

# Educating the Next Generations of LGBTQ Attorneys

Ruthann Robson

## Introduction

One could say that in the past quarter-century the legal academy has been queered. In the more than twenty-five years I've been teaching in law schools, the number of LGBTQ law professors has increased dramatically, especially with regard to "out" lesbian and gay law professors. Similarly, the number of LGBTQ law students and LGBTQ courses, and the breadth of LGBTQ course content, has multiplied, certainly since my years as a law student in the late 1970s. Many law schools now tout themselves as "LGBT-friendly" in their communications with prospective students. The indicia of friendliness include LGBTQ-identified faculty, a student group, a course, and testimonies by alums and students.

Yet while law school may be more friendly, I'm not convinced that the legal academy has been queered, at least sufficiently so. While there are more LGBT law professors, we do not necessarily devote scholarly attention to developing what a queer pedagogy might be. One of the few substantive forays into the subject is a pair of articles by Canadian law professors Kim Brooks and Debra Parkes, published in 2003 and 2004.<sup>1</sup> As new law teachers, Brooks and Parkes draw on other outsider pedagogies to develop sets of principles to guide their quest for a queer law school pedagogy.<sup>2</sup> In a less hopeful article published

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1. Kim Brooks & Debra Parkes, *Moving from the Back to the Front of the Classroom*, 1 SEATTLE J. SOC. JUST. 637 (2003); Kim Brooks & Debra Parkes, *Queering Legal Education: A Project of Theoretical Discovery*, 27 HARV. WOMEN'S L.J. 89 (2004) [hereinafter Brooks & Parkes, *Queering Legal Education*].
2. The eight principles they articulate are: 1. Centering queer experience in all of its diversity; 2. Denaturalizing heterosexuality; 3. Cultivating community and coalition; 4. Seeking connections between disciplines; 5. Advancing progressive transformation; 6. Embracing activism as method; 7. Uncovering perspectives; and 8. Responding to changing contexts, periods, and climates. Brooks & Parkes, *Queering Legal Education*, *supra* note 1, at 117-35.

in 2010, American law professor Doni Gewirtzman reflects on the conflicts inherent in the pedagogy and substance of a “civil rights course” such as sexuality and law.<sup>3</sup> In the present precarious time for legal education, in which the contours of educating the lawyers of tomorrow is shifting, LGBTQ law professors and administrators have not yet focused on how—or if—LGBTQ law students are specifically implicated in any proposals for change.

In this brief essay, originally presented in a talk to other LGBTQ law professors, I’d like to explore the role of LGBTQ law professors in empowering students, LGBTQ or otherwise. Admittedly, this formulation is fraught. Many students object to being patronized as people who need “empowerment” and to the implicitly hierarchical concept of empowerment itself. Yet within the legal academy, in relation to students, professors do have power. Using this power to foster the space for novice legal learners to become proficient professionals is never simple. If this power occurs in an LGBTQ context, it is further complicated. When it comes to sexualities and gender identities, there are neither clear categories of novice/ expert, nor should there be. Moreover, there is rarely a commonality of experience, even when a seemingly definitional label such as “lesbian” might be accurately applied.<sup>4</sup> This makes the simplistic and often-proposed notion of LGBTQ law professors as “role models” not only superficial but specious. Instead, LGBTQ law professors must be more ambitious for our students.

Using my own experience as a springboard, I consider in this essay three contexts in which LGBTQ law professors have the possibility to “empower” our students. First, and most obvious, is the classroom, or, more accurately, various classrooms. Second, and often neglected, is the context of direct supervision. And third and last are the contexts of community, including within the law school, and larger LGBTQ and legal communities.

### I. In Classrooms

Different types of classrooms, different types of courses, and different class sessions exist within those courses. Each minute of each class deserves specific choices as to pedagogical styles. This is no less true in LGBTQ contexts.

