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Making Traditional Courses More Inclusive: Confessions of an African American Female Professor Who Attempted to Crash All the Barriers at Once

By Angela Mae Kupenda*

"WE MUST DISMANTLE all barriers at once!" "No, go slow!" These were two of the opposing cries heard during the civil rights movement. Some thought the only way to eliminate exclusiveness, based on race and gender, was to dismantle all the barriers all at once. Others thought the costs of such change too great and urged for caution and patience. Even in the 1990s, barriers of exclusiveness continue to exist, even in the law school classroom. Here I share my story of how, as a beginning law school professor, I tried to bring change to the law school classroom. I was motivated by one of my favorite poems where the poet tells of a black and brave, young male soul who also tried to crash all the barriers forcefully, quickly, and at once. The poem applauds the black man who tried to go for a swim on a southern white beach in the nude.¹

Introduction

Many times during my first semester of law school teaching I felt like the young black man in Alice Walker's poem might have felt: obvious,

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1. See Alice Walker, In Search of Our Mothers' Gardens 335 (1983). Unfortunately, the poem could not appear here in the text. Although permission was obtained to print the poem in this journal, permission could not be obtained to reproduce the poem in the essay on microfilm or computerized databases. Please read the complete poem, however, in Walker's book to capture its full meaning and relevance to this essay.
different, challenged, but determined. This essay is my true confessions of how I attempted in my first semester of law school teaching to make a traditional mainstream law school course more inclusive of diversity. Following is the story of the struggles I survived and the lessons I learned as I attempted to crash all barriers of exclusiveness at once.

For my first semester of teaching law school, one of the courses, I was assigned was Contracts I. During the summer before the fall semester, I started to plan and prepare for the course. Seasoned and tenured law professors had advised me to choose a goal for the course and to select goals for each class meeting.

As I reflected on what my goals would be for the course and how I would accomplish them, I thought back to my own experiences as a law student. In law school, I took a significant number of commercial law courses. Frequently I was dismayed, however, as I rarely heard black and female “voices” emanating from the course materials, in the classroom, or from the lectern.

As I reflected on my own experiences, I decided that my “goal” for the semester would be to teach Contracts well and to teach Contracts with an emphasis on inclusiveness and diversity. Soon I realized that I would have to be very creative and sensitive to achieve this goal, as I looked at the makeup of the other first year faculty, as I looked at the small number of minorities in the first year class, and as I looked through the Contracts casebook that I had quickly and somewhat arbitrarily selected (most of the assumed nonwhites mentioned in the cases were portrayed in only a seemingly negative light). I knew I would have to add materials and would have


3. As I write this essay, I am in my second year of teaching law. I have taught Contracts I and II, Constitutional Law, First Amendment, Civil Rights, and Legal Process.

4. Cf. Patricia J. Williams, The Alchemy of Race and Rights 104 (1991) (discussing need to examine how women and nonwhites are omitted from “the literature of the law [and] from the ranks of lawyers”).

5. Cf. id. at 90.

6. Although there are a number of women teaching in the first year at our school, I am the only minority first year professor. We have one other black professor at the law school, a tenured female professor, who teaches second and third year courses.

7. I intentionally do not include the name of the casebook I used here. This essay is not intended as a critique of that author’s work. Rather the goal of this essay is to address the dire need for inclusiveness in legal education as a whole. Cf., e.g., Williams, supra note 4, at 94, 104. Other writers have reviewed, however, specific casebooks and critiqued the books for inclusiveness. See, e.g., Mary Joe Frug, Re-reading Contracts: A Feminist Analysis of a Contracts Casebook, 34 Am. U. L. Rev. 1065 (1985) (analyzing a widely-used first year contracts casebook and analyzing it for sexist and classist language and presentation).
to add emphasis. I also knew that I would have to confront one of my greatest fears: my fear of not being accepted by my students—here manifesting itself as the fear that, being a black woman, my goal of inclusiveness would be read as excluding white males (I was especially concerned considering approximately 65 percent of my students would be male and approximately 60 percent would be white males, possibly many with conservative southern views).

Having confronted my fear, I attempted to identify the barriers of exclusiveness and began to develop my strategy to achieve my goals. This essay is the story of my successes and my disappointments as I attempted to make Contracts more inclusive of diversity by dismantling the barriers in the Contracts physical classroom, in the classroom materials, and in the “classroom of ideas.”

I confess that many times during that first semester I felt like the outsider swimming at the beach in Alice Walker’s poem.\(^8\)

I. Attempting to Crash the Barrier of Exclusiveness in the Physical Classroom

A. Crashing the Barrier by My Physical Presence—Not More Deeply Suntanned—Just Plain Different at the Beach

In my second semester of teaching, a black professor was the guest lecturer at the school’s convocation program. Engrossed in his ideas, I realized that something even more significant was happening. Then it dawned on me that this was the first time that I had ever heard a lecture by an African American law professor, and this first time was happening during my first year of teaching law school. It was encouraging to hear a familiar “voice” and reassuring to see that some of the things I had attempted the previous semester in my Contracts course were not “odd” or “wrong,” but were just different, maybe, from the majority approach.

