Law Teaching and Social Justice: Teaching Until the Change Comes

Stephanie Y. Brown
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STEPHANIE Y. BROWN*

INTRODUCTION

The privilege of serving in the academy affords diverse opportunities to influence the quality of justice available in under-represented communities. Whether that service is as a distinguished law school administrator in a high-profile, internationally renowned university or as resident counsel in a clinical program servicing local indigent housing needs, gifted lawyers may choose to collaborate on, inspire, or craft theoretical constructs and ethical standards for an evolving area of practice, or secure relief for a population overlooked by traditional renderings of statutory authority or litigation outcomes. While there is no shortage of meaningful legal concerns to address, the quality and extent of justice resulting from that work is dependent on the willingness of each professor, administrator, or resident counsel to remain personally committed to and active in justice-affirming change.

For nearly two decades the American Bar Association (ABA), National Conference of Bar Examiners (NCBE) and other organizations that serve as the conscience and gatekeepers of the profession have had the benefit of scholarly findings that call for transformation of the profession in several significant ways. Service in an increasingly diverse, global society must be provided by a profession that has a diverse membership. From a practical perspective, the membership should reflect a level of skill and professionalism consistent with the profession's stated mission and values.

*Associate Professor of Law, University of the District of Columbia, David A. Clarke School of Law. I gratefully acknowledge the support and assistance of colleagues and family. I thank Rebecca L. Brown, for for insights on change and teaching.


2 Id. at 1712-18 (noting that diversity in the legal profession that is representative of the world at large is an important goal).

3 Id. at 1698-1700 (stating that there has not been enough focus on imparting important professional values to law students throughout their legal education).
National studies completed early in the 1980s suggest that extreme white opposition to equal opportunity for blacks was not as detectable as it had been in the past thirty years. In 1969 and 1973, only 15% and 16%, respectively, of the white population surveyed believed blacks to be less intelligent than whites. Only 8% and 10% of whites, respectively, supported separate schools for blacks. Because these studies reported a decline in both overt hatred for and denial of civil rights to blacks, in 1970 researchers began to focus their attention on white “attitude stability” to discover attitudes towards progressive racial policy. Changes in the nation’s demographics and student populations contributed to social science faculty members defining their social and ethical responsibilities as engendering the student comprehension of gender, race, ethnicity, culture, and class issues. That commitment has influenced theory, research, and practice.

The legal profession continues to be noticeably white. Law school admission and state bar examination processes continue to embrace policies and processes that limit diversity. The under-representation of nonwhites in the profession is likely to result in a lack of service to nonwhite client communities. Skill-based or experiential education is costly, and law faculty appear to resist nontraditional teaching. Neither traditional nor special mission law schools have challenged or overcome the various factors that constrain nonwhite admission to the profession. There continues to be a need for highly skilled, principled practitioners.

When new to the academy, I expected to be a co-laborer in an active

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5 Id. at 419.
6 Id. at 419-420.
7 Phillip J. Mazzocco et al., The Cost of Being Black: White Americans’ Perceptions and the Question of Reparations, 3 DU BOIS REV. 261, 262 (2006) (providing a comprehensive study of the change in whites’ attitude towards progressive racial measures).
8 Hector Betancourt & Steven Regeser Lopez, The Study of Culture, Ethnicity, and Race in American Psychology, 48 AM. PSYCHOL. 629, 629 (1993) (quotation omitted) (discussing the importance of developing racial and ethnic understanding in the context of psychology studies).
9 Id.
10 Glen, supra note 1, at 1698-1700 (noting the lack of change in law school and bar admission process, in spite of the fact that a change would increase diversity).
11 Id. (proposing an alternative to the traditional bar examination).
12 Id. at 1713.
13 Id. at 1710.
14 Id. at 1701-03.
15 See id. (explaining that the current methods of admission to the profession may be excluding good prospective attorneys).
scholarly movement to address law school admission policies and processes that constrain the admission of nonwhites to law school. I also expected to collaborate on the development of a curriculum that would activate principled, professional, legal practice and access to social justice. As an established member of a special mission institution, I now know that it is most important to remain individually accountable for the opportunity and promise in one’s own classroom activity. While mission and social consciousness influence corporate effort, individual action is an indispensable element of system transformation or change. This article details the approach to teaching law that I have adopted and the thinking that supports my choice.

In Part I of the article I discuss some of the concerns that prompted a recommitment to teaching law as a means to transform the profession and the quality of justice available to under represented communities. This discussion explores the setting of individual and institutional teaching goals and efforts to innovate teaching outcomes in under represented communities. This section examines the transformation of instructional and practical perspectives needed to fuel changes in conduct and, concomitantly, social justice. It also includes a discussion of the learning environment and its role in optimizing learning.

Part II details the design and implementation of the nontraditional aspects of the courses that I teach. This section focuses on the selection of textbooks and supplemental materials and development of an approach to creating social justice consciousness. Student evaluation is also addressed in this section.

Part III discusses the challenges attendant to the use of nontraditional teaching approaches. In this section I discuss student response, institutional support, and the influence of gatekeepers in refining alternative teaching strategies. I also address the use of research and other tools as constructive responses to stakeholder interaction and concern.

I. SOCIAl JUSTICE: TRANSFORMATIONS IN PERSPECTIVE AND ENVIRONMENT

A. Why Client Service Alone Is Not Enough: The Nature of Inequality

"Justice is the principle moral virtue for organizing human communities that enables the maximum of human freedom and dignity and that recognizes when harm arises or inequities endure, deliberative measures
must be taken to restore a peaceful and equitable balance."\textsuperscript{16} Furthermore, as a part of a just human community, we are, in the words of Simone Weil, "obliged to safeguard the autonomy of others."\textsuperscript{17} Whether distinguished by race, gender, nationality, culture, or religious tradition, each person is entitled to unqualified respect as human in any forum or context.\textsuperscript{18} Such a notion of justice obligates fellow humans to acknowledge and collaborate with others to remedy the inequality and hardship experienced by others even when they have not directly caused the harm.\textsuperscript{19} It is this transformation of the professional and the community notion of justice that is essential to stimulating and routinizing the flow of human behavior and creativity requisite to resolving inequality in its most basic and notorious forms. I seek a commitment and approach to teaching law that will renew professional and community understanding of justice and the concomitant responsibility to act decisively to dissolve inequity and harm as the cornerstone of my approach to assessing and improving the roles and constituencies influenced by my performance as law professor. An institution's mission is also a significant factor in examining the requisites of quality law teaching. The most obvious and basic role the law professor performs is that of learning facilitator. In that role one engages students about discrete areas of the law and oversees their progress towards mastery and application. Because graduates ultimately work as independent professionals outside of the law school, the quality of justice available to under-represented communities is also significant. It is the blending of these challenges in the context of a public institution with public interest, land grant, and historically black college and university (HBCU) designations that I have endeavored to affect educational access.

For me, access encompasses the meaningful opportunity for nonwhite and other under-represented applicants to study law and the creation of welcoming study spaces and mentorship. It also includes the provision of instruction that cultivates professional capacity and sensitivity to influencing the quality of justice available to others in under-represented communities. While client service for under-served communities is essential to the larger purpose, service to these communities also holds the

\textsuperscript{16} Richard H. Bell, \textit{Rethinking Justice: Restoring Our Humanity} 113 (Lexington Books 2007).

\textsuperscript{17} Id. (quotations omitted).

\textsuperscript{18} See id. at 81 (explaining that justice and the concept of humanity require "mutual recognition of the needs and wants of others and one's self, and the trust needed to mutually fulfill those needs and wants").

\textsuperscript{19} See id. at 86 (describing the process of achieving social justice as a two-part process involving enhancing individual freedoms and creating social commitment to those freedoms).
promise or opportunity to serve in a context that transforms the quality of life for clients in some significant way.

