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SYMPOSIUM
PROMOTING JUSTICE: ADVANCING RACIAL EQUITY THROUGH STUDENT PRACTICE IN LEGAL CLINICS

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SYMPOSIUM
PROMOTING JUSTICE: ADVANCING RACIAL EQUITY THROUGH STUDENT PRACTICE IN LEGAL CLINICS

INTRODUCTION TO THE SYMPOSIUM

DEBORAH N. ARCHER*

We are living through an inflection point in American history. America's foundational principles, and the mechanisms we rely on to defend them, are under profound and sustained attack. The work to advance civil rights and racial justice in America has never been easy. But some days, some years, it can feel like we are losing more than we are winning. And the losses become harder to bear.

During times like these, many of us who care about racial justice may find it difficult to keep the struggle going; to get up and keep fighting. On my office wall, I have posted several quotes and phrases that give me the kick I need when I am finding it difficult to keep moving forward. One is from civil rights leader Mary McLeod Bethune. It says: "If we have the courage and tenacity of our forebears, who stood firmly like a rock against the lash of slavery, we shall find a way to do for our day what they did for theirs." This is our challenge—it is what I wake up thinking about in the morning and what helps me get through the challenges of the past several years. Our forebearers faced steeper challenges and longer odds. We must find the strength to do our part for the next generations, just as our forebearers set the table for us.

To find that strength, we must start by acknowledging the breadth of the challenges we face. As clinicians, if we claim that the clinics we teach are fighting for racial justice, or that our clinics are anti-racist, our work must rise to the level of that fight.

America is fundamentally an idea, an ethos, a set of principles and demands. The story of America is, at its heart, the story of Americans' struggle to protect and implement those principles and demands. Who gets to feel like they belong? Who gets to benefit from the unprecedented wealth of this nation? Who has access to the opportunities that being in America offers? Who gets to receive the equal protection of our laws? Who gets to live with safety and dignity? And who gets to decide the answers to these questions?

You cannot seriously wrestle with these questions without understanding systemic racism.

Systemic racism is America's operating system. And what is so

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remarkable, and so heartbreaking, about America, is how durable and effective that operating system has been. The systems of racial separation and oppression have thrived, in part, because they are so malleable. Systemic racism is creative. Systemic racism constantly evolves.

America ratified the Fifteenth Amendment and guarantees Black men the right to vote, and America responds with poll taxes, grandfather clauses, and voter identification laws.

America makes Jim Crow and housing discrimination illegal, and America responds with redlining, racially exclusionary housing policies, the criminalization of poverty, and living while Black.

America makes slavery illegal, and America responds with mass incarceration, police brutality, and racial terror.

The genius of America's systemic racism lies in its ability to adapt.

In his famous poem, *Let America Be America Again*, Langston Hughes wrote:

> O, let America be America again—
> The land that never has been yet—
> And yet must be—the land where *every* man is free.
> The land that's mine—the poor man's, Indian's, Negro's, ME—

This is our constant struggle—bridging the gap between the American that was promised—and the America that is. We have the power to make America be America.

To bridge that gap, and to respond to the creative and evolving nature of racial oppression, our work as law school clinicians must evolve. Yet so much—I would say too much—of clinical legal education looks like it did when I was a law school student almost 30 years ago.

Over the past several years, we have seen a transformation in the national dialogue on racial justice. Activists and advocates have shone a piercing light on practices that are not only part of America's racist past, but that remain central to America's present de-humanization of Black bodies, Black communities, and Black identity. And I have found myself encouraged over these past few years, as more and more Americans have been unable to deny the ugly truth that the light has made clear and plain. More Americans have come to understand that the source of Black America's problems are not in Black people, but in the racism systemically woven into the fabric of America. Activists and advocates are pulling on the threads that connects so much of America's systems, laws, and structures—the need to control, regulate, exclude, and devalue Black people.

But what role will we as clinical faculty play in meeting the demands for racial justice? Are we doing our part to finally transform

these systems?

Too often, and sometimes exclusively, clinical education is focused on specific acts of injustice before us: a wrong done by one person, or business, or institution against another. And our efforts are too often limited to correcting that individual wrong. Too often, we declare victory when we hold one person accountable for their evil actions.