As he lectured, I further reflected on what the lack of black professors had meant for me as a law student, and for all students past and present. I realized then that my very presence in the classroom was my first step toward crashing a barrier of exclusiveness. My very presence incorporated

8. Others have also written about reshaping traditional law school courses to make them more inclusive. See, e.g., Beverly Horsburgh, Decent and Indecent Proposals in the Law: Reflections on Opening the Contracts Disclosure to Include Outsiders, 1 WM. & MARY J. WOMEN & L. 57, 92 (1994) (concluding that law schools must develop ongoing programs to “educate and sensitize” students and faculty to diversity issues); Judith Resnik, Revising the Canon: Feminist Help in Teaching Procedure, 61 U. CIN. L. REV. 1181 (1993) (discussing the importance of procedure in the struggle to end sex discrimination); Paul M. George & Susan McGlamery, Women and Legal Scholarship: A Bibliography, 77 IOWA L. REV. 87 (1991) (compiling works about women in legal education, the legal profession, and legal scholarship).

9. See WALKER, supra note 1, at 335; cf. WILLIAMS, supra note 4, at 55–56.
race and gender into the Contracts classroom. I thought back to one of my first orientation presentations the first semester when a young white female student excitedly approached me and told me I was her first female professor, ever. Recently two Contracts students, a black female and a black male, told me I am their first black professor, ever.

This invisibility, or rather exclusiveness at the lectern, affects students from both the dominant and the minority cultures. Seeing a minority and female professor benefits minority and/or female students because they possibly see in the professor’s physical presence evidence of possibilities for themselves.\textsuperscript{10} The presence of minority faculty is equally important, though, for those students from the dominant cultures. “[T]hough minority faculty members are generally considered to serve as role models for aspiring minority students, it may well be their impact on white power brokers—present colleagues and future lawyers—may well be their most important contribution.”\textsuperscript{11}

To be frank, though, I was concerned about the “perceptions” of my presence. To my knowledge, I was the first black female professor at my law school to teach first year courses. The fact that many students from the dominant culture had probably never had a female, or black, and certainly not a black female professor caused me to pause. All over the country, white female and nonwhite faculty tell their stories of being perceived as less competent, or out of place, solely because of their race and/or gender.\textsuperscript{12}

\begin{itemize}
\item \textsuperscript{10} \textit{See} Johnetta B. Cole, \textit{Conversations: Straight Talk with America’s Sister President} 20–21 (1993). Professor Cole related:

Years [after my time as a student] as I continue to mentor young African American women anthropologists, I recall that when I was in college and graduate school I did not see myself reflected in the scholars who taught and encouraged me. I had to lean on the works of Zora Neale Hurston and St. Clair Drake to gain what all students surely profit from: evidence that if someone like me has done it, surely so can I!

\textit{Id.} at 43. “Moreover, [a black female student with black female professors] does not have to wonder about her possibility for achieving because someone like her who has achieved is standing before her.” \textit{Id.}

\item \textsuperscript{11} Henry W. McGee, Jr., \textit{Symbol and Substance in the Minority Professoriat’s Future}, 3 Harv. BlackLetter J. 67, 75 (1986).

\item \textsuperscript{12} \textit{See}, e.g., Richard Delgado & Derrick Bell, \textit{Minority Law Professors’ Lives: The Bell Delgado Survey}, 24 Harv. C.R.-C.L. L. Rev. 349 (1989). Professors Delgado and Bell observed:

A respondent, the only black woman teaching at a major southern university, reported that many of the law students had never seen a black woman ‘out of uniform’—outside of domestic service. She said that although she dresses impeccably, visitors to the law school often mistake her for a maid and call spills and messes to her attention.

\end{itemize}
This perception of less competence appears in some students' minds before the minority or white female professor even opens her mouth.¹³

Choosing to make no change in my race and gender (even if I could), I made some peace with the knowledge that my presence—just by my being black and female¹⁴ and standing at the lectern—could crash one barrier of exclusiveness.

B. Crashing the Barrier by My True Presence—Baring Myself on the Beach

A deeper concern though, was "what" presence I should exude. Like many minority professionals, I have developed many levels of presence (or are they all one?), from being able to have a professional controlled composure all the way to the presence that knows "how to have a down home, get down, jive around time." I wondered whether I could just be "me" in the classroom, or whether I would have to displace myself in the classroom just to be viewed as competent.¹⁶ I decided to just bare myself and be me.¹⁷ That was a good choice, as one author has stated:

Minorities should not feel constrained to replicate the mannerisms of whites, but must somehow make a personal and personality difference when they step in the classroom, and when they write . . . . Minority

¹³. One first year white female student who was in another course I taught came to me for encouragement and counsel about a personal crisis. She told me that she was so ashamed about how she had prejudged me. She said that the first moment I walked into the classroom and she saw me, she thought "Oh, no [a black woman][?]" See, e.g., Kathleen S. Bean, The Gender Gap in the Law School Classroom—Beyond Survival, 14 VT. L. Rev. 23, 28–29 (1989). Professor Bean stated:

Almost all students will subconsciously register a reaction to or record something less than the presumption of competence accorded white males.... One of the most important aspects of this characteristic of the gender gap is that it is born the moment I walk into the classroom. It has a life of its own before I open my mouth. . . .

Id. at 27–28 & n.11.

¹⁴. See Bean, supra note 13, at 29. Professor Bean stated:
Because the combination of woman and law professor contradicts traditional sex roles, a woman law professor challenges the values of many students. Ultimately, it challenges the traditional male gender identity of the law. This challenge threatens the superior status of these students' chosen profession. This threat creates hostility.

Id.