To facilitate access, provide comfortable learning space, and influence the extension of community appropriate services to the under-represented, familiarity with the challenges and history of student, professor, and institution is essential. From a theoretical perspective, under-represented students and under-represented client communities share a disadvantaged position in the society. Whether as a consequence of class, ethnicity, gender, race, socioeconomic status, physical or mental health challenges, the potential and need of the under-represented have been assigned a different priority. To the extent that their value has not been recognized, a sense of inferiority impedes both the individual and societal expectation for the under-represented to achieve individual potential or experience the opportunity to solve life difficulties. Professors are challenged, consequently, to identify and encourage individual difference, e.g. uniqueness, while supporting the development of all students equally.

Education is not a neutral process. It either maintains or transforms a system of thinking and conduct. “If students are not able to transform their lived experiences into knowledge and to use the already acquired knowledge... they will never be able to participate rigorously in a dialog as a process of learning and knowing.” In short, students must have or acquire the capacity to see things from an unfamiliar perspective. Clients in the real world often benefit from the lawyer’s assistance in weighing alternatives and making sound decisions. Clients also benefit when their counsel has experience evaluating the ethical implications of his or her

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21 See CHARLES TAYLOR, MULTICULTURALISM 25 (Amy Gutmann, ed., Princeton University Press 1994) (explaining that groups in society often assume an identity that is shaped by the “misrecognition” of them by others and results in a “demeaning or contemptible picture of themselves”).

22 See id. at 25-26 (providing two examples of an assigned priority where women in patriarchal societies and blacks in white society were assigned a low priority).

23 See id. (asserting that when society imposes an identity on a group, that imposition can “inflict a grievous wound, saddling its victims with a crippling self-hatred”).

24 See id. at 37-38 (discussing that “emphasizing the equal dignity of all citizens” enables the “equalization of rights and entitlements,” and underscoring that “[e]veryone should be recognized for his or her unique identity”).


26 See id.

conduct and the clients can be assured that their lawyer’s behavior is
grounded in fairness.\textsuperscript{28} I endeavor to teach from a social justice perspective
and encourage the incorporation of social justice concerns into the
analytical frameworks supporting student analysis and decision making.
The first step in preparing to teach from a social perspective involved an
evaluation of my own values and whether I believed it possible to confront
my experience and expectations of the legal system.

My personal assessment included a review of my own priorities and
notions of social justice. I determined it equally important that the lawyer-
in-training not only appreciate the theoretical descriptions of equality and
justice. Rather, they should also experience the challenge of reconciling
theory with real life needs of people.\textsuperscript{29} It is significant to realize that justice
and equality are more likely outcomes when relentlessly pursued.\textsuperscript{30} I
questioned my perception of the law school’s notion and demonstrated
commitment to these principles. I concluded that access to education for
under-represented groups was my priority. Access to education not only
empowers the student but provides the community with services,
leadership, and the wherewithal to influence the power dynamics that deny
under-represented communities a voice and position of self-determination
and well-being. In that context equality and justice become the focus of the
educational process and a more likely bi-product of those who have
acquired access through the receipt of legal training at a law school or
through the service and effort of law school graduates.

It was also helpful to consider how and whether student diversity would
impede or facilitate the nontraditional preparation of public interest
lawyers. Traditional academic work has reinforced stereotypes and myths
associated with race.\textsuperscript{31} Scholarship has often failed to explore and explain
the varied factors that influence the function and success of under-
represented groups, in particular, racial minorities.\textsuperscript{32} I determined that

\textsuperscript{28} See \textsc{William M. Sullivan, et al.}, \textit{Educating Lawyers} 154-58 (2007) (discussing different
models for preparing law students for effective legal practice).

\textsuperscript{29} \textsc{Douglas W. Rae}, \textit{Equalities} 1 (1981) (discussing equality and asserting that “[i]t[s success
and importance lie not in its crystalline beauty among abstract conceptions, not in its wonderful
symmetry, not even in its moral power, but in countless attempts to realize equality in polity, economy,
and society.”).

\textsuperscript{30} \textit{Id.}

\textsuperscript{31} \textsc{Janet E. Helms, Maryam Jernigan, & Jackquelyn Mascher}, \textit{The Meaning of Race in Psychology
and How to Change It: A Methodological Perspective}, 60 \textsc{Am. Psychol.} 27, 27 (Jan. 2005) (noting that
race has no consensual theoretical or scientific meaning in psychology even though it is frequently used
in psychological theory, research, and practice as if it has an obvious meaning).

\textsuperscript{32} \textit{Id.} (“[B]ecause race lacks precise meaning, various psychologists have long challenged the
scientific merit of studying or using race as an explanatory construct in psychological theory, research,
and by implication, practice.”).
respect for student individuality and differences in learning style is essential to creating an environment supportive of optimal development. I also considered the law school’s connection to the client community and the extent to which the client community’s identity or priorities for legal services influence how we help students to view and support the clients. It was equally important to identify my own limitations in dealing with the student and client populations.

Given the law school’s mission and the university’s designations, I think it is important to incorporate that information as a part of the backdrop against which we study. Being at one’s best often means that a lawyer will consult the research of skilled professionals from other disciplines. Collaboration with other professionals and selecting materials that support mastery of the law course in question all prepare the professor and student to participate optimally in the learning process. I developed one set of goals common to all courses and a second set particular to the discrete course. Diverse student groups should find challenge and support sufficient to optimally cultivate their respective talents. They must become equally capable of working with the full range of colleagues, faculty, and clients that they will encounter during their professional life.

B. Educational Renewal in Other Parts of the System

Because the student population expected to matriculate at my home institution is diverse, and research continues to explore the factors believed to affect disparity in white and nonwhite performance, I was curious to know how educators address these concerns at earlier stages in the formal educational process. The student populations of particular interest to me were predominantly nonwhite, from economically disadvantaged backgrounds with little-to-no family history of educational achievement, and uneven educational preparation. Three programs emerged as noteworthy examples of programming for youth with socioeconomic indicators similar to those identified when considering law student performance: Success for All, The Comer Process, and the work of Anthony Alvarado.33

The primary focus of Success for All is to engage each student early in their educational history. Starting with preschool and kindergarten,

33 See Making Schools Work with Hendrick Smith (PBS television broadcast Oct. 5, 2005) (transcript available at http://www.pbs.org/makingschoolswork/atp/transcript.html) [hereinafter Making Schools Work] (providing a profile of several different approaches to school reform at the elementary, middle, and high school levels).
significant reading support is provided through third grade to sensitize the student to learning. Students are grouped by reading level and given individual tutorial support as needed. The primary instruction is group centered. Concepts are reinforced audio-visually and through as many other sensory methods as possible. Most significant of all, teachers denounce traditional excuses offered to substantiate unequal development among minority students. In short, characterizations of students having poor English, English as their second language, or a limited capacity which precludes the professor from presenting information as quickly or completely as one might with white students are all deemed inappropriate for the professor or teacher in this system.

The Comer Process focuses on establishing a culture that will foster student success. The environment must support learning and creativity. Power and control are seen as destructive forces, undermining intellectual growth and inciting conflict. There is an expectation that every student will enjoy a successful learning experience. The learning process is collaborative, involving the active listening of all relevant stakeholders. The goal is to influence conduct and learning; motivating excited students to collaborate responsibly in the learning process.

