

# *Ruminations on Stimulating Robust Discussions of Race in the Law School Classroom*

Diversity Work Group<sup>1</sup>  
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**WHAT:** This handout provides law professors with ideas on how to discuss race in the classroom.

**WHY:** Discussing race in the classroom can

1. "strengthen and expand a student's intellectual capacity, as well as his or her capacity for passion and compassion,"<sup>2</sup>
2. "assist in revealing the limits of legal doctrines and, in some cases, how the doctrine itself undermines the overriding purpose or goals of the law,"<sup>3</sup> and
3. help students see people of color "in situations other than as criminals or victims in the subordination/dominance axis."<sup>4</sup>

## **SOME THOUGHTS:**

1. Modify this handout's suggestions to accommodate your particular goals and classroom dynamics. Include your own ideas on how to effectively discuss race.
2. Be open to experimentation.

## **I. SOME DIFFERENT DYNAMICS TO CONSIDER:**

<b>Professors of color</b>	<b>White professors</b>
"When a person of color raises issues of race, students tend to see those issues as issues of personal concern to the person of color." <sup>5</sup>	"When a white person raises issues of race, students tend to think the white professor cares about social justice." <sup>6</sup>

<sup>1</sup> Jeff Balenton and Bill Chin researched sources. Brie Carpenter and Bill Chin organized and edited the material. Diversity Work Group members contributed helpful suggestions.

<sup>2</sup> Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability into Law School Teaching*, 32 WILLAMETTE L. REV. 541, 544 (1996).

<sup>3</sup> *Id.*

<sup>4</sup> Alfred Dennis Matthewson, *Race in Ordinary Course: Utilizing the Racial Background in Antitrust and Corporate Law Courses*, 23 ST. JOHN'S J. LEGAL COMMENT 667, 676-77 (2008).

<sup>5</sup> Cynthia Lee, *Integrating Race into the Curriculum: Learning from Failure 5* (Feb. 25, 2005), <http://www.law.ufl.edu/centers/csrrr/pdf/racelawconf/lee.PDF>.

<sup>6</sup> *Id.*

<p><b>Students of color</b></p> <p>"But other students, particularly students of color, suspect that beneath white students' naïve goodwill and their careful, 'politically correct' comments lie all manner of racist assumptions and beliefs that they hesitate to voice or even acknowledge."<sup>7</sup></p>	<p><b>White students</b></p> <p>1. "[T]here are a lot of angry white students who think they didn't get into Harvard because of affirmative action . . . and they take it very personally."<sup>8</sup></p> <p>2. "[R]aising the race issue before students who have grown up learning that color blindness is good can make students uncomfortable."<sup>9</sup></p>
<p><b>Race-related law courses</b></p> <p>"In courses that were specifically designed to focus on these issues [of poverty, inequality, and diversity], such as courses on poverty law or law and social change, students came into the courses expecting these issues to be central to the course and were not as resistant."<sup>10</sup></p>	<p><b>Traditional law courses</b></p> <p>"However, the student receptivity to such [race-related] issues in traditional law school courses, where there is no expectation on the part of students that questions regarding wealth and inequality, race, gender or class differences would be raised, was not necessarily positive."<sup>11</sup></p>
<p><b>Small class</b></p>	<p><b>Large class</b></p>
<p><b>Discuss race in one class</b></p>	<p><b>Discuss race throughout the semester</b></p>
<p><b>Discuss race early in the semester</b></p> <p>"My approach in raising the plight of economically disadvantaged . . . was to be direct and to do this in the first class of the semester [for Creditors' and Debtors' Rights]. . . . It was pragmatic because the large volume of substantive issues to be covered would delay raising these issues later so that there might not be enough time for meaningful discussion of the disparate treatment of the poor under collections law and its system. It was strategic</p>	<p><b>Discuss race later in the semester</b></p>

<sup>7</sup> HELEN FOX, "WHEN RACE BREAKS OUT": CONVERSATIONS ABOUT RACE AND RACISM IN COLLEGE CLASSROOMS 56 (rev. ed. 2009).

