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IN THE SPIRIT OF REGINA AUSTIN'S CONTEXTUAL ANALYSIS: EXPLORING RACIAL CONTEXT IN LEGAL METHOD, WRITING ASSIGNMENTS AND SCHOLARSHIP*

CHARLES R. CALLEROS**

INTRODUCTION

Many thanks to Kevin Hopkins and Maureen Kordesh for inviting me and for organizing this conference. I'm honored to share this panel with my distinguished colleagues, Professors Austin and Robinson.

As I understand Professor Austin's central thesis, many legal issues can be fully appreciated only in their social context, and specifically for purposes of this panel, in their racial context. Thus, data about an ethnic group's distinctive experiences in, or relationship to, a larger community-perhaps through formal ethnographic studies, or perhaps through other means-often can inform teaching, scholarship, and representation of clients in a meaningful way.

I find Professor Austin's thesis to be sound and to be supported by the teaching and scholarship of teachers of legal method of writing. I would like to share some examples from that field to illustrate both the benefits and the minefields of exploring issues of difference, of "otherness" in the classroom and particularly in legal writing courses or in seminars with writing components.

After all, it is in writing or advocacy courses that students often must immerse themselves in an issue in a way that requires full intellectual and emotional commitment. And it is in those classes that we might best train students to use ethnographic information in their formal representation of a client. So, I will take on the task of relating this topic to the legal writing field.

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I. OVERVIEW OF WAYS THAT ASSIGNMENTS OR SCHOLARSHIP
INVITE A CONTEXTUAL ANALYSIS

Let me begin by suggesting different ways that race or other facets of “otherness” can be acknowledged and confronted, rather than ignored, in the law school classroom.

A. *Acknowledging Diversity*

At the subtlest level, law school instructors can be inclusive simply by recognizing ethnic and other diversity in the lawyers, judges, parties, and other actors and events that parade through hypos, problems, and assignments. As fellow writing instructor Joe Nalven put it, he tries “to embed ‘diversity’ into every hypothetical.”¹

We don’t need to dwell much on that relatively superficial level, but we shouldn’t minimize it either. The first step in preparing our students for practice in a pluralistic society is to get them accustomed to picturing their clients and other actors in the legal system in an inclusive, realistic manner.²

But that’s just the surface. The real learning and effective student preparation takes place with assignments that substantively raise issues of diversity in a way that expands students’ socio-legal knowledge and perspectives. Cliff Zimmerman of DePaul calls this approach one of “overtly” confronting issues of difference.³ In correspondence to me, he said that this approach requires “immersing the diversity issue into the legal problem such that the students have to ingest, digest, and ‘live’ the issues.”⁴ As he later suggested, it might more aptly be described as constructing problems that *immerse the students* in the diversity issues so that they cannot avoid digging deeply.⁵

Let me continue by describing various ways of inviting a contextual analysis at this deeper level in legal method and writing problems.

1. E-mail from Joe Nalven (Aug. 25, 1999).

2. See Charles R. Calleros, *Training a Diverse Student Body for a Multicultural Society* 8 LA RAZA L.J. 140, 150-51 (1995) [hereinafter, *Training a Diverse Student Body*].

3. E-mail from Clifford Zimmerman (Sept. 9, 1999).

4. *Id.*

5. See *id.*

B. *Race or Ethnic Culture in Substantive Issues or Factual Context*

In 1994, Nancy Wright of Santa Clara used the occasion of a teaching conference of the Society of American Law Teachers to collect legal writing assignments that require students to confront issues of diversity. Nancy Soonpaa was good enough recently to send me a summary of the problems and of the student reactions to them, which are appended to these remarks.

The collection includes problems and materials for about 50 in-depth writing or advocacy assignments that require students to discuss or argue issues about race, economic class, ethnic culture, gender, sexual orientation, HIV status, medical condition, or mental or physical disability.⁶ Several more have come to my attention during the preparation of this paper.⁷ And you can add to that other kinds of texts or teaching resources that are premised on difference based on foreign language or culture.⁸

This collection of resources raises several questions: (1) How do such assignments affect a student's legal education? (2) What motivates or justifies our assigning issues relating to diversity? (3) What are the pitfalls or challenges of such assignments? And (4) what are the implications of Professor Austin's views for legal skills teaching and scholarship?

6. See *infra*, Appendix (summarizing the problems).

7. A partial list of issues of diversity presented in recent writing problems include: ethnic intimidation (letter from in Sheilah Vance-Lewis, Sept. 15, 1999); affirmative action, hate speech at a public university, police failure to protect a woman from a former spouse, and medicinal use of marijuana as an AIDS treatment (E-mail from Clifford Zimmerman, Sept. 9, 1999); sexual orientation harassment (E-mail from Gwen Mathewson, Aug. 27, 1999); rights under the Individuals with Disabilities in Education Act, rights under the Americans with Disabilities Act, and rights under the Fair Housing Act (E-mail from Janet George Blocher, Aug. 27, 1999); exclusion of jurors based on gender, and police stops and searches based on race (E-mail from Mary Beth Beazley (Aug. 26, 1999); gender discrimination in law firm hiring, rights under the Americans with Disabilities Act, and racial discrimination in housing (E-mail from Sue Liemer, Aug. 25, 1999); sex, race, or national origin discrimination under Title VII (E-mail from Steve Jamar, Aug. 25, 1999); application of state hate crime statute, analysis of case regarding a commercial enterprise's duty to protect patrons from violent crimes such as rape, eligibility for federal benefits for disabilities, and affect on employment relationship of clash between American cultural norms and cultural traditions of foreign nationals in the workplace (E-mail from Joe Nalven, Aug. 25, 1999).

8. See, e.g., MARK E. WOJCIK, INTRODUCTION TO LEGAL ENGLISH - AN INTRODUCTION TO LEGAL TERMINOLOGY, REASONING, AND WRITING IN PLAIN ENGLISH (1998); Jill Ramsfield, *Is "Logic" Culturally Based? A Contrastive, International Approach to the U.S. Law Classroom*, 47 J. LEGAL EDUC. 157 (1997).

II. PEDAGOGIC ANALYSIS OF ASSIGNING ISSUES OF DIVERSITY

Let's start with the way in which non-mainstream legal problems can expand a student's legal imagination.

A. *Challenging Students' Ideas about Basic Legal Method and Legal Systems*

To start with the most basic foundations of legal method, first-year classes can easily fall into the trap of treating a whole category of domestic legal systems as invisible. In our society, of course, federal, state, and local governments exist side by side with American Indian tribal governments with limited sovereignty.⁹ With continued economic development on tribal lands, our students are increasingly likely to represent clients who will interact with tribal governments or private entities and perhaps litigate in tribal courts, even if the students do not intend to practice in tribal communities. Nonetheless, students might easily miss that point unless they are introduced fairly early in their legal education to the values and needs of Native American communities or at least the existence and method of their legal systems.

Just to take one example of the lessons in legal method to be learned, Justice Austin of the Navajo Supreme Court once explained to me how his nation's interaction with-or in some cases its carefully guarded distance from-mainstream American culture affected his court's development of tribal customary law in areas not controlled by federal law. In resolving contracts disputes, the Navajo court system has largely adopted and applied well-established rules of state contract law. That approach ensures predictability and uniformity for non-tribal contractors who might hesitate to enter into bargains with tribal entities if they were uncertain of the manner in which tribal courts would resolve contract disputes.

But in areas such as domestic relations, the Navajo Supreme Court has given renewed authority to traditional Navajo customary law because the issues touch upon deeply held, internal tribal values. In its opinion *In re Validation of Marriage of Francisco*, for example, the Navajo Supreme Court explained the significance of tribal traditions in domestic relations law, as it rejected Anglo-American notions of common law marriage and reinforced the validity under tribal customary law, even in the absence of a marriage license, of a marriage conducted according to traditional Navajo ceremony.¹⁰

The *Francisco* opinion confronts another fundamental concept

9. See, e.g., CHARLES R. CALLEROS, LEGAL METHOD AND WRITING 23, 47 (3d ed. 1998) [hereinafter LEGAL METHOD].

10. 16 ILR 6113 (Nav. S. Ct. 1989).

of legal method to which law students are introduced early in their first semester: the primacy in the Anglo-American legal system of enacted law over judicially developed common law.¹¹ Although some scholars have argued that courts should refuse to give effect to clearly outdated statutes even in the Anglo-American system,¹² this argument against the universal primacy of legislation may take on special significance in tribal communities whose enacted tribal codes may have been fashioned partly with the assistance and influence of federal government agencies or other non-tribal entities and at a time when the tribal community did not have the strength or support to strongly assert its traditional values and tribal sovereignty.

Thus, in *Francisco*, the Navajo Supreme Court rejected application of a Navajo tribal code that appeared clearly on its face to incorporate state law governing the validity of marriages and thus did not adequately vindicate values of tribal sovereignty in the area of domestic relations.¹³ The court explained that the code section, enacted in 1957, had “outlived its usefulness” and should be amended by the Navajo Tribal Council.¹⁴ However, even absent such action by the Tribal Council, the court apparently was prepared to protect values of tribal sovereignty by elevating judicially recognized Navajo customary law above the seemingly clear terms of a tribal code section.¹⁵

By assigning to students a case such as *Francisco*, we can expose them to the importance assigned by at least one tribal community to their traditions and to their assertion of the sovereignty when permitted by federal law and when consistent with their internal needs and values. That, in turn, can lead to an interesting and eye-opening comparative analysis of some fundamental principles of legal method that we commonly teach in a more limited way in a legal writing class.

In advanced Indian or Tribal Law seminars, such as those taught by my A.S.U. colleague Rebecca Tsosie, or by New Mexico’s Gloria Valencia-Weber, ethnographic information on the traditions and cultures of specific tribes or Indian nations might very well inform students when immersing themselves in a writing project on an issue of tribal sovereignty, tribal jurisdiction, or cultural property.

