges to the material and/or professor”).

154. *See* AMBROSE ET AL., *supra* note 39, at 170 (advising professors to “anticipate the tensions that might occur in the classroom and be proactive about them”); *Creating a Positive Classroom Climate*, *supra* note 8, at 10 (suggesting professors plan ahead by developing a set of strategies to deal with instances of incivility).

155. *See* Curcio, *supra* note 5, at 559 (noting that “students may passively resist learning via silence”).

156. *See* Dark, *supra* note 9, at 558 (warning that students who are unable to handle the awkwardness of cross-cultural discussions may shift their discomfort to the professor); Bannai & Enquist, *supra* note 9, at 37 (observing that “tough cultural examination may result in less than glowing student evaluations”).

157. *See* Curcio, *supra* note 5, at 561 (encouraging professors to “become active listeners—observing body language and listening to what is said and what is unsaid by both the speaker and the non-speakers—in order to address what is left unsaid”).

158. This subsection discusses some of the common reasons students may resist cross-cultural discussions. However, this list is not exhaustive. An in-depth discussion of student resistance is beyond the scope of this article.

159. Dark, *supra* note 9, at 558.

160. Calleros, *Training a Diverse Student Body*, *supra* note 9, at 147.

of law, professors may choose to take some time early in the course to explain: 1) that law school is not just about learning the black-letter law; 2) that another important objective is the development of critical thinking skills; 3) that one of the most effective ways to improve critical thinking is through the analysis of legal issues from diverse perspectives; and 4) that cultural biases affect “how attorneys and judges express themselves, how they analyze and construct arguments, and ultimately how they make decisions.”¹⁶¹ Taking the time to discuss your approach to teaching the law and how the learning process works is especially valuable in alleviating the concerns of first-year students who find much of law school to be mysterious and may still be trying to gain their footing in law school. Furthermore, explaining your approach can also build the trust that is critical for cross-cultural conversations to be productive.¹⁶²

Other students may resist devoting class time to diverse conversations because they perceive themselves as unbiased and culturally aware. However, studies suggest that people have a “bias blind spot” (we can see bias in others but not ourselves).¹⁶³ The reason people may be unaware of their stereotypes, biases, and prejudices is that these mindsets become embedded in our subconscious from an early age.¹⁶⁴ Furthermore, when judging bias, people tend to look introspectively at their own thoughts and feelings, unaware that “bias generally manifests unconsciously and thus, introspection does not yield evidence of bias.”¹⁶⁵ Students who are blind to their own biases may not appreciate discussions that challenge their self-image as “progressive, sensitive, [and] open-minded.”¹⁶⁶ Furthermore, “[l]earning that one harbors unconscious biases can create a high level of discomfort when it conflicts with one’s belief that one operates from an unbiased, egalitarian viewpoint.”¹⁶⁷ In addressing this type of resistance, it is important to stress the universality of bias and not to suggest that only a particular student or group of students is biased. Furthermore, to counteract the bias blind spot, researchers have found it effective “to provide students with studies about: 1) subconscious influences on attitudes and behaviors; 2) the failure of introspection to access what occurs in our minds on an unconscious level; and 3) people’s lack of awareness regarding when they have been unintentionally influenced.”¹⁶⁸

161. Bannai & Enquist, *supra* note 9, at 4.

162. *See* Part III-B, *supra*.

163. Curcio, *supra* note 5, at 554.

164. Curcio, *supra* note 5, at 546. Studies show that racial stereotypes are in place before children enter kindergarten. *See id.* at n.54. *See also* Jacobowitz, *supra* note 6, at 543 (observing that “our culturally influenced perceptions of our surroundings are so deeply ingrained that we are generally unaware of implicit biases that may influence our communication and reactions”).

165. Curcio, *supra* note 5, at 555.

166. Bannai & Enquist, *supra* note 9, at 37.

167. Curcio, *supra* note 5, at 558.

168. *Id.* at 555.

Some students may believe that our society is hyperfocused on issues of diversity and have an attitude of impatience toward those who, in their opinion, see every issue through some sort of cultural prism. Still other students may consider such discussions unnecessary because they believe we live in a postracial society, or they believe that prejudice is a historical problem, something from “the olden days” that is not an issue today. This is supported by “the prevalent and dominant discourse[, which] asserts that racism is a thing of the past and we now live in a ‘color-blind’ society.”¹⁶⁹ This can be a challenge when historical events that professors perceive as “recent” happened before our students were born and seem like ancient history to them. To offset this perception, it may help to either relate the issue under discussion to contemporaneous historical events with which students are likely to be familiar, or place the passage of time in context.