<sup>8</sup> *Id.* at 55.

<sup>9</sup> Lee, *supra* note 5, at 5.

<sup>10</sup> Veryl Victoria Miles, *Raising Issues of Property, Wealth and Inequality in the Law School: Contract & Commercial Law School Courses*, 34 IND. L. REV. 1365, 1368 (2001).

<sup>11</sup> *Id.* at 1368.

because planting the seed to think about these issues of fairness in the beginning of the course would give this discussion a place of prominence throughout the course." <sup>12</sup>	
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## **II. SOME IDEAS ON HOW TO DISCUSS RACE IN ANY LAW SCHOOL CLASSROOM.**

### **A. Consider your own philosophy or goal.**

One law professor states, "[I]t is only valuable to teach about difference if we teach about sameness at the same time. . . . We must teach them to see difference with respect, thus encouraging them to find the sameness."<sup>13</sup>

### **B. Plan beforehand rather than reacting.**

Plan the race discussion in advance rather than merely reacting to unanticipated race-related questions from students. Consider, for example, (1) what specific race issue to discuss, (2) why it is important to discuss, (3) when it will be discussed, and (4) how long it will be discussed.

### **C. Be aware of terminology.**

1. students of color (~~minority students~~)
2. Chicana/o, Mexicano/a, or Mexican American (preferred by Americans of Mexican descent over ~~Hispanic~~, which carries the echo of Spanish colonialism)
3. Hispanic (preferred by some in the Southwest and Florida, by some descendants of the Spanish colonists)
4. Asian American, Korean American, Pacific Islander (~~Oriental~~)
5. Native Americans (others prefer American Indians, Indians, Indigenous Peoples)<sup>14</sup>

### **D. Use a casebook addressing race or provide supplemental race material.**

1. "Adopting a casebook that already incorporates race makes it easier for you . . . to raise race-related questions without looking like you are forcing the issue."

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<sup>12</sup> *Id.* at 1374.

<sup>13</sup> Judy Scales-Trent, *Sameness and Difference in a Law School Classroom: Working at the Crossroads*, 4 YALE J.L. & FEMINISM 415, 415 (1992).

<sup>14</sup> BARBARA GROSS DAVIS, *TOOLS FOR TEACHING* 59, 60 (2d ed. 2009).

**a. Business Associations.**

"The 6<sup>th</sup> Edition of Klein, Ramseyer and Bainbridge [titled Business Associations] continues to include *Arguello v. Conoco, Inc.*, a case that explicitly involves race."<sup>15</sup>

**b. Civil Procedure.**

"This book . . . asks: would the Federal Rules of Civil Procedure look different if the experiences of outsiders were consciously taken into account? Would civil procedure be the same today if nontraditionalists held seats on the original Rules Advisory Committee in 1934?"<sup>16</sup>

**c. Property.** (The suggested casebooks below are from Prof. Ansley's article.<sup>17</sup>)

(i) RICHARD H. CHUSED, *CASES, MATERIALS AND PROBLEMS IN PROPERTY* 94-160 (1988) (section entitled "Native American Land Claims: Sovereignty, Cherokee Removal, and Modern Non-Intercourse Act Litigation")

(ii) CHARLES DONAHUE, JR., THOMAS E. KAUPER & PETER W. MARTIN, *CASES AND MATERIALS ON PROPERTY: AN INTRODUCTION TO THE CONCEPT AND THE INSTITUTION* 30-42 (2d ed. 1983) (discussing *Johnson and Graham's Lessee v. M'Intosh*, 21 U.S. (8 Wheat.) 543 (1823))

(iii) CHARLES M. HAAR & LANCE LIEBMAN, *PROPERTY AND LAW* 3-32 (2d ed. 1985) (section entitled "Chain of Title: European Versus Native American").