¹⁵. My mother and my aunt, two charming and proper southern ladies, wanted me to be sure that you understand that I bared myself in the classroom figuratively speaking, and not literally.

¹⁶. Cf. Peter C. Alexander, Diversity Challenges: CLEO Students in Search of an Identity, 14 NAT'L BLACK L.J. 157, 164–65, 172 (discussing minority Council on Legal Educational Opportunity ("CLEO") students' concerns that being a successful lawyer would mean "perverting their understanding of self").

¹⁷. See WALKER, supra note 1, at 337 (describing civil rights poems as "full of protest" but also full of "an attraction to world families and the cosmic sea—full of a lot of naked people longing to swim free").
faculty must equal white faculty in competence. *However, they must be themselves, not darker replicas of their colleagues.* If it is acceptable to look black—or brown—then it is acceptable to speak accented English. Indeed, it may well be preferable to speak in our own accents and from the deep reservoir of our personal origins.

... .

Bringing a humanitarian approach, as well as the beauty and power of their own cultures, minority academics come to teaching and scholarship freighted with a historic mission. *In the classroom, minorities must eschew the neutrality and the colorless, unemotional content of traditional teaching styles.* Although white academics have mastered the art of concealing emotion and suppressing their feelings and even their beliefs, minorities must not shrink away from the opportunity to expose future white opinion makers to points of view they would otherwise never see first hand.\(^\text{18}\)

Even though I decided I had no other choice I could live with but to just be me,\(^\text{19}\) that choice was not without cost. Some of my students commented in my first year evaluations that I was too emotional. Others said I was too intense. Yet other students saw the same “me” as passionate, interesting, and one who obviously loves teaching and the law. One day I responded to a few students, “if you think this ‘me’ is passionate, then you should see me when I get together with family and friends to have a good laugh . . . or cry.” Other students commented that my “accent” or way of speaking was problematic and needed correction. One of the administrators told me not to worry about those comments. He said that other members of the faculty are also southerners with southern accents and possibly the reason I received those comments was because of race, not “accent.”\(^\text{20}\)

Regardless, I was myself in the classroom, and I “found it well preferable to speak in [my] own accents and from the deep reservoir of [my own] personal origins.”\(^\text{21}\) In my view, I had at least cracked, if not dismantled, one more barrier.

\(^{18}\) McGee, *supra* note 11, at 74–75 (emphasis added).

\(^{19}\) See Bean, *supra* note 13, at 41–42 (surviving in the classroom by silencing one’s own voice leads to “the long-term denial of self,” and that “[n]o matter how wholeheartedly she implements her strategy to silence her sex by silencing her female voice, her sex will be duly noted”); *cf.* Cole, *supra* note 10, at 40 (“I am aware that my sensibilities borne out of my experiences as an African American and a woman prompt me to ‘run things’ in a manner [different from the typical].”).

\(^{20}\) Cf. Williams, *supra* note 4, at 97 (discussing effect of race and gender on her teaching evaluations).

\(^{21}\) McGee, *supra* note 11, at 74.
C. Crashing the Barrier by Providing a Forum for Diverse Voices
—Welcoming Other Swimmers—The Water Is Fine

Besides my presence, I also wanted the physical classroom to become an environment where "other voices" were heard. I could not speak for all the women and/or minorities in the classroom. "What I [could] do [was] help their voices to be heard, not by presuming to speak for them, but rather by doing what I [could] to put a microphone in front of them." Clearly a barrier of exclusiveness was the absence of diverse student "voices" in the classroom. Studies have shown that in classes composed predominantly of white males, white females and nonwhites appear to be more reluctant to speak. Some suggest that this is partially because white males receive more direct attention in the classroom than other students. Another possible explanation is that nonwhites and/or women fear being hissed for being too outspoken. Still other students might not participate because they are troubled by the Socratic method itself.

I began to grapple with concepts of power and that possibly the Socratic classroom is an unfriendly place and a place that perpetuates the same dominant power dynamics and myths rather than changing them. I decided that I would use several different approaches to attempt to crash this barrier.

First, I found that white women and nonwhites seemed to participate more in smaller settings than in the large standard first year classroom setting. So, I started to occasionally bring problem hypotheticals to class where the students could work in a small-group setting and discuss the problem. A number of other teachers, concerned with the empowerment of all of our students, have urged similar approaches. I also used entire class


[Real] democracy is strengthened by including those who were left out. Our gift, then, is to turn silence into insight and to make a chorus of many voices contending. We can become proud proponents of genuine conversation and real democracy. For me, the first lesson of democracy is the importance of conversation, creating a space for everyone to have her say.

Id. at 883.


24. See id. at 31 ("Some students feel that faculty members hold cultural stereotypes about them and therefore do not expect them to participate."); see also Lani Guinier et al., Becoming Gentlemen: Women's Experiences at One Ivy League Law School, 143 U. PA. L. REV. 1, 37 (1994) [hereinafter Guinier, Becoming Gentlemen].