Respect and trust are essential to the interaction among all of the stakeholders, school

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34 Id.
35 Id. (explaining that such sensitizing occurs by “carefully construct[ing] the learning sequence to build students’ skills”).
36 Id.
37 See id. (“The details were engineered to keep children engaged, with their minds turned on. One way is to keep teach fast-paced.”).
38 Id. (“One of the things that we’re trying to build in our Success for All programs is to have many pathways for children to learn the content that they’re being taught. You learn best if you’ve learned the same idea... through your ears, through your eyes, through your senses. And you’re much more likely to be able to recall it and to be automatic, than if you only had it one way.”)
39 See id.
40 See id. (explaining that the system in the focus and teachers have only “90 minutes times 180 days to have kids really learn to read in a given year. You can’t waste a moment of that.”).
41 See James P. Comer, Schools That Develop Children, AM. PROSPECT, April 2001, at 1, available at http://www.prospect.org/cs/articles?article=schools_that_develop_children (“We will be able to create a successful system of education nationwide only when we base everything we do on what is known about how children and youths develop and learn.”).
42 See id. (arguing that the optimal way schools function is in a culture of mutual respect and collaboration created and bolstered by programs that support student development and learning).
43 See id. (concluding that if “we continue to be guided by tradition ideology, and power, we will reach a point of no return”).
44 See id. (describing a visit to an elementary school where the kids were “lively, spontaneous, and engaged in their work at appropriate times”).
45 See id. (noting that “[c]ommittees, operations, and guidelines help schools create a culture of mutual respect and collaboration as well as social and academic programs that enable them to support students’ development and learning”).
46 See id. (stating that this culture will allow students to develop and learn).
administrators and faculty, parents, children, and community supports engaged in the learning enterprise.\textsuperscript{47}

The Knowledge Is Power Program is grounded in the belief that all students are worthy of the considerable effort needed to support success.\textsuperscript{48} All can learn, and teaching should advance students from recognition of their own potential to learn through the actual process of learning.\textsuperscript{49} Students acquire the desire, discipline and determination essential to individual success and to supporting the success of others.\textsuperscript{50} Learning is active and encouraged to progress in a public environment.\textsuperscript{51} Energy and creativity are critical to the operation and success of this model. Faculty are encouraged to motivate students through close personal relationships.\textsuperscript{52} Students in this program develop extensive vocabulary, comprehension, improved reading skills, and confidence.\textsuperscript{53}

Finally, Anthony Alvarado, a former public official in the New York City School System, reformed the New York system by focusing first on the knowledge, skills, and talent of teachers, and then on the students' contributions to their own learning.\textsuperscript{54} In this system, the quality of the educational leadership is believed to influence the quality of learning.\textsuperscript{55} There is active teacher training, practice of the concepts taught, and individual coaching to cultivate teaching skill.\textsuperscript{56} Teachers acknowledge the gap between their understanding and the expertise required to advance their students.\textsuperscript{57} Teachers agree that experience, structure, and knowledge produce good teaching and that students learn where there is high quality

\textsuperscript{47} Id. (noting that good adult relationships can lead to good student relationships).
\textsuperscript{49} See id. (stating that the "KIPP schools are open-enrollment schools where students develop the knowledge, skills, and character needed to succeed in top-quality high schools, colleges, and the competitive world beyond").
\textsuperscript{50} See Making Schools Work, supra note 33 (describing KIPP's method of "Kippnotizing" the children in its school so that they will buy into the principles of the program).
\textsuperscript{51} See id.
\textsuperscript{52} See id. (noting that the teachers also must sign a contract of commitment).
\textsuperscript{53} See id.
\textsuperscript{54} See id. (explaining the program's "very simple theory: Kids learn from teachers. If the kids need to learn more and more powerfully, then teachers need to know more and their teaching has to be more powerful").
\textsuperscript{55} See id. (noting that the "number one priority was to improve the performance of students through the learning of teachers and the learning of their leaders").
\textsuperscript{56} See id. (discussing that coaching teachers was a "big part" of school reform, thus peer coaches were selected to help train their colleagues).
\textsuperscript{57} Id. ("Professional development is the life's blood of all of teaching and learning. It's how we learn. It's how we keep learning. It's how we add to our store of knowledge.").
teaching.\textsuperscript{58} No one educator has the sole responsibility for student mastery of a given subject.\textsuperscript{59} Each class affords the student a further opportunity to master the complement of material contained in the curriculum.\textsuperscript{60}

In all programs students are encouraged to talk aloud, respond to questions, and pose questions. Group study is also encouraged on a constant basis, and as a result, students often overcome their lack of trust for teachers.\textsuperscript{61} Teacher accountability is high.\textsuperscript{62} Teaching plans and methodology are adjusted to meet student needs.\textsuperscript{63} Failure is an opportunity for further learning for both the teacher and the student.\textsuperscript{64} Data are used to improve student performance.\textsuperscript{65} Materials and community involvement are coordinated to enhance student learning, and teachers are encouraged to make timely requests for supplemental materials needed to advance the learning of complex subjects.\textsuperscript{66}

In addition to those three programs, I have also considered the characteristics and performance of historically black colleges and universities (HBCUs) and land grants. HBCUs provided blacks with access to higher education when segregation precluded attendance at white institutions.\textsuperscript{67} While blacks now matriculate at colleges and universities throughout the nation, HBCUs continue to enroll and graduate significant numbers of blacks. When surveyed about the quality of their academic experience, alumni and matriculating students describe a level of institutional support that is internalized as commitment to their individual success.\textsuperscript{68} Students persist through their education with a level of self-

\textsuperscript{58} See id. ("[A]ll children can learn, if adults provide high quality instruction.").
\textsuperscript{59} See id. (revealing one teacher’s experience of feeling intimidated by having to share her classroom with someone else, but learning to love it, because the principal “made a really big deal about teachers learning from each other”).
\textsuperscript{60} See id. (stressing that in the KIPP program, teachers want kids to be active learners).
\textsuperscript{61} Id. (stating that one of the main ways to engage with students is by “[i]nviting the kids to talk, to respond, to come up with questions, to actually have some ideas about what they were listening to”).
\textsuperscript{62} See id. (acknowledging that tests aren’t really about grading students, but about checking on teachers and how well they are doing).
\textsuperscript{63} See id. (discussing a teacher’s observation that test scores allow her “regroup” and find ways to improve her teaching).
\textsuperscript{64} See id. ("Kids lives and their academic success depends on our ability to be fluid and dynamic and to be able to be responsive to their success or their failure.").
\textsuperscript{65} See id. (recognizing that data was “the most important aspect” of reforming a North Carolina school district, because it was the way to identify problems and successes).
\textsuperscript{66} See id. (observing that in order to be successful with a particular teaching strategy, one must determine what materials and supporting materials teachers need to effectively carry out the strategy).
\textsuperscript{67} Ella Pearson Mitchell, Du Bois’s Dilemma and African American Adaptiveness, in LURE AND LOATHING: ESSAYS ON RACE, IDENTITY, AND AMBIVALENCE OF ASSIMILATION 266, 267 (1993). Even desegregated institutions of higher learning are described as having “miseducated” African American students in the supremacy of Western culture by imparting a sense of ethnic inferiority to even their best students. Id.
\textsuperscript{68} Id. ("[A]cademic choices of African American students today would suggest that the personal
confidence and pride that fuels the active pursuit of excellence. Unlike predominantly white institutions, faculty and other authority figures were overwhelmingly black; they modeled professional decorum and positive interaction with the community. In addition to the individual nurture received, institutional life afforded alumni the opportunity to share in thoughtful, cooperative efforts to address the breadth of problems challenging the life and survival of black and other under-represented people in America.

In addition to education and a fortified sense of self, HBCUs prepare students to engage in every aspect of professional life, pursue their economic advancement, and generally participate in the full promise of American citizenship. There is great expectation and celebration of each student’s success. Each student’s accomplishment is seen as a facet of the institution’s legacy.

C. Changing the Thinking of the Professor, Students, and Others

“Without a vision, the people perish.”

The philosophical and practical underpinnings of educational traditions and programming described above served as a background against which to consider my approach to law school teaching. An expanded vision of what could be accomplished in the classroom necessitated an assessment of my own perspective of teaching, social justice, and the adjustments that new teaching goals implicated. Upon concluding that review process, I determined that my work in the classroom would require the use of different teaching materials, efforts to ensure the existence of a safe and engaging learning environment, and a range of evaluative tools to test and reinforce the skills and information destined to become the course content.

I have observed that institutional culture influences what it means to be successful as a law student. The challenge became assisting the student to adjust expectation to include the broadest possible opportunity for growth. Even in our special mission law schools, faculty, administrators, and other grounding offered in the best of the predominantly ‘black’ schools is far more important than any other value to be gained, for instance, in Ivy League schools”).