One way for a professor to offset this form of resistance is to acknowledge the value of considering different perspectives, even if the professor or other students in the class do not agree with a particular point of view or think an argument based on that perspective would not be persuasive. The professor should “set an example for the class by admitting limitations of their own knowledge” and by listening to other points of view, even if the initial reaction is to strongly disagree.¹⁷⁰ Cross-cultural conversations can “elicit students’ personal narratives,” and all students need to know that their perspectives will be valued and respected.¹⁷¹ Remind students that another person’s experience is not a point for agreement or disagreement. In other words, it would be inappropriate to declare “I disagree” in response to another person’s life story. In fact, disagreeing with or refusing to believe or credit another person’s experience, rather than simply listening to them, is often a source of tension.¹⁷² Creating a supportive environment for diverse perspectives may sometimes be as simple as listening and demonstrating interest in a student’s point of view, rather than shutting down opinions that are not mainstream. “When faculty actively encourage the expression of a broad range of ideas, greater understanding of difference is more likely to occur.”¹⁷³

Another type of resistance comes from students who cringe at the awkwardness of conversations that evoke discussions about topics that cast marginalized groups in a negative or stereotypical light. To minimize the awkwardness of these discussions, professors should not engage in “tokenism,” which is “relying on minority students to represent the ‘minority point of view’

169. *Id.* at 558.

170. Calleros, *Training a Diverse Student Body*, *supra* note 9, at 159.

171. Dark, *supra* note 9, at 571.

172. In a panel discussion titled “Courageous Conversations: Race at the Crossroads,” Howard Stevenson, Ph.D., Professor of Urban Education and Africana Studies, at the University of Pennsylvania, observed that disbelieving someone’s experiences is a psychological strategy to keep power; it is a form of dehumanization. The two-hour panel discussion is available at <http://www.newsworks.org/index.php/local/item/104157>.

173. *Creating a Positive Classroom Climate*, *supra* note 8, at 8.

rather than speaking for themselves” as individuals.¹⁷⁴ Tokenism can be a trigger of stereotype threat.¹⁷⁵ Professors should not assume that people from similar cultural backgrounds have the same beliefs or perspectives.¹⁷⁶ Studies have shown that even a student who does not believe in a particular stereotype may be affected by “emotions that disrupt cognitive processes.”¹⁷⁷ Furthermore, students reported “focusing on their anger at the stereotype or the instructor . . . [and] not being able to think clearly,” rather than concentrating on their work.¹⁷⁸

Finally, some students may feel generalized anxiety about any controversial topic that has the potential to lead to a tense or emotional discussion. In particular, self-exploration about one’s own biases and prejudices can “engender anxiety and resistance because it threatens one’s sense of oneself and one’s place in society.”¹⁷⁹ “Discussion of issues involving oppression such as racism, classism, gender bias, ageism, anti-Semitism, etc. often ‘generates powerful emotional responses in students that range from guilt and shame to anger and despair.’”¹⁸⁰ To remedy this generalized anxiety, avoid intense discussions within the first days of class. Ease students into cross-cultural discussions after they have become acclimated and have developed a level of trust in the professor.¹⁸¹ Also, maintain an explicitly centralizing classroom environment,¹⁸² require students to adhere to course policies and ground rules for class discussions,¹⁸³ and promptly and effectively address any incidents of incivility.

B. Dealing with Classroom Incivility

One potential pitfall of engaging in classroom discussions about cross-cultural awareness is insensitive, rude, or hostile reactions from some students. “Classroom incivility unsettles the teaching and learning environment in a manner that threatens the cohesion and collaboration among faculty

174. AMBROSE ET AL., *supra* note 39, at 175.

175. *See supra* note 145—definition of “stereotype threat.”

176. Curcio, *supra* note 5, at 539 n.10. Assuming that all students from a particular group share the same view on an issue has been identified in a study as an incorrect assumption about student learning behavior. *Creating a Positive Classroom Climate*, *supra* note 8, at 12.