Now do not get me wrong. Individual cases are important. And certainly, for the plaintiff whose illegal eviction is overturned or who receives damages for their illegal termination, the individual case means everything. But we also know that those cases do not usually change the systems that lead to illegal evictions or terminations.

I want more clinicians to join the fight to challenge structural racial inequality. It is not enough to speak to our students about systemic and structural racism. We must give them the tools to challenge those systems and structures.

We bring cases challenging student suspensions, but don't have a strategy to address the racism that requires parents to send their children to under-resourced, heavily-segregated public schools which consistently under-prepare their students for college and life and put them on track for involvement with the criminal legal system. Importantly, we are challenging acts of employment discrimination. But limiting our clinics to individual employment discrimination cases misses the racism of systems that require people to live an hour and a half away from decent jobs because their communities are ill-served by public transportation. It ignores the racism of a lack of access to supermarkets providing affordable and healthy food, while your children are sick because they are exposed to environmental stressors, and you cannot access regular health care. Indeed, we are fighting evictions and helping to keep people, families, and communities stable. But that work does not address the long-time damage to communities of color that were ripped apart through highway development and systemic underdevelopment, at an incalculable cost to wealth, health, and community. It will be difficult if not impossible, to find a single actor to hold responsible for these harms. But these are all faces of systemic racism.

Systemic racism speaks to the fact that the systems on which our society functions—the economic, education system, health care, transportation, criminal legal system—and our structures—physical, cultural, and social—are all infused with and impacted by the racism within which they were created and maintained.

To effect change, then, not only for our individual clients but for their communities and for the generations that follow, we must iden-

tify the systems that come together to drive racial inequality—and challenge them.

I want us to challenge ourselves to think about how we can work with people of color to advocate for systemic change and to build power. This will require a deeper focus on systems and power, and the complexities facing impacted communities who envision a more just future.

We need to tear down the legal and policy foundations of racial inequality.

This includes, of course, a commitment to reconcile with the past. The roots of racism in 2023 have a direct line to the racist policies and practices of the past. We cannot dismantle racism today unless we take the time to acknowledge and explore those connections. You cannot have healthy fruit if you won't root out the poison in the tree.

This includes work to address slavery and its legacy. Slavery was a system of theft. It was theft of life as people were stolen, enslaved, and brutalized. Slavery was theft of property through forced labor. It was the theft of identity and home, as people were repeatedly ripped from the community and culture that are central to human experience. It was theft of happiness, dignity, and potential. Slavery became imprinted onto the DNA of the nation and remains the foundation of racial inequality. After the abolition of slavery, new systems of white supremacy evolved in its place, to continue the theft and exploitation that were at slavery's core.

Today we see the vestiges of slavery in mass incarceration and mass criminalization. We see it in police violence and brutality. We see it in the racial wealth gap and the education gap. The systems that replaced slavery are all operating in the same vein—as systems of theft. Theft of life, theft of property. Theft of identity and home. Theft of happiness, dignity, and potential. They have adapted, as racism always does. But their work is the same.

Tearing down the legal and policy foundations of racial inequality also requires us to support communities of color as they build true political power and tear down the barriers to full participation in the democratic process. In so many areas of civil rights and civil liberties, we are fighting a battle of ideas. But those on the side of racial justice will find it difficult to win if those who currently exercise disproportionate political power are able to use it to systemically disenfranchise people of color, to silence their ideas and undermine their interests. Systematic barriers to democratic participation not only undermine the ability of people to color to protect their interests; it discourages those people from participating in what they rightfully experience as a rigged contest. And that is how democracies die: when people believe

they don't have any political power and worse when they may in fact be right.

Law school clinics must also engage in the struggle to build economic prosperity. Gaps in wealth between people of color and white households expose accumulated inequality and discrimination, as well as differences in power and opportunity that can be traced back to this nation's inception. Economic justice and racial justice are two sides of the same coin. Economic justice work is critical because it supports our ability to access and enjoy other civil rights and civil liberties. As Dr. King put it, "What does it profit a man to be able to eat at an integrated lunch counter if he doesn't have enough money to buy a hamburger?" Racial justice requires stable jobs and incomes, affordable housing, the provision of basic financial services, and meaningful and equal access to the mainstays of an economically vibrant life.