25. See, e.g., Guinier, Becoming Gentlemen, supra note 24, at 42-43.

26. See id. at 45-46.

27. See Guinier, Keynote Address, supra note 22, at 885. Professor Guinier stated:
brainstorming sessions to hear as many voices as possible. My goal was to provide settings where all the students would begin to participate in class. Altering my classroom style slightly from the traditional style was not without concerns. One concern was that the class might be perceived as uncontrolled (as a result of the group participatory work) and, as a result, the students (and my peers) might perceive me as less of an authority figure. Another concern was my own personal reservations and feelings of vulnerability about giving up some of my hard earned power of the lectern.28

Second, I kept detailed records of who spoke in class. I was determined that in every class meeting a woman would speak and/or a nonwhite would speak. Other scholars and educators have discussed their results from attempting to have more balanced voices in the classroom. One professor found that where the female students participated in proportion to their numbers, the men in the class complained that the professor was favoring the female students.29 In my class, too, students were troubled by my inclusiveness. One student complained in the evaluation that I was “pro-black” and “pro-female.” I thought it interesting (and a compliment to me) that the student never accused me of being “anti-white male.” I wonder if this means that I succeeded in being inclusive, without being exclusive of the dominant group.

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28. Cf. Guinier, Keynote Address, supra note 22, at 888 (“[H]ow do you convince professors who have the power and have the microphone that they should cede that power and . . . [h]ow do you convince women professors or professors of color who feel very vulnerable in the first place in exercising that power to then give up the authority?”).


One professor who rejected Guinier’s argument that the atmosphere is hostile to women did recall that his attempts to get women to speak more “unnerved many of the men.” He stated:

I actually kept a journal on how long the women and men spoke because I was interested in this, and at the end of the year, women had spoken 40 to 45 percent of the time. The fascinating thing was that when I asked the men, they said the class was so dominated by women that it was completely unfair. They thought women were speaking about 80 percent of the time.

Guinier, Keynote Address, supra note 22, at 889; see also Guinier, Becoming Gentlemen, supra note 24, at 57 n.142 (when women participate to the same extent as men, women are seen as over-participating, and the men complain of “reverse discrimination” where the professor is female).
II. Attempting to Crash the Barrier of Exclusiveness in Classroom Materials—Swimming a Different Stroke

As I surveyed my casebook, I noticed some images of women as prevailing parties, for example as in *Fiege v. Boehm*,\(^{30}\) and in *Strong v. Sheffield*,\(^{31}\) although some of the images were troubling. There was a shortage, however, of images of powerful black people, or just black people as ordinary business people engaging in ordinary business transactions. The shortage of references to black women was especially daunting.\(^{32}\) This "invisibility" places constraints on both the abilities of nonwhites and whites to see black people as businesspeople who engage in commercial transactions.\(^{33}\) The casebook appeared to presume the exclusion or nonexistence of nonwhites in commercial settings, reinforcing the view that nonwhites are outsiders to commercial transactions and reinforcing the suggestion that law schools and the materials were initially, and still are, "created, designed, and implemented by white males to educate white males."\(^{34}\) This presum-

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30. 123 A.2d 316 (Md. 1956). In *Fiege*, the female plaintiff succeeded in obtaining recovery for breach of contract. See *id.* at 323. The defendant had promised to pay expenses for a child thought to be his illegitimate child, in exchange for the plaintiff agreeing not to sue. See *id.* at 319. When the defendant ceased payment, the woman sued and recovered, although there was substantial evidence that the defendant was not the biological father. See *id.* at 322–23. Here although the woman prevailed in contract, the case raises, perhaps, some disturbing stereotypical images about women.

31. 39 N.E. 330 (N.Y. 1895). Here a woman agreed to pay the debt owed by her financially defunct husband to her uncle, in exchange for her uncle’s promise not to sue on the debt “until such time as [he] want[ed] it.” *Id.* at 395. When the uncle sued the woman she prevailed, the uncle’s promise being illusory. Even though this case shows a financially successful woman, it seems to cast women in a traditional light of being willing to do anything to help their husbands, even potentially to their great financial detriment.

32. *Cf.* JULIA BOYD, IN THE COMPANY OF MY SISTERS: BLACK WOMEN AND SELF ESTEEM 59 (1993). Professor Boyd related:

As Black women we never saw ourselves portrayed in history, literature, or science books. When Blacks were mentioned in these areas, they were males. The message was subtle and indirect but very clear: Black females just did not exist. As young Black females, we learned we could not be astronauts, scientists, doctors, or attorneys. The basic underlying messages we received as Black women was "to be as much like the dominant culture as possible; otherwise you’re invisible."

*Id.* at 59; see also Guinier, Becoming Gentlemen, *supra* note 24, at 18 n.57 (stating non-whites and females are alienated from the content of legal education).

33. See Boyd, *supra* note 32, at 4 (“As I grew older, I realized that images of Black women as heroines were absent from the pages of my books, thereby placing some constraints on my imaginative powers of seeing myself as a confident and powerful Black woman.”).

34. Boyd, *supra* note 32, at 57–58. Professor Boyd related the account of one student:

The main thing I learned in school was that I didn’t exist. Not as a student, a female, or a person of color. What I learned was that the American educational system, like much of the society we live in, was never intended to educate or support our female gender or our ethnic diversity. I also learned that schools were created, designed, and implemented
tion did not satisfy me, for this barrier of exclusiveness needed dismantling, too.

Although my casebook was lacking in these images, the instructor’s manual had several references to supplementary cases that obviously highlighted nonwhites. Adding the materials to assure inclusiveness is a recommended method, but is not without risk. I feared the risk, and my fears were not imagined and fictional. Minority faculty member after minority faculty member have cautioned that any emphasis on race and gender by minority faculty in traditional type classes may at best indeed make a minority professor unpopular with the students.