But so far, we’ve been talking about providing our students

11. See, e.g., CALLEROS, *LEGAL METHOD*, *supra* note 9, at 44.

12. See, e.g., GUIDO CALABRESI, *A COMMON LAW FOR THE AGE OF STATUTES* 163-66 (1982).

13. *Francisco*, 16 ILR at 6115 (analyzing 9 NAV. T.C. § 2).

14. *Id.*

15. The court, however, did invoke a tribal code section that directed the court to apply federal laws and any “laws or customs of the Navajo Nation” not precluded by federal law. *Id.* (quoting 7 NAV. T.C. § 204(a)).

with a larger ethnic perspective by exposing them to non-mainstream opinions in such sources as the Indian Law Reporter or to ethnographic information from other sources. But how about Professor Austin's sense of frustration over state court opinions that seem to tell only part of the story? If information about race or ethnic culture would offer a helpful perspective to an analysis, how can we get appellate courts to discuss it? In her presentations and writings, Diana Pratt of Wayne State University offers her analysis.

B. Preparing Students to Introduce Ethnographic Information into the Record

Professor Pratt has shown that ethnographic information, such as expert and non-expert testimony about ethnic cultural traditions, can affect the outcome of a case, and can become part of the explicit analysis of published opinions, if the evidence is produced and shown to be relevant at the trial stage.¹⁶ As an example, she offers the case of *Frank v. Alaska*,¹⁷ in which a member of the Athabascan tribe in Alaska faced jail and a fine for hunting a moose out of season.¹⁸ On appeal, a majority of the Alaskan Supreme Court reversed the conviction on grounds that it interfered with the free exercise of the defendant's religion, in which moose meat was a critical ingredient in a funeral potlatch.¹⁹ In its opinion, the court extensively discussed ethnographic information about Athabascan cultural traditions that the trial lawyers had diligently assembled for trial in the form of testimony by tribal leaders, expert testimony by anthropologists, and anthropological studies:

The appellant presented impressive evidence concerning the religion of the Central Alaskan Athabascan people. Several Athabascans and expert anthropologists testified and anthropological works were received in evidence.

The evidence was unrefuted, and in summary it shows the following.

Athabascan culture is highly individualized. From a complex belief system individual selection is tolerated and is the norm. Yet, there is a distinct belief system recognizable in Athabascan villages many miles apart. These beliefs have blended comfortably with Christianity, which was introduced in the 19th century.

16. See Diana Pratt, *Representing Non-Mainstream Clients to Mainstream Judges: A Challenge of Persuasion*, 4 LEGAL WRITING 79 (1998).

17. 604 P.2d 1068 (Alaska 1979).

18. Pratt, *supra* note 16, at 82-87.

19. *Frank*, 604 P.2d at 1072-75.

Death is the life crisis receiving the greatest attention in current Athabaskan culture. While it may be awaited with equanimity, it is an event of predominant significance, whose repercussions are long felt in the village.

The funeral potlatch is the most important institution in Athabaskan life. It is mandatory. Peter John, seventy-six, a former tribal chief in Minto, could not remember a death that was not followed by a funeral potlatch. It is apparently an obscenity to suggest that possibility. While a potlatch may be held to celebrate secular occasions, the funeral potlatch is distinguished by its fundamentally sacred aspect. The ritual has its origins in antiquity and it has not changed in any important respect since anthropologists first began to describe it.

Food is the cornerstone of the ritual. From the moment the death is learned of, food preparation begins. People begin to arrive in the village from nearby and remote places. Food is brought by all participants to one or several houses associated with the deceased and is shared in several pre-burial meals. The body will not be buried until a sufficient quantity of the proper food is prepared for the post burial feast. In the case of Delnor Charlie this took four to five days.

Athabascans believe that the funeral potlatch is the last meal shared by the living with the deceased. It is a communion meal. The deceased is discussed and songs of eulogy are sung. The deceased is thought to partake of the meal and this helps his spirit on its journey.

The funeral potlatch serves other functions. The grief of the family is to be eased. The community becomes involved and the sharing of food is the communal tie. Prayers are said for the dead and the living. All who have come and contributed are thanked. It is hoped that the funeral potlatch and one that is to follow, often more than a year later, the memorial potlatch, will assuage the spirits and prevent future deaths.

From the foregoing it is clear, and consistent with the findings of the courts below, that the funeral potlatch is a religious ceremony. The role of moose meat in that ceremony must next be examined.

Native foods comprise almost all of the foods served at the funeral potlatch. In a culture without many formal rules this is an absolute requirement. Native food means moose, bear, caribou, porcupine, fish, duck and berry dishes.

Of the native foods moose is at the apex. The most common big game animal is required, and in Central Alaska this is moose. As the district court found, it is the staff of life-, it is the meat that the people regard as most important for their sustenance. However, the district court found that although the evidence indicated that moose is the most desirable of foods to be served, it is not "an essential requirement."

The district court's finding that moose was not essential for a funeral potlatch is based primarily on the following testimony of Chief Peter John:

Q. Could there be a potlatch without wild meat?

A. Well, it could be, maybe, but then I don't think I'll enjoy it.

However, John also stated that he had been to hundreds of potlatches and had never attended one in which there was no moose meat, a recollection shared by Catherine Attla, fifty-two, and Carlos Frank. Barbara Lane, an anthropologist, provided this gloss on John's statements:

A. If a Roman Catholic priest was in some bush area up here and found himself without the proper wafers and wine, he could still perform his function with some substitute, but it wouldn't do in the sense-If at all possible to have the proper foods, that's what you would use.

Q. But nevertheless it could be accomplished?

A. I believe so. As a dire strait, in some unusual circumstance.

Other witnesses stated that moose meat is a necessary requirement having the sacramental equivalent to the wine and wafer in Christianity. Frank and all of the Athabaskan witnesses, including Peter John, testified that they could not risk showing disrespect to the dead by failing to provide moose for the post burial ritual.²⁰

Indeed, the Alaskan Supreme Court found this evidence to be so persuasive that it was prepared to overturn as clearly erroneous

20. *Id.* at 1071-72.

the district court's ultimate factual conclusion:

Thus we would be inclined to hold that the district court was clearly erroneous in concluding that moose meat was not essential for the observance of a funeral potlatch. However, absolute necessity is a standard stricter than that which the law imposes. It is sufficient that the practice be deeply rooted in religious belief to bring it within the ambit of the free exercise clause and place on the state its burden of justification. The determination of religious orthodoxy is not the business of a secular court We think the evidence is inescapable that the utilization of moose meat at a funeral potlatch is a practice deeply rooted in the Athabaskan religion. While moose itself is not sacred, it is needed for proper observance of a sacred ritual that must take place soon after death occurs. Moose is the centerpiece of the most important ritual in Athabaskan life and is the equivalent of sacred symbols in other religions.²¹

Professor Pratt concludes that the defense in *Frank* was successful because advocates explained Athabaskan culture in detail, with dignity, and with solid documentation, and because they drew analogies to mainstream religious practices and emotional bonds with which the justices could identify.²²

The relevance of ethnic cultural information may be obvious in a case involving free exercise of religion, but I can provide another example from personal experience in which the legal issues seemed to be limited to applying a general rule limiting damages for breach of contract.

I once represented *pro bono* a group of young Latinas and their mothers, when their tailor ruined a *Quinceanera* celebration by misleading the young women about the state of their gowns, making them late for the celebration, and causing some to miss their role in the mass and others to come to the reception and dance in street clothes or unfinished gowns. The case went to arbitration, raising the issue of whether the plaintiffs could get damages for emotional distress for the tailor's breach of contract.²³ Such damages are not usually awarded, but courts have made exceptions in unusual cases, such as contracts for funeral arrangements, when the object of the contract is protection of sentimental or emotional interests and when breach would foreseeably cause emotional distress for reasons other than disappointment over pecuniary losses.²⁴

The arbitrator, a white male, was open-minded but was unfamiliar with a *Quinceanera*. So my lead-off witness, stipulated

21. *Id.* at 1072.

22. Pratt, *supra* note 16, at 86.

23. *Araiza v. Udave*, No. CB 88-05922 (Ariz. Super. Ct. 1989).

24. See, e.g., *Farmer's Ins. Exch. v. Henderson*, 313 P.2d 404, 409 (Ariz. 1957) (dictum); ALLEN FARNSWORTH, *CONTRACTS* § 12.17, at 934 (2d ed. 1990).

by both parties as expert, was Leonides Covarrublas, an immigrant from Mexico and a graduate student in Spanish Language, Literature, and Culture at Arizona State University. In detailed testimony, Ms. Covarrublas explained the religious and social significance of the *Quinceanera* ceremony as a "coming-of-age" ritual for a young woman reaching the age of fifteen in the Hispanic community. She described the social and emotional significance of the Catholic mass, the reception with the formal "waltz" performed by the *Quinceanera* celebrant, her maids of honor, and their escorts, and the importance of the formal attire worn by all at this tradition-bound event. She compared it to a formal wedding with a traditional church service, allowing the arbitrator to analogize its significance to that of an event with which he had experience.²⁵ And he did indeed end up awarding damages for emotional distress.²⁶

The cultural information in that case did not end up in a published opinion, but it did form the basis of a writing assignment in my classes.²⁷ And such a writing assignment could be supplemented with articles, videos, or testimony setting forth the cultural information relevant to the case.²⁸

This assignment accomplishes several goals with my students. First, it impresses on them that even a question such as calculation of damages for breach of contract may tam on information about the cultural significance of events.²⁹ Second, it suggests ways in which they can put such information into the record.³⁰ Third, it allows students who come from a traditional Latino community, who may normally feel like outsiders at law school, to be the "insiders" for once, the experts on factual matters. By the end of the year, it would be possible to allow different groups to take turns enjoying that position, perhaps reducing student alienation.³¹ And finally, of course, all students benefit by

25. Hearing in *Araiza v. Udave*, No. CV 88-05922 (Ariz. Super. Ct. 1989). Indeed, Ms. Covarrublas testified that a *Quinceanera* in one sense was more significant than a formal Catholic wedding: although a Latina might be married more than once in her lifetime, she turned fifteen only once. *Id.*

26. Award in *Araiza v. Udave*, No. CV 88-05922 (Ariz. Super. Ct. 1989).

27. See CALLEROS, LEGAL METHOD, *supra* note 9, App. IV, at 542-50 (office memo assignment); *Id.*, App. VI, at 573 (trial brief assignment).

