



Diversity in the Legal Writing Curriculum, Fostered by Faculty With Color



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Diversity has been a strong theme within the legal writing community over the past year or so. Legal Writing faculty of color gathered at two meetings at the 2010 LWI Biennial Conference, revealing a critical mass of minority faculty and leading to new friendships, mentoring relationships, and collegial contacts.

A few months later, California Western School of Law was one of many that hosted a one-day LWI conference, further cementing friendships and exposing me to a wonderfully expansive view of diversity. At the Cal Western conference, I chatted with Mark Wojcik about a National Professor of Color Conference hosted by his school years earlier. Mark responded: "I like to think of myself as a professor *with* color."

Although Mark has long helped to raise the profile of gay faculty,¹ his comment reminded me that diversity in the academy, broadly viewed, is defined by more than the facets of personal identity frequently listed – it's also a matter of spirit, attitude, and commitment. Applying that definition, the legal writing community – perhaps more than any other academic community with which I travel – is teeming with faculty *with* color.

I have written before of the benefits of diversity in the classroom,² and I hope that a brief recap here will be useful. Although many of my points may

state the obvious, the benefits and challenges of introducing diversity into the classroom are sufficiently substantial to warrant continuing discussion.

The Benefits of Curricular Content that Raises Issues of Diversity

Examples, exercises, and assignments that raise issues relating to race, sex, sexual orientation, age, physical or mental abilities, economic class, immigration or foreign national status, medical conditions, and similar characteristics can enrich the classroom in a variety of ways. Issues such as these can:

- be particularly vivid, concrete, and engaging, if not provocative, thus stimulating student interest;
- promote critical thinking skills by inviting students to challenge long-held assumptions and to argue both sides of an issue on which each student may have previously formed an opinion;
- provide opportunities for members of a diverse student body to educate each other by sharing various perspectives and experiences during class discussion, while also revealing that members of any single group do not necessarily share a monolithic view, perspective, or set of experiences;
- reduce the elevated alienation often felt by "outsider" students in a sometimes oppressive environment, by providing subject matter that puts some of them in the position of "insiders" and that validates issues on which they place importance;
- help prepare students to represent a diverse clientele in practice; and
- better prepare students for reasoned political discourse on some of the more burning issues of the day

More than a decade ago, Nancy Wright collected "Problems Raising Issues of Diversity or Social Concern,"³ and many more are in use today. I can relate a few of my own experiences to illustrate some of the benefits of exposing students to issues of diversity.

1 See Charles R. Calleros, *Training a Diverse Student Body for a Multicultural Society*, 8 La Raza L.J. 140, 140 & n.2 (1995) (hereafter, "*Training a Diverse Student Body*") (referring to a phrase borrowed from Mark: "out, loud and proud").

2 Charles R. Calleros, In the Spirit of Regina Austin's Contextual Analysis: Exploring Racial Context in Legal Method, Writing Assignments, and Scholarship, 34 J.

Marshall L. Rev. 281 (2000) (hereafter, "*Exploring Racial Context*", *Training a Diverse Student Body*, *supra* note 1).

3 Nancy Wright, *Summary of Problems Raising Issues of Diversity or Social Concern*, (reprinted in *Exploring Racial Context*, *supra* note 2, Appendix, at 298-319); see also *Exploring Racial Context* at 283 nn. 7-8, 284-92 (summarizing other problems).

Many years ago, I assumed pro bono representation of a number of young women and their parents in an arbitration proceeding on their claim that a tailor – out of personal spite – managed to ruin the lead plaintiff's Quinceanera ceremony by misrepresenting the state of readiness of the gowns and providing unfinished ones. If the arbitrator granted relief only for breach of contract, he could grant damages for emotional distress under Arizona law only if the contract was designed partly to protect emotional sensibilities so that emotional distress would be a particularly foreseeable consequence of the breach. The arbitrator, a white male, was unfamiliar with the cultural and religious significance of this "coming out" ceremony of a 15-year-old woman in the Mexican-American community. Consequently, one of the most important witnesses of the hearing was an expert witness, a graduate student from Mexico, who educated the arbitrator about the social and emotional import of the Catholic mass, reception, and performance of a carefully rehearsed dance by the Quinceanera and attendants in formal dress.

I later based an office memo problem on the Quinceanera arbitration, a problem that allowed Latino students to be "insiders" for a small slice of their law school studies and that provided all students with some intercultural education and an appreciation for the possible need to educate an adjudicator about a cultural event or cultural values.⁴ A student from Mark Wojcik's class, who had been assigned the problem, described at a conference how she had asked her Hispanic co-workers about Quinceaneras and was met with photo albums, animated stories, and faces marked with emotion; the student had gained both new intercultural knowledge and a new level of rapport with her co-workers.⁵

Issues of diversity can be profitably raised in examples and exercises short of full legal memo or brief assignments. For example, Diana Pratt has offered another example of an opportunity to educate an adjudicator about cultural values or phenomenon, which could serve as a fascinating exercise in case briefing. Using the case of *Frank v. Alaska*,⁶ she has shown how evidence of the

necessity of moose meat in a Central Alaskan Athabascan tribe's funeral potlatch supported invocation of the Free Exercise clause to reverse a tribal member's conviction for hunting moose out of season.⁷ Even our working issues or examples of diversity into classroom lectures can secure educational benefits. Samantha Moppett, for example, reminds us to include tribal court systems in our presentations of courts systems in the United States.⁸

As I write this article, I am tweaking the facts for my main legal memo assignment for the fall, an assignment that I expect to bring the educational benefits of confronting issues of diversity. This one originates with Lisa Black, who shared the problem at the one-day legal writing conference in San Diego last December. The assignment tells the story of a same-sex couple that for two decades has enjoyed the equivalent of a loving, committed marriage. Alberto and Ben, however, are not married – indeed, they cannot marry in their home state of Arizona. One issue raised in the assignment is whether Alberto and Ben have the requisite relationship to support Alberto's claim for negligent infliction of emotional distress when he witnessed a driver strike Ben with his car, causing Ben to suffer serious injuries.