And we need to challenge justice by geography. We are only as strong as our individual parts, and as a country we are only as strong as our individual states. There is work we all must do to build a future where "we the people" means that everyone, everywhere, can access their fundamental rights, regardless of where they live; where everyone, everywhere can live a choice filled life with dignity and respect.

Justice by geography has been a part of America's story from the very beginning. Place and space have long decided whether one is free or faces injustice and whether one has access to opportunity. This truth is as clear today as it has ever been. Our country's union is barely being held together, and the nation's past and present are being mapped across regional lines. We live in two Americas, and geography increasingly determines whether one receives the full rights of citizenship and belonging.

Today, the right to vote, the right to make healthcare decisions, and the right to marry whom you love depends on whether you live in California or Arkansas, Florida or Illinois. Black voters stood in the baking sun for hours to vote in a Senate race simply because they are Georgians. Classrooms have been censored and students have been silenced and fed an alternate version of American history—one that erases the legacy and reality of racial inequality and systemic racial oppression—because they live in Florida. Fighting for justice by geography requires us to support the people and communities fighting the fight against white supremacy in many of the communities that perfected it—many of the communities at the forefront of creative resistance to racial justice and equality.

We all must rise to the moment. At this inflection point in our history, clinical legal educators must take advantage of this window of opportunity to deepen and expand our work to challenge racism in all

its forms. We have an opportunity to tear down the architecture of inequality and build the foundation for equality, challenging the systems and structures through which racism continues to constrain the life outcomes of some and expand the life outcomes of others. Or we can squander the legacy of our ancestors, and watch our nation go backwards.

If we are all serious about racial justice, there are two questions we must ask ourselves. What are we prepared to help dismantle? And what are we prepared to help build? You and your universities have extraordinary power and influence. Use those resources to tear down the infrastructure of racial inequality and help to build a new American infrastructure—one with equity and justice at its core.

Law professors often speak about the power of our scholarship to shape the law. The work we do in our clinics has as much potential, if not more. Challenging deeply embedded racial inequality will involve a reimagining and rethinking about how we can use the law to strengthen communities of color and allow the people who live in those communities to thrive. We must rethink what it means to challenge imbedded systems of racial inequality. Our civil rights laws have the potential to dismantle the structures and systems that stand as monuments to institutional racism. But to do so, we must re-envision these laws as tools for community equity and distributive equality. We must also grapple with how civil rights laws can more effectively address the intersectional harms and the mingling of public and private discrimination.

Toward the end of his poem, Langston Hughes makes a promise. It is a promise we are all called upon to embrace every day.

> America! O, yes,
> I say it plain,
> America never was America to me,
> And yet I swear this oath—
> America will be!

As we think about racial justice work, we have to recommit to doing the work—all of the work—to make America be America.

RACE AND ENTREPRENEURSHIP: RECLAIMING NARRATIVES

PRIYA BASKARAN & ALICIA PLERHOPLES*

This essay makes the case for engaging in counter-narratives and inclusive storytelling within the transactional clinic curriculum. The authors leverage lessons from Critical Race Theory to amplify the voices and experiences of underrepresented entrepreneurs and marginalized communities in both clinic seminar and selected casework. In doing so, we challenge hegemonic narratives of entrepreneurship and expose our law students to the presence and impact of interlocking systems of subordination that minimize the existence and contributions of entrepreneurs of color. We challenge our law students and ourselves to become more creative and thoughtful lawyers to a more inclusive and diverse set of client-entrepreneurs.

INTRODUCTION

The myths and misconceptions surrounding entrepreneurship promote a homogenous vision synonymous with whiteness.[1] This narrative minimizes the lived experiences of numerous entrepreneurs of color, devaluing their contributions because they do not match the popular perceptions of entrepreneurial success.[2] Why is our conceptu-

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[1] Lynnise E. Phillips Pantin, *The Wealth Gap and the Racial Disparities in the Startup Ecosystem*, 62 ST. LOUIS U. L.J. 419, 427 (2018). Although this essay focuses on race, the authors recognize that the dominant narratives surrounding entrepreneurship also exclude and ignore intersectional experiences connected to gender, sexual orientation, immigration status, neurodiversity, and socio-economic status.