177. AMBROSE ET AL., *supra* note 39, at 175.

178. *Id.*

179. Curcio, *supra* note 5, at 557.

180. *Id.* at 557–58 (Spring 2015) (quoting Beverly Daniel Tatum, *Talking About Race, Learning About Racism: “The Application of” Racial Identity Development Theory in the Classroom*, 62 HARV. EDUC. REV. 1, 1–2 (1992)).

181. *See* Part III, *supra*.

182. *See* Part III-A, *supra* (discussing definition of “explicitly centralizing classroom environment”).

183. *See* Part IV-A, *supra*.

and students.”¹⁸⁴ Language that singles out certain students and makes them feel uncomfortable does not create a good environment for learning. Instead, the learning environment must be amenable to everyone in the classroom. Appropriately and promptly addressing classroom incivility is an important aspect of creating a supportive classroom environment.¹⁸⁵ If incivility targeted toward certain students or groups of students is allowed to go unchecked, many students will no longer feel safe sharing their views on anything, especially controversial topics. This can have a chilling effect on the willingness of all students (not just those directly targeted) to engage in cross-cultural conversations. Moreover, students will not trust a professor whom they perceive “does not have their back,” or who cannot control the classroom, or who is inconsistent in maintaining the “ground rules.”

Incivility is more likely to occur when “students encounter information . . . that challenge[s] their worldview, value system, social behavior and identity.”¹⁸⁶ Students may react negatively in order to distance themselves from “what is perceived as ‘dangerous’ material.”¹⁸⁷ Incivility may manifest in a number of ways including, but not limited to, “[c]laims of course bias, reverse ‘victimization,’ the ‘right’ to be provocative (e.g., make racist or sexist comments)[,] . . . challeng[ing] the accuracy of data, . . . critiqu[ing] autobiographical accounts based upon their subjectivity[,]. . . [and] attempt[ing] to shift the conversation to a ‘class not race’ dialogue.”¹⁸⁸

Professors can be uncertain and anxious about responding to inappropriate behaviors without escalating the situation.¹⁸⁹ However, a professor’s trepidations about addressing incivility should not cow him or her into silence. Ignoring incivility is a mistake because it gives the impression that the professor is not serious about enforcing the rules. Note that addressing a student’s violation of the ground rules for class discussion does not have to be confrontational; instead, it can be used as a teaching opportunity for all students, including the student who violated the rules.¹⁹⁰

When addressing an incident of incivility, begin by giving the student the benefit of the doubt, when possible. Not every insensitive comment or uncivil act is motivated by the intent to offend;¹⁹¹ sometimes the problem is a poor

184. Wright, *supra* note 87.

185. See *Creating a Positive Classroom Climate*, *supra* note 8, at 11.

186. Wright, *supra* note 87.

187. Curcio, *supra* note 5, at 559.

188. *Id.* at 559.

189. Bannai & Enquist, *supra* note 9, at 36–37.

190. See *Creating a Positive Classroom Climate*, *supra* note 8, at 10; Wright, *supra* note 87 (discussing “insensitive comments as teachable moments”).

191. See Wright, *supra* note 87. “Uncivil behavior in the classroom can be unintentional, and consequently, those perpetrators are likely unaware of the negative impact of their behavior.” *Id.* See also Dark, *supra* note 9, at 559 (observing that students might unintentionally offend other students or groups of students by their statements).

or awkward choice of words. Such behavior can stem from ignorance, lack of sophistication, a misguided attempt at humor, or a response to another occurrence (inside or outside the classroom).¹⁹² In correcting the student's language, try to do so in a way that does not silence the student or cause him or her to disengage for the remainder of the course (*e.g.*, "I'm sure you did not mean to imply X" or "Perhaps you meant Y"). Remind the student that "lawyers are wordsmiths"¹⁹³ and must use precise language. If the inappropriate comment is off-topic, immediately steer the conversation back on course (*e.g.*, "We hear you, but our discussion is about Z. In the interest of time and to ensure that our discussion is constructive, we need to stay on topic."). One of the reasons it is important for the professor to stay within the subject matter of the course is to have the credibility to steer students' statements about unrelated social and political topics back in line.¹⁹⁴

