



1-1-1996

# Women of Color in the Law: The Duality of Transformation

Margalynne J. Armstrong

*Santa Clara University School of Law*, [marmstrong@scu.edu](mailto:marmstrong@scu.edu)

Follow this and additional works at: <http://digitalcommons.law.scu.edu/facpubs>

---

## Recommended Citation

31 U.S.F. L. Rev. 967

This Article is brought to you for free and open access by the Faculty Scholarship at Santa Clara Law Digital Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of Santa Clara Law Digital Commons. For more information, please contact [sculawlibrarian@gmail.com](mailto:sculawlibrarian@gmail.com).

# Women of Color in the Law: The Duality of Transformation

By MARGALYNNE ARMSTRONG\*

WHEN A WOMAN of color enters the legal profession, she steps into a forum that has only recently begun to permit her presence. The long tradition of excluding most minority men, white women, and women of color from law schools and law practice formed a bar and bench devoid of the experiences and perspectives of the majority of the people that have lived in this democracy. The exclusion of outsider groups from law has had profound implications for our nation as a whole. Professor Elizabeth Iglesias addresses the societal ramifications of barring women of color from the law's interpretive processes, noting that "[i]f . . . the structures erected through legal interpretation organize our social, political and economic alternatives in ways that systematically exclude our transformative agency from the realm of the lawful, then exploitation is institutionalized and violence is structural."<sup>1</sup>

The legal institutions of this country are still deficient and incomplete in that they lack the democratic justice that the experiences, perspectives, and intelligence of people of color and women would have contributed for two centuries. These institutions continue to perpetuate the allocation of power to society's most privileged sectors. But now that women and men of color and white women are becoming law students, lawyers, judges, and law professors, our legal institutions are taking tentative steps towards reform as a direct result of this new inclusion.<sup>2</sup> Access to knowledge of the

---

\* Associate Professor of Law, Santa Clara University.

1. Elizabeth M. Iglesias, *Structures of Subordination: Women of Color at the Intersection of Title VII and the NRLA. Not!*, 28 HARV. C.R.-C.L. L. REV. 397, 398 (1993).

2. Many transformative projects have emanated from the historically black institutions for decades. Distinguished alumni and professors of Howard Law School effectuated what is certainly the most transformative legal movement of our century, the desegregation decisions that led to *Brown v. Board of Educ.*, 347 U.S. 483 (1954), and ultimately, the elimination of *de jure* segregation. The transformation of predominantly white law schools is a more recent phenomenon, and the integration of people of color into these institutions is by no means stable. In the wake of the elimination of affirmative action due to Proposition 209, the class entering the University of California, at Berkeley's Boalt Hall School of Law in the fall of 1997 includes only one African American student. Every African American applicant who was accepted to Boalt in 1997 (not including possible wait-list offers) declined to attend. The single entering African-American had

law and its processes has enabled excluded groups to infiltrate many of the institutions that wield authority in unprivileged communities.

Although increased diversity has engendered a number of innovations in the legal profession, this essay will focus on only two of the changes: one in academia, the other in the courthouse. The educational innovation is the formation and growth of the law school academic support program. The development in legal practice is the rise of alternative dispute resolution in family court. Professor Trina Grillo has influenced both of these innovations, though in very different ways. She contributed her generous gifts of intelligence, faith, and honesty to the causes of developing and preserving academic support and to ensuring fairness in family law mediation. Trina fought to empower people who the law schools and the courts would otherwise disregard. She found that the most effective way of doing this work was to focus upon the truth that people coming into law school or court are inevitably changed by these institutions. Trina worked to refine and humanize these processes of change while simultaneously teaching people undergoing such change to seize power and growth from the experience.

## I. The Transformative Work of Women of Color in the Legal Academia

Transformation often works in opposing directions. Even as diverse participants change the profession, there is no denying that the legal profession pressures its participants to conform, to follow set procedures, and to "walk the walk and talk the talk." People come to law school for the express purpose of being changed into lawyers and the avowed mission of law professors is to teach students to "think like lawyers." But the definition of lawyer is no longer a static concept. Rejecting the proposition that to become a lawyer entails "becoming a gentleman"<sup>3</sup> (with all of the class, racial, and gender implications of the term), formerly excluded groups have worked to transform the meaning of lawyer and to humanize their education. Thus, transformation is a two-way process that can occur between "outsider groups," women of color,<sup>4</sup> and the legal profession.

---

deferred entry after being admitted in a previous year. See Pamela Burdman, *Boalt Law's Entering Class Has Only 1 Black*, S.F. CHRONICLE, June 28, 1997, at A15.

3. Even for women who are academically successful in law school, learning to think like a lawyer means learning to think and act like a man. As one male professor told a first-year class, "to be a good lawyer, behave like a gentleman." Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 5 (1994).

4. The experiences of women of color cannot be essentialized. I will attempt to present my discussion in a manner that recognizes the wide range of diversity that falls within this broad categorization.