[2] *See generally* Elizabeth MacBride, *White Men Are Now the Minority of Business Owners in the United States*, FORBES (May 23, 2021) https://www.forbes.com/sites/elizabethmacbride/2021/05/23/white-men-are-now-the-minority-of-business-owners-in-the-united-states/?sh=22c5c5431582 ("The demographic shift in the makeup of the entrepreneurial class in the United States has been largely overlooked, because the U.S. Census Bureau analysis is centered on employer businesses, where white men are a shrinking proportion of owners but still make up about 60% of all business owners. Narratives about business owners also tend to focus on a tiny minority of companies, fast-growth tech companies."); Jordan Weissman, *Entrepreneurship: The Ultimate White Privilege?* THE ATLANTIC (Aug. 16, 2013), https://www.theatlantic.com/business/archive/2013/08/entrepreneurship-the-ulti-

alization of entrepreneurs so painfully narrow? More importantly, how does this misconception limit our lawyering to entrepreneurs who do not fit the archetype? Lawyers of entrepreneurs—primarily transactional and intellectual property attorneys—cannot lawyer towards emancipatory ends if we erase the experiences, challenges, victories, and stories of diverse individuals negatively impacted by economic systems and policies.

This essay uses key lessons from Critical Race Theory (CRT) to disrupt the dominant narrative of who we recognize as an entrepreneur.[3] CRT scholars have documented three categories of counter-stories: personal stories, third-party narratives, and composite stories. All three alternative narratives "facilitate social, political, and cultural cohesion, as well as survival and resistance among marginalized groups."[4] Personal stories document and acknowledge "the experiences of persons of color and how they experience racial discrimination, insult, injury or disadvantage."[5] Third-party narratives transform "a particular, individual experience" into a bridge or shared experience with others.[6] Finally, "composite stories or narratives represent an accumulation, a gathering together, and a synthesis of numerous individual stories."[7] When viewed collectively, these stories challenge and change the dominant narrative as well as the underlying legal landscape that elevates certain sectors, individuals, and communities.[8] This essay makes the case for engaging in counter-narratives and inclusive storytelling within the transactional clinic curriculum, and provides practical tools for doing so. We also showcase the role of case

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mate-white-privilege/278727/ (noting the underlying study limits the dataset of entrepreneurs to self-employed individuals with incorporated businesses, effectively eliminating smaller entrepreneurs like "bodegas" and similar enterprises). *See also* Rosanna Garcia & Daniel W. Baack, *The Invisible Racialized Minority Entrepreneur: Using White Solipsism to Explain the White Space*, J. BUS. ETHICS (2022), https://link.springer.com/article/10.1007/s10551-022-05308-6 (discussing the prevalence of "white solipsism" to erase and marginalize racial minorities in entrepreneurship).

[3] Counter-stories facilitate social, political, and cultural cohesion, as well as survival and resistance among marginalized groups. Therefore, they need not be created only as a direct response to majoritarian stories.

[4] Lisa R. Merriweather Hunn, Talmadge C. Guy & Elaine Manglitz, *Who Can Speak for Whom? Using Counter-Storytelling to Challenge Racial Hegemony, in* PROCEEDINGS OF THE ADULT EDUCATION RESEARCH CONFERENCE 244 (2006), https://newprairiepress.org/aerc/2006/papers/32.

[5] *Id.* at 245.

[6] *Id*.

[7] *Id*.

[8] Imani Perry, *Cultural Studies, Critical Race Theory and Some Reflections on Methods*, 50 VILL. L. REV. 915, 922 (2005) (noting that Critical Race Theory challenges "normative standards and ideologies that serve to marginalize and oppress peoples of color" by "exposing the norms that serve to marginalize us (notions of merit, color blindness without considering privilege, wealth versus income, etc.")).

selection in introducing and developing counter-narratives to our law students, challenging them to develop into more creative and thoughtful lawyers.