(iv) RICHARD H. CHUSED, *CASES, MATERIALS AND PROBLEMS IN PROPERTY* 161-251 (1988) (section entitled "Black Persons and Property Ownership" covering slavery and the transition to freedom as well as housing segregation and racial property restrictions)

2. Alternatively, the law professor could provide supplemental material discussing race, but this "can accentuate the perception that [the law professor is] injecting race into the curriculum where it doesn't belong."<sup>18</sup>

**E. Notify students in advance.**

Notify students of upcoming race discussions. This could be done either in class or through the syllabus, or both. For example, one philosophy instructor's syllabus states,

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<sup>15</sup> Matthewson, *supra* note 4, at 684.

<sup>16</sup> ROY L. BROOKS, *CRITICAL PROCEDURE* xxiii (1998).

<sup>17</sup> Frances Lee Ansley, *Race and the Core Curriculum in Legal Education*, 79 CAL. L. REV. 1511, 1521 n.23 (1991).

<sup>18</sup> Lee, *supra* note 5, at 5.

Please be forewarned that you may find some of the reading in this class difficult or perhaps even offensive. Discussing one's moral views is always a difficult thing to do, perhaps because it requires people to be tolerant of those who hold different (and to you, even abhorrent) views.<sup>19</sup>

#### **F. Prepare students for sensitive topics.**

Use the "inoculation" technique by directly addressing the sensitive nature of a topic. A health sciences instructor discussing race and poverty might say, for example,

In this class we'll be talking about how some ethnic groups are more affected by poverty and health problems than others. I realize this can be a sensitive issue, since these facts have often been used to stereotype and blame people of color for their own problems. But this is just the opposite of what I want us to do in this class.<sup>20</sup>

#### **G. State ground rules.**

"The professor can set a tone on the first day by setting some ground rules to ensure a safe space for discussion."<sup>21</sup> For example, one Introductory Composition instructor states,

The issues we will be discussing can be sensitive and emotional. You don't have to agree with what I think. Everyone's contribution and perspective is valuable in this class, as long as you give reasons for your opinions and listen carefully to the opinions of others. Of course I know you are all mature enough not to get into personal attacks so I hardly need to mention using ethnic slurs . . . or calling someone a racist is off-limits. We can talk about racist ideas and racist actions but not racist individuals.<sup>22</sup>

#### **H. Show you value all comments.**

If some students ignore the views of others, reintroduce the ignored views into the discussion. If a student frowns while another is talking, ask the frowner to explain her or his point of view.<sup>23</sup>

#### **I. Balance openness and safety.**

Openness allows ideas to be explored. Safety prevents offensive speech and allows all students to feel as if they belong.<sup>24</sup>

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<sup>19</sup> Jack Musselman, Syllabus, Ethical Analysis (2005), at <http://faculty.stedwards.edu/jackgm/phil2329/assign.html>.

<sup>20</sup> FOX, *supra* note 7, at 111.

<sup>21</sup> Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635, 669 (2008).

<sup>22</sup> FOX, *supra* note 7, at 76.

<sup>23</sup> DAVIS, *supra* note 14, at 64.

<sup>24</sup> *Id.* at 65.

### **J. Respond to distasteful remarks.**

Students may view the professor's silence as affirmation of the distasteful remarks. Thus, a response might be required. Three possible responses include:

1. slowly repeating back the exact words to allow the speaker a chance to rephrase,
2. explaining why the comment is offensive (e.g., "What you said made me feel uncomfortable. Although you didn't mean it, it could be interpreted as saying . . ."), and
3. depersonalizing the situation (e.g., "Some people think that way. What assumptions are they making?").<sup>25</sup>

### **K. Defuse heated remarks.**

One approach is to stop the discussion, have students take time to write about the incident, and have pairs exchange their viewpoints before restarting the discussion.<sup>26</sup>

### **L. Promote full participation.**

Students who first work in small groups are later more comfortable speaking up in the larger class group.<sup>27</sup>

### **M. Avoid making students of color spokespersons for their demographic group.**

"An example to avoid: after lecturing on research about the relationship between race and heart disease, an instructor called on an African American student and asked him to describe how black health professionals were reacting to the research."<sup>28</sup>

### **N. First discuss a sensitive topic without eliciting the personal opinions of students.**

A professor might say, for example:

Some people say they are colorblind, or that they don't notice race. Let's try to think of the positive aspects of adopting a colorblind attitude, and also, why that stance might be problematic.