Id. at 267–68 (observing that it is common for those with black college psychic nourishment and ethnic formation to become leaders, and noting that “one is not likely to be a leader even in one’s own sight when one has been nourished only in an atmosphere of hostility, or of limited acceptance at best”).

Id. at 267 (explaining that students are “free to focus on the best of their own culture”).

Id. at 270 (“Even in a position of being oppressed, it is in fact unquestionably advantageous to have access to and become competent in two or more ethnic groups and cultures.”).

Proverbs 29:18.
students have and project expectations associated with the potential of individual students. These assessments result from the Law School Admission Test, the student’s undergraduate grade point average (UGPA), law school grades, class, gender, race, or other opinions or biases. Those notions are communicated consciously or unconsciously in efforts to encourage pursuit of excellence, favorable public image, or standing in the professional community. Thus the communication of high expectations for student success is not internalized as the same message by all recipients.

My revived notion of quality teaching added the bolstering of student confidence and commitment to hard work as priorities. Teaching and learning to function from a perspective other than one that maintains disparity in social groups was a second priority. While it would be extraordinary to approach instruction from this perspective across the curriculum, it has been useful, even if only on a course-by-course basis. Because social justice and legal representation of under-represented communities are so closely associated with the law school’s mission, I believe that it is important to challenge the notion of justice that the students bring to their studies based on their previous formal study and personal experiences.

Any action that does not actively contribute to ending inequality supports it. Transformation or change happens when the former order is resisted and actively replaced with conduct directed towards equality, real change in the quality and experience of life. In short, it is not enough to highlight system flaws and teach the black letter law. Learning should provide the opportunity to examine behavior and the resulting violence to those experiencing inequality. The inclusion of history and detailed information about oppression helps to motivate pursuit of and adaption to a more humane approach to applying legal principles and social change. To approach such an undertaking with any expectation of positive outcome necessitates careful attention. The classroom environment is also a concern.

73 See Schau, supra note 25, at 10-11 (discussing the importance of being aware of under-represented and dispossessed).
74 See Paulo Freire, Pedagogy of the Oppressed 34 (Myra Bergman Ramos, trans., Herder and Herder 1970) (“The oppressed can overcome the contradiction in which they are caught only when this perception enlists them in the struggle to free themselves.”).
75 Id. at 35.
76 See id. at 39.
77 See id. at 40-41 (“Violence is initiated by those who oppress, who exploit, who fail to recognize others as persons—not by those who are oppressed, exploited, and unrecognized.”).
78 See id. at 41 (“It is not those whose humanity is denied them who negate man, but those who denied that humanity (thus negating their own as well).”)

D. Creating a Healthy Learning Environment

"[T]ransform the atmosphere in the mines as well as the miners themselves."\(^79\)

The classroom is intended to be a place for informative exchange and exploration. Doubt and conjecture may be exchanged for clarification and a systematic approach to learning. It is the place where students test their understanding of the substantive law and their developing skills. It must be safe and open for respectful, candid exchange with professor and colleagues. Each student must be held accountable to maintain an atmosphere of respect and openness. The study of oppression that includes class, gender, and race is essential to the work and living experiences of any professional and client.\(^80\) Because the discussion of oppression often triggers hostility, fear, or shame, it is important to remain sensitive to the skills and experiences of the students and to persist in keeping communication as barrier-free as possible.

To that end I spend some portion of the first few classes examining our mutual expectation for the course. Each student shares her expectation for the course and describes the nature of the contribution that she will make during the course of the semester. Because student achievement is related to the professor's expectation for success, I set high standards and discuss varied approaches to exceeding the standards. We start out knowing students will be successful because they have the talent and are willing to work diligently. I do not resist any appropriate opportunity to build their confidence and to invite their participation.\(^81\) Each student is encouraged to participate regularly in classroom discussion. Voluntary participation is welcomed. Class assignments provide sufficient occasion for less assertive students to develop the confidence needed to equalize student participation. The consistent, full participation of a class in an open, respectful learning exchange creates an opportunity for each student to learn from different cultural, ethnic, or racial groups.

Our discussion of decorum and professionalism includes a reference to


\(^{80}\) Sandra Bell, Marina Morrow, and Evangelia Tastsoglou, Teaching in Environments of Resistance: Toward a Critical, Feminist, and Antiracist Pedagogy, in Meeting the Challenge: Innovative Feminist Pedagogies in Action 23, 24 (Maralee Mayberry and Ellen Cronan Rose eds., 1999) (discussing the importance of "the values and principles of a critical, feminist, and antiracist pedagogy in our respective teaching environments.").

\(^{81}\) See RAE, supra note 29, at 70-71 (explaining the need for teachers to understand how each student learns and to enable and encourage each student to participate in the classroom).
local voluntary standards of civility. Students receive a copy of the District of Columbia’s Voluntary Standards on Civility, and we review the concerns that led to the promulgation of comparable standards in other jurisdictions. Case and course content require dedication on the part of professor and students and yield valuable professional and personal life skills.

Students receive group project assignments and are counseled to study in small groups regularly. They are also encouraged to take advantage of office hours. I invite individual students and study groups to discuss and solve unresolved questions or to review basic materials with me outside of class as the course progresses. For any student reluctant to engage the professor in class, these sessions provide a further opportunity for the student to gain confidence discussing the law with others. These students often question the benefit of a less-than-perfect exchange in front of colleagues who appear to have better command of the material. Students may also submit written responses to sample problems.

II. CURRICULUM BUILDING BLOCKS

A. Inequality: Discussion of Class, Gender and Race

How do we define inequality? Is the definition too narrow? What are the power implications of the definition we rehearse? Does the work we undertake expose the critical, intellectually challenging opportunity to make unique, system-altering contributions—reforming life experience and the systems influencing justice, as well as daily life for the disadvantaged and under-represented?

Class, gender, and race are fundamental to understanding social organization. For lawyers-in-training, I believe it is helpful to explore these forms of social stratification and oppression. Oppression involves a power dynamic between at least two groups. This context focuses on the exploitation and subordination of one group to the advantage of another.

83 See Susanne Bohmer & Joyce L. Briggs, Teaching Privileged Students About Gender, Race, And Class Oppression, 19 TEACHING SOC. 154, 154 (1991) (discussing oppression in the context of gender, race, and class as aids to teaching an introductory psychology course).
84 See id. at 155 (defining oppression as “those attitudes, behaviors, and pervasive and systematic social arrangements by which members of one group are exploited and subordinated while members of another group are granted privileges.”).
85 See id.
The study of oppression encourages the student to examine institutional and individual "attitudes, behaviors, and pervasive and systematic social arrangements" that affect every member of the society.\textsuperscript{86}

It is important to document the systematic nature of oppression and how the power dynamic, whether premised on class, gender, or race, can be detected in all of the society's institutions.\textsuperscript{87} This approach allows students to explore the nature of inequality in terms that reflect the connections and experiences of every student without invoking guilt, anger, blame, or shame.\textsuperscript{88} It is helpful to explore where the power resides and how it is utilized to control expectations, economic well-being, and access to health, education, and other services. It is, hopefully, through this more complete discussion of social injustice that students become aware of opportunities to engage in activity and collaborations that translate into solutions—transformation in the nature of justice available in the society at large.\textsuperscript{89}

Traditional approaches to teaching law and exhorting notions of social justice permit the status quo to stand.\textsuperscript{90} As long as the power dynamic remains unchanged, the power balance is distorted against the interests of nonwhites and other under-represented individuals.\textsuperscript{91} The concerns of nonwhites, if addressed at all, receive priority for resolution consistent with the comfort, care, and protection of those advantaged by oppression.\textsuperscript{92} The selective presence of limited numbers of nonwhites provides little beyond an illusion of change.\textsuperscript{93} Access and a neutered presence do not eliminate inequality.\textsuperscript{94} The presence of a chosen few may distract attention and dilute

\textsuperscript{86} Id.