I. Narratives of Entrepreneurship

A. The Dominant and Data-Driven Narratives

Law students encounter entrepreneurship narratives long before they begin law school. Bill Gates, Steve Jobs, Jeff Bezos, and Elon Musk are household names. Entrepreneurship is nearly synonymous with Silicon Valley in the American lexicon. Entrepreneurship success stories that reach main stream media and permeate American culture focus on entrepreneurs who have built companies and become part of the billionaire class. "Conventional wisdom tells us that entrepreneurs are very special people. They are heroes who stand alone and overcome great odds to build companies through superhuman efforts."[9]

Scott Shane's *The Illusions of Entrepreneurship* grounds the dominant entrepreneurship narrative in reality by empirically describing what typical entrepreneurship actually looks like.[10] Shane describes the typical entrepreneur as a middle-aged white man with no special qualities who is "just trying to make a living, not trying to build a high-growth business."[11] Additionally, entrepreneurship is common: Shane's data shows us that 11.1% of U.S. households have a self-employed head and 11.3% of households own a business.[12] Entrepreneurs are people who "just[ ] want to earn a living and support [their] family."[13] They are not overwhelmingly computer scientists or tech engineers; it is much more likely that their entrepreneurial venture is a "low-tech endeavor, like a construction company or an auto repair shop" started as a "sole proprietorship financed with $25,000 of his savings and maybe a bank loan that he guarantees personally."[14]

Shane's data shows us that the dominant narrative of entrepreneurship in the United States is false. Data proves that entrepreneurship more typically encompasses mundane solo businesses. Nonetheless, the data also concludes that U.S. entrepreneurship is largely dominated by white men. In drawing data from the entirety of America, Shane presents a data-driven narrative that more recent

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[9] Scott A. Shane, The Illusions of Entrepreneurship: The Costly Myths That Entrepreneurs, Investors, and Policy Makers Live By 40 (2008).

[10] *Id*.

[11] *Id.* at 41.

[12] *Id*. at 3.

[13] *Id.* at 4.

[14] *Id.* at 3-4.

data supports.[15] However, just as we should not learn to lawyer to the dominant but false narrative of entrepreneurship, critical race theory requires that we not learn to lawyer solely to the typical entrepreneur when diversity exists. One can think of entrepreneurship on a bell curve. The dominant (but false) narrative sets a white, college-educated, "jet-setting, Silicon-Valley residing engineer who, along with a couple of his buddies, has raised millions of dollars of venture capital to start a new company to make a patent-protected gizmo" at the top of the bell curve as the typical entrepreneur. Shane's research resets the narrative with a middle-aged self-employed white man engaging in a "low-tech endeavor"[16] at the top of the bell curve. Critical race theorists ask what entrepreneurs sit on the rest of the bell curve? How do we lawyer to them? What laws, practices, and systems have prevented entrepreneurs who do not fit the dominant or data-driven narratives from accessing and having lawyers who are equipped to represent them and their various forms of entrepreneurship?

B. Counter-narratives

As used by critical race theorists, storytelling draws upon the lived experiences of an individual or community.[17] Stories are inherently personal; a necessary counterbalance to supposedly anodyne laws and regulations. CRT uses narratives to challenge dominant norms and assumptions, centering the experiences of diverse individuals and groups.[18] CRT uses these counter-narratives to deconstruct harmful defaults and "embedded preconceptions that marginalize" diverse groups and "conceal their humanity."[19] These alternative stories also reconstruct and reimagine a more just outcome and circumstances. By doing so, "well told stories describing the reality of Black

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[15] *See* MacBride, *supra* note 2 ("[W]hite male business owners comprise about 41% of the 30.5 million total owners of small businesses in America.").

[16] SHANE, *supra* note 9, at 3.

