COMMENTARY

Difficult Conversations

Critic at Large

By DOROTHY RABINOWITZ

In 1973, film audiences were captivated by "The Paper Chase," a drama about the travails of a first year student at Harvard Law School. His performance as the mercilessly demanding Professor Kingsfield secured an Oscar for John Houseman, a television series based on the film, and left Americans and a good part of the rest of the world with a vivid impression of the fearful intellectual rigors of life at Harvard Law.

Current Harvard Law students may have a hard time reconciling this picture with the realities of life at their school today, a time, after all, when a Kingsfield would surely face accusations that he had created a discomfiting learning environment for one group or another. Certain of the newer aspects of life and learning at Harvard Law would also have come as a surprise, to put it mildly, to its renowned longtime dean, the late Erwin Griswold.

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"Look to the right of you, look to the left of you," the famously tough Griswold was known to advise first year students: "One of you isn't going to be here by the end of the year." The students had entered a world -- and this was still true as recently as the 1980s -- in which intellectual rigor, skill in logic and harsh argumentation were prized. Harvard had pioneered the Socratic method of case studies emulated by all other law schools: a combative intellectual exercise requiring students to counter torrents of relentless questions designed to drive them into a corner, much like the kind the devilish Kingsfield asked. And much like those they might encounter from justices of an appellate court.

At Harvard Law today, skill in hard combative argument is no longer prized, nor even considered quite respectable. Indeed, first year law students can hardly fail to notice the pall of official disapproval now settled over everything smacking of conflict and argument. That perception can only have been strengthened by a new program for freshmen, called "Managing Difficult Conversations."

In the lesson books provided, students learn the importance of empathy. "Emotions need to be acknowledged and understood before people can problem solve," another lesson teaches. In a book by the program's chief creators we learn that "A Difficult Conversation Is Anything You Find It Hard To Talk About." Not the sort of wisdom that would have taxed the minds of the students. Still, the purpose of the three-hour sessions did elude one otherwise accepting attendee, who reports that the discussion leaders seemed to circle around specific issues, and that he had the feeling there was a real subject here not yet clear or acknowledged.

He was not the only one wondering about the substance of these meetings. The freshman had just gained entry to the most elite of the nation's law schools. For upward of $32,000 a year tuition, he could learn that a difficult conversation is anything a person finds hard to talk about, and that "logic/reason" have to be combined with "emotions and personal experience" in order to be persuasive. He would not have learned, at such a session, that all the negotiating strategies, all the emphases on emotion and personal history and subtext being advanced at these workshops, was exactly opposite of what legal training was supposed to teach. He would not learn here that the law deals in objective truth that it is concerned with fact. That what is said is determinative, not what is left unsaid, not subtexts, not emotions, expressed or other, not personal history.

The student's feeling that the sessions concerned more than the art of difficult conversations was correct. In March, a freshman summarizing a court decision on racial covenants had put his class notes on the Web, which included two references to "Nigs" -- abbreviations that caused an uproar. The offender, a Filipino from Hawaii, apologized profusely. Another first year law student weighed in next, this one from Poland. In an anonymous, extremely unpleasant e-mail, he claimed the right to use the N-word, in the interests of free speech. He, too, apologized.

The Harvard Black Law Students Association responded with declarations charging the Law School administrators with willful inaction in the face of "racial outrages." High on their list of perpetrators was senior law professor Charles Nesson, who had offered, as a kind of pedagogic exercise, a mock trial of the anonymous e-mailer, with himself as defense counsel. Arguing that this was an outrage even at a mock trial, the BLSA demanded that Mr. Nesson be barred from teaching mandatory first-year classes.

Prof. David Rosenberg was similarly named as a perpetrator of racial outrages. "Marxists, feminists and the blacks had contributed nothing to torts," he is alleged to have told his class. From the context of the class discussion it was clear that the reference to "the blacks" was to the school of legal scholars, known as the Crits -- critics whose viewpoints were based on radical black and feminist perspectives, who had, in Mr. Rosenberg's view, contributed nothing to tort law. This explanation was unacceptable to the BLSA, which demanded that he, too, be barred from teaching mandatory first-year classes, and that the administration publicly reprimand him (along with Mr. Nesson) in the Harvard Law Bulletin and the Harvard Crimson.

The answer from law school dean Robert Clark was a model of responsiveness. The Nesson course would be taught by an assistant dean -- Mr. Nesson having volunteered, publicly, to remove himself. As for Mr. Rosenberg, his classes would be tape-recorded, so that students who felt he might insult them need not suffer the discomfort of sitting in his class.

Dean Clark next announced plans for a "Committee on Healthy Diversity," along with suggestions that a racial harassment policy might be enacted at the school. There was to be, in addition, "a responsive training program for incoming students and faculty." So did it happen that first-year Harvard law students found themselves in workshops on managing difficult conversations.

One senior member of the faculty marveled that the school was now training law students to stigmatize conflict. Just before his own class went off to attend the workshops, he slipped them all pieces of paper -- these filled with quotes from Supreme Court Justices's opinions holding that free speech is supposed to invite dispute.

Boston attorney Harvey Silverglate, who tracks assaults on free speech at universities, describes the workshops as "an exercise in thought reform disguised as an effort to help students improve their negotiation skills." Dean Todd Rakoff, the program's overseer, stands foursquare behind it, nonetheless. The students needed these skills for their careers, he argues. As to free speech, "We are absolutely in favor of uninhibited debate, in a workable fashion."

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Why the school's administration yielded to the pressure to punish two senior professors charged with racism, one because of a misunderstanding of his meaning, another because of an attempt to turn an ugly episode into an educational one -- instead of standing by them -- remains unexplained. Nor has anyone in that administration explained why, instead of a rational assessment of these hysterically inflated incidents, the school's dean was moved to give instant implicit assent to the strange notion that racism was running riot at Harvard Law. Both of these subjects would, of course, make for difficult conversations.

Ms. Rabinowitz is a member of the Journal's editorial board.

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