Though maybe not quite “understandable,” there is a basis for these harsh reactions to attempts at inclusiveness. The primary voice (or approach, or viewpoint, or perspective) for most of legal education has been the male perspective or, more accurately, the white male perspective. The view has been that “his voice” is “the voice” and the appropriate one. As Trina Grillo and Stephanie Wildman once stated so completely and eloquently:

Like cancer, racism/white supremacy is a societal illness. To people of color, who are the victims of racism/white supremacy, race is a filter through which they see the world. Whites do not look at the world through this filter of racial awareness, even though they also comprise a race. This privilege to ignore their race gives whites a societal advantage distinct from any advantage received from the existence of discriminatory racism. . . . [W]e use the term racism/white supremacy to emphasize the link between the privilege held by whites to ignore their own race and discriminatory racism.

White supremacy creates in whites the expectation that issues of concern to them will be central in every discourse. . . . The center-stage problem

by white males in order to educate white males. These indirect lessons began our first day of school . . . with the lack of Black females in our studies.

Id. 35. See Sandler, supra note 23, at 74, 84.

36. See, e.g., Sandler, supra note 23, at 61; Okianer Christian Dark, Just My 'Magination, 10 Harv. Blackletter J. 21, 23–24 (1993). Professor Dark also tells of comments from student evaluations of her Torts course: “She goes off on too many tangents. We don’t just discuss the law because she wants to talk about gender, class, and race in the law school classroom . . . [and from another student] I wish she wouldn’t bring race into the classroom.” Professor Dark further cites the experience of Professor Derrick Bell where faculty secretly supplemented his constitutional law class after students complained he spent “an inordinate amount of time on history; more specifically on the history of race in the United States.” Id. at 27; see also Trina Grillo & Stephanie Wildman, Obscuring the Importance of Race: The Implication of Making Comparisons Between Racism and Sexism (or Other Isms), 1991 Duke L.J. 397, 408 (1991) (“[F]aculty members . . . raising women’s concerns may be particularly vulnerable to poor teaching evaluations.”); Horsburgh, supra note 8, at 59; McGee, supra note 11, at 70 (“Today . . . students are likely to find allusions to the race problem unsettling.”).
occurs because dominant group members are already accustomed to being on center-stage. They have been treated that way by society; it feels natural, comfortable, and in the order of things.\textsuperscript{37}

Patricia Williams also stated:

Although there really is no alternative until casebooks are revised, a teacher using [supplementary] materials may be viewed as a fanatic who is bent on finding sex [or race] bias everywhere, and even worse, assigning unnecessary reading. The student may believe that a casebook is 'neutral,' while the teacher is biased . . . .\textsuperscript{38}

As I faced my fears, I knew that, arguably, a way out was for me to just teach traditional Contracts, and not add any race or gender insights. That option was not a real option, though. First, race and gender are always with us. For me to put forth a traditional “neutralized” perspective of Contracts would mean I would be urging a view that continues to promote only the dominant race and gender groups.\textsuperscript{39} Second, as a black female law professor, it is my duty to use my own special viewpoints in my teaching.\textsuperscript{40} I did not alone create our history of race and gender problems. Although accepting my responsibility to help dismantle the barriers of exclusiveness will not erase the past, it might help us choose a new future.\textsuperscript{41}

My fears were so intense that I continued to seek other ways to teach Contracts that would be true to myself, but without risking that my goal of inclusiveness would be read as one of exclusiveness of the majority. Arguably, one other possibility was to deal only with gender or only with race issues. I rejected this seemingly “less threatening approach.”\textsuperscript{42} All of the

\textsuperscript{37} Grillo & Wildman, supra note 36, at 398, 401 (emphasis added).

\textsuperscript{38} Williams, supra note 4, at 95; see Nancy S. Erickson, Sex Bias in Law School Courses: Some Common Issues, 38 J. LEGAL EDUC. 101, 113 (1988). Williams also states: “Because students fill out teacher evaluations forms, which are then considered by tenure committees, deans and tenure committees must be made aware that this type of unwarranted hostility may occur.” Id. at 113 n.67.

\textsuperscript{39} Cf. Sandler, supra note 23, at 29 (footnote omitted). Professor Sandler states that:

Many people who do not want to perpetuate sexist and racist behavior make statements such as 'Gender doesn't matter,' and 'I do not see race when I teach.' Although such statements reveal the best intentions (an attempt to treat all students equally), they also reveal a lack of understanding of the many ways in which gender and race bias manifest themselves in a classroom. It is increasingly clear that simply 'ignoring' difference is often inappropriate, ineffective and sometimes even offensive.

Id. at 29.

\textsuperscript{40} See, e.g., McGee, supra note 11.

\textsuperscript{41} See, for inspiration, IYANLA VANZANT, ACTS OF FAITH: DAILY MEDITATIONS FOR PEOPLE OF COLOR, February 20th entry (1993), where she states, "[w]hat is written cannot be changed," but "I am choosing my future by what I do now."

\textsuperscript{42} Sandler, supra note 23, at 74. Sandler makes a recommendation for improving the educational climate for women by "emphasiz[ing] from the beginning how feminist theory and women's experiences are concerned with race, class, ethnicity, and sexual orientation; don't try to discuss just 'gender,' as a simpler, less threatening approach." Id.
exclusiveness barriers must be dismantled together if we ever expect to have a diverse and inclusive legal academy and, even more important, a diverse and inclusive world. As Trina Grillo, whose memory we honor in this symposium issue, once stated so well:

[T]he oppressions cannot be dismantled separately because they mutually reinforce each other. Racism uses sexism as its enforcer. Homophobia enforces sexism by making people pay a heavy price for departing from socialized gender roles. And those of us who are middle-class, or members of otherwise privileged elites can be used as unwitting perpetrators of the subordination of others.  