If it appears clear that the student's intent is hostile, stay calm and dispassionate; do not become emotional. Model the behavior you would like to see in your students.¹⁹⁵ Use the syllabus policy on classroom discussions and the law school's diversity and inclusion policy as the reasons certain speech cannot be tolerated in the classroom. Although all students are entitled to their opinions, even controversial ones, freedom of speech is limited in the classroom. Violations of the ground rules should be taken seriously, and all students should be held to the same standards.¹⁹⁶ If a conversation becomes too intense, use inclusive, nonconfrontational language to defuse tension. "If a student, for example, speaks heatedly and seems angry, respond quietly by saying, 'It sounds like you have a strong opinion about . . . , I am interested in hearing more. Can you expand on your point?'"¹⁹⁷ Also, when moderating class discussions that have become intense, avoid "you" statements. For example, if a student interrupts another, rather than saying, "Stop, you are interrupting X," say, "X was in the middle of making a point. We would all like to hear the rest of what X has to say and then others will have a chance to comment."¹⁹⁸

Another type of incivility occurs when students who believe they have the moral high ground shout down or drown out speech that they find offensive. On one hand, an institution of higher education should be a place where even the most repugnant points of view can be discussed fully and rationally. However, students and professors alike will find certain views so offensive that

192. Wright, *supra* note 87.

193. Dark, *supra* note 9, at 569.

194. See Part IV-A, *supra*.

195. *Creating a Positive Classroom Climate*, *supra* note 8, at 10. For example: "If a student makes a clearly discriminatory remark such as 'You people are always . . .,' respond with 'I felt upset when you made that remark. I felt that it marginalizes a whole group of people. Can you tell us what you were trying to express?'" *Id.*

196. *Id.* at 11.

197. *Id.* at 10.

198. See *id.*

they test the limits of tolerance. Ultimately, in the classroom, the professor has to be the arbiter. The tendency to shout down opposing views may be a reaction to “confirmation bias,” which “has been defined as ‘the tendency to seek out evidence consistent with one’s views, and to ignore, dismiss, or selectively reinterpret evidence that contradicts them.’”¹⁹⁹ “Students can also be reminded that the classroom is a place for the exploration of ideas where all views must be not only respected, but also subject to critical examination in the search for sound legal analysis.”²⁰⁰ This is also an opportunity for professors to teach students how to conduct themselves as professionals during a debate. Attorneys are expected to remain coherent and civil even when confronted by opposing viewpoints in various forms, such as arguments advanced by opposing counsel, tough questioning from a judge, or difficult bargaining during a negotiation. Students may have seen many examples of journalists, pundits, and politicians shouting each other down, talking simultaneously, and hurling personal insults. Instead, students would benefit from opportunities to practice the restraint and patience needed for appropriate debate in a professional setting.

Ultimately, instances of incivility are far less likely to materialize when professors “create learning environments that embrace diverse identities and effectively manage conversations about sensitive topics including, but not limited to, race[,] . . . gender, sexuality, [and] politics.”²⁰¹ A positive way to view student questions and challenges is as an indication of “engagement with provocative material—exactly the kind of learning atmosphere we hope to produce in our law classes.”²⁰²

VI. Conclusion

Professors who are new to incorporating cross-cultural conversations into a course should take it slowly. Start by choosing a couple of issues to explore, rather than attempting to engage in cross-cultural discussions on a minute-by-minute basis. Plan and prepare ahead, consult with colleagues to test-drive your ideas, and review your course evaluations to assess whether your efforts have been well-received and where improvement is needed. To keep students engaged and to include many different student perspectives throughout the course, make an effort to discuss a variety of cultures. Professors should adopt the role of neutral moderator in cross-cultural conversations, rather than as a proponent of a particular point of view. The goal is to help our students learn how to include cross-cultural awareness among the many tools for effective legal analysis and to prepare them for practice in a diverse legal marketplace.

199. Curcio, *supra* note 5, at 552–53 (quoting Scott O. Lilienfeld et al., *Giving Debiasing Away: Can Psychological Research on Correcting Cognitive Errors Promote Human Welfare?*, 4 PERSP. ON PSYCHOL. SCI. 390, 391 (2009)).

200. Bannai & Enquist, *supra* note 9, at 38.

201. Wright, *supra* note 87.

202. Curcio, *supra* note 5, at 559.