28. See, e.g., Linda Helser, *Quinceanera: Girl to Woman*, ARIZONA REPUBLIC, Oct. 9, 1994, at I (describing Mayan cultural roots of the modern *Quinceanera* and the particular *Quinceanera* of a young woman in Phoenix).

29. See CHARLES R. CALLEROS, TEACHER'S MANUAL FOR LEGAL METHOD AND WRITING 83-85 (3d ed. 1998) (sample office memorandum).

30. See *id.* at 109-111 (sample trial brief).

31. See Calleros, *Training a Diverse Student Body*, *supra* note 2, at 144-45. Sometimes a student's sense of alienation is diminished simply in knowing that peers are reflecting on issues that are important to the student. For example, a student who was permanently on crutches expressed his delight that fellow students in Sue Liemer's class were researching a problem under

learning about a cultural event important to a segment of our society.³²

C. Benefits and Challenges of Using Problems Raising Issues of Diversity

In a previous article, I discussed in detail the benefits of confronting issues of diversity in the classroom, and I explored the problems and challenges as well.³³ It will suffice here to summarize those benefits and challenges and then to provide a particularly vivid example of both.

In my view, the pedagogic benefits of using writing assignments or other course assignments to confront issues of diversity are at least three-fold. First, they are good vehicles for developing skills in critical thinking, because students tend to care deeply about the issues and can challenge each other to analyze the issues from different perspectives.³⁴ Second, and particularly if the class is diverse, students can educate one another about differences in our society, or at least engage in a joint exploration of those differences, helping to prepare all students for practice in a society that is multi-ethnic and pluralistic in a number of other

the Americans with Disabilities Act and thus were thinking about issues that he encountered every day of his life. E-mail from Sue Liemer, Aug. 25, 1999. And a student from a different legal writing section wrote to Gwen Matheson, expressing praise for Professor Matheson's writing assignment dealing with sexual orientation:

I am a 1 L in another . . . section and just wanted to tell you how impressed I am with your research assignment. It's encouraging to know that at least somebody is willing to make her students deal with gay and lesbian issues. I've quickly found that law school has a tendency to stifle any real discussion surrounding these issues. Whenever minority "categories" are discussed, somehow sexual orientation is either attached as an afterthought or left out completely. Thank you for bringing gay and lesbian issues to the forefront.

E-mail from Cara J. Frey to Gwen Matheson, Feb. 4, 1999, forwarded with permission to Charles Calleros, Aug. 31, 1999.

32. At the 1999 conference at John Marshall Law School, at which this paper was presented, Vivian Tarver, a student in Mark E. Wojcik's class, testified that she was unfamiliar with a *Quinceañera* celebration when first assigned the *Quinceañera* problem. Her unfamiliarity caused her initially to discount the evidence of emotional trauma in the case. However, when Ms. Tarver began asking her Hispanic co-workers at a medical facility about *Quinceañeras*, her colleagues responded with photo albums, animated stories, and faces full of emotion. She began to understand the significance of the event, leading her not only to a fuller understanding of the writing assignment, but also a fuller appreciation of the lives and culture of some of her co-workers.

33. Calleros, *Training a Diverse Student Body*, *supra* note 2, at 141-47, 156-64.

34. *See id.* at 141-42.

ways.³⁵ Third, by setting issues in a variety of racial, cultural, or otherwise diverse contexts, we sometimes can reduce student alienation by allowing different groups of students to take turns enjoying the status of “Insiders” on a problem, rather than routinely relegating some students to the role of perpetual “outsider.”³⁶

In some cases, we might add a fourth benefit, that of educating students about a particular issue that has troubled their community, allowing students to air the issue in a relatively controlled, academic setting. For example, when Sheilah Vance-Lewis taught legal writing, she assigned a problem based on a case of racial harassment that made the news in her community. She developed the problem partly to present her class with current, relevant, realistic issues in which they likely would be keenly interested, and partly to help her deal with her own dismay over the incident.³⁷ Similarly, Sue Liemer once assigned a first-year writing problem presenting a case of racial discrimination in housing after she heard of an ugly housing incident in which a second-year law student had apparently acted in utter ignorance of housing laws in renting out a room. Professor Liemer wanted to make sure next year that the future power structure of Mississippi-the students at her law school-graduated with some understanding of laws banning racial discrimination in housing.³⁸

The potential problems and challenges of confronting issues of diversity in the classroom are also multi-faceted. When an instructor constructs a problem that is not strictly based on a real event, he or she faces the risk of painting diverse characters and events in a manner that some students find to be inauthentic or stereotypical. Although this risk is real, we can reduce it by learning from each other and from our diverse students; moreover, many students tend to be sufficiently grateful for efforts to diversify the curriculum that they are willing to forgive minor imperfections in the assignment.³⁹ A related challenge is that of encouraging full class participation by all students, welcoming a variety of perspectives without stereotypically assuming that a student will represent a particular view simply on the basis of that student’s race or other personal characteristics.⁴⁰

Unfortunately, full participation may be excruciating for some students. A victim of sexual assault may find it traumatic to live with a writing assignment that vividly portrays sexual

35. See *id.* at 142-43.

36. See *id.* at 142-43.

37. Telephone conversation with Sheilah Vance-Lewis (Oct. 12, 1999).

38. E-mail from Sue Liemer to Charles Calleros (Aug. 27, 1999).

39. See Calleros, *Training a Diverse Student Body*, *supra* note 2, at 156-58.

40. See *id.* at 158-160.

harassment or assault, precisely because she is an “insider” to the problem. In such a case, the student’s personal experience with the issue may give her special insights, but not ones that she is anxious to confront in her first-semester of law school and to share with others in an academic setting. Other issues of diversity, including those relating to racial discrimination or harassment, may raise similar problems of pain for some students. Whether the best course is to help students confront these demons or to allow them to opt out in extreme cases is a matter of some dispute among well-meaning, sensitive academics.⁴¹ In either case, the support and understanding of the administration can be invaluable.⁴²

A final pitfall lies in an instructor’s ability to evaluate each student’s analysis objectively, even when the students take positions that vary to different degrees from the instructor’s own deeply held views on an emotionally charged subject.⁴³ Perhaps the best means of avoiding this potential pitfall is self-awareness. For example, in developing a series of assignments based on her racial harassment problem, Sheilah Vance-Lewis ultimately decided not to raise an issue of ethnic intimidation centered on the ugly racial epithet, *nigger*. She was not prepared to read memos from some students arguing that the epithet was not outrageous, and she feared for her own objectivity toward such students once having read such arguments.⁴⁴ Although she wondered later whether she had been too cautious, her awareness of the issue allowed her to make a conscious choice rather than stumble unthinkingly into a difficult position.

Several of these benefits and challenges to assigning problems of diversity in legal writing classes are illustrated by the experiences of Samara Marion in assigning a moot court problem raising the defense of rape-trauma syndrome in a criminal prosecution for homicide. Professor Marion based her appellate advocacy problem on a trial advocacy exercise developed by Professor Phyllis Bookspan and described by Professor Bookspan at a teaching conference of the Society of American Law Teachers.⁴⁵

The assignments developed by Professors Bookspan and Marion were multi-faceted in at least two ways. First, they explored multiple differences in personal characteristics. Because

41. See *id.* at 161-63.

42. One legal writing instructor, who shall remain anonymous, felt less than full support when his acting dean informed him that “you were hired to teach lawyering skills, not diversity.” E-mail from colleague, Aug. 1999.

43. See Calleros, *Training a Diverse Student Body*, *supra* note 2, at 164.

44. Telephone interview of Sheilah Vance-Lewis, October 12, 1999.

45. See Calleros, *Training a Diverse Student Body*, *supra* note 2, at 154 & n.41.

the defendant in the case, "Lorraine," was African-American and lesbian, her story examined the intersection of race, sex, and sexual orientation. Second, the assignments used literature and a variety of media to portray Lorraine and those around her in deep and meaningful ways. Students first read a chapter in Gloria Naylor's novel, *The Women Of Brewster Place*, and then saw a video-taped excerpt of the made-for-TV movie adaptation of the novel. In combination, these media developed the characters vividly: students came to know Lorraine, her world, her emotional strengths and weakness, her daily tribulations, her sense of betrayal at experiencing homophobia from neighbors who had themselves suffered the sting of racial bigotry, and the violent tragedy that formed the basis of the legal problem, all in a way that is not easily communicated in a trial record.⁴⁶ Indeed, one might argue that fiction presented in this way can sometimes mirror the truth of actual contexts as vividly and realistically-or perhaps even more so-than can pure ethnographic data.