The instructor’s manual did include references to several cases clearly with African Americans as parties. I did not assign these cases as additional required readings. What I did was recite the facts from the cases (without any allusion to race) as hypotheticals for in class problem brainstorming. After we discussed the problems, I gave the students the case name and citation for them to compare their analysis with the court’s if they desired. When I called out the case names and the students recognized African Americans as parties, some looked surprised and puzzled and others appeared surprised and pleased. When we discussed promissory estoppel in class, I used the above approach with the case of Coretta Scott King v. Trustees of Boston University. As another example, when we discussed precontractual liability, I followed the above described approach and supplemented the casebook with Elvin Associates v. Aretha Franklin.

Sometimes being more inclusive in the classroom means using the traditional materials, but paying attention to subtle race or gender points. An interesting example is the case of Parker v. Twentieth Century-Fox Film Corp. In this case Shirley MacLaine Parker contracted to perform in a production called “Bloomer Girl.” After the film company decided not to produce that show, the company offered MacLaine Parker a role in a film entitled, “Big Country, Big Man.” The issue before the court was whether MacLaine Parker improperly failed to mitigate damages when she refused to accept the role in the other film. Her refusal was improper if the second

43. Grillo, supra note 22, at 27.
44. 647 N.E.2d 1196 (Mass. 1995) (concerning the dispute over whether the King estate or Boston University was entitled to the papers of Rev. Dr. Martin Luther King, Jr.). By using the facts from this case, we were able to both discuss Contracts and have a short lesson in history.
45. 735 F. Supp. 1177 (S.D.N.Y. 1990) (concerning a musical producer who sought recovery from Aretha Franklin for failure to appear in a musical production, although the contract had not been executed).
46. 474 P.2d 689 (Cal. 1970) (en banc).
47. See id. at 690.
48. See id. at 691.
show was comparable, or substantially similar to the first show.\textsuperscript{49} The case led to a lively discussion, especially when I added a note that the films were possibly not comparable because “Bloomer Girl” might have given MacLaine Parker an opportunity to make a feminist statement.\textsuperscript{50}

In the class hypotheticals I tried to cast the characters in nontraditional roles. For example, we covered \textit{Sullivan v. O'Conner},\textsuperscript{51} where a female entertainer seeks to recover from a doctor in contract for the doctor’s failure to improve the appearance of her nose as he had promised. In the following footnote is the follow-up hypothetical I used to challenge the students’ notions of appearance and gender, and for just a little fun, too.\textsuperscript{52}

\section*{III. Attempting to Crash the Barrier of Exclusiveness in the “Classroom of Ideas”—Transforming the Beach}

\subsection*{A. Crashing the Barrier by Reframing the Unconscionability Issue}

One of my major goals was to confront the stereotypical assumptions in the unconscionability materials.\textsuperscript{53} In the section on unconscionability, black people seem to appear in the material as poor and uneducated. I wanted to help the students examine some of their own assumptions in this material.

First, I approached the unconscionability material by pointing out what all of us in the classroom agreed with: some valid contracts should not be enforced because they are so unfair. I then approached the unconscionability materials by starting with commonalities and then attempting to move toward the concept of diverse needs as related to fairness.

\textsuperscript{49} See \textit{id.} at 742.
\textsuperscript{50} See Frug, \textit{supra} note 7, at 1116.
\textsuperscript{51} 296 N.E.2d 183 (Mass. 1973).
\textsuperscript{52} Jeffrey reads in a sports magazine about a doctor who has developed an implant/hormonal treatment technique that may expand a man’s chest up to ten inches. Jeffrey is a musician and has always thought that if he could improve his personal appearance more people would pay to come watch and hear him perform.

Jeffrey meets Doc in a makeshift office. Doc says her real office is being remodeled. Jeffrey is warned that the surgery will be painful and that he will experience intense physical pain for up to a month. Jeffrey asks the doctor whether she needs any information about his past medical history. She replies no. The surgery is performed. Jeffrey pays Doc $10,000.

Jeffrey is in physical pain for two months. Not only does his chest not expand, it contracts and becomes even smaller than before. As a matter of fact Jeffrey is now too weak to even play his musical instrument. Based on \textit{Sullivan}, should Jeffrey be able to recover in contract against Doc?\textsuperscript{53}

We first discussed unconscionability that affects the masses and using the case of *Henningsen v. Bloomfield Motors, Inc.*\(^5\) Almost all the students agreed that the court correctly held that the plaintiff, who had sustained personal injuries as a result of a defective part in a brand new automobile, should be able to recover in contract from an automobile dealer even though the contract to purchase the new automobile limited the dealer's liability to replacement of defective parts.

We then discussed unconscionable behavior that affects less than all of us using the case of *Williams v. Walker-Thomas Furniture Co.*\(^5\) Fewer students agreed with that decision where the court held that the store's financing agreement with a poor person was unconscionable.\(^6\) We had a lively discussion about freedom to contract and responsibility. I suggested that perhaps we were more sympathetic with the plaintiff in *Henningsen* because we could see ourselves in her position, but many of us could not see ourselves in the position of the plaintiff in *Williams*.