Lisa sets her problem in Florida, where the case law supports arguments and counter-arguments on several interesting issues. I have adapted the problem, however, to be set in Arizona, and was grateful to discover that Arizona case law appears to leave the door open (if only slightly ajar) for recognizing that a committed same-sex relationship can trigger liability for IIED, even though a state constitutional amendment specifically limits marriage to a man and a woman, and though the requisite connection between injured party and witness most commonly is a relationship of blood or marriage.

I'm hoping that the assignment not only is an excellent vehicle for case analysis and synthesis but also stimulates

4 The latest publication of this closed universe problem is found in Charles R. Calleros, *LEGAL METHOD AND WRITING* app. IV at 578-85 (6th ed. Aspen 2011).

5 *Exploring Racial Context*, *supra* note 2, at 291 n. 32.

6 604 P.2d 1068 (Alaska 1979).

7 Diana Pratt, *Representing Non-Mainstream Clients to Mainstream Judges: A Challenge of Persuasion*, 4 *Legal Writing* 79 (1998).

8 Samantha A. Moppett, *Acknowledging American's First Sovereign: Incorporating Tribal Justice Systems into the Legal Research and Writing Curriculum*, 35 *Okla. City L. Rev.* 267 (2010). I accomplish this not only with an excellent chart provided by my colleague, Robert Clinton, but also by showing the website of the Navajo Nation judicial system, <http://www.navajocourts.org/>.

unusual student interest at a time when the debate about same-sex marriage has stirred passions. It should also develop skills of critical thinking as students grapple with the question of whether the policies underlying limitations on the tort are distinct from the justifications advanced for the constitutional amendment, and whether a committed same-sex relationship is different from an opposite-sex marriage for purposes of application of the tort standards. To present the last question in sharpest detail, I have attempted to describe the couple as one that has all the substantive features of a successful opposite-sex marriage, the kind of permanent, committed relationship that I foresee for my son, Alex, and his partner of several years, Alek.

The Challenges of Introducing Diversity in the Classroom

Precisely because issues of diversity can engage students intensely, they can also raise some challenges.⁹ They can:

- elicit student comments that expose conflicting values within the class;
- spark resistance in students who balk at developing an argument or counter-argument that runs counter to the student's deeply held values; and
- run the risk of stereotyping a group whose diversity is represented in the problem

Although these challenges are real, the benefits of introducing diversity into the curriculum outweigh the risks. Sensitive faculty moderation of provocative classroom discussions provides good modeling for dealing with highly charged meetings in practice. Moreover, explicit classroom rules requiring civility and mutual respect in discussions will help prepare students for proper courtroom decorum, as well as success in negotiations and similar functions.

Moreover, although faculty should avoid assigning problems that will visit emotional trauma on some students, students learn a valuable lesson when invited to recognize arguments that conflict with their own beliefs and values. In practice, they inevitably will represent clients whose causes and claims are not entirely consonant with their own. And even when their clients' claims coincide with their own values, they will represent those clients best by fully understanding the counter-arguments. On the issue of same-sex marriage, for example, I admit that I do not fully understand the argument that same-sex marriage will somehow adversely affect my own opposite-sex marriage,

but I know that I will improve my ability to debate and deliberate if I can understand that argument or understand the real objection for which it stands as a marker.

Finally, if our attempts to introduce diversity sometimes sound inauthentic, it is likely that diverse students nonetheless will applaud our goals, forgive minor imperfections in our examples and assignments, and – best of all – educate us so that we can improve the problem for future use.

Diversity in the Academy

It may be true that a perfectly homogeneous classroom, lacking any diversity in its composition, is most in need of diversity in the curriculum, to challenge conventional assumptions and help prepare the students for practice in a diverse society. However, the educational benefits are exponentially increased in a diverse student body, where students can learn from – and be challenged by – different perspectives and experiences, and can enjoy the beneficial experience of collaborating with students from different backgrounds.

Similarly, diversity within the faculty instantly signals students that expertise in legal analysis and writing is not correlated with personal characteristics other than intellect and hard work. Moreover, a diverse team of writing faculty provides the same opportunities for enriched collaboration and group intelligence that a diverse student body brings to the classroom.

But I return to my opening theme, that diversity can be found not just in diverse personal characteristics, perspectives, and experiences, but also in spirit, attitude, and commitment. As we applaud gains in more traditional forms of diversity – such as the critical mass of faculty of color meeting at the 2010 Biennial – and as we strive for further gains in that diversity, we can also acknowledge that, broadly defined, our academy can boast a multitude of faculty *with color*. ■

⁹ *Exploring Racial Context*, *supra* note 2, at 292-95; *Training a Diverse Student Body*, *supra* note 1, at 156-64.