Taking her cues from Professor Bookspan, Professor Marion used this problem to raise questions of multiple levels of difference in the context of a criminal law problem. What motivated Lorraine's tormentors to brutally assault her? Misogyny? Racism? Homophobia? A combination of these forms of bigotry? Which of Lorraine's personal characteristics are relevant to the issues of the case? Which of her characteristics should either party make known to the jury or judges, and why? Would emphasizing such information invite a biased response toward Lorraine? If so, does the prosecution act ethically in bringing the information out? Does the defense act wisely in risking a biased reaction if it believes that any of Lorraine's personal characteristics help explain her defense? Professor Marion believed that her students grew intellectually and became better prepared to practice in a pluralistic society by grappling with such questions in addition to the legal doctrine.⁴⁷

Professor Marion used this problem at three law schools over several years. At the first two law schools, students were enthusiastic about the problem. At the third school, a group of students demanded to opt out of the problem, protesting the problem's vivid depiction of sexual assault. Professor Marion encouraged students to stick with the problem and to let her help them confront the difficult issues; however, she received mixed signals and mixed support from the administration, leading ultimately to the hiring of another writing instructor to teach those students who opted out of the problem. Professor Marion

46. Interview of Samara Marion, Santa Cruz, California (Oct. 19, 1999).

47. *Id.*

has not used the problem since.⁴⁸

Professor Marion's experience demonstrates the benefits and the potential problems of confronting issues of difference in a vivid manner. Although it may be little consolation to her, and although one cannot be sure of this, the student movement to opt out of her problem at the third school appeared to be based solely on student discomfort with the graphic violence of the problem. Assignments that examine issues of difference, even issues of race that tend to trigger emotional reactions, may be less controversial if they deal with injuries other than the trauma of a brutal sexual, racial, or homophobic assault. Such assignments may still require some extra effort and intellectual growth on the part of students, as well as special attention from the instructor, but they may be less likely to spark an open revolt by students. When Sue Liemer assigned her housing discrimination case, for example, she noted that there were students from dusty little Mississippi towns who could barely get the words "racial discrimination" out of their mouths without incredible layers of discomfort, but it was also a wonder to hear the many discussions as the students parsed out the case and their arguments.⁴⁹

Moreover, although Samara Marion was stung by the controversy aroused by her moot-court problem, she continues to contribute to legal analysis with sociological or ethnographic information, more recently with fieldwork in criminal justice. She recently published her field research of the way in which California's Three-Strikes law was applied in San Diego County between July and December 1996, as influenced by prosecutorial and judicial discretion and by the plea bargaining and litigation process.⁵⁰ She found, among other things, that "offenders sentenced under Three Strikes were predominantly men of color in their mid-thirties who had committed non-violent offenses," such as petty theft.⁵¹ Of those offenders who had committed violent crimes, Professor Marion found a puzzling "inverse proportionality between sentence length and violent crime: the average prison sentence of those who had committed one violent crime was two years longer than the average prison sentence of those who had committed two violent crimes."⁵² Work such as this should demonstrate the need for broader studies of Three Strikes and should inform policy discussions of the law, whether in the classroom or in the legislature.

48. *Id.*

49. E-mail from Sue Liemer (Aug. 25, 1999).

50. Samara Marion, *Justice By Geography? A Study of San Diego County's Three Strikes Sentencing Practices From July-December 1996*, 11:1 STANFORD L. & POL. 77 (1999).

51. *Id.* at 78.

52. *Id.*

CONCLUSION

I whole-heartedly agree with Professor Austin's thesis that our courses can engage students in a pedagogically rewarding way by inviting and enabling students to explore the racial context-or other contexts of diversity-of a legal dispute. Indeed, the teaching and scholarship of writing faculty have demonstrated the benefits and challenges of raising issues of diversity and have demonstrated how litigants may successfully invite courts to employ ethnographic information in analyzing disputes. Although the potential problems of using emotionally charged issues of diversity in the classroom are real. I believe that the benefits are worth the extra effort, and conspicuous omission of the tough questions of diversity that inevitably arise in our society can be problematic as well.⁵³

Professor Austin's special challenge to us all is to look for and incorporate new ethnographic studies that go beyond the obvious issues of "black and white" and that tackle issues such as bias between minority groups or biases of various kinds within a discrete minority community. Professor Marion's experience with an assignment presenting multiple levels of difference represents a step in that direction, and warns us of the challenges awaiting. That assignment also reminds us that ethnographic information may take a number of forms. A contextual interdisciplinary approach might combine law and literature as well as law and sociology: sometimes a poet or novelist, speaking from a lifetime of experience or observation, can enrich a student assignment and provide contextual insights equal to that of a controlled, sociological study.

Indeed, interdisciplinary work may take some surprising forms. This year the Cardozo Law Review published a symposium on music and legal theory.⁵⁴ One of the symposium articles arose from "independent ethnographic field research" that the authors-a family law scholar and an ethnomusicologist-"conducted over the course of six months in 1996 with the *Gitanos* (Spanish Gypsies) of the Andalusian city of Jerez de la Frontera."⁵⁵ In it, the authors analyze the 12-beat flamenco rhythm known as *buleria*;⁵⁶ they describe the integral part that group performance of that rhythm plays in *Gitano* wedding ceremonies;⁵⁷ and they argue that the rhythm "provides a good metaphor for the Gitano community's

53. See Calleros, *Training a Diverse Student Body*, *supra* note 2, at 157-58.

54. *Modes of Law-Music and Legal Theory-An Interdisciplinary Workshop*, 20 CARDOZO L. REV. 1325-1746 (1999).

55. Susan G. Drummond & Jean-Marc Sellen, *Follow a Rule/Follow a Rhythm: Sharing Practice in a Gitano Quarter in Jerez, Andalusia*, 20 Cardozo L. Rev. 1423 (1999).

56. *Id.* at 1427-337.

57. *Id.* at 1423-27.

loosely structured and unformulated, but nonetheless regular, conjugal arrangements,” reflecting an internal form of “Gitano family law.”⁵⁸

This research held particular fascination for me, because I have incorporated *bulerias* and other flamenco rhythms as analogy to the law school curriculum in a teaching workshop for law school faculty.⁵⁹ I have not yet incorporated ethnomusicology into my courses for students. However, the panel discussion today should encourage all of us to enrich our students’ intellectual encounters with the law by engaging in a contextual analysis of the law, as espoused by Professor Austin. As we do so, we should keep an open mind about the sources that we might use for such a contextual analysis. For example, we might glean helpful ethnographic information not only from sociological or economic studies, but also from the arts, such as from ethnic literature or ethnomusicology. The challenge awaits us.

58. *Id.* at 1436.

59. See Charles R. Calleros, *Reading, Writing, and Rhythm: A Whimsical, Musical Way of Thinking about Teaching Legal Method and Writing*, 5 LEGAL WRITING 1 (1999).

APPENDIX

SUMMARY OF LEGAL WRITING PROBLEMS RAISING
ISSUES OF DIVERSITY OR SOCIAL CONCERN⁶⁰

NANCY WRIGHT

INTRODUCTORY REMARKS

I want to thank all of you who responded to the survey or submitted problems to be shared at the Conference. As you will see from the brief summaries that follow, the problems raise a wide range of issues of diversity or social concern. In order to help you narrow your search for the problems that might be of particular interest to you, I have also attached a list of the numbers of the problems, categorized by their areas of substantive law and the legal and diversity/social concern issues they raise.

In almost all cases, the professor who submitted the problem is also the person who wrote it. Unless noted otherwise, all of the problems summarized below are first year assignments. All comments regarding any positive or negative reactions from students or faculty (as well as any additional comments) are from the professor that submitted the problem.

Thank you again for your assistance with this project.

1. SUBMITTED BY: MARY GARVEY ALQUERO

LOYOLA UNIVERSITY LAW SCHOOL, NEW ORLEANS - (504)
861-5675

SUBSTANTIVE AREA: Torts

LEGAL ISSUE: Causes of action for negligent transmission of
AIDS & for doctor failing to tell party of another's AIDS

SOCIAL CONCERN ISSUE: Liability related to transmission of
AIDS & doctor's responsibility

TASK/FORMAT: Office memorandum

PAGE LENGTH: 3

POSITIVE REACTIONS (FROM STUDENTS): Students not only
learned the law, but they learned about social responsibility &
facts about AIDS itself

NEGATIVE REACTIONS (FROM STUDENTS): Only that they were

60. Prepared by Nancy Wright for the Society of American Law Teachers in 1994, and published here with her permission. Except for one name change known to the author, this Summary appears here in its original form, without any attempt to update its information.

forced to look outside of their jurisdictions to research which meant more work

OTHER COMMENTS: Students were assigned to use the law of one of six different states. The problem worked out well and students enjoyed it. Students were not given the handout. They were told the facts & took notes & could ask questions weekly to clarify.

2. SUBMITTED BY: MARY GARVEY ALQERO

LOYOLA UNIVERSITY LAW SCHOOL, NEW ORLEANS - (504) 861-5675

SUBSTANTIVE AREA: Torts

LEGAL/SOCIAL CONCERN ISSUE: Social host & tavern owner liability for intoxication of customer

TASK/FORMAT: Office memorandum

PAGE LENGTH: 2

POSITIVE REACTIONS (FROM STUDENTS): Students discussed their views on who should be responsible

OTHER COMMENTS: I used it for night students and the research was pretty straightforward. Note: Several states do not hold tavern owner's liable - like Louisiana and Mississippi.

3. SUBMITTED BY: CHERYL BECKETT GONZAGA

UNIVERSITY SCHOOL OF LAW - (509) 328-4220 EXT. 3721

SUBSTANTIVE AREA: Disability Law

LEGAL ISSUE: Whether wheelchair access to a museum is in compliance with Title III of the Americans with Disabilities Act (A.D.A.)

DIVERSITY/SOCIAL CONCERN ISSUE: Accommodation for the disabled in privately-owned, public accommodations Task/Format: Intra-office memo

PAGE LENGTH: 5

POSITIVE REACTIONS (FROM STUDENTS): Students were engaged in debating the breadth of A.D.A.