We then went further in our discussion to unconscionability that affects specific groups. We discussed the status of women when contracting\(^5\) and recent studies that suggest that white men get far better automobile deals than white women and nonwhites,\(^5\) even with all other factors held constant.

**B. Crashing the Barrier by Incorporating Inclusiveness in the Final Examination**

Even in the final exam, I attempted to be inclusive. Recalling some of the exams I took as a student where I felt as I was being tested about situations with which I had no familiarity, I tried to be inclusive in language, in the type of factual scenarios, and in the types of parties in the factual scenarios. In one question,\(^5\) I tested for the principles of offer, acceptance, and unconscionability. I tried to write the question so that a student would want to protect one of the main parties, either the female shopper or the computer store (even though the salesclerk in the store was female, too). I pointed out to the students in our post-exam review that the question was fairly well

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\(^5\) [161 A.2d 69 (N.J. 1960).]

\(^5\) [350 F.2d 445 (D.C. Cir. 1965).]

\(^6\) *See id.* at 447. I tried to cast the case in a new light, by showing the students the financing clause at issue and asking them if they would have understood it. I was trying to help them examine and dismantle their own preconceptions about who is "educated enough" to contract.

\(^5\) *See Elizabeth S. Anderson, Women and Contracts: No New Deal, 88 Mich. L. Rev. 1792 (1990) (discussing contractarian political theory and patriarchy).*


\(^5\) The three hour exam had four questions. I know now that this was too long.
balanced and required them to be able to make arguments for both sides. The question follows in the footnote.60

In the second question,61 I mainly tested the students’ understanding of non-compete agreements and consideration. The characters in the hypoth-

60. Forty year old Mrs. Melissa Brown timely saw an advertisement in the daily newspaper for a computer. The ad stated:
   Now available: top of the line computers starting at $3000, complete with printer.
   You all are welcome to come buy now at Fair Shake Computer Store. Get here first!!
   Shop where you always get a fair shake, and your wallet will never break!

   Brown rushed right out to the store. She had been searching all over for a good computer and for good service. She was sure her spouse would like the buy. Brown entered the store and approached salesperson Jones. Brown requested the $3000 computer advertised. Jones told Brown she could sell to Brown that computer for $4000 if the store had any available, which she doubted. Brown showed her the ad. Jones said, "Did you really believe that? I can sell you one without a printer for $3000." Brown walked away.

   Brown was quite upset. She sat down in the store to think and reconsider her finances. While Brown was sitting there for almost an hour, she noticed that 4 businessmen came in requesting the computer as advertised. After a little good natured chaffering, each of them received the computer with printer, exactly as advertised, for $3000.

   Brown marched back over to Jones and requested nicely, then demanded, that she get the same deal. Jones yelled, "Look lady, we can sell to whoever we wish and at whatever discounted price we wish! And, you are not about to get that computer unless you have 4 big ones!" Brown then paid $4000 for the computer and left with the computer, but also with a broken spirit and a broken wallet.

   Later that same day, you received a telephone call from Ms. Michaels, the owner of Fair Shake and one of your favorite clients. Michaels tells you all of the above. She just received a call from Brown’s attorney, demanding a refund of at least $1000. Michael assured the attorney, and assures you, that she has already dealt appropriately with Jones as provided in the employee handbook.

   You agree to call Michaels back with advice. Before you call Michaels back, prepare a memo to the file, stating your advice and explaining in detail the basis for your advice. Evaluate Brown’s basis for relief, and any counter-arguments and defenses Fair Shake could have.

61. Jamona is an ambitious and successful, Native-American, doctor specializing in the treatment of cancer. She initially had a practice in Dallas, Texas. Smith’s Clinic for Women Only ("the clinic"), located in Jackson, Mississippi, badly wanted to hire Jamona. The employment negotiations were fierce. Jamona insisted that every detail of the agreement be worked out prior to her acceptance of any offer. Finally, Jamona received a letter from the clinic, satisfactorily detailing the agreement. The letter stated that attached were copies of forms Jamona must complete after she started work. Jamona carefully read the letter and flipped through the attachments. All seemed okay, so she called and accepted. Unfortunately, Jamona had not noticed that on the back of one of the attachments was a non-compete agreement. The agreement required that Jamona would not “compete in any possible way with the clinic in the regions of Dallas, Texas, Jackson, Mississippi, or anywhere in the southern part of the USA, for at least 3 years.”

   Jamona closed her thriving practice in Texas and relocated to Mississippi. On the second day of Jamona’s employment at the clinic, she had not had an opportunity for orientation. The clinic was short handed, so she was very busy. The office manager thought it essential, though, that Jamona’s paperwork be completed. He rushed into Jamona’ office between patients to get her signature on the forms. Jamona hurriedly signed the forms without reading them, she thought that she had no reason to distrust the professionals she was practicing with.

   For almost a year, the clinic benefited from Jamona’s employment. The clinic passed a small percentage of these benefits on to Jamona. By the time the following dispute developed, Jamona’s
ical had diverse backgrounds and a well developed answer would have picked up on the diversity themes.