[17] This essay uses the definition of "narrative theory" connected to critical race theory. In CRT, "narrative voice, the teller, is important to critical race theory in a way not understandable by those whose voices are tacitly deemed legitimate and authoritarian. The voice exposes, tells and retells, signals resistance and caring, and reiterates what kind of power is feared most—the power of commitment to change." Derrick A. Bell, *Who's Afraid of Critical Race Theory?*, 1995 U. ILL. L. REV. 893, 907 (1995). *See also* Leslie Espinoza & Angela P. Harris, *Embracing the Tar-Baby—LatCrit Theory and the Sticky Mess of Race*, 85 CALIF. L. REV. 1585, 1630 (1997) ("Critical theorists tell stories, both 'real' and 'fictional.' Arguably, the most significant impact of critical theory has been the reformation of legal analytical practices through the use of stories. Outsider tales provide an opportunity to breach the limits of language in describing oppression. They lead to the creation of new language. That which has not yet been named can be understood.")

[18] *See generally* RICHARD DELGADO & JEAN STEFANIC, CRITICAL RACE THEORY: AN INTRODUCTION (2001).

[19] *Id.* at 50.

and brown lives can help readers to bridge the gap between their world and those of others."[20]

In the absence of meaningful narratives, hegemonic norms and dominant perspectives are reinforced. Stories laud successful entrepreneurs pulling themselves up by their bootstraps.[21] We never consider or acknowledge that many may be barefooted. We erase entire populations of entrepreneurs by closing our ears to their stories. Worse, we compound the negative impacts by entrenching hegemony and stifling divergence.[22] We create laws and policies based on partial information and lopsided narratives, utterly failing to build nuanced and resilient entrepreneurial ecosystems.

In our clinics in Washington, D.C., we see a real divergence from both the hegemonic, false narrative of entrepreneurship and from Shane's data-driven narrative of entrepreneurship. Whereas Shane's data tells us a lot about the average entrepreneur in America, the faces of entrepreneurship in D.C. look different—42.2% of small businesses in D.C. are owned by racial minorities and 47.8% are owned by women; 33.1% of small businesses in D.C. have one or more Black owners.[23] 78% of D.C. small businesses have no employees.[24] It becomes clear that even the data-driven narrative is place-based, and not universal. Our transactional clinics practice in and draw clients from this diverse entrepreneurial environment.

II. The Costs of Exclusion

Excluding narratives that do not fit the dominant or data-driven story of entrepreneurship has long-lasting consequences for communities, clients, attorneys, and the legal profession as a whole. From an economic development and investment perspective, this myopia can lead to strategies that do not generate true, inclusive economic

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[20] *Id.* at 49.

[21] Horatio Alger, Jr. was a novelist famed for portraying rags to riches stories, where impoverished youth were able to attain great wealth thanks to their resilience and work ethic. *See generally* The Horatio Alger Society, *Horatio Alger, Jr.—Biography*, http://www.horatioalgersociety.net/100_biography.html (last visited May 19, 2023).

[22] "Dominant narratives carry multiple layers of assumptions that serve as filters in discussions of racism, sexism, classism, and so on. In short, majoritarian stories privilege Whites, men, the middle and/or upper class, and heterosexuals by naming these social locations as normative points of reference." Hunn, Guy, & Manglitz, *supra* note 4, at 244.

[23] *Compare* U.S. Small Business Administration Office of Advocacy, 2022 Small Business Profile District of Columbia 2-3 (2022) (33.1% of small businesses in D.C. have one or more Black owner) [hereinafter SBA DC Profile] *with* Shane, *supra* note 9, at 143 (indicating that 4.24% of small businesses in the U.S. have Black owners).

[24] SBA DC Profile, *supra* note 23, at 2. Many more D.C. small businesses have no employees than Shane's data show. According to Shane, only "24 percent of the new businesses founded each year employ anyone (and only 16.9 percent of the self-employed hire any employees)." Shane, *supra* note 9, at 65.

growth. Economic investment in place does not always translate into investment in communities, but can focus on physical resources that can be rebuilt or redesigned to entice outside talent to move into underdeveloped communities. In this regnant scenario, existing populations or community institutions are not recognized as assets. The resulting economic development strategy actively devalues and ignores the community, perpetuating exclusion, and compounding economic hardship.

As educators, we are also aware of the broader costs to our profession when only servicing one category of client. In lawyering for the status quo, we diminish our ability as attorneys to engage in creative thinking and problem-solving. Deals become reductive, templates abound, and we lawyer within narrow constructs that prevent innovation. The following section outlines in greater detail the costs to both clients and attorneys in maintaining hegemony in our transactional work.