POSITIVE REACTIONS (FROM FACULTY): One senior faculty member was impressed with the exercise

OTHER COMMENTS: There is little or no case law — but tons of regulations

4. SUBMITTED BY: CHERYL BECKETT GONZAGA

UNIVERSITY SCHOOL OF LAW - (509) 328-4220 EXT. 3721

SUBSTANTIVE AREA: Employment Law

LEGAL/SOCIAL CONCERN ISSUE: Whether Title VII covers discrimination based on sexual orientation

TASK/FORMAT: Office memorandum

PAGE LENGTH:

POSITIVE REACTIONS (FROM STUDENTS): Some students were

intrigued with the lack of protection for gay citizens

POSITIVE REACTIONS (FROM FACULTY): Yes

OTHER COMMENTS: The twist on the facts is that it can be analyzed as a male-female discrimination case rather than one based on sexual orientation since the male homosexual was retained while the female was dismissed.

5. SUBMITTED BY: LISA BLACK

ROGER WILLIAMS UNIVERSITY SCHOOL OF LAW

SUBSTANTIVE AREA: Criminal/Constitutional Law

LEGAL ISSUES: Whether the language of a disorderly conduct statute covers homeless people on public land

DIVERSITY/SOCIAL CONCERN ISSUE: Tights of homeless people/ "status crime"

TASK/FORMAT: In class debate over statutory interpretation of Cal. Penal Code section 647(1). The problem could also be used as closed universe office memorandum

PAGE LENGTH: 14 (includes statute)

POSITIVE REACTIONS (FROM STUDENTS): Yes

POSITIVE REACTIONS (FROM FACULTY): Yes - other legal writing professors adopted it

OTHER COMMENTS: Includes suggestions after facts of problem

6. SUBMITTED BY: LISA BLACK

ROGER WILLIAMS UNIVERSITY SCHOOL OF LAW

SUBSTANTIVE AREA: Torts - social host & dram shop liability

LEGAL ISSUE: Who should bear responsibility when a person serves another person alcohol even though he is visibly intoxicated

DIVERSITY/SOCIAL CONCERN ISSUE: Responsibility for drunk driving

TASK/FORMAT: Interoffice memorandum & appellate brief

PAGE LENGTH: 7 (includes brief instructions for writing an interoffice memo)

POSITIVE REACTIONS (FROM STUDENTS): Yes it's an issue they have experience with

NEGATIVE REACTIONS (FROM STUDENTS): Yes - too much policy - not enough black letter law (Professor Black's response to the students' comments: "I loved it!")

OTHER COMMENTS: Problems works better in hypothetical jurisdiction. If use real jurisdiction, note that most states have changed their laws recent years & need to use most recent cases.

7. SUBMITTED BY: CHARLES CALLEROS

ARIZONA STATE UNIVERSITY - (602) 965-4761

CONTACT PUBLISHER - PUBLISHED IN CHARLES R. CALLEROS, LEGAL METHOD AND WRITING, SECOND EDITION, LITTLE, BROWN & CO. (1994) PAGES 500-507

SUBSTANTIVE AREA: Contracts, Torts
CLASS YEAR: Upper division but suitable for first year
LEGAL ISSUE: Damages for emotional distress
DIVERSITY/SOCIAL CONCERN ISSUE: Problem is set in traditional Hispanic culture in context of Quinceanera, a ceremony with religious and social significance
TASK: Case analysis & synthesis
FORMAT: Office memorandum & trial brief
PAGE LENGTH: 7 (sample response to the problem is included in the Teacher's Manual)
POSITIVE REACTIONS (FROM STUDENTS): Hispanic students enjoyed working in familiar territory

8. SUBMITTED BY: CHARLES CALLEROS
ARIZONA STATE UNIVERSITY - (602) 965-4761
CONTACT PUBLISHER- PUBLISHED IN CHARLES R. CALLEROS, LEGAL METHOD AND WRITING, SECOND EDITION, LITTLE, BROWN & CO. (1994) PAGES 525-541
SUBSTANTIVE AREA: Contracts Torts & Employment Law
LEGAL/SOCIAL CONCERN ISSUE: Liability under Title VII for sexual harassment & discharge
YEAR: Upper division
TASK: Case brief, synthesis, drafting & advocacy in some assignments & complaint & demand letter
FORMAT: Office memorandum & points & authorities
PAGE LENGTH: 16
POSITIVE REACTIONS (FROM STUDENTS): Generally enthusiastic discussion other participation

9. SUBMITTED BY: KIM CAUTHRON
SOUTH TEXAS COLLEGE OF LAW - (713) 646-1873
SUBSTANTIVE AREA: Employment Law - A.D.A.
LEGAL ISSUE: Whether an employee was fired because his obesity was perceived as a disability.
DIVERSITY/SOCIAL CONCERN ISSUE: Society's perception of those who are obese
TASK/FORMAT: Appellate brief
PAGE LENGTH: 13 page federal district court's memorandum opinion, which was the only substantive information provided to the students about the appellate problem & 13 page bench memo
POSITIVE REACTIONS (FROM STUDENTS): Better understanding of the A.D.A. & of its scope; greater sensitivity to those with weight problems
POSITIVE REACTIONS (FROM FACULTY): Made the students wrestle with policy arguments & was very timely
OTHER COMMENTS: It's probably too difficult for first semester students, students must be comfortable with statutory

interpretation & using administrative regulations & guidelines. Only other concern was that students in the class might make derogatory comments about people who are overweight which could hurt over-weight students in the class.

10. SUBMITTED BY: MARIA CIAMPI

ST JOHN'S UNIVERSITY SCHOOL OF LAW - (718) 990-6094

SUBSTANTIVE AREA: Constitutional Law - First Amendment

LEGAL ISSUE: Whether an anti-begging statute violated the First Amendment

DIVERSITY/SOCIAL CONCERN ISSUE: Free speech rights of the homeless

TASK/FORMAT: Appellate brief

PAGE LENGTH: 35

11. SUBMITTED BY: SUSAN DENISE

GEORGETOWN UNIVERSITY LAW SCHOOL - (202) 662-9526

SUBSTANTIVE AREA: Torts

LEGAL/SOCIAL CONCERN ISSUE: Intentional infliction of emotional distress from sexual harassment by former attorney

TASK/FORMAT: Office memorandum

PAGE LENGTH: 3

POSITIVE REACTIONS (FROM STUDENTS): Interesting topic

POSITIVE REACTIONS (FROM FACULTY): I coordinated with one of the small section Torts professors who was using a sexual harassment problem in his class

OTHER COMMENTS: Other jurisdictions that work include Alaska, Massachusetts and Wisconsin

12. SUBMITTED BY: SUSAN DENISE

GEORGETOWN UNIVERSITY LAW SCHOOL - (202) 662-9526

SUBSTANTIVE AREA: Torts

LEGAL ISSUE: Invasion of privacy

DIVERSITY/SOCIAL CONCERN ISSUE: Unauthorized disclosure of positive HIV status as invasion of right to privacy

TASK/FORMAT: Office memorandum (statutory interpretation)

PAGE LENGTH: 3

POSITIVE REACTIONS (FROM STUDENTS): Students found project to be very interesting

NEGATIVE REACTIONS (FROM STUDENTS): Topic may have been considered provocative by some

OTHER COMMENTS: Other jurisdictions that work include Arizona, Missouri and Ohio

13. SUBMITTED BY: NANCY LAWLER DICKHUTE

CREIGHTON UNIVERSITY LAW SCHOOL - (402) 280-5522

SUBSTANTIVE AREA: Civil Procedure

LEGAL ISSUE: Existence of personal jurisdiction

DIVERSITY/SOCIAL CONCERN ISSUE: AIDS

TASK/FORMAT: Office memorandum

PAGE LENGTH: 4

POSITIVE REACTIONS (FROM STUDENTS): They liked tie-in to civil procedure, topic & persuasive writing opportunity

NEGATIVE REACTIONS (FROM STUDENTS): They wanted more than two weeks to complete it

POSITIVE REACTIONS (FROM FACULTY): Civil procedure professors helped design problem & liked using it as a springboard for classroom discussion

NEGATIVE REACTIONS (FROM FACULTY): Agreed more than two weeks was needed to complete problem because of its complexity

OTHER COMMENTS: Build more time into completing problem

14. SUBMITTED BY: K.K. DUVIVIER

UNIVERSITY OF COLORADO SCHOOL OF LAW - (303) 192-7420

SUBSTANTIVE AREA: Torts - slander per se

LEGAL ISSUE: Whether alleging someone's homosexuality is slander per se

DIVERSITY/SOCIAL CONCERN ISSUE: Whether homosexuality is slander per se & also whether AIDS is a loathsome disease. Also we discussed Amendment 2 which restricts gay rights in Colorado.

TASK/FORMAT: Appellate brief & oral argument

PAGE LENGTH: 7

POSITIVE REACTIONS (FROM STUDENTS): They found the issues interesting

15. SUBMITTED BY: TAYLOR FLYNN

STANFORD LAW SCHOOL - (415) 723-2519

SUBSTANTIVE AREA: Constitutional & Criminal Law

LEGAL/SOCIAL CONCERN ISSUE: Search & seizure of homeless person's belongings (and, incidentally, refusal to allow adoptions to the homeless)

TASK/FORMAT : Appellate brief

PAGE LENGTH: 4

POSITIVE REACTIONS (FROM STUDENTS): Students thought issue was interesting

POSITIVE REACTIONS (FROM FACULTY): No comments by faculty, but several moot court judges said they thought the issues were interesting assignment

16. SUBMITTED BY: DONNA HILL

HOFSTRA LAW SCHOOL - (516) 163-5933

SUBSTANTIVE AREA: Torts - duty of care & damages

YEAR: Second year, fall semester

LEGAL/SOCIAL CONCERN ISSUE: Should a patient have a duty to disclose her HIV positive status to her doctor & was an award of damages for fear of AIDS a cognizable harm under California law

TASK/FORMAT: Appellate brief

Page Length: 101

POSITIVE REACTIONS (FROM STUDENTS): They enjoyed working on a timely, interesting issue

POSITIVE REACTIONS (FROM FACULTY): A few faculty members expressed that it was a good assignment

OTHER COMMENTS: The problem was narrowed to the two issues above. The problem can also be used for moot court with each member of the team taking responsibility for one of the two issues. One of the features of the problem was that the patient was having elective breast surgery. Professor Hill is not sure she would retain the breast surgery aspect although she felt that the elective nature was a nice teaching tool. Professor Hill has other AIDS related problems, such as whether the bite of an HIV positive person is a dangerous instrument.