Then draw two columns (positive v. problematic) on the board and place the different perspectives within the proper column. Ask students to write down what they view as the best arguments. Then students could discuss the issue, this time providing their own opinions.<sup>29</sup>

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<sup>25</sup> *Id.* at 65-66.

<sup>26</sup> *Id.* at 66.

<sup>27</sup> *Id.* at 65.

<sup>28</sup> *Id.* at 66.

<sup>29</sup> FOX, *supra* note 7, at 116-17.

### **O. Invite a guest speaker.**

Identify the objective of the race discussion in class. Identify a guest speaker who can help you meet that objective. Discuss your objective with the guest speaker. Explain to the class the reason for the guest speaker's appearance. Consider the format for the guest-speaker class: will you direct specific questions to the guest speaker or will the guest speaker be allotted a chunk to just speak?

One law professor in a First Amendment class discussing religion explained, "In a further attempt to help us all see the real impact of these decisions on Indians, I invited Professor John Mohawk of the American Studies Department to come to class and present his perspective on those cases."<sup>30</sup>

### **P. Use video and other aids.**

For example,

When teaching *Gibbons v. Ogden* [in a constitutional law class], the role of slavery in the national debate about the extent of Congress's commerce power can be easily introduced in class by showing and discussing the videotape "Equal Justice Under the Law: The Marshall Years: *Gibbons v. Ogden*." The video highlights the Denmark Vessey-led slave revolt as an influential undercurrent in the states' desire to maintain control over incoming traffic.<sup>31</sup>

## **III. SOME IDEAS ON HOW TO DISCUSS RACE IN SPECIFIC LAW SCHOOL CLASSES.**

### **A. Criminal Law--discussing *cultural defense*:**

1. Pre-identify the main points to discuss. (Include discussing the *relevancy* of the "race" issue.):

"My teaching plan for this lesson contains three distinct points or issues: (1) the relevance of culture to the criminal law, (2) the propriety of cultural defenses in the criminal law, and (3) the culture of the law school classroom."

2. Provide a helpful visual aid:

"To accommodate different learning styles, I state these issues as well as list them on the blackboard. For the kinesthetic learners, I graphically describe the issues as lying one within the other like three concentric circles or spheres, with Issue One representing the smallest circle and the common center for all three issues. I also draw a figure that looks like a target on the blackboard and label the center circle as "Issue 1," the middle circle as

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<sup>30</sup> Scales-Trent, *supra* note 13, at 429-30.

<sup>31</sup> Armstrong & Wildman, *supra* note 21, at 668-69.

“Issue 2,” and the outside circle as “Issue 3.” Issue One fits within the greater context of Issue Two, which, in turn, is situated within the greatest context of Issue Three.”

**3. Lead the class discussion:**

"I then commence the substantive lesson by beginning with the smallest point, Issue One--whether culture is relevant. We discuss several cases or fact patterns and consider how a cultural defense might be used in each situation. Next, we move to Issue Two and the students make arguments for or against the use of cultural defenses in our criminal legal system. This dialogue includes general reflection about our legal system and specific consideration of whether cultural assumptions are inherent in our criminal laws. Finally, I put Issues One and Two within the context of Issue Three. At this point, we mull over the process of legal education and the distinct culture of the law school classroom."<sup>32</sup>

**B. Torts:**

**1. Include race as one of several topics to discuss:**

"I [Stephanie] decided to inject a series of seven sessions, every other week throughout the term, on theoretical perspectives on tort law. The use of perspectives not only allowed the explicit introduction of critical race theory into the classroom, but it also enabled utilization of other, better known perspectives, situating critical race theory as an equal to them. Perspectives included [1] pragmatism, [2] *critical race theory*, [3] law and economics, [3] feminist theory, [4] critical legal theory, [5] process theory, and [6] the practical aspects of lawyering."

**2. Begin with a topic that serves as a helpful introduction to race:**

"Beginning with *pragmatism*, utilizing the wonderful article by Catharine Wells about situated decisionmaking opens students' eyes to the concept that who we are affects how we view the world."

**3. Assign other readings that promote race discussions:**

"With this introduction, the students are ready for the Crenshaw and Culp readings that introduce *critical race theory*. The Crenshaw article provides a point of reference for later conversations engaging the questions, 'Do you have a perspective in making that argument that you are assuming as a universal? Does everyone agree it is universal?' The Crenshaw and Culp articles provide a vocabulary for later discussion, and they make race 'officially' visible in the classroom. Notice, although none of these articles is about torts, they enrich the teaching of torts and the discussions that are possible to conduct in class."<sup>33</sup>

**C. Advanced Torts--discussing *defamation*:**

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<sup>32</sup> Susan S. Kuo, *Culture Clash: Teaching Cultural Defense in the Criminal Law Classroom*, 48 ST. LOUIS U. L.J. 1297, 1301 (2004).

<sup>33</sup> Armstrong & Wildman, *supra* note 21, at 667 (emphases added).



**1. Know the purpose of the race discussion:**

"The first example demonstrates how a discussion of race and gender assists in constructing a better argument under the stated rule of law than those presented in the court's opinion."

**2. Use a helpful case to bring out your point:**

"The first example is a defamation case from the Sixth Circuit. In *Clark v. American Broadcasting Companies, Inc.*, the court considered whether to adopt the *innocent* construction rule or the *reasonable* construction rule in determining whether an utterance was actionable defamation. . . . The subject of *Clark* was a special ABC program entitled 'SEX for Sale: The Urban Battleground.' The program focused on street prostitution in a middle-class neighborhood of Detroit. The segment showed an obese white woman in her fifties, carrying a grocery bag down the street. The next segment showed a slightly obese black woman, who was at least forty years old, walking down the street. As these women appeared on the screen, the following comments were made: 'According to residents, and Detroit police records, most of the prostitutes' customers or johns were white, the street prostitutes were often black. This integrated middle-class neighborhood became a safe meeting place for prostitutes and johns.' Then, the plaintiff, a black woman, was the third woman photographed walking down the street."

**3. Explain the race aspect to the class:**

"After a careful analysis of the opinion, I told the class that the majority opinion ignored any discussion of how racial stereotypes regarding black women may contribute to the perception that, in the broadcast, the plaintiff was a prostitute."

**4. Explain and discuss why the race aspect is important to the legal issue:**

"Why would raising this question be important to the legal issue? If you represent the plaintiff, the legal argument should be that summary judgment should be denied because there is a factual question as to whether the plaintiff could be regarded as a prostitute in the broadcast."

**5. Use personal insights and experiences to further the point:**

"After much discussion of this point--during which students said that 'one cannot generalize,' 'it depends on your community,' 'race is not a factor'--I shared my own experiences as an attorney with the United States Department of Justice in the Antitrust Division. While traveling to different cities on investigations or cases and staying in hotels, I was approached frequently by white men who assumed that I was 'available,' even though I carried a briefcase and wore a suit, modest pumps, and tiny pearl earrings."

**6. Understand the lesson to be derived from the race discussion:**

"The lesson for this class went far beyond the question of which rule of construction the court should use in construing defamatory meaning. The important lesson here was in revealing

to students the power that societal stereotypes can have in creating or shaping legal arguments or outcomes."<sup>34</sup>

#### **D. Constitutional Law:**

##### **1. Consider how race is relevant to the class:**

"Constitutional law classes also provide often unused opportunities to introduce discussions about race. Students perceive the white supremacy embedded in the Constitution, but addressed by the Thirteenth, Fourteenth, and Fifteenth Amendments, as merely historical."

##### **2. Use a relevant book to promote race discussions:**

"Recently I [Margalynne] have become more conscientious about noticing when issues of race and whiteness arise in my constitutional law course and less self-conscious about using these issues to present a more complex understanding of substantive legal issues. For example, while teaching about the historical context of *Marbury v. Madison*, I used Garry Wills's book *Negro President* to explain some of the issues that made the presidential election of 1800 so hotly contested and the results so bitter to the Federalists."

##### **3. Use a relevant video to uncover hidden racial dimensions:**

"When teaching *Gibbons v. Ogden*, the role of slavery in the national debate about the extent of Congress's commerce power can be easily introduced in class by showing and discussing the videotape 'Equal Justice Under the Law: The Marshall Years: *Gibbons v. Ogden*.' The video highlights the Denmark Vessey-led slave revolt as an influential undercurrent in the states' desire to maintain control over incoming traffic. . . . White interests were clearly the racial component of these cases rather than the rights of non-white litigants. Looking at cases with color insight rather than colorblindness provides a new dimension for the students as well as for the professor."<sup>35</sup>

#### **E. First Amendment class--discussing *speech*:**

##### **1. Use race-related cases:**

"We work with cases such as *Cox v. Louisiana* and *Chicago v. Gregory* . . . ."

##### **2. Use Socratic questioning to bring out race-related points:**

"I asked the students whether Rev. Cox's exhortation to the black demonstrators to sit in at the 5 & 10 store lunch counter was protected under the First Amendment. Cox was, I reminded them, urging the demonstrators to violate a state law which required that eating establishments segregate diners by race."

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<sup>34</sup> Dark, *supra* note 2, at 548 (emphases added).

<sup>35</sup> Armstrong & Wildman, *supra* note 21, at 668-69.

**3. Provide needed historical context:**

"[D]uring the next class we read and discussed the black laws of Virginia between 1866 and 1922. What did they tell us about American history? How had they shaped us all?"

**4. Use film sources to accentuate race-related points:**

"[A]fter we discussed the civil rights demonstration cases, I showed the film *Ain't Scared of Your Jails: 1960-61* from the series *Eyes on the Prize*. This film portrays the initial training in non-violence of black college students who would participate in a sit-in at a segregated luncheonette counter. The law school students also experienced the power of non-violence protest, as they watched white hoodlums pull the students from the counter stools, and beat and kick them as the police watched. . . . I chose this film in large part because it showed the courage of both black and white college students as well as their ability to work together."

**5. Consider adding "outside-the-classroom" activity (field work):**

"[I]t made little sense to simply read or view a film about demonstrations, when the students could go and see one for themselves. . . . Another goal was to give them the opportunity to do the kind of work lawyers do when they advise their clients at a demonstration. Which of these protest activities would be protected under the First Amendment? Which would not?"

**6. Provide guidelines for field work:**

"I gave them guidelines for their fieldwork. Because abortions are performed at this particular clinic early Saturday mornings, the students were to spend at least one hour observing between 8 and 10 a.m. I gave them a map of that location, and asked them to stand across the street from the pro-life demonstration, which was near the entrance to the clinic."<sup>36</sup>

**F. First Amendment class--discussing *religion*:**

**1. Focus on a specific group to highlight the teaching point:**

"In the casebook, the stories of inclusion and exclusion are disconnected one from the other, disconnected from real lives. I decided, therefore, to teach the Free Exercise Clause by focusing on one group. I would try to make that group visible, try to show how the constitutional issue being addressed mattered to them. I chose to focus on Indian religion."

**2. Assign relevant readings (non-law material):**

"For this class discussion, there were two sets of readings. The first set was excerpts from Paula Gunn Allen's book *The Sacred Hoop*, which discusses Indian literature within the context of Indian culture and religion. She points out the different concepts which underly Indian and Western religion."

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<sup>36</sup> Scales-Trent, *supra* note 13, at 426-28.

### 3. Assign relevant readings (law material):

"Once the students are immersed in the richness and complexity of this culture, they read two cases, *Lyng v. Northwest Indian Cemetery Prospective Association* and *Employment Division v. Smith*, to see whether the complexities they had just discovered were addressed in a respectful and understanding way by the courts."