Conclusion—Learning My Lessons

In conclusion, among the lessons I learned are the following:

A. Diversity Goals Can Coexist with Substantive Goals

In my first semester of teaching Contracts, I was very pleased to see that incorporating diversity did not appear to sacrifice my presentation of the “substantive part” of the course. I was also pleased that overall my goal of inclusiveness was not read as excluding white males. In our student evaluations, students evaluate faculty on 12 different items using ratings from 1 to 5, where 1 is poor and 5 is excellent. I was very pleased that for the three items that I had worked on diligently—knowledge of the material, preparation for class, and interest in students and their progress—I averaged 4.38. For all 12 items evaluated I averaged 3.86.

salary had doubled what it was in Dallas (although her Dallas salary was very high). The dispute developed over the primary approach for treatment of those suffering from cancer. Jamona urged a holistic health care approach, with surgery only as a last alternative. The majority of the other doctors urged surgery first.

Four of the 12 doctors at the clinic, for the above and other reasons, decided to leave the clinic and open their own in Clinton, Mississippi. Their clinic would be called “Rainbow Clinic,” and would utilize a variety of approaches for treating both men and women. Rainbow Clinic’s four doctors would include: an Asian-American woman, an African-American woman, an African-American man, and a Caucasian-American man. None of the four had signed non-compete agreements with the clinic. Rainbow Clinic desperately wanted Jamona to join them because, among other reasons, of her wonderful personality and her expertise. They also would benefit from the publicity Jamona gets from her health care talk radio show that is broadcast all over Mississippi and from Jamona’s new e-mail “talk” show on the world wide web.

When the clinic learned that Jamona was leaving to join Rainbow Clinic, the office manager showed Jamona the non-compete agreement she signed. Jamona was perplexed, but she believed that since she signed it she gave her word and was obligated to keep her word. The clinic assured Jamona that it would not seek to enforce the agreement in federal court if Jamona would agree to work at the clinic for free on an as needed basis for the next 11 months. Jamona agreed. Rainbow Clinic was not happy to hear about the agreement. Rainbow Clinic’s four doctors met with the doctors from the clinic. Rainbow orally agreed to repay the clinic three times the amount of Jamona’s salary and benefits the clinic had paid her, if the clinic would completely release Jamona from any claims the clinic had against her. Rainbow Clinic now refuses to pay the clinic. The clinic files suit in state court against Rainbow Clinic and against Jamona individually, seeking an injunction and other relief. All parties file motions for summary judgment. Above are the undisputed facts. Please write an opinion resolving the case.
B. As a Professor Becomes More Confident and Comfortable in Achieving Her Goals, Students Possibly Become Less Resistant to Inclusiveness

In my second year of teaching Contracts I, I had the same diversity goal and used similar approaches. Possibly, I was a little less intense in achieving my goals and more comfortable in the classroom. My evaluations were substantially higher. Overall for the 12 items evaluated, I averaged a 4.62, with a median of 5.0 in all categories.

In addition, few negative comments appeared on my evaluations. Furthermore, no students mentioned race, gender, or bias in the classroom. As a matter of fact, none of the troubling type remarks, made by students the first year I taught the course, were made by the students in my second year of teaching the course. To the contrary, students commented that they enjoyed the class and my passionate style of teaching. One question on the evaluation form was “How might the instructor improve this course?” A student remarked, “While there is always room for improvement, Prof. Kupenda has done an excellent job of teaching this course.”

The more comfortable I became with my goals, and with just being myself in the classroom, the more enjoyable the class became.62

C. Think Twice Before Trying Nontraditional Classroom Approaches—But Then Try Anyway

If a professor is extremely concerned about receiving poor teaching evaluations, and biting comments from students, think twice before taking nontraditional classroom approaches—but then try anyway. Many professors (myself included) do not like to receive poor students evaluations. Many of us are also rightfully concerned about the effect these evaluations could have on promotion and/or tenure decisions. If these concerns are great, one possibility is to attempt to dismantle only one barrier of exclusiveness at a time. Trying to dismantle more than one at a time might lead to poor student evaluations, and ultimately affect obtaining promotion and tenure. If a faculty member starts slowly, however (or does not start at all) still there are risks—the risks of denial or loss of self identity and the risk of never achieving the goal of diversity and inclusiveness. Each faculty member will have to determine for herself which risk is worse.63

62. Much credit must be given, though, to the exceptional and interesting students in the class.
63. Before I attended law school, I taught finance and insurance at Jackson State University and at the University of Mississippi. Although my presence in the classrooms was the dismantling of one barrier, I did not intentionally pursue diversity goals early in that academic career. However, it became harder, not easier, to pursue diversity goals the longer I taught.
D. Search for Casebooks That Are Inclusive So That You Do Not Have to Add Supplementary Materials

After my first year of teaching, I talked with a number of nonwhite and white female professors about my first semester and the goals I sought to accomplish. A number of them suggested that there are a few casebooks that are more inclusive in coverage, so that a professor does not have to add materials that may be viewed as "suspect" and not a part of the neutral law.

E. Renew the Commitment

I have renewed my commitment that nonwhites and white women should be apparent in the entire law school experience, and should not be readily apparent only in courses like Women and the Law, Civil Rights, etc. For future lawyers to be prepared for living and thriving in our diverse world (and for the sake of all of us), diversity in the physical classroom, in the classroom materials, and in the "classroom of ideas" is essential.

Am I still on the beach in Walker's poem? Sometimes I am, and sometimes I am not. Regardless, it is a beach that is being transformed, day by day and class by class, and is becoming more inclusive and diverse. COME ON IN—THE WATER IS FINE!

64. See WALKER, supra note 1.