\textsuperscript{87} See id. at 156 (stating that discussion with students about the "pervasive and systematic nature of the social arrangements that characterize oppression at an institutional level" is one way to address oppression in the classroom).

\textsuperscript{88} Id. at 157.

\textsuperscript{89} It is my belief that this approach creates a space for the contribution and experience of each student. It provides language and structure for an informed exchange and learning challenge to students thinking about client service requirements in the curriculum. Transformed thinking is a predicate to shifts in attitudes, behaviors, and social system modification capable of affecting the balance and exercise of our oppression. Individuals must see themselves as capable and duty bound to make such contributions to individuals, communities, and social groups. See Betancourt & Lopez, supra note 8, at 629.

\textsuperscript{90} See GUINIER & TORRES, supra note 79, at 121-26 (discussing the difficulties of overcoming the conventions of "zero-sum power").

\textsuperscript{91} Id. at 121 (explaining that generally, when an outsider becomes an insider in the legal context, "[a]ll the efforts of newcomers to think and act independently are slowly constrained by increasingly limited choices and the pressure exerted by those most invested in their producing certain outcomes").

\textsuperscript{92} Id. at 121-26.

\textsuperscript{93} Id. at 122 (asserting that an "outsider," such as a nonwhite in the legal profession, that becomes an "insider" "need[s] an alternative or independent source of power" or else he will not be able to "retain [his] critical double consciousness as [he] exercise[s] power or authority within the status quo").

\textsuperscript{94} Id. at 125 ("I{nfiltrating hierarchy in order to redistribute power usually will not succeed unless the new insider has an energized or powerful base of outsiders as support.").
effort critical to ending inequality. As long as there is a nonwhite presence and no transformation in thinking and action, it would not be difficult to equate the lack of change with the inadequate, underwhelming performance of the limited nonwhites present in the institution.

My goal is to incorporate the study of social justice and oppression into the fabric of any substantive course that I teach. Through this approach I hope to contribute to the thinking and conduct of the next generation of lawyers and to remain personally accountable for the experience of others in our legal system. Accountability for the professor must continue to include self-examination. Exaggerated notions of self-importance, entitlement, self-imposed subordination must be identified and bled from the line, as inequality in any form impairs the effectiveness of even so-called progressive legal education circles.

B. The Selection of Text and Supplemental Study Materials

"History can become a basis for self-criticism, a basis for self-understanding, and more importantly, the basis for the understanding of the motives and the psychology of others." The selection of an appropriate text is complicated by the range of materials needed to support course teaching objectives. The first requirement is effective coverage of core concepts associated with each subject area. Cases of varying complexity, model codes, restatements, and other forms of authority must support mastery of the substantive law and the discussion of oppression previously described. The text should also include problems that address relevant ethical concerns and provide the student opportunity for self-evaluation on the subject matter.

The text is further supplemented with legal historical information, appropriate law reviews, and social science materials. While each member of the class receives a copy of all assigned supplemental readings and is responsible for reading the material, three to four randomly selected students form an “expert group.” Each group presents an assigned article and facilitates the incorporation of the supplemental reading into the class

95 Id. at 123 (using environmentalists who became members of President Clinton’s administration as an example of the difficulties outsiders often face when then become “insiders” and try to implement change).
96 Id. at 121-26.
97 See generally FREIRE, supra note 74, at 61-65 (explaining the importance of self-examination).
98 The notion that there is quotient of “white gray matter” needed to make a class competitive, educable or that organizational effectiveness and survival is so determined persi.:s in the conscious and unconscious operation of the educational continuum.
99 WILSON, supra note 20, at 18.
discussion. Group assignments provide legal research and writing opportunities. To the extent possible, I avoid materials broadly supported by canned briefs or outlines. My overall objective is to select materials that provide strong-foundational support for learning relevant legal concepts and understanding how lawyers perform their work. Group assignments encourage self- and peer-testing of their general comprehension and ability to solve relevant contemporary problems. These activities are user-friendly for diverse learners and provide broader opportunities for all students to demonstrate growth and seek assistance as needed.

C. Contrary Voices

Anticipating likely challenges permits the educator to expand the range and complexity of learning exercises developed for each class. Without exception, the study or discussion of racial inequality stimulates student discomfort and negative reaction. Even verbatim passages from court opinions and historical documents can provoke hostile comments and efforts to avoid the discussion. Thoughtful sequencing of material and the opportunity to look at varying forms of oppression are essential to minimizing unproductive hostility. Learning about injustice is not a blame-fixing exercise to be feared or resisted. While education has too often missed the mark, law students and faculty are accountable to a different standard. In no other area of law is it acceptable to argue without knowledge of or ignorant to the law or truth. This uncomfortable conversation is directed at developing capacity to repair systemic problems that have resulted in harmful group subordination.

Psychologists have offered several theories to explain the slow-changing tide of white attitudes towards race in American society. The “realist threat theory” suggests that change in the social, political, and economic position of blacks in society threatens the “whites’ private lives.” To the extent that such a change would influence or result in a diminution in the advantage enjoyed by whites, progressive racial attitudes and social changes would pose a real threat to whites. Symbolic racism, on the other hand, emanates from beliefs held by whites about blacks. Because

101 Kinder & Sears, supra note 4, at 414.
102 See id. at 415 (asserting that the more that blacks compete for scarce resources, the more whites will resist).
103 See id. at 414 (stating that “a sociocultural theory of prejudice termed symbolic racism, [] emphasizes abstract, moralistic resentments of blacks, presumably traceable to preadult socialization.”).
blacks are believed to be dependent, undisciplined, and welfare cheats without a strong work ethic, those holding such negative beliefs about blacks conclude that blacks are unworthy of adjustment in social, political, and economic status that they seek.\footnote{See id. at 416 (explaining symbolic racism).} Lastly, there is the belief that segregation, established and maintained through residential discrimination, has forged two separate nations.\footnote{See, e.g., DOUGLASS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID 4, 4 (1993) (discussing the chance of a permanent division of the country into two societies).} Individual behavior, racist attitudes and the residential disenfranchisement of blacks contributed to an aggressive and malignant form of social, economic, and political isolation that has metastasized nationally.\footnote{See id. at 6 ("Black disadvantages were attributed not to a defective culture but to the persistence of institutional racism in the United States.").} Blacks are disadvantaged, ravaged outside of the sight and understanding of whites.\footnote{See id (explaining that deeply-imbedded racism within American institutions has kept blacks largely poor and dependent).} This permits stereotypes and white resistance to desegregation to persist without overt exhibition of racial hatred or culpability for the devastation experienced by blacks.\footnote{See id at 4-7.}

Student hostility often manifests as a challenge to a minority teacher's competence and authority and intolerance for the discussion of minority community perceptions. That student then resists participation in class discussion about the value of under-represented communities. Helping students to participate positively in learning activities is the starting point. Overcoming common social discomfort with race and minority authority figures cannot be addressed without active engagement.\footnote{While the nation celebrates the election of Barack Obama as the 44th President of the United States, we are not yet in a position to evaluate whether minority professionals will enjoy improved status and cooperation in the execution of their daily duties consistent with the hope and good will extended towards President Obama.} The institution's challenge is similar to that posed by student-related considerations.

**D. Evaluation**

The learning environment must support the frequent testing of student comprehension. While law schools frequently test at the end of semester, increasing student opportunity to strengthen discrete skills supports student excellence. Trust in the motives and availability of the professor is essential to motivating student interest in a frequent assessment process. I remind students that each opportunity to improve analytical, legal writing, and exam-taking skills and eliminate information gaps is valuable. It is important to help students identified as under-performers or at-risk to avoid
the powerless place that the profession reserves for under-performance. Knowledge empowers and positions the successful student to reform the very legal system that expected their failure.  

