A Legacy for the Future of Legal Education

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Professor Taunya Banks studies the past to open doors in the future

She describes her life as fortuitous. A series of unexpected doors that opened and through which she ventured, once as a young lawyer with dreams of racial justice in a time of raw hatred, later as a teacher and activist striving to help society’s outcasts. And now, Taunya Banks finds herself in the improbable role of historian. Searching the past for clues to the future, she hopes to make history relevant to where society is heading and to ensure racial justice for the generations to come.

A professor at the law school since 1989, Banks holds lofty positions in the two major leadership organizations in legal education—she is a member of the Executive Committee of the American Association of Law Schools and the Board of Trustees of the Law School Admissions Council. She is also vice president of the Maryland Humanities Council.

Law school was the furthest thing from her mind. As a college freshman at Syracuse University, Banks set her sights on an art career, either as a medical illustrator or an illustrator of children’s books. She was in her fifth semester as an art major when that door abruptly closed in her face.

“I was told that since I was black and a woman in the early 1960s, it was highly unlikely that I would be hired,” she recalls. Active in campus politics, she turned her focus to political science with thoughts of joining the foreign service until she discovered that she was too young. Banks entered college at 16 and wouldn’t turn 21, a requirement for entering the service, until almost a year after her graduation. While Banks and a friend were chatting during Christmas break, the talk turned to law school, an idea that intrigued her.

“The only school I applied to was Howard University because they came to my school to recruit. I hadn’t even taken the admissions test,” she explains. “It was a fortuitous move, which is the story of my life—being in the right place at the right time and taking advantage of an opportunity.”

Banks thrived in law school, noting that “those were good activist days.” Between her studies and work on the Law Review, she contributed to an underground newspaper and joined fellow students in demonstrations against the war in Vietnam and for student rights. All to the chagrin of her father, who taught American literature and drama while serving as Howard University’s associate dean for arts and sciences.

“There were times when we did not speak, especially when students stormed the administrative suites where his office was located,” she recalls. “Fortunately, I was in the Law Review office at the time, making more posters for the demonstration.”

Banks left her native District of Columbia with a law degree and a family. She moved to Mississippi to work as a civil rights lawyer, a practice she found disappointing.

“It was very dissatisfying because at that time you lost most of your cases at trial and had to appeal. That was not my notion of justice,” she says. Pregnant with her second child, Banks chose motherhood over law. Her youngest child was 2 when an unexpected phone call marked the beginning of a new path her life would take. A local college was searching for a teacher for an undergraduate-level constitutional law course. Revived in the academic arena, her teaching career took off and led Banks to positions at Jackson State; Texas Southern University in Houston, where she served as associate dean; and the University of Tulsa in Oklahoma, where she was appointed by the governor to chair a subcommittee of Oklahoma’s Constitutional Revision Study Committee. Her research focused on the burgeoning AIDS epidemic, and, at the urging of a colleague diagnosed with HIV, Banks began to write about the legal implications of AIDS issues, including access to health care.
“He got me started writing about HIV, and it opened yet another door for me,” she says. As chair of a subcommittee of the governor’s AIDS Task Force and as co-chair of the state health department’s AIDS Task Force, she traveled throughout the state, working with doctors and dentists on AIDS advocacy.

But for Banks, the environment in Tulsa seemed far removed from the realities of urban life. As her second child left home for college, another phone call changed her direction.

“A member of the law school’s appointments committee called and asked if I’d be interested in coming to Maryland, and, even though I grew up in the District, well, you just don’t go to Baltimore,” she says laughing. “I hadn’t been in Baltimore in 30 years, and I was stunned by the changes at the Inner Harbor.” Warmly received by the law school faculty, Banks made her move.

Interim Dean Karen Rothenberg recalls the excitement the day Banks came to campus. “To this day, she continues to make a significant contribution to the intellectual life of our law school and to legal education at a national level.”

Although Banks continued writing about health care issues, her research interests turned to the legal history of racial formation and, in particular, the early freedom lawsuits.

“I became very interested because the court was dealing with notions of race and racial formation with people of obvious mixed ancestry,” she says. For example, Banks explains that during the slavery era, if a white woman was pregnant by a black man, the courts determined her child would be free. However, if the mother was black and the father was white, the child would not be free. “That’s very important,” Banks stresses, “because if we’re supposed to deal with the legacy of a long history of racial disparity, we have to know how it started.”

Banks began teaching critical legal history in 1997. She sets the class in motion with a simple question—What is race? As an example, she provides Directive 15 from the federal Office of Management and Budget, which defines racial groups for use in the U.S. Census and for other records based on race and ethnicity.

“It defines them in such crazy and unscientific ways that students start thinking about what race really is,” Banks explains. The students examine cases of naturalization where the court struggles to determine who is white, and who isn’t, in the late 19th and early 20th centuries. Jewish people, for example, were considered white for naturalization purposes but not for other purposes.

“I want my students to get a sense of history and to understand the notion that race is fluid,” Banks says. Nowhere is that more evident than in Baltimore’s Chinese community of the 1930s. “The Chinese walked a strange tightrope at that time because they were classified as neither black nor white,” she says. “Their children could go to white schools, but they couldn’t get a room at a white hotel or be served in a white restaurant.” By examining these so-called buffer groups (people who are not black or white but who fall between the lines of rigid racial definitions), Banks hopes to get a glimpse of how a colorblind society might function. She points to Mexico, which abolished all laws dealing with race in the late 18th century, although Banks argues that race continues to influence Mexican society.

“The visual arts reinforce old notions,” she says, describing a series of caste paintings called Las Castas, which feature 16 pictures of family groups with people of mixed races.

“It’s like a caste system with three main racially mixed groups of mestizo (Spanish-Indian), mulatto (Spanish-black), and Zambo (black-Indian),” Banks explains. “Latin American scholars will tell you that even though they say they’re colorblind, there still exists this color caste hierarchy. How you look, how well you’re educated and how much money you make all determine where you fit on the spectrum.”

In this country, Banks sees a push for recognition of biracial and multiracial individuals, especially within the Hispanic community. She notes that census forms offer a variety of choices for Hispanics, including Hispanic-white, Hispanic-black and Hispanic-other.

“We have this crazy definition of race anyway,” Banks says. “In this country I’ve seen as black, but if I go to Europe or Latin America, they think of me as mixed race.” She predicts that while courts are reluctant to redefine race for people of African ancestry, within 50 years the United States will move away from hard racial categories and change the definition of who is black and who is white.

Having studied the Latin American culture and Baltimore’s Chinese community, Banks will soon turn her efforts to the 1950s immigration of the Lumbee Indians in Baltimore, the largest urban settlement of Native Americans.

“It brings us back to race in a different way,” Banks says, by asking who’s Native American and who’s not and by how intermarriage affects a person’s status as a tribal member.

“I’m trying to think about new theories for ensuring racial justice,” she says. “The old legal theories are worn out and don’t work well in what I see as a changing environment. We have to understand the past and create new legal theories in order to make things better in the future.”