The experience of law school changes the lives and thought processes of the typical "One L" and female students of color are not excepted. But rather than exterminate the identities with which they enter the profession, many develop a "jurisprudence of multiple consciousness,"<sup>5</sup> an ability to move through the law school classroom, law office, and courtroom in the ways required by a legal tradition defined by, and for, white men, while simultaneously transforming the system into something that reflects true diversity. For students of color, the duality of transformation often involves "making legal consciousness their own in order to attack injustice,"<sup>6</sup> while concurrently listening to and honoring what Trina called the "various voices within ourselves."<sup>7</sup>

Professor Grillo was dedicated to supporting students through the difficult process of developing and valuing their multiple consciousnesses. She pursued this vision in various ways. The first was to use her position as a professor to mentor individual students. Those of us who were fortunate enough to attend this symposium in Professor Grillo's honor, heard the testimony of students that Trina fostered on a one-to-one basis. She served as a lifeline to these students but did not merely tow them through law school. Trina pushed, prodded, and guided frightened and discouraged students to remake themselves into confident, legal thinkers who could flourish within the legal profession, yet retain their "pre-law" sense of justice.

Professor Grillo's students testified to the rigor Trina demanded of them. High intellectual standards were yet another means of effectuating the transfers of power so central to her work. Trina appreciated the potency and beauty of intellectual power. The study of law is a means of acquiring the powers of persuasion and rhetoric. These are valued ways of communicating in Western culture, messages conveyed with these tools carry authority and demand engagement. Logical thinking and orderly oratory inspire the confidence of listeners and give lawyers the power to influence and represent others. Professor Grillo was able to convince her students that mastery of traditional legal communicative skills is a relevant and essential element in the grand proposition of achieving a just society.

Professor Grillo was also able to channel her devotion to students into the institution-wide transformative project of the Academic Support Program. She saw the purpose of academic support as "making it possible for students who would otherwise not be in law school to attend school, gradu-

---

5. Mari Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 2 *WOMEN'S R.L. REP.* 7, 9 (1989).

6. *Id.* at 8.

7. Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle the Master's House*, 10 *BERKELEY WOMEN'S L.J.* 16, 20 (1995).

ate, and get into positions in which their voices can be more easily heard.”<sup>8</sup> In return, she believed that these students would heed her admonition to use their positions as attorneys to “pay careful attention to the lives and material conditions of women (and, no doubt, others) who are under-represented in the law and to believe that their struggles have meaning and much to teach . . . the world.”<sup>9</sup>

Academic Support Programs (ASPs) focus on imparting processes to empower the whole student. Rather than tutoring students in rules of substantive law, the programs serve as a resource to support students through a mental metamorphosis. ASPs help students acquire effective procedures for processing and re-inscribing law school materials and to then present the materials in the manner required by traditional law school assessment mechanisms.<sup>10</sup> ASPs recognize and value different styles of learning. Unlike traditional law teaching often described by students as a game of “hiding the ball,” ASPs strive to demystify the case method and law classroom discussion. They directly reject the concept of keeping intellectual power out of the reach of students by making it remote. ASPs promote collaborative learning processes where knowledge is shared instead of sequestered.

Professor Grillo applied ASP theory to teaching her substantive classes in order to shed light on the obscurity that so often afflicts legal education. She saw that all students can benefit from ASPs because of the varied perspective taking that is a core ASP tool. Trina was a pioneer in the movement away from problematizing the students who use ASP. Instead, she confronted the oppressive “teaching” traditions of law school education in the United States. Such changes in the classroom can have transformative effects on legal academia and the legal profession. Although law schools do not change with ease, students who have experienced the value of alternative teaching methods often demand the use of such methods in other classes and exert consumerist pressures on the institution. Given the disproportionate advantages that Socratic-style teaching seems to bestow upon

---

8. *Id.* at 28. A more nuanced and complete presentation of Professor Grillo’s role in and approach to academic support is found in Abby Ginzberg’s film about Trina and the University of San Francisco’s Academic Support Program. See Videotape: Making a Difference: University of San Francisco Law School Academic Support Program (Abby Ginzberg 1994) (on file with the University of San Francisco Law School Library).

9. Grillo, *supra*, note 7, at 28.

10. See Kristine Knaplund & Richard H. Sander, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157, 158–59 (1995). These generalizations will not, of course, apply to all ASPs. Professors Knaplund and Sanders note that there are currently more than 100 ASPs in the United States. See *id.* These ASPs encompass a wide variety of approaches and methods to providing academic support to law students. See *id.*

male students,<sup>11</sup> the widespread implementation of alternative teaching methods is essential for transforming law schools into unbiased institutions.