Technology is available to support frequent assessment. A diverse testing format may be used to establish whether the student’s difficulty is skill or information based. It also gives the student an opportunity to enjoy some measure of success while resolving skill or information deficits. Students should come to expect frequent assessment and clear documentation of problems noted in their test performance. In the best of all circumstances, students should have sufficient information to correct the initial performance and to test their comprehension or skill on a new problem set. Student skill with and comprehension of the substantive law should be evaluated frequently. Feedback and the opportunity for reevaluation support the efforts and confidence of motivated students. Course content and effectiveness in teaching can be improved in tandem with building student exam taking abilities and mastery of the black letter law.

III. BUILDING ON RESPONSES TO A NONTRADITIONAL APPROACH

A. Student Response to the Study of Equality

While student responses to nontraditional curricula and teaching methodologies have varied, their responses have been similar to those observed in other classrooms, irrespective of discipline. Some responded negatively to any discussion of race in relation to property law. They failed to see any connection between race and the substantive law. Race is not a subject tested on the Bar Exam, and there is no practice-related skill that can result from learning about race. Among the students, some refused to complete individual or group reading and other assignments; others stayed away from class. Some directed verbal hostilities towards the professor, nonwhite teaching assistants, and their nonwhite colleagues.

110 See FREIRE, supra note 74, at 61-65 (describing the active process that a peasant, or student, must take to make the most of learning from his or her boss, or professor, and how believing in one’s own knowledge, along with not being afraid to share such knowledge, fits in to such a process).
111 The property law textbook I used with the students examined Supreme Court precedent regarding Native American land claims, personhood, and property, racially restrictive covenants, and other manifestations of property-related discrimination.
112 See Glen, supra note 1, at 1710-12 (explaining that it is both easier and cheaper for law schools to focus on bar preparation than to teach lawyering skills, and acknowledging that the New York bar exam has a disparate impact on minorities who take the test, delaying and often denying their admission to the bar).
irrespective of their registration in the class. On at least one occasion, white students conducted a pre-start-of class interview to determine the breadth of my teaching experience and justification for the choice of text.

Students react to accounts of history and law-inspired conduct that contradict the better traditions associated with what they believe to be the legacy of American democracy. There is general ignorance, or a refusal to acknowledge that communities of color experience disproportionate outcomes where services and supports vary according to race. The current economic downturn is cited as proof that whites and blacks face home foreclosure, bankruptcy, job loss, and other aspects of American life equally. That small group of students resisted assignments and any approach to learning that they deemed to lack value. They also voiced concern that their performance—grade point average—could be affected by material they believe to be insignificant.

I have concluded from the instances detailed above that the students resisted what they feared would be presented. Some quickly spoke about prejudice and the inability to control others. Some reflected a belief that nonwhites had exploited race to gain advantage where they were clearly incompetent. Any challenge to the position of earned consideration that whites might enjoy should not be questioned. In their experience nonwhites were not authority figures, role models, or professors in professional schools. Noncompliance with course requirements or institutional policy and verbal hostility evidenced conscious or unconscious decisions to embrace familiar roles, group status, and benefits.

Students of color have generally participated actively in these classes, observing proper decorum. In some instances their sharing helped to focus attention on how the oppression is internalized in nonwhite communities and redirected against community members. In the two semesters when white student resistance was most apparent, their disrespect was directed towards nonwhite students and teaching support staff. The larger number of white students have listened and asked questions. Exchanges have improved over time with most students demonstrating respect, even when disagreeing.

113 See Kinder & Sears, supra note 4, at 416 (stating that a type of racism called symbolic racism evidences itself when whites express disdain for government programs designed to help disadvantaged blacks, such as welfare and mandating racial quotas).

114 See Mazzocco et al., supra note 7, at 264 (noting that when one's place in society is seen as a reflection of work ethic, many social disparities can be justified).
B. The Role of Institutional Support

Knowledge emanates from the perspective of the persons or group generating the knowledge. White males have established hegemony over the world’s political economy. White racial superiority and maleness are the values which have justified and supported the political and economic market place. Psychologists explore the use of values, customs, or tradition instead of race or racial group description in their effort to understand how race influences psychological phenomena. The value of certain research is limited to reinforcing stereotypes or the myth that the influence of race has been measured or explained. Ideological bias provides the backdrop against which scholarly inquiry unfolds. It is not surprising that so little progress has been made in the academy.

Educational institutions and the processes that determine their admission and classroom functions are all influenced by attitudes, conduct, and power relationships that perpetuate inequality along class, gender, and racial lines. The failure to address inequality assures its existence. While there are a number of civil rights courses offered in the curriculum here at the law school, the overwhelming majority of our graduates matriculate without examining the nature of oppression and gaining a perspective on addressing the effect of continuing oppression on critical social institutions. Because class, gender, and race are not raised in a coherent fashion across the curriculum, the effectiveness of courses that address oppression is

115 See Halford H. Fairchild, Scientific Racism: The Cloak of Objectivity, 47 J. SOC. ISSUES 3, 110 (1991) (explaining that when considering social science knowledge, similar to knowledge of any subject, the perspective of whomever is generating the knowledge is important).

116 See id. (noting the extent to which white males control the world’s political economy).

117 See id. (stating that theories put forth by white males have provided ample justification for the continuance of their political and material control and influence).

118 See Helms, Jernigan, & Mascher, supra note 31, at 27-32 (describing a methodological critique of the use of racial categories as independent variables in psychological theory and research).

119 See id. at 27 (stating that psychologists have long challenged the scientific merit of using race as an explanatory construct in psychological studies due to there being no uniform meaning for race).

120 See id. at 29 (noting that researchers’ implicit beliefs about the meaning of race tend to serve as the operational definitions of racial categories).

121 See Fairchild, supra note 115, at 110 (arguing that the social sciences have not yet discovered a way to incorporate the exploitation and subjugation of minorities throughout history into empirical studies).

122 See Vincent J. Roscigno, Race and the Reproduction of Educational Disadvantage, 76 SOC. FORCES 1033, 1034-1035 (1998) (stating that there is a line of research indicating that the institution of education has perpetuated already existent societal inequalities).

123 Betsy Lucal, Oppression and Privilege: Towards A Relational Conceptualization of Race, 24 TEACHING. SOC. 245, 249 (1996) (discussing that failing to address inequalities will only perpetuate its existence); see Haider Rizvi, Development: Globalisation Driving Inequality, UN Warns, INTER PRESS SERVICE NEWS AGENCY, Aug. 25, 2005, available at http://ipsnews.net/news.asp?idnews=30029 (stating that failure to address inequality and social injustice will lead to further instability).
While law school faculties, which are predominantly white, do not determine bar passage scores or whether the LSAT score is universally applied, they do determine admission criteria, curricula, and the size of entry classes in their respective institutions. Given the rate of nonwhite enrollment nationally, it is difficult to conclude that law school faculties have confronted reducing the under-representation of nonwhites in law school with any real commitment to transforming current practices and outcomes.

Black lawyers comprise less than 4 percent of all licensed attorneys. Because white faculty and administrators experience the profession and their respective role in the law school from an advantaged perspective, there is no eminent sense of failed mission or loss when there is under-representation of nonwhites on the faculty or in the student body. It is likely that faculty and administrators could also benefit from a facilitated review of oppression. Like the students, faculty and administrators have lived their lives acculturated to the notion that whiteness is the norm.

Comprehension of and accountability for personal conduct are critical to divesting self and the law school of attitudes and processes that undermine. Glen, supra note 1, at 1737-38 (questioning the bar examination as the only means of admission to the legal profession); see National Education Association, Race and Ethnicity, http://www.nea.org/tools/30417.htm (last visited Aug. 20, 2010) (listing "logical" or "psychological" learning activities to introduce concepts on race and ethnicity).


Kidder, supra note 125, at 559-75 (listing the national minority rate of enrollment in law school); see William Treanor, Deans, Professors Ponder Reasons for Decline in Minority Enrollment, N.Y. L.J., Nov. 14, 2008), available at http://law.fordham.edu/newsroom/9985.htm (discussing the drop in minority enrollment in law schools).