Broadly speaking, we properly divide our classrooms into two categories in law school: the large podium-style class and the small seminar, experiential, clinical class. Each of these has its unique challenges and advantages. Yet

3. Doni Gewirtzman, *Reflections on Substance and Form in the Civil Rights Classroom*, 54 ST. LOUIS U. L.J. 783 (2010). Gewirtzman conceptualizes the conflicts as three battles: between coercion and freedom, between public and private, and between law and love. That same year saw the publication of a conversation between law professors Robert Chang and Adrienne Davis which included exploring their own racial, gendered, and sexual identities and student bias. Robert S. Chang & Adrienne D. Davis, *An Epistolary Exchange. Making Up Is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J. L. & GENDER 1 (2010).
4. I discussed this in Ruthann Robson, *Pedagogy, Jurisprudence and Finger-Fucking: Lesbian Sex in a Law School Classroom*, in LESBIAN EROTICS 28 (Karla Jay ed. 1995), reprinted in *Lesbian Sex in a Law School Classroom*, in RUTHANN ROBSON, SAPPHO GOES TO LAW SCHOOL 215 (1998).

common to both is the responsibility of the professor to create and maintain a conducive learning environment, as Gerry Hess has written.<sup>5</sup> And while we often think of the large classroom as being the most “intimidating,” classroom dynamics in a small seminar can be just as intimidating, and perhaps more so, when the subject is sexuality and gender identity.

The professor’s own identities undoubtedly play a part in the classroom dynamics, but if it were ever as simple as being “out”—which I don’t think it was—that is no longer true. Indeed, perhaps the most fractious relationships in the classroom may be among LGBTQ professors and LGBTQ students; the terrain for mutual disappointment is vast. LGBTQ students may expect a favored status and they may have more invested in performing well. In addition, they may have high and unrealistic expectations of the professor embedded in their own search for their professional identities, which include differentiating themselves from professors. Professors possess their own unrealistic expectations, including their own investment in the performance of LGBTQ students (especially if the professors participated in the recruitment of those students) and their desire that LGBTQ students be their acolytes or supporters.

In the large—and thus more public—classroom of podium classes, whether they be lecture, Socratic method, interactive, or mixed methods, are multiple opportunities for misunderstandings. The troublesome subject of classroom “air time,” including which students get called upon whether by volunteer or not, has well-noted gender and racial differentials,<sup>6</sup> and also has LGBTQ aspects, including gendered and preferred name and pronoun issues.<sup>7</sup> For my own practices, I have come to prefer a random system of name cards that are

5. Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75 (2002).
6. See, e.g., Timothy T. Clydesdale, *A Forked River Runs Through Law School: Toward Understanding Race, Gender, Age, and Related Gaps in Law School Performance and Bar Passage*, 29 LAW & SOC. INQUIRY 711 (2004) (presenting a long-term study about how race, gender, age, and sexual orientation affect law school experience, including classroom participation and bar passage rate); Meera E. Deo, *The Promise of Grutter: Diverse Interactions at the University of Michigan Law School*, 17 MICH. J. RACE & L. 63 (2011) (discussing the general problems of low-minority participation in law school classrooms and the impact of the *Grutter* decision at Michigan Law); Adam Neufeld, *Costs of an Outdated Pedagogy? Study on Gender at Harvard Law*, 13 AM. U. J. GENDER SOC. POL’Y & L. 511 (2005) (discussing an empirical study conducted at Harvard that found women were significantly less likely to participate in class and that the trend was not affected by the perceived gender of the professor); Elizabeth Mertz with Wamucii Njogu & Susan Gooding, *What Difference Does Difference Make? The Challenge for Legal Education*, 48 J. LEGAL EDUC. 1 (1998) (exploring a long-term study on how women and minorities participate in law school classrooms and the impact class participation has on success). *But cf.* Cassandra M.S. Florio & Steven J. Hoffman, *Student Perspectives on Legal Education: A Longitudinal Empirical Evaluation*, 62 J. LEGAL EDUC. 162, 175 (2012) (stating that results of a long-term study of student satisfaction at University of Toronto law program concluded that “gender does not seem to have the influential role it is currently accorded in legal education discourse”).
7. See, e.g., Gabriel Arkles, *Trans\* and Gender Nonconforming Students: Suggestions for Law Faculty*, 17 CUNY L. REV. 87, n.4 (July 12, 2014), <http://www.cunylawreview.org/trans-and-gender-nonconforming-students-suggestions-for-law-faculty/> [<https://perma.cc/89D7-3PSK>].