A. The Costs of Exclusion to Clients

Returning to the various narratives of entrepreneurship, we must interrogate the costs of exclusion from these narratives to clients and to the broader field of business law. First, who are we excluding by adhering to the status quo?

1. Exclusion by Place: Black Communities

In his book, *Know Your Price*, Andre Perry notes the importance of understanding the interconnected nature of Black communities, Black-owned businesses, and devaluation by public and private forces.[25] He contends that "urban planning" and "urban development efforts" in Black communities are extractive in nature. Rather than investing in people and community, they see only the value of place as defined by land, building, and other inanimate physical assets.[26] In contrast, he notes how much of the development of Pittsburgh into a tech hub is connected to investments in "the *people* of Carnegie Mellon, University of Pittsburgh, Google," in addition to physical assets.[27]

The failure to recognize Black individuals and their communities as worthy of investment only entrenches and perpetuates past harms. Numerous leading historians, legal scholars, and economists have highlighted the lasting impact of racist federal and state policies that

[25] ANDRE M. PERRY, KNOW YOUR PRICE: VALUING BLACK LIVES AND PROPERTY IN AMERICA'S BLACK CITIES 34-41 (2020).

[26] *Id.* at 40 (noting the "invisibility of black institutions, firms, social clubs" in targeted economic strategies).

[27] *Id.* at 39.

resulted in massive devaluation of Black communities.[28] One Brookings Institute analysis estimates that homes in Black communities are devalued at $48,000 per home on average, resulting in $156 billion in cumulative losses nationwide.[29] The roots of this devaluation are entwined with racist public policy and private divestment, channeling resources, funds, and employment opportunities away from Black communities. As Perry emphasizes, this significant devaluation is money that could be spent starting businesses, saving for college, and growing the general economic health of the community.[30]

Exclusion also prevents any hope of remediation and future growth. For example, there is much emphasis on developing the technology sector as a local economic development strategy. While data has shown that there can be positive impacts, the capture of this economic benefit by marginalized groups is minimal.[31] Much of this sector appears to focus on bringing in new firms to existing spaces, rather than leveraging and investing in existing community members and assets.[32] Perry underscores the consequences on communities and individuals by emphasizing that "[e]conomic growth and advancements in technology are a direct result of strategic investments in people who are trusted. Those who are not trusted are left behind."[33] Perry underscores that the recipients of economic investment "have no deep ties

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[28] *See generally* Audrey G. McFarlane, *The New Inner City: Class Transformation, Concentrated Affluence and the Obligations of the Police Power*, 8 U. Pa. J. Const. L. 1 (2006); Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L. Rev. 1095 (2008); Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America (2017); Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 Mich. L. Rev. 173 (2019); Norrinda Brown Hayat, *Section 8 Is the New N-Word: Policing Integration in the Age of Black Mobility*, 51 Wash. U. J. L. & Pol'y. 61 (2016); Rashmi Dyal-Chand, Collaborative Capitalism in American Cities: Reforming Urban Market Regulations (2018); Anika Singh Lemar, *An Opportunity Zone Falls in a Forest*, 48 Fordham Urb. L.J. 1183 (2021); Jade A. Craig, *"Pigs in the Parlor": The Legacy of Racial Zoning and the Challenge of Affirmatively Furthering Fair Housing in the South*, 40 Miss. C. L. Rev. 5 (2022); Destin Jenkins, The Bonds of Inequality (2021); Thomas Sugrue, The Origins of the Urban Crisis (1996).

[29] Andrew M. Perry, Jonathan Rothwell & David Harshbarger, *The Devaluation of Assets in Black Neighborhoods: The Case of Residential Property* (Nov. 27, 2018), Brookings, https://www.brookings.edu/research/devaluation-of-assets-in-black-neighborhoods/. Subprime mortgages are another example of the devaluation of Black communities. *See* Bernadette Atuahene, *Predatory Cities*, 108 Calif. L. Rev. 107, 124 (2020).

[30] Perry, *supra* note 25, at 57.

[31] *See* Neil Lee & Stephen Clarke, *Do Low-Skilