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On Teaching Constitutional Law When My Race Is in Their Face

Angela Mae Kupenda*

Constitutional Law is one of my favorite subjects to teach. You see, I am a 45-year-old southern-born, black woman who not only studies constitutional law, I lived it. I attended separate and unequal schools, survived freedom of choice programs, suffered Jim Crow laws, and was a beneficiary of consent decrees and affirmative action programs. I love discussing and debating issues relating to race, gender, etc. I love constitutional law, but many of my students do not love the subject or, perhaps, care for hearing about my related experiences.

A student once wrote in an evaluation of my First Amendment course, that the course would be excellent if I would omit any coverage of “speech and race.” As you might guess, many of my students (and I have been fortunate to teach across the country) are white males – very conservative white males. I cannot meet those students’ request. Our casebooks discuss important cases about freedom of association, civil protest, unpopular speech, hate speech, etc., which are core First Amendment ideas. Moreover, as a law professor I have an obligation to help future lawyers engage in collegial debate, understand that there are always at least two sides to every argument, and to appreciate the strength of opposing viewpoints, even if they do not ultimately choose to embrace or endorse a different viewpoint.

So, while I love constitutional law, teaching the required segments of the course to students who would rather not hear about individual rights and, in some instances, would surely prefer to not hear about them from my womanly dark brown face, is a

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real challenge.

I am in my eighth year of teaching in the legal academy. Initially, I thought that the way to break down defenses and create an open dialogue, to hear and debate different perspectives, was to be direct and challenging, as many of my own white male law professors were. I went charging into solid, centuries old brick walls without wearing a helmet. And, all I ended up with was a headache and bruises.

Frequently former students, who are now lawyers, come back to me and say that, although they did not appreciate me while I was their teacher, they realized during their studies for the bar exam and thereafter, that they had received a valuable education and were challenged in necessary ways. But these incidents occur much later after the course ends and after the same students write scathing student evaluations of my courses and of coverage of racial implications.

In the last few years since obtaining tenure, I am rethinking my teaching methodologies. I am asking myself: Can a black woman teach the required constitutional law course to a predominantly white and conservative class, cover majority and dissenting views, challenge the status quo, share her relevant experiences, and still leave the classroom enlightened but intact? And if so, how? I have been in a deep meditation on this question ever since I obtained tenure and ever since noting, that while my student and peer evaluations are generally excellent in most of my courses, my student evaluations in the required constitutional law class are consistently much lower. My meditation was intensified after the terror inflicting incidents of September 11.

After September 11, it became clear to me that our country will have to answer many constitutional questions. A week later, I still did not know whether my students and I were emotionally ready to discuss such topics in class. "But how long could I put off any discussion –I teach at a law school, and lawyers must be able to discuss the aftermath of these incidents," I seriously thought. "But we are all hurting so badly, and some of my students have admitted they feel terror for the first times in their lives," I told myself. "But I am teaching constitutional law and civil rights and teaching at a school that emphasizes excellence, so it is my duty," I reflected. Also, students were beginning to quietly complain and murmur as to why we were not discussing these topics in class.

I knew that if I initiated the discussion, I would have to be true to myself. That meant I would have to facilitate a discussion of terror in a broader sense which would include the terror many

racial minorities, and their ancestors, have experienced, and still do experience, even in America. The terror of slavery and continuing hate crimes would have to be addressed. Whether our country is ready to address all terror, or whether the racist terror of some groups will continue to be considered protected speech would have to be posed for discussion. Would not it? These topics were being discussed in many people of color circles, surely my overwhelmingly white class of future lawyers should be challenged to think more broadly.

The discussion went well in my civil rights class, an elective course. Students wanted to talk. They needed to talk. Racial profiling was disturbing to them, universities punishing teachers for critically analyzing any role American policies played in the terror was disturbing them, and feeling unsafe was disturbing to them, too.

However, class discussion did not go as well in my required constitutional law course. A couple of students became overtly hostile and lodged personal attacks. I survived the class. But I left the classroom on the verge of tears. Fortunately, I encountered a couple of students of color who just days ago I had consoled regarding their struggles with the racial fallout from September 11 and the country's response. Their puzzled expressions of concern for my troubled state gave me enough strength to make it to my office, and there I closed the door and cried, alone.

I received a host of advice. Some students came to my office said, "Please don't let a few ugly and silly people cheat the rest of us from hearing your stories. Your real life experiences help us understand the context of the cases better." A sisterly colleague of color from another school was concerned for my security and peace of mind. "It's their loss," she said. "Just do not cover the race topics, do not cover individual rights, if they are so overtly hostile that they can not stand to hear another viewpoint."

I decided that I would not go to either extreme. I would stop running into the brick wall. I would not allow myself to be controlled by fear: my students' fear of being challenged, my fear of their rejection and (smile) their bad student evaluations. As for the students who came to apologize for their hostile classmates, I reminded them that many of them sat silently in class when I would ask for anyone to give the opposing arguments to various positions. I told them that if they want to hear my stories, they would have to help create an environment more welcoming of diverse viewpoints. "Do not leave it for me to always have to explain the dissenting or liberal opinions all the time," I told them.

“As future lawyers, you must be able to explain a viewpoint, even if you do not embrace it. Then, in class, it will not look like it is me, the only black face in the class, giving countering viewpoints to the very vocal conservative view all the time,” I challenged them.

Well, it worked. A mediocre, hostile constitutional law classroom became a more open and invigorating one. But, why did I have to hurt so badly for it to happen. And, who knows what my student evaluations will say?

I guess I tried one more time to run into that brick wall without a helmet, huh? As to whether, given my womanly brown face, I can ever teach my favorite required courses without receiving overt hostility from some students – well, changing my womanly brown face is no option. Leaving individual rights, race, and gender out of constitutional law is not an option for me. Failing to encourage my students to consider other viewpoints is no option either. Unless you have good advice for me, get my helmet ready... and brick wall... here I come!