Glen, supra note 1, at 1714 (stating that the percentage of African American lawyers is 3.36%); see Kenneth Mallory, Black Presence in Law Schools Dwindling, CHI. DEFENDER, Aug. 2, 2005, available at www.blackpressusa.com/news/Article.asp?SID=4&Title=Department&NewsID=4559 (noting that African American lawyers make up only 3.9% of the profession).

Lucal, supra note 123, at 245-47 (noting that for most white people, racial privilege is lived but not seen); see Leigh Jones, Minority Enrollment at Law Schools is Faltering, NAT'L L.J., Feb. 6, 2008, available at http://www.law.com/jsp/law/careercenter/lawArticleCareerCenter.jsp?id=1202211781492 (noting that U.S. News & World Report does not include diversity as one of the factors in the rankings and that the publication's director of data research believes that including diversity as a factor would be difficult).

Lucal, supra note 123, at 245-47 (stating that whites are taught not to recognize white privilege); see Peggy McIntosh, White Privilege: Unpacking the Invisible Knapsack INDEP. SCH., Winter 1990, at 31, 31, available at www.case.edu/president/aaction/UnpackingTheKnapsack.pdf (noting that it seems whites are carefully taught not to recognize white privilege).
disadvantage and subordinate nonwhites. In order for the underrepresentation of nonwhites in the student body and faculty to be displaced as a norm, individual thinking and conduct must change. "The liberal theory of right finds success not in Locke or Mill, but in the promulgation and enforcement of the law by which liberal societies are distinctly governed. And so it is with equality... [S]uccess and importance lie... in countless attempts to realize equality in polity, economy, and society." The cultivation of nonwhite leadership and the capacity to control their own destiny is a concern for those who recognize and value those communities. Advantage or privilege perverts perception and compromises sensitivity to nonwhite community needs and the sense of urgency attendant to that need. To the extent that special mission or other institutions reflect the under representation of nonwhites in the faculty and student body common throughout the profession, faculty and administration may doubt or overlook how advantage has obscured mission and the commitment to justice for those groups in their midst. Compensation, meaningful promotion and professional development, and respectful consideration of appropriate input in decision making pose particular challenges in institutions that self identify as mission driven or public interest, where the subordination of nonwhites continues to influence the institution’s power relationships.

Ambiguity or the failure to appreciate that subordination of nonwhites results from the exercise of white privilege elevates inequality to a place of acceptability. Ambiguity and character failure facilitate oppression and unequal treatment. It is important that law faculty and administrators progress towards a new genre of institutional harmony. They can best model professional, collegial exchange among different groups when they actively engage in the use of personal and corporate power to equal advantage and sacrifice within the systems that determine the law school and profession.

130 Lucal, supra note 123, at 245-47 (defining oppression as social attitudes and behaviors that advantage one group while disadvantaging another); see Bohmer & Briggs, supra note 83, at 155 (defining oppression as social arrangements by which one group is exploited while another is privileged).


132 Rae, supra note 29, at 1 (stating that equality can be achieved with insistent demand).
C. External Influences: Gatekeepers et al.

From kindergarten to bar admission, a student acquires credentials that attest to competence sufficient to progress to the next level of education. At each level credentials issue as a consequence of performance on standardized tests. Comparison of African-American and white scores on these tests reveal significant gaps without exception.

At the high school level, there is a larger gap between standardized test scores than between academic grades within the same school. Differences between General Aptitude Test Battery scores are double the observed differences in job performance. Gaps in SAT scores are larger than the gap in high school grades for the two groups.

State bar examiners stand between a law graduate and his or her entrance into the profession. Bar examiners filter the concerns of the consumer and professional community with regard to determining entry or release into active practice (e.g., the size of the labor force available to service the legal services need of the jurisdiction) and oversight of misconduct. While these are necessary functions that support the availability of a reliable legal service capacity, professional organizations also perform roles unrelated to competency.

The control exerted over access to the group, unrelated to competence, is known as social closure. To the extent that bar admission criteria are
manipulated to control the size of the labor pool and the potential earning capacity of all lawyers generally, it is an exercise in exclusionary closure. The type of practice that a lawyer undertakes will determine his or her status within the profession. Lawyers who represent large businesses and the government typically have greater status than those who represent individuals, and they have used that influence to constrict entry into the profession for others. While such an exercise of social control may not be directed consciously against nonwhites, it is unlikely that a system designed to restrict access will either favor those previously disadvantaged or atone for inequity elsewhere in the pipeline without prompting.

The misuse or abuse of numerical indicators affects the validity of the measure. Each indicator has limited applicability. The LSAT measures reading and verbal reasoning skills. These skills appear to correlate to academic success in the first year of law school. Use beyond the intended purpose can produce a distorted outcome. UGPA reflects the influence of several factors. Rigor of the course, student motivation, and leniency in grading all contribute to UGPA. When LSAT and UGPA are used together, validity is affected. Use of an indicator that has such tradition of sociology, referring to the action of certain social groups that “maximize their own advantage by restricting access to rewards ... to their members”).

Id. at 548-49 (defining the “exclusionary closure” as “a dominant group’s strategy for securing or protecting benefits by closing off opportunities”).

Id. at 555 (noting that there is an overcrowding issue reflecting attempts by elite lawyers to use status closure within the legal profession).

Id. at 560 (contrasting the “social universe” that lawyers representing individuals live in, against the world-view of lawyers representing businesses and the government).

Id. at 548, 566 (discussing the “accumulated educational deficit” reflected by the bar exam).

Linda Wightman, The Threat To Diversity In Legal Education: An Empirical Analysis Of The Consequences of Abandoning Race As A Factor In Law School Admissions Decisions, 72 N.Y.U. L. REV. 1, 29 (1997) (noting that it is not necessary to argue that the LSAT is “invalid or a biased predictor” against members of certain groups in order to establish that the test is “misuse[d]” and “overuse[d]”).

Id. (explaining that the LSAT has a “clearly defined, narrow focus”).

Id. (noting that a law school’s use of the LSAT to measure a prospective student’s first year performance damages the test’s validity).

Id. at 31 (discussing how the usual procedure for establishing the validity of the LSAT is to obtain evidence of a relationship between the LSAT and academic performance in the first year of law school).

Id. (indicating that the LSAT has limitations and that data regarding the test must be viewed in the scope of those limitations).

Id. (highlighting the limitations associated with the UGPA including the influence of factors such as leniency of graders, rigor of curriculum represented by the grades, and students’ motivation and application).

Id. The LSAT, when coupled with the limitations affecting the undergraduate grade point average, cannot serve the purpose of being the sole determinant in the allocation of limited educational opportunity. Id.

Id. (“Concerns about validity of the LSAT or the LSAT and UGPA used in combination are
narrow applicability to determine access to limited educational opportunity is inappropriate.\textsuperscript{154}

The NCBE and board of bar examiners for the several states maintain that the bar exam does not unfairly disadvantage African Americans and other people of color.\textsuperscript{155} Disparity in bar pass rates is explained as a reflection of the gap in law school grades.\textsuperscript{156} LSAT/UGPA index scores have no significant positive correlation with indicators of professional success, including income, career satisfaction, or service contributions.\textsuperscript{157} There is no acknowledgment that grading, like any other social process, reflects bias. The Federal Trade Commission (FTC) developed and administered alternative accomplishment inventories in an effort to establish selection and promotion criteria for attorneys reflective of the actual skills and experience required.\textsuperscript{158} The inventories, most like the standardized tests administered along the pipeline, were predictively invalid.\textsuperscript{159} To date there is too little support and too little effort on the part of gatekeepers to reduce and eliminate even the appearance of disparity. Their respective certifications have become credential-like merit badges symbolizing entitlement.\textsuperscript{160}

\textit{D. Research and Statistics}

Inadequate analysis will produce unreliable results.\textsuperscript{161} "African Americans at first-tier schools graduate and pass the bar at higher rates than

often the result of misunderstanding or confusion between the scientific definition of validity in test theory and the lay interpretation of validity.").