17. SUBMITTED BY: DONNA HILL

HOFSTRA LAW SCHOOL - (516) 463-5933

SUBSTANTIVE AREA: Torts - municipal liability

LEGAL/SOCIAL CONCERN ISSUE: Is a municipality liable for a police officer's rape of a witness

TASK/FORMAT: Synthesis & memorandum of law for summary judgment using closed universe

PAGE LENGTH: 23

POSITIVE REACTIONS (FROM STUDENTS): The students loved this exercise

OTHER COMMENTS: The setting can be changed since Professor Hill believes that rape can be too delicate if not properly handled. Professor Hill has other gender-related problems.

18. SUBMITTED BY: DONNA HILL

HOFSTRA LAW SCHOOL - (516) 463-5933

SUBSTANTIVE AREA: Torts

LEGAL/SOCIAL CONCERN ISSUE: Should a manufacturer have a duty to warn a patient (rather than just a duty to warn a doctor) of the possible side effects of birth control devices (in this case an I.U.D.)

TASK/FORMAT: Appellate brief

PAGE LENGTH: 95

19. SUBMITTED BY: CHRISTINE L. KUNZ

WILLIAM MITCHELL COLLEGE OF LAW - (612) 290-6340

CONTACT PUBLISHER - PUBLISHED IN RUNS, CHRISTINE L., ET AL., THE PROCESS OF LEGAL RESEARCH, THIRD ED., LITTLE, BROWN

& Co.

SUBSTANTIVE AREA: Torts - intentional infliction of emotional distress (I.I.E.D.)

LEGAL ISSUE: Does racial harassment constitute I.I.E.D.?

DIVERSITY/SOCIAL CONCERN ISSUE: Whether racial minorities have a special susceptibility to harassment, making the I.I.E.D. threshold lower

TASK/FORMAT: Case brief, case synthesis, analogy exercise, closed office memo

PAGE LENGTH: 2 - at pages 15-16 of book

POSITIVE REACTIONS (FROM STUDENTS): Minority students appreciated raising the issues

NEGATIVE REACTIONS (FROM STUDENTS): Some students made minority bashing remarks

POSITIVE REACTIONS (FROM FACULTY): Faculty applauded the raising of diversity issues so early in the first year

NEGATIVE REACTIONS (FROM FACULTY): Two minority faculty members were highly critical of the casting of an African-American woman as the victim of racial harassment

OTHER COMMENTS: Train the Legal Writing faculty on sensitivity to diversity issues in the classroom

20. SUBMITTED BY: JAN LEVINE

UNIVERSITY OF ARKANSAS SCHOOL OF LAW - (501) 575-7643

CONTACT PUBLISHER - PUBLISHED IN JAN LEVINE, ANALYTICAL ASSIGNMENTS FOR INTEGRATING LEGAL RESEARCH & WRITING, ADAMS & AMBROSE (1993, 1994)

CALL PUBLISHER AT (608) 257-5700 request Diskette 6 A/B & 8

SUBSTANTIVE AREA: Disability Law

LEGAL/SOCIAL CONCERN ISSUE: Reasonable accommodation for learning disabilities on the Bar Exam

TASK/FORMAT: Office memorandum

POSITIVE REACTIONS (FROM STUDENTS): Very interested and insightful into legal and social issues

NEGATIVE REACTIONS (FROM FACULTY): One thought it prompted a request for accommodation by a student

OTHER COMMENTS: Need to understand University policies prior to use & know State Bar responses as well

21. SUBMITTED BY: JAN LEVINE

UNIVERSITY OF ARKANSAS SCHOOL OF LAW - (501) 575-7643

CONTACT PUBLISHER - PUBLISHED IN JAN LEVINE, ANALYTICAL ASSIGNMENTS FOR INTEGRATING LEGAL RESEARCH & WRITING, ADAMS & AMBROSE (1993, 1994)

CALL PUBLISHER AT (608) 257-5700 & REQUEST DISKETTE 6 A/B & 8

SUBSTANTIVE AREA: Juvenile Law & child neglect

Legal Issue: Fourth amendment & exclusionary rule in abuse/neglect investigation

DIVERSITY/SOCIAL CONCERN ISSUE: Poor parent (with low income & limited skills) v. state agency investigation for neglect

TASK/FORMAT: Office memorandum & appellate brief

POSITIVE REACTIONS (FROM STUDENTS): Loved context & newsworthiness

POSITIVE REACTIONS (FROM FACULTY): Enjoyed novel context for Fourth Amendment problem

22. SUBMITTED BY: SAMARA MARION

SANTA CLARA UNIVERSITY LAW SCHOOL - (408) 554-4739

SUBSTANTIVE AREA: Torts

LEGAL ISSUE: Is there an affirmative duty to provide to shelter when releasing homeless patients from mental health institutions

DIVERSITY/SOCIAL CONCERN ISSUE: Homelessness

TASK: Synthesis problem

FORMAT: Office memorandum

PAGE LENGTH: 10 (includes cases)

POSITIVE REACTIONS (FROM STUDENTS): Material was interesting but analysis was difficult—maybe better to do later in the semester

23. SUBMITTED BY: SAMARA MARION

SANTA CLARA UNIVERSITY LAW SCHOOL - (408) 554-4739

SUBSTANTIVE AREA: Criminal law - rape trauma syndrome

LEGAL ISSUE: Whether rape trauma syndrome can be used as a defense to a charge of second degree murder

DIVERSITY/SOCIAL CONCERN ISSUE: The victim of the rape (the homicide defendant) was a lesbian

TASK/FORMAT: Appellate brief

PAGE LENGTH: 20 (includes bench memo)

POSITIVE REACTIONS (FROM STUDENTS): They found the problem very interesting & controversial & enjoyed working on it

OTHER COMMENTS: The problem was based on the chapter entitled "The Two" in Gloria Naylor's book (and later movie) Women of Brewster Place

24. SUBMITTED BY: SAMARA MARION

SANTA CLARA UNIVERSITY LAW SCHOOL - (408) 554-4739

SUBSTANTIVE AREA: Criminal procedure - Fourth Amendment

LEGAL/SOCIAL CONCERN ISSUE: Search & seizure - highlights police omission of favorable evidence from search warrant affidavit

TASK/FORMAT: Appellate brief

PAGE LENGTH: 84

25. SUBMITTED BY: MICHAEL MCFERREN

WAYNE STATE UNIVERSITY LAW SCHOOL - (313) 577-8033

SUBSTANTIVE AREA: Employment Law

LEGAL ISSUE: After Acquired Evidence Doctrine

DIVERSITY/SOCIAL CONCERN ISSUE: Exploring recent Title VII decisions which undermine plaintiffs' right to relief for sexual harassment

TASK/FORMAT: Appellate brief

PAGE LENGTH: 30

POSITIVE REACTIONS (FROM STUDENTS): Seemed very enthusiastic to explore this area of law after Anita Hill hearings

26. SUBMITTED BY: LISA RYCUS MIKALONIS

WAYNE STATE UNIVERSITY LAW SCHOOL - (313) 577-8096

SUBSTANTIVE AREA: RICO

LEGAL ISSUE: Whether RICO is applicable to noneconomically motivated actor

DIVERSITY/SOCIAL CONCERN ISSUE: Defendants were members of a white supremacist organization; plaintiffs were civil rights organizations

TASK/FORMAT : Appellate brief

PAGE LENGTH: 9

POSITIVE REACTIONS (FROM STUDENTS): Students learned from representing undesirable client

NEGATIVE REACTIONS (FROM STUDENTS): Students didn't want to represent white supremacists

OTHER COMMENTS: NOW v. Scheldler came down on day problem disseminated; took the fun out of it for students; need to change issue as case law develops

27. SUBMITTED BY: NANCY WRIGHT

SANTA CLARA UNIVERSITY LAW SCHOOL - (408) 554-5233

SUBSTANTIVE AREA: Criminal Law

YEAR: Upper division moot court

LEGAL/SOCIAL CONCERN ISSUE: Whether battered child syndrome can be used as a defense for killing the abusive parent

TASK/FORMAT: Appellate brief & oral argument

PAGE LENGTH: 12

POSITIVE REACTIONS (FROM STUDENTS): Students found it very interesting & topical since the Menendez trial was in progress

28. SUBMITTED BY: NANCY WRIGHT

SANTA CLARA UNIVERSITY LAW SCHOOL - (408) 554-5233

SUBSTANTIVE AREA: Constitutional Law

YEAR: Upper division moot court

LEGAL/SOCIAL CONCERN ISSUES: Whether an anti-begging

ordinance violates the First Amendment rights of a homeless woman & whether requiring the woman to have a blood transfusion to save herself & her expected child, against her religious beliefs, violates her right to privacy & the free exercise of her religion

TASK/FORMAT: Appellate brief & oral argument

PAGE LENGTH: 10 (problem)

POSITIVE REACTIONS (FROM STUDENTS): Students found the problem very interesting

OTHER COMMENTS: A panel discussion on homelessness & a trivial pursuit contest, involving successful people who had been impoverished at some point in their lives, helped raise the understanding of the students of the problems of homelessness.

29. SUBMITTED BY: NANCY WRIGHT

SANTA CLARA UNIVERSITY LAW SCHOOL - (408) 554-5233

SUBSTANTIVE AREA: Constitutional Law

LEGAL/SOCIAL CONCERN ISSUES: Whether sexist speech & a "code of silence" against women could be prohibited by a college's anti-hate speech code & whether intercollegiate student athletes could be subjected to mandatory suspicionless blood testing

TASK/FORMAT: Appellate brief & oral argument

PAGE LENGTH: 11 (problem)

30. SUBMITTED BY: MUFFLE MORONEY

UNIVERSITY OF HOUSTON LAW CENTER - (713) 743-2143

SUBSTANTIVE AREA: Contracts, Employment Law

LEGAL ISSUE: Sexual harassment/termination at will of employer

DIVERSITY/SOCIAL CONCERN ISSUE: Sexual discrimination & harassment

TASK/FORMAT: Plaintiff's Original Petition, Motion for Summary Judgment & Response, appellate brief & oral argument

PAGE LENGTH: 6

POSITIVE REACTIONS (FROM STUDENTS): Timeliness, relevance & interesting area of law

NEGATIVE REACTIONS (FROM STUDENTS): Fact pattern too realistic

31. SUBMITTED BY: SALLY MURPHY

ST. LOUIS UNIVERSITY SCHOOL OF LAW - (314) 658-3966

SUBSTANTIVE AREA: Employment law

LEGAL/SOCIAL CONCERN ISSUE: Violation of Title VII based on sexual harassment

TASK/FORMAT: Office memorandum

PAGE LENGTH: 3

32. SUBMITTED BY: SALLY MURPHY
ST. LOUIS UNIVERSITY SCHOOL OF LAW - (314) 658-3966
SUBSTANTIVE AREA: Criminal Law
LEGAL/SOCIAL CONCERN ISSUE: Whether battered spouse syndrome can be used as a defense to second degree murder?
TASK/FORMAT: Office memorandum
PAGE LENGTH: 8 (includes outline of memo & possible cases)
33. SUBMITTED BY: TOM NEWBY
INDIANA UNIVERSITY LAW SCHOOL - (317) 274-4902
SUBSTANTIVE AREA: Native American Law - Indian Child Welfare Act
LEGAL/DIVERSITY/SOCIAL CONCERN ISSUE: Tribal Court Jurisdiction/Abandonment
TASK/FORMAT: Appellate brief
PAGE LENGTH: 22 (includes bench memo)
34. SUBMITTED BY: TOM NEWBY
INDIANA UNIVERSITY LAW SCHOOL - (317) 274-4902
SUBSTANTIVE AREA: Contracts/Trusts
LEGAL ISSUE: Enforcement of contract with sexual services as consideration
DIVERSITY/SOCIAL CONCERN ISSUE: The point was the irrelevance of the homosexuality & the ability to recognize it was irrelevant
TASK/FORMAT: Appellate brief
PAGE LENGTH: 15 (includes bench memo)
35. SUBMITTED BY: PAM NORRIX
ALBANY LAW SCHOOL - (518) 445-2311
SUBSTANTIVE AREA: Constitutional Law
LEGAL ISSUE: Whether under the Fair Housing Act, a landlord may refuse to rent to a handicapped person with cerebral palsy
DIVERSITY/SOCIAL CONCERN ISSUE: Disability
TASK/FORMAT: Office Memorandum
PAGE LENGTH: 2
POSITIVE REACTIONS (FROM STUDENTS): Learned how the diversity question can get in the way of fair dealing
NEGATIVE REACTIONS (FROM STUDENTS): Disability seemed safe to students
36. SUBMITTED BY: LAUREL OATES
UNIVERSITY OF PUGET SOUND SCHOOL OF LAW - (206) 591-2233
SUBSTANTIVE AREA: Torts
LEGAL/DIVERSITY ISSUE: Whether racial slurs can form the basis for the tort of outrage
TASK/FORMAT: Office memorandum

POSITIVE REACTIONS (FROM STUDENTS): Able to talk about issue as a lawyer & as individuals

NEGATIVE REACTIONS (FROM STUDENTS): Uncomfortable with racial slurs

OTHER COMMENTS: Must be sensitive to reactions of students both in & outside of class

37. SUBMITTED BY: ANGELA PASSALACAQUA

RUTGERS UNIVERSITY SCHOOL OF LAW - (609) 225-6419

SUBSTANTIVE AREA: Constitutional Law

LEGAL ISSUE: First Amendment, Equal Protection & Due Process

DIVERSITY/SOCIAL CONCERN ISSUE: Facts involved defendants who shot an African-American man for allegedly racist reasons

TASK/FORMAT: Appellate brief & oral argument

PAGE LENGTH: 20 (includes newspaper articles regarding hate crimes & comments regarding first draft revision)

POSITIVE REACTIONS (FROM STUDENTS): Very good legal analysis despite emotional baggage

NEGATIVE REACTIONS (FROM STUDENTS): All African American students in class picked the prosecution side; there were some tensions in class

OTHER COMMENTS: Besides updating the law, have open dialogue in class regarding the facts of the problem & let the students pick sides

38. SUBMITTED BY: ANGELA PASSALACQUA & ANN MULLAN

RUTGERS UNIVERSITY SCHOOL OF LAW - (609) 225-6419

SUBSTANTIVE AREA: Constitutional Law

LEGAL ISSUE: Equal Protection & right to privacy

DIVERSITY/SOCIAL CONCERN ISSUE: Facts involved Florida statute prohibiting homosexuals from adopting

TASK/FORMAT: Appellate brief & oral argument

PAGE LENGTH: 18

POSITIVE REACTIONS (FROM STUDENTS): Generated discussion among students; students found it interesting

NEGATIVE REACTIONS (FROM STUDENTS): Complaints about lack of substantive law background-; no complaints regarding the subject or gay bashing reported. Students were respectful of each others' feelings

NEGATIVE REACTIONS (FROM FACULTY): One faculty member thought it might alienate gay students who were not out & who might be hurt by comments

OTHER COMMENTS: Florida is considering repealing the statute, let students pick a side for moot court

39. SUBMITTED BY: TOM PATRICK
WEST VIRGINIA UNIVERSITY COLLEGE OF LAW - (304) 293-2871
SUBSTANTIVE AREA: Torts
LEGAL/SOCIAL CONCERN ISSUE: Sexual harassment in a law firm context
TASK/FORMAT: Office memorandum
PAGE LENGTH: 4
40. SUBMITTED BY: TERRILL POLLMAN
STETSON LAW SCHOOL - (727) 345-1121
SUBSTANTIVE AREA: Criminal Law
LEGAL ISSUE: Domicile & reasonable expectation of occupancy in first degree arson
DIVERSITY/SOCIAL CONCERN ISSUE: Homelessness
TASK/FORMAT: Office memorandum
PAGE LENGTH: 4
POSITIVE REACTIONS (FROM STUDENTS): An easy social issue-lots of concern-they found it interesting
41. SUBMITTED BY: DIANA PRATT
WAYNE STATE UNIVERSITY LAW SCHOOL - (313) 577- 4824
CONTACT PUBLISHER_- PUBLISHED IN DIANA V. PRATT, LEGAL WRITING: A SYSTEMATIC APPROACH, SECOND EDITION, WEST PUBLISHING CO. (1993) - PAGES 111-122
SUBSTANTIVE AREA: Employment Law
LEGAL/DIVERSITY/SOCIAL CONCERN ISSUE: Sexual & racial harassment
TASK/FORMAT: Class discussion & office memorandum
PAGE LENGTH: 11
POSITIVE REACTIONS (FROM STUDENTS): Led to a frank discussion of the issues with 20% of the male students and 80-90% of the female students raising their hands when asked at the start of the class discussion whether they had experienced harassment.
NEGATIVE REACTIONS (FROM STUDENTS): A few students felt uncomfortable with the issue and discussion
42. SUBMITTED BY: MARILYN PRESTON
WAYNE STATE UNIVERSITY LAW SCHOOL - (313) 577-8035
SUBSTANTIVE AREA: Disability Law
LEGAL/SOCIAL CONCERN ISSUE: Whether a doctor can refuse treatment of a person with AIDS
TASK/FORMAT: Appellate brief
POSITIVE REACTIONS (FROM STUDENTS): Students liked writing on an interesting topic
POSITIVE REACTIONS (FROM FACULTY): One faculty person in the health law field was very interested & supportive

43. SUBMITTED BY: NANCY SCHULTZ

GEORGE WASHINGTON UNIVERSITY LAW CENTER - (202)
994-1005

SUBSTANTIVE AREA: Torts

LEGAL/SOCIAL CONCERN ISSUE: Whether there is a cause of action for IIED in a case where parents consented to organ transplants from their child who they later learned was legally alive at the time his organs were "harvested."

TASK/FORMAT- Office memorandum

PAGE LENGTH- 4

POSITIVE REACTIONS (FROM STUDENTS): Professor Schultz comments that in all the years she has had her students dealing with racial and other emotionally charged issues, she has never had a complaint from a student & her classes tend to be at least reasonably diverse.

NEGATIVE REACTIONS (FROM FACULTY): One or two members of the faculty have expressed surprise that Professor Schultz is willing to address such issues in the classroom; they seem to be quite fearful of offending someone or generating complaints

OTHER COMMENTS: If we cannot discuss difficult & important issues in law school, there is something seriously wrong. Professor Schultz also has used problems raising issues of diversity and social concern in her upper division classes in Advanced Oral Advocacy & Interviewing, Counseling & Negotiation.

44. SUBMITTED BY: NANCY SCHULTZ

GEORGE WASHINGTON UNIVERSITY LAW CENTER - (202)
994-1005

SUBSTANTIVE AREA: Criminal Law

LEGAL ISSUE: Whether evidence of Multiple Personality Disorder can be asserted as a defense to a criminal assault

DIVERSITY/SOCIAL CONCERN ISSUE: Mental health

TASK/FORMAT: Office memo

PAGE LENGTH: 2

45. SUBMITTED BY: NANCY SCHULTZ

GEORGE WASHINGTON UNIVERSITY LAW CENTER - (202)
994-1005

SUBSTANTIVE AREA: Constitutional & Criminal Law

LEGAL/SOCIAL CONCERN ISSUE: Whether a cryonics firm can constitutionally be charged with homicide or aiding & abetting a suicide if an individual, terminally ill with a brain tumor, contracts with the firm to decapitate him & freeze his head in hopes that he could be revived at a later time when his condition might be curable.

TASK/FORMAT: Office memorandum

PAGE LENGTH: 1

46. SUBMITTED BY: NANCY SCHULTZ

GEORGE WASHINGTON UNIVERSITY LAW CENTER - (202)
994-1005

SUBSTANTIVE AREA: Constitutional Law & Torts

LEGAL ISSUE: First Amendment & invasion of privacy

DIVERSITY/SOCIAL CONCERN ISSUE: Whether a university's anti-hate speech code violates students' First Amendment rights (involving homophobic remarks directed at the Dean) and whether revealing the fact that the Dean is gay & "tailing" him constitutes invasion of the Dean's privacy

TASK/FORMAT: Appellate brief

PAGE LENGTH: 10

47. SUBMITTED BY: LUCIA SILECCHIA

CATHOLIC UNIVERSITY LAW SCHOOL - (202) 319-5580

SUBSTANTIVE AREA: Employment Law

LEGAL/SOCIAL CONCERN ISSUE: Discrimination on the grounds of disability under the A.D.A. (re Alzheimer's disease)

TASK/FORMAT: Client letter based on short version of problem & then office memorandum based on more complex version of the same problem (based on closed universe)

PAGE LENGTH: 69 (client letter problem); 68 (office memo problem) both problems include all statutes, cases & other materials the students will need

POSITIVE REACTIONS (FROM STUDENTS): Thought it was interesting & current

NEGATIVE REACTIONS (FROM STUDENTS): A bit challenging!

48. SUBMITTED BY: HAZEL WEISER

TOURO LAW SCHOOL - (516) 421-2244 EXT. 371

SUBSTANTIVE AREA: Torts

LEGAL/SOCIAL CONCERN ISSUE: Possible violation of New York AIDS confidentiality statute

TASK/FORMAT: Client letter/office memorandum

PAGE LENGTH: 10

POSITIVE REACTIONS (FROM STUDENTS): Discussions about counseling on sexual orientation & way insurance company codes gays

POSITIVE REACTIONS (FROM FACULTY): Casual discussion

OTHER COMMENTS: It's an excellent problem

49. SUBMITTED BY: HAZEL WEISER

TOURO LAW SCHOOL - (516) 421-2244 EXT. 371

SUBSTANTIVE AREA: Torts

LEGAL ISSUE: Group defamation

DIVERSITY/SOCIAL CONCERN ISSUE: Group defamation of the

professional reputations of African-American clergymen

TASK/FORMAT: Moot court appellate brief & oral argument

PAGE LENGTH: 23 (bench memo including case summaries)

POSITIVE REACTIONS (FROM STUDENTS): Led to open discussion of African American history

NEGATIVE REACTIONS (FROM STUDENTS): Some students didn't want to use term African-American.

POSITIVE REACTIONS (FROM FACULTY): Torts professors saw increased participation

OTHER COMMENTS: Problem works

50. SUBMITTED BY: GRACE WIGSEL

WEST VIRGINIA UNIVERSITY COLLEGE OF LAW - (304) 293-7774

MUST BE PURCHASED FROM LEGAL WRITING INSTITUTE'S DATA BANK

SUBSTANTIVE AREA: Disability Law

LEGAL/SOCIAL CONCERN ISSUE: Accommodations of a law student's learning disability pursuant to the Rehabilitation Act of 1973

TASK/FORMAT: Office memorandum

51. SUBMITTED BY: GRACE WIGSEL

WEST VIRGINIA UNIVERSITY COLLEGE OF LAW - (304) 293-7774

MUST BE PURCHASED FROM LEGAL WRITING INSTITUTE'S DATA BANK

SUBSTANTIVE AREA: Disability Law

LEGAL/SOCIAL CONCERN ISSUE: Whether the Pregnancy Disability Act applies to a father if the mother is unable to care for the child

TASK/FORMAT: Office memorandum

POSITIVE REACTIONS (FROM STUDENTS): Interesting problem

**INDEX OF NUMBERS OF LEGAL WRITING PROBLEMS RAISING
ISSUES OF DIVERSITY OR SOCIAL CONCERN**

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Compliance with Americans With Disabilities Act (A.D.A.) - 47 (Alzheimer's disease); 20 (learning disabilities); 9 (obesity); 3 (wheelchair access)

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Compliance with Pregnancy Disability Act - 51

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Governmental liability - 18 (rape of witness by police officer)

Intentional infliction of emotional distress - 43 (failure to tell parents child was legally alive at time parents consented to organ donation); 19 (racial harassment); 11 (sexual harassment)

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20, 21, 22, 31, 32, 35, 36, 40, 41, 43, 44, 45, 46, 47, 49, 50, 51
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**SUMMARY OF RESULTS OF LEGAL WRITING SURVEY
REGARDING RAISING ISSUES OF DIVERSITY AND SOCIAL
CONCERN IN LEGAL WRITING**

Number of different law schools responding: 53
Number of different States represented: 26
Number of respondents teaching first year students: 59
Approximate number of first year students taught: From a
low of 60-70 to a high of 260.

Number of respondents teaching upper division students: 25
Approximate number of upper division students taught: From
a low of 10-20 to a high of 70-90

Number of respondents who reported advantages in raising
these issues in Legal Writing: 71

Number of respondents who reported disadvantages in
raising these issues in Legal Writing- 52

Number of respondents who reported that they have used
exercises raising these issues: 42

Number of respondents who reported that they have not used
exercises raising these issues: 23

Of those respondents who have not used exercises raising
these issues number who would (or possibly would) be interested
in using problems raising these issues if samples were available:
17 (yes), 2 (possibly)

Number who would not be interested in using problems
raising these issues even if samples were available: 4

**RESPONSES REGARDING THE ADVANTAGES OF RAISING
THESE ISSUES**

**THE NUMBER OF RESPONDENTS LISTING SIMILAR ADVANTAGES
IS INCLUDED AT THE END OF EACH STATEMENT**

Heightens the awareness of real-life problems; allows
students to apply the law in a realistic context. (19)

Raises social consciousness early; increases sensitivity. (13)

Makes legal writing more interesting. Issues of social concern
and diversity can prompt interest and enthusiasm for what are
usually required course exercises. (11)

Promotes class discussion. Makes small group sessions less
intimidating. (7)

These issues are important in every class. (5)

Since issues of social concern are often cutting edge, they

require students to synthesize bodies of prior law and to apply them in light of policy. Thus, social problems are excellent vehicles for students to use in learning both how the common law develops and the role of the courts in interpreting statutes. (4)

Makes diversity students feels more accepted; helps them feel their concerns are considered and heard. (4)

Encourages *pro bono* work; creates interest in diversity issues. (2)

Diversity issues are familiar to most students. (2)

Creates an atmosphere where social, political and legal issues intersect.

Helps students see how society has chosen either to protect or to ignore the disenfranchised.

Educational institutions generally need to be aware and supportive of solutions to social dilemmas that arise from ignorance or disregard of diversity issues and social issues facing students.

It reinforces issues of civil procedure which is often learned in a vacuum.

Students need to recognize that social concerns permeate out of society and legal structure, and that the law school is not "neutral."

Allows for analysis which challenges students' preconceptions.

RESPONSES REGARDING THE DISADVANTAGES OF RAISING THESE ISSUES

THE NUMBER OF RESPONDENTS LISTING SIMILAR DISADVANTAGES IS INCLUDED AT THE END OF EACH STATEMENT

Takes time away from other topics; distracts students from other materials being taught/the writing process. (15)

Some issues cause tension and argument in the classroom; risks alienation. (6)

Diversity problems tend to be too complex for first year students who already have enough to learn in their first year. Most issues raised are not covered in a first-year course. (6)

Students feel uncomfortable discussing diversity issues. In Moot Court, half the class ends up with the "wrong" side. (5)

Students may perceive that we are teaching based on a highly politicized agenda, and resent being forced to confront these issues. (5)

Incorporating diversity involves too many emotions for some students who are too young and inexperienced to make legal arguments; student responses tend to be immature and lack thoughtfulness. (3)

It creates polarity in the classroom. (3)

If handled poorly, these issues can stifle discussion. (2)

Diversity issues don't lend themselves to LRW.

Enough is said and written about these issues elsewhere and they need not be incorporated into this course as a way of sensitizing students.

Students focus on their personal reactions, personal opinions, their personal attitudes can intrude into their legal analysis.

Legal writing is a marginalized subject. Introducing such important issues as these may marginalize these issues in students' minds.

The purpose of the course is not to attempt to educate or sensitive students about particular issues—we are dealing with adults who are equipped to make their own judgments.

Discussions may offend some students who are hesitant to speak.

Diversity issues are rarely brought up in other classes and writing classes are already

11suspect". Issues may be raised that have not yet been addressed in case law.

Difficult to construct easy problems to introduce research and writing concepts.

Students fear using a controversial piece as a writing sample.