pulled (sometimes by a student) for student participation. Names, of course, have their own LGBTQ and other diversity issues. I have taken to using index cards with the “official” roster name on one side and the student’s preferred name, as written by the student, on the other side, which is the side I use. For volunteers or questions, I try to be indiscriminate, but when it seems lopsided, I cut off comments and questions during class and move these conversations to after class, a strategy that works well if the scheduling of the classroom or students is not too tight. This randomization also forestalls the perception of certain students being selected for certain cases because of their identities or even politics, which both puts those students on the spot and has the potential of installing those students as “experts” based on experience, if not doctrinal mastery. I do allow selected students to ask for assistance from a colleague as “co-counsel,” and, interestingly, these selections often follow identity patterns.

In smaller classes and seminars, issues of identity, “airtime,” and expertise can be magnified. In teaching sexuality and law since the early 1990s, I have consistently depended upon role-play and student facilitation to construct the course. Using this methodology with many different groups of students at several law schools, and at times including nonlaw students, I appreciate the differences among students and believe that we must take our students, LGBTQ or not, as we find them. Doing so has heightened my own perceptions of individuality and diversity, even as it has broadened my own theoretical, political, social, and sexual knowledge.<sup>8</sup>

The course content has always treated sexuality in the broadest sense, including gender and gender identity, and has altered dramatically over the years as the issues have changed. The syllabus has a set of class topics and sets of readings under each topic, but it operates more as scaffolding than as a prescription. At the second class, students sign up to facilitate a class. I work with the students to streamline, select, and augment the suggested readings and to develop the class session’s simulation. Students often bring problems from their internships, projects, and lives, allowing them to essentially “workshop” issues they have encountered. Importantly, these facilitations must not admit of easy answers or solutions. They must also engage the range of theoretical positions and usually seek concrete resolutions, if not solutions. Thus, the class simulations do not include general debates about LGBTQ equality or sexual freedom, but focus on what that might mean in particular circumstances. For example, in one class session the students might role-play members of a hypothetical “sexual freedom” organization, each student having a particular role and “secret fact,” deciding whether we will write an amicus brief on behalf of a person challenging the criminalization of bestiality. If so, what should we argue? And if not, what should we say in our letter denying the request? Or, in another class session, as advisors to a particular legislator in a particular state (or as members of a model drafting commission), do we criminalize adult-child (or intergenerational) sex? Do gender or sexual orientation differentials matter? Do age differentials? Intellectual or physical capacity? And even if

8. See, e.g., Robson, *supra* note 4.

we value individuality, aren't there some bright-line rules? Are we being paternalistic? What will our constituents say?

By assuming new and shifting identities, the role-play frees the students from our previous conceptions of ourselves and others in the classroom regarding our identities and politics.<sup>9</sup> It allows us to disagree and debate in relatively, if not completely, nonpersonal ways, and also to challenge our own beliefs in nonthreatening ways. It ensures that a variety of viewpoints are articulated in the context of issues that admit no easy answers. It models, I hope, how to work across sexualities and politics on difficult issues.

The class features, in addition to role-play, more traditional discussion and a focus on the writing component of the course, a paper. In class, the discussion can be a reflection on the role-play or a more generalized discussion of the topic, with one of the few rules of the course being that each student is limited to one personal story per semester. The focus on writing examines the articles we read for a class session as samples, asking basic questions regarding an article's structure, introductory choices, conclusion, or even citation practices. After we have read a spate of articles, students spotlight specific portions or techniques in articles that they admire, and—equally important—that they dislike. Disagreements among students usually abound and are vital to the discussion. Students then move from general appreciation or disapproval to processes of emulation or avoidance in their own writing and approaches to their subject.

I am fortunate to be able to assign a substantial number of articles published by former students in the sexuality and law course,<sup>10</sup> and this enables current students to envision their own work as part of an ongoing project to theorize sexuality and law, and that empowers them. At times, I've had recent former students come to speak about their work and their processes, another way that current students can critically craft their own futures. Moreover, I meet with students individually and directly supervise their work.

## II. In Supervision

The process of direct supervision is well-theorized in the clinical context,<sup>11</sup> but often when we think of “teaching,” we emphasize the classroom contexts

9. I use a more limited role-play in a portion of a First Amendment course. See Ruthann Robson, “*Losing My Religion*”: *Extended Role Play and the First Amendment Religion Clauses*, LAW TCHR., Fall 2014, at 49, <http://lawteaching.org/wp-content/uploads/2016/06/lawteacher2014fall.pdf> [<https://perma.cc/6UJD-EGJ6>].
10. See Ruthann Robson, *Sexual Justice, Student Scholarship and the So-Called Seven Sins*, 19 LAW & SEXUALITY 31 (2010) (discussion of working with students on scholarship on sexuality and law).
11. See, e.g., Ann Shalleck & Jane H. Aiken, *Supervision: A Conceptual Framework*, in SUSAN BRYANT, ELLIOTT S. MILSTEIN & ANN C. SHALLECK, *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* 169 (2014); Jane H. Aiken & Ann Shalleck, *The Practice of Supervision*, in *id.* at 205; Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109 (1993-94).

and minimize office hours and meetings. Yet in the nonclinical context, this supervision is equally vital. And it is here that LGBTQ professors and students forge individual bonds and encounter personal minefields.

In direct supervision of student papers and student choice of topic, my motto is “never say no.” This does not mean that topics cannot be refined, shaped, and focused. Instead, it means that I believe we should never withhold permission to pursue a topic. My belief in this is rooted in my own experiences as a law student and as a new scholar: The number of well-meaning advisors who advised me not to write about lesbian legal issues is much larger than it should have been. Indeed, I was cautioned that such concerns were “irrelevant.” Now, of course, LGBTQ issues are mainstream, but what of ideas that are—or seem to me to be—unimportant or ill-advised? More than a few, I admit, have arisen. Yet in practicing the “never say no” motto, my initial negative reaction has been proved wrong most of the time, further strengthening this resolve. At other times, students have abandoned the idea on their own, or “refined” it past recognition. For me, this further bolsters my willpower. It engages me as a collaborator and expands my own points of view.

In direct supervision beyond topic selection for students writing papers, prompt and positive feedback is essential. Beryl Blaustone’s six-step feedback model is incredibly useful, stressing as it does both positivity and student autonomy.<sup>12</sup> It begins with the student identifying the strengths of the “performance,” in this case the piece of writing, whether an outline or draft; the supervisor then responding only to what the student has said; the supervisor then identifying other strengths; the student then identifying “difficulties”; the supervisor then responding only to what the student has said; and then the supervisor identifying and discussing other difficulties.<sup>13</sup> Embedded in these discussions is the path to improvement.

While these practices are not specific to LGBTQ professors and students, they take on a special resonance in the LGBTQ context. In terms of topic selection, LGBTQ students may be seeking validation and permission from LGBTQ professors about their interests, even as LGBTQ professors may be seeking to mentor or protect LGBTQ students, or even (unconsciously) “use” LGBTQ students to advance their own scholarly agendas or professional reputations. In terms of feedback, LGBTQ professors may be tempted to take shortcuts with LGBTQ students based on assumptions given credence by shared identities. A professor may perceive a particular LGBTQ student as intellectually (or personally) strong, politically savvy, and writing about a sophisticated subject; so the professor’s conversation starts with “ways to improve.” Meanwhile, the student does not realize the professor believes the work is strong overall, a perception that can be complicated by the student’s LGBTQ-inflected feelings about the professor or the subject.

12. Beryl Blaustone, *Teaching Law Students to Self-Critique and to Develop Critical Clinical Self-Awareness in Performance*, 13 CLINICAL L. REV. 143, 154-59 (2006).

13. *Id.*

The attention to the complexities of direct supervision can be necessary even in the most casual interactions. For example, one year I finished reading the submitted outlines for sexuality and law papers and emailed each individual student to arrange a feedback session. I wrote: "I've finished reading your outline. Please stop by my office for a brief chat whenever it's convenient." Although I like to think I had sent the same email in previous years, that year it caused much consternation, especially among LGBTQ students. As one lesbian student explained, "chat" seemed severe and an indication that there were "serious issues." And I had thought "chat" seemed informal and friendly! After much interrogation of the word "chat," I don't think I was incorrect. However, what I was wrong about was that students thought that their outlines were properly the subject of a discussion that could—or should—be informal and friendly. Our LGBTQ students, like all our students, expect rigor and professionalism from us. Many, although certainly not all, students suspect us and our motives when we provide anything less.

### III. In Law School and Larger Communities

The lectures and presentations on "this generation of law students" or on "millennials" have a particular valence in the context of LGBTQ experiences. It is not simply a discussion of technological change or cultural references, but a comparison of our sexual and gender identities. Yet the sentiments are often startlingly similar, sounding like some version of "kids have it so easy today" compared with when I had to walk to (law) school five miles uphill in the homophobic snow.

In our law school communities, this can be fertile ground for discord. LGBTQ law professors can find ourselves judging "our" students as unappreciative for the roads we have paved and being "impatient" for (more) change. Moreover, we can disagree about the direction of change students advocate. LGBTQ students, on the other hand, may simultaneously want and reject assistance from their professors. A critical mass of LGBTQ students in a law school community can mean that students look to each other, rather than to their professors, for "community." And, as in any community, commonalities in sexual and gender identities coexist with differences (or commonalities) in our politics and personalities.

For example, I have experienced incidents of "hate speech" or "bullying" or "incivility" as especially wrenching. At times, my private reaction to incidents has been akin to "kids these days are so sensitive" with the addition of "when I was in law school there were broken bottles thrown at me, never mind an ambiguous remark on Facebook." Yet taking students seriously is vital. This was true when "coming out" was a major issue (and of course it can still be for some students and in some places). It is also true when the trust and confidence students place in LGBTQ professors is about other issues, including taking their perceptions of injuries seriously.

In the larger legal community, "educating" the next generations of LGBTQ lawyers includes acting as a bridge for our students. LGBTQ law professors

generally have contacts with the wider LGBTQ legal profession; we not only can serve as an introduction to that profession, but we can make concrete introductions of students to attorneys and others working in the field. This has always been an important aspect of the work of LGBTQ law professors. But while it might have once operated more as an entrée into a secret society, it is now an essential task in this downsized legal economy.

The joy of introduction, however, can transmute into the anguish of recommendation. Certainly, writing reference letters and recommendations can be time-consuming and even arduous, but the true distress occurs when an LGBTQ student is not stellar. As LGBTQ law professors, we owe our larger legal communities our honest assessments. This is the best practice ethically, but also instrumentally if we want our future recommendations to be trusted.

### **Conclusion**

If the stance of LGBTQ professors toward LGBTQ students can be reduced to a single question, I suggest it would be this: How can we be champions rather than gatekeepers? Although it can be difficult for a professor to invest the amount of time and care required to be an effective champion, the ultimate dividends are immeasurable. The next generations of LGBTQ attorneys will be their own reward.