## II. Transforming the Practice of Law: Professor Grillo's Work in Mediation

Sometimes female attorneys of color work in environments where their mere presence is a transformative project. These trailblazers encounter so much resistance to simple acceptance of the fact that they are indeed lawyers, that their transformative work (other than client representation) must be directed to changing segregated legal work-spaces to integrated ones. Beverly Nelson Muldrow, an African-American attorney describes her own and other such experiences:

Recently I spoke with a friend who is a female African-American and an experienced attorney with Ivy-League credentials. She also happens to work for the state government. She explained that when she attended her first meeting with one of her clients, another government employee, and advised him that she represents the state in certain legal matters, his disbelief was such that he called her office, before she returned, to check on her professional qualifications . . . . Upon learning what he had done, my friend was angry at the fact that he did not presume her to be qualified.<sup>12</sup>

This "first female of color" scenario tends to be difficult and lonely individual work, often producing only incremental results. Such tokenism takes its toll on the token, while the segregated institution remains relatively unscathed. Professor Grillo encountered this dynamic upon entering law teaching. Later she was able to act on a more expansive level, working to transform exclusionary institutions and jettison unjust procedures. Such work challenges institutional structures and is thus often met with forceful resistance. Professor Grillo's career encompassed both poles, she experienced the isolation of the trailblazer and the obloquy accorded the visionary. Although she preceded other women of color in legal education, Trina reached back to pull up others, myself included. I will always be deeply appreciative of the support and assistance she gave me, in the midst of answering the millions of demands that family, friends, teaching, and writing made upon her time.

One of Professor Grillo's avocations was mediation. She was an avid advocate of mediation's potential for empowerment and self-determination. But despite this enthusiasm, she always retained her critical consciousness

---

11. See Guinier et al., *supra* note 3, at 4.

12. Beverly Nelson Muldrow, *As a Woman of Color*, in *THE {WOMAN} ADVOCATE* 81, 86 (Jean Maclean Snyder & Andra Barmash Greene, eds., 1996). See Rita Henly, *Moving Mountains*, A.B.A. J., Nov. 1995, at 78, 81 (relating Chicago attorney Mussette Hill's description of her experiences as a desegregating trailblazer).

and did not shy away from examining the operation of this cause in which she so firmly believed. Her 1991 article on the pitfalls of mandatory mediation in family court interrogated the perception that mediation is, in and of itself, a feminist alternative to adversarial family law adjudication.<sup>13</sup> Her work examined the devastating uses to which mediation might be put under the guise of introducing an "ethic of care" (a virtue identified with female gender roles) to divorce procedures. She wrote:

If mediation does not successfully introduce an ethic of care, however, but instead merely sells itself on that promise while delivering something else in its place, the consequences will be disastrous for a woman who embraces a relational sense of self. If it is indeed her disposition to be caring and focused on relationships, and she has been rewarded for that focus and characterized as "unfeminine" when she departs from it, the language of relationship, caring and cooperation will be appealing to her and make her vulnerable . . . .<sup>14</sup>

She concluded:

[F]orcing women to take part in a process which involves much personal exposure sends a powerful social message: it is permissible to discount the experience of real women in the service of someone else's idea of what will be good for them, good for their children, or good for the system.<sup>15</sup>

Trina's point was that women's contributions to alternative dispute resolution in family law would not serve women well if the process were exalted without examining its content or impact, particularly upon subjugated groups. Mediation was being used to disguise dispersions of power in ways that did violence to the women involved. The article exemplified Trina's courage. It was very brave for her to point out mediation's failings to a community that considers its members progressive advocates for women's rights. It was difficult to criticize an alternative to adversarial processes that failed female participants in appalling ways. She did, indeed, receive a lot of flak from the mediation community for her article. But Trina did not fear disrupting comfort when that comfort served to obscure detriment to people and progress.

### III. The Future

In discussing Trina's work, I have often mentioned power and how she worked to disperse it among people who were excluded from it. Trina did not just empower students and struggling law professors. She sought to empower those who came into contact with the justice system at a locus where

---

13. See Trina Grillo, *The Mediation Alternative: Process Dangers For Women*, 100 YALE L.J. 1545, 1547-51 (1991).

14. *Id.* at 1604-05.

15. *Id.* at 1607.

interaction was likely to occur for the average person, family court. Her comprehension of power and its operation was brilliant. I think that Trina's nuanced understanding of power was attributable to her mastery of her own resources. Trina embodied inner strength, power from within, and the better self that we can attend and nurture or ignore and squelch. She used her inner power wisely and coaxed or taught others to channel their own. She taught us to start with the simple acts of listening and paying attention to our inner selves and to what our senses tell us. She believed that justice cannot happen, will not happen—unless and until we open our eyes, our ears, and our hearts.

To honor her memory each of us must seize every opportunity to teach her lessons to as many people as we can reach. The transformative projects to which Trina was devoted must continue. We cannot allow the setbacks, such as her loss and the enactment of Proposition 209, to discourage us from pursuing the redistribution of power in our society. As we evaluate, reassess, and reconfigure our struggles, Trina's words can inspire us and remind us what this rich pageant is all about. "[L]ife is enhanced by difference and justice requires an open heart."<sup>16</sup>

---

16. Fred Morison et al., *A Tribute to Dean Robert A. Stein: From Former Dean of the University of Minnesota Law School*, 80 MINN. L. REV. 1, 8 (1995).