\textsuperscript{154} Id. at 30-31 (explaining how the LSAT, although it adequately measures a narrow but important range of acquired academic skills, cannot be the sole determinant of success or skill).

\textsuperscript{155} Kidder, supra note 125, at 578 ("NCBE's argument - dismissing the racially discriminatory impact of the bar exam by controlling for law school grades - resembles the claim that evidence of employment discrimination against minorities is rebutted by 'controlling' for workers' standardized test scores.").

\textsuperscript{156} Id. (commenting that race and ethnicity cannot be easily isolated as the residual influence left after accounting for law school grades, and that attempts to justify the bar exam because it displays the same magnitude of disparities as law school grades is tautological).

\textsuperscript{157} Id. at 580 (explaining the findings of an academic study focused on University of Michigan Law School alumni).

\textsuperscript{158} Id. (noting that the inventory used by the FTC was at least modestly predictive of lawyer job performance).

\textsuperscript{159} Id. ("[T]he agency's accomplishment-record inventory had zero correlation with bar exam performance, LSAT scores, law school grades, and law review membership, while it did correlate somewhat with self-perceptions of hard work and self-assurance.").

\textsuperscript{160} Id. at 581 (arguing that unacknowledged negative consequences emerge from the use of the bar exam as the gatekeeper of competency to practice law).

African Americans with the same credentials at schools in the lower tiers.”

It is important to identify and resolve the institutional factors that impede nonwhite graduation from law school and success at the bar. The research agenda of public interest institutions must address the failure of the academy, the profession, and its gatekeepers to confront and resolve their collective role in perpetuating under-representation of nonwhite communities in the profession. When the bar pass rate for two minority groups and all non-majority bar applicants has been less than 80 percent of successful white applicants, a presumption of disparate impact arises. The bar examination has never been validated “as manifestly related to employment.” It has been determined statistically that “high stakes, paper and pencil tests . . . unintentionally discriminate[] against African American college students and under-measure[] their actual ability.”

State bar associations persist in either overlooking race or failing to disclose it as a variable in bar passage data collected. NCBE studies have relied upon the work of a single psychometric consultant to demonstrate their contention that the MBE is a fair and appropriate tool to determine qualification to practice law. The MBE “imposes extra burdens” on racial and ethnic minorities in an effort to manage the numbers of lawyers admitted to the profession. In response to lower bar pass rates and the use of first-time bar pass as a significant factor in a law school’s ranking, it is not uncommon to raise the LSAT score and UGPA. Given the disparity in law school admission for nonwhites where LSAT and UGPA control, individual scholars must continue to explore the factors influencing successful law school matriculation and bar passage for this

162 Id. at 1897.
163 Ian Ayres & Richard Brooks, Does Affirmative Action Reduce The Number of Black Lawyers?, 57 STAN. L. REV., 1807, 1854 (2005) (asserting that responsible educators should not ignore racial disparity data existent in the legal profession).
164 Glen, supra note 1, at 1717 (describing Equal Employment Opportunity Commission specifications for when to draw a disparate impact presumption).
165 Id. at 1717–18.
166 Id. at 1715.
167 See id. at 1712 (asserting that most states do not use race as a category to organize bar information); Kidder, supra note 125, at 570 (using two states’ Bar Examiner organizations, New York and Florida, to highlight failure to record and release, respectively, racial information).
168 See Kidder, supra note 125, at 566–67 (describing the report of the consultant retained to examine the intersection of race, entrance to law school and success on the bar exam).
169 Id. at 567, 575–76 (relating the National Conference of Bar Examiners’ argument that the Multistate Bar Examination does not exacerbate racial differences in LSAT and LGPAs, and the author’s response that the claims are unpersuasive).
170 Glen, supra note 1 at 1704–05 (highlighting the general practice of law schools’ compensating for the weight of first-time bar passage rates by requiring high LSAT scores at the expense of non-numerical factors).
population. Such information will position law schools, especially special mission entities, to affirmatively address the documented disparity in nonwhites without risking accreditation status or declining admission to people whose assessment, without the LSAT, suggests capacity to succeed in law school and practice. The cost of compensatory measures and further evidence of the limited usefulness of the LSAT in law school admission further challenge the value of retaining the test in its current form and adds further institutional impediments to nonwhite access to law school and the profession.

In the articles that have preceded this work, I have examined whether the public interest and HBCU mission can coexist in a millennium law school. While there are aspects of both perspectives that suggest the potential for productive coexistence, the true test of the potential and power of such a coupling is the extent to which such an institution challenges and disrupts the systems and processes that maintain disadvantage and subordination for nonwhites and other under-represented groups and privilege and domination for whites.

Faculty and administrators must get “involved in overcoming their learned biases.” Their studies must include empirical research to improve our understanding of the factors that promote learning and compensate for the systematic disadvantage occasioned by subordination. The study and modification of classroom and clinical teaching engages willing faculty and administrators in affecting the quality and content of professional and skill orientation for under-represented lawyers-in-training; thereby reordering the power dynamic and resulting system of privilege. The day-to-day operation of such special mission law school programs must routinely contribute to transformation of the profession and those who aspire to serve by becoming individually accountable for their special mission or transformed social justice.

CONCLUSION

Law teaching offers a unique opportunity to influence the quality of justice available in under represented communities. Law faculty determine who will have an opportunity to qualify for entry into the profession. They

171 See id. at 1705 (highlighting that relying on the LSAT may result in overlooking a candidate with an otherwise exceptional profile).


determine admission criteria, the content and quality of the training, and the perspective on how it is that lawyers conceptualize and undertake their work. While any program of lawyer training cultivates awareness of justice and equality, experiences and education influence what equality and justice mean, and what a person will do to extend that equality or justice to others.

The ABA, NCBE, and other professional organizations have conducted research on under-representation of nonwhites in the profession, law school, applicant pools, and various positions that lawyers hold in the workforce. That research acknowledges the value of the profession’s membership reflecting the diversity of the population it serves. It also acknowledges the disparity that continues to distinguish white and nonwhite participation and performance along each phase of the lawyer-production continuum. While reports encourage efforts to ameliorate the outcomes, I believe that too little is done to cultivate the thinking and perspective requisite to change the behavior and policies needed to birth the recommended change.

The study of social stratification and oppression illuminates how group power dynamics serve to advantage or privilege one group and disadvantage or subordinate others. Institutions reflect the power dynamics that create and sustain them. Change has been slow because the same thinking and power dynamic that created and sustain inequality in the larger society fuel under-representation in membership and purpose in the legal profession. While there are committees, unions, associations, and public interest law schools committed to change under-representation in the profession, changed individual thinking and accountability through conduct is needed.

Every course presents the opportunity to incorporate the discussion of oppression as reflected through class, gender, and race. These forms of social stratification are familiar and permit all students to contribute to the study. By associating the benefit with the cost paid and focusing on how systems contribute to the harm and subordination, law students can be empowered to affect the systems supporting injustice and disparity. Although the discussion of race and injustice can be emotionally charged, the coordination of cases and appropriate social science materials in a nurturing learning environment provides the student with insight useful in their professional and private lives.

While the effectiveness of this approach to transforming the systems connected to lawyer training and disparities in the larger society would be enhanced if adopted by complete faculties, associations, unions, and special
mission law schools, individuals in those groups have to disconnect from traditional thinking and be accountable for conduct consistent with changed thinking. Self-analysis, the selection of appropriate course materials, and the creation of a positive study environment are essential first steps. Frequent student evaluation and the opportunity to apply course content further improve the professional skills and knowledge capacity of the course. Students learn the nature of inequality and that conduct and changed perspective affect disparity, not rhetoric. Reviving the role of teacher by being accountable for affecting real life justice from the classroom is both a productive and efficient way to stimulate movement towards the change that will inevitably come.