### 4. Invite guest speakers:

"In a further attempt to help us all see the real impact of these decisions on Indians, I invited Professor John Mohawk of the American Studies Department to come to class and present his perspective on those cases."<sup>37</sup>

## **G. Employment Discrimination Law:**

### 1. Identify the pedagogical need:

"[S]tudents, like the rest of us, are often able to see only their issue, and not the issues of others. They see the difference, not the sameness. . . . The law, hence the casebooks, also falls into this trap, by separating out issues, for example, by sex or by age, and by failing to point out that black people can be old, that old people can suffer gender discrimination and that women can be discriminated against because they are Latinas."

### 2. Provide supplemental material:

"I attempt to address the concept of sameness and difference in class by pointing out these convergences as often as possible. For example, when we read the sexual harassment material in the casebook, I provide supplementary information on racial harassment. When we read about pay equity as a theory for attacking gender-based wage discrimination, I provide the research on pay equity as a remedy for race/ethnicity-based wage discrimination."

### 3. Consider "field work":

"[O]n the first day of class I ask [students] to work 'in the field' by writing a report describing two examples of employment discrimination they have witnessed in some way. I offer several suggestions: (1) interview a family member or friend; was your father forced to retire? Has your sister ever been harassed on the job? (2) Have you yourself seen discrimination in the workplace? Have you personally suffered from discrimination? Have you seen discrimination against your co-workers? . . . I explain that I am not asking them to describe what is legally cognizable as employment discrimination, but what seems so unfair that it should be against the law."

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<sup>37</sup> *Id.* at 429-30.

#### 4. Use a pay equity chart:

"Another technique for getting them to look around-and at-themselves with fresh eyes is to use a pay equity chart. At the end of our work on the Equal Pay Act, I provide an introduction to pay equity by giving them a list of jobs connected to three workplaces: restaurant/hotel, airport, and college/university. For example, this is the restaurant/hotel list:

manager  
desk clerk  
pool attendant  
coat check person  
shoe shiner  
restaurant host/hostess  
maintenance crew worker  
room cleaner  
assuming hotel has two dining rooms, who serves food in:  
1) breakfast/lunch restaurant  
2) dinner restaurant

I then ask students to note the race/ethnicity and sex of the person who is likely to hold these jobs. After they mark their chart, one by one the students identify who most likely holds a specific job. . . . We then talk about the other workplaces. Why it is that the airport attendants who use a computer to check your bag outside are all black men, while those who use a computer inside to check your bags are generally white men and women."<sup>38</sup>

### **H. Contracts/Commercial Law/Creditors' and Debtors' Rights:**

#### 1. Address race-related topics first:

"My approach in raising the plight of economically disadvantaged . . . was to be direct and to do this in the first class of the semester. . . . It was pragmatic because the large volume of substantive issues to be covered would delay raising these issues later so that there might not be enough time for meaningful discussion of the disparate treatment of the poor under collections law and its system. It was strategic because planting the seed to think about these issues of fairness in the beginning of the course would give this discussion a place of prominence throughout the course."

#### 2. Prepare students in advance:

"The students were forewarned that while the course was entitled 'Creditors' and Debtors' Rights,' they would find that state law rights and remedies available to creditors and debtors to enforce debt obligations were primarily creditor-centered and creditor-friendly."

#### 3. Use media sources (e.g., video) effectively:

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<sup>38</sup> *Id.* at 430-32.

"Without getting on a soapbox to raise this issue, I was able to find some video presentations produced by consumer credit advisory organizations that were very effective in introducing struggling consumer debtors and their various plights to my students. . . . Most of the debtors in the video presentations were women and minorities. . . . These individuals were eloquent and powerful in explaining their paths to their current situations. . . ."

[The video shows most of the debtors as women and minorities. This arguably could reinforce negative stereotypes of women and minorities. To counter this perception, the law professor might first explain to students that they will see many women and minorities in the video, but that this does not mean that all women and minorities are debtors or that white consumers are never debtors.]

**4. Find opportunities to discuss race-related issues:**

"[S]everal opportunities arose that allowed the class to consider how the various collection remedies studied might have different or more adverse effects on the low income consumer debtors as opposed to business debtors or more economically secure debtors. One such occasion was found in the study of the course unit on prejudgment attachment remedies."

**5. Choose relevant cases to read. Let the cases stimulate classroom discussion:**

"The class was assigned appellate cases to review involving the constitutionality of such remedies, including the Supreme Court case *Connecticut v. Doehr*, which considered whether the Connecticut prejudgment attachment statute violated a debtor's right to due process under the Fourteenth Amendment of the Constitution."

**6. Invite clinic professors and practitioners to be guest speakers:**

"Another way to bring the problems of low income consumers into a traditional contracts/commercial law course is to invite faculty from law school clinical programs to share some examples of challenges they have encountered in their representation of low income clients."<sup>39</sup>

**I. Business Associations/Securities Regulations:**

**1. Realize the reason for the race discussion:**

Race is discussed "when the presence of nonwhites is a notable element of the transactional context . . . ."

**2. Use a race-related case:**

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<sup>39</sup> Miles, *supra* note 10, at 1374.

"In Business Associations, for example, Marcus Garvey's conviction for securities fraud provides an opportunity to examine issues in the mechanics of corporate formation as well as provide a setting examining securities fraud. Garvey is identifiable as an African American." [See *Garvey v. U.S.*, 4 F.2d 974 (2d Cir. 1925)].

3. Use the race-inclusive case to promote class discussion about both racial inequality and the fine points of securities law:

"In **Business Associations**, class discussions about the *Garvey* case may revolve around the distinction between nonprofit and for-profit enterprises, the issuance of shares of stock, or record ownership. In **Securities Regulations**, the discussion may center on the technical requirements of the mail fraud statute in comparison with the Federal Securities Act of 1933 and Section 10b-5 of the Federal Securities and Exchange Act of 1934. A deeper conversation involves underlying policies for protecting unsecured investors as the primary contributors to Garvey's enterprises who were for working poor with relatively little education, an issue that may come up from time to time in the course."<sup>40</sup>

#### **J. Property--discussing Native American displacement and slavery:**

1. Use a casebook that incorporates cases discussing race.

2. Use helpful cases to stimulate class discussion.

"The case of *Johnson and Graham's Lessee v. M'Intosh*, for example, is a fascinating vehicle for the introduction of notions of occupancy, possession, . . . and the relationship between property and sovereignty."

3. Integrate the "race" subject into the class. Begin and end with discussions of race.

"In my first attempt the topic functioned more as a disconnected sermon than as an organic part of the whole. In my second attempt I saved slavery as a culminating topic for the end of the course. We had begun by examining 'Property as a Cultural Institution,' and the final class was entitled 'Property as a Cultural Institution Revisited.'"<sup>41</sup>

#### **K. Contracts:**

1. Understand the connection between the course and race.

"The history of American contract law and issues of race and culture are inextricably intertwined."

2. Identify specific connections between the course subject and race subjects:

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<sup>40</sup> Matthewson, *supra* note 4, at 678-81.

<sup>41</sup> Ansley, *supra* note 18, at 1524-25.

(a) African-Americans as Subjects of Contracts

(i) The Institutionalization of Slavery

(ii) Slaves as Human Property

(iii) Warranty of Slaves ("An express warranty as to the condition of a slave excluded any prior warranties. However, what constituted an express warranty was not always clear.")

(b) African-Americans as Parties to Contracts

(i) Incapacity of Slaves to Contract. ("Slaves legally could not enter into contracts, not even contracts of matrimony.")

(ii) Agency Theory. ("Applying the agency theory to slaves and masters obviously presented some problems. The master always had the right to control the slave, therefore, a master potentially could be liable for every act of his slaves. On the other hand, there was no agreement on the part of the slave to the original condition of slavery and, consequently, no agreement to serve as the master's agent.")

(iii) Contractual Emancipation. ("Emancipation of a slave could be accomplished by three means: by deed or will, by contract, or by implication.")<sup>42</sup>

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<sup>42</sup> Anthony R. Chase, *Race, Culture, and Contract Law: From the Cottonfield to the Courtroom*, 28 CONN. L. REV. 1, 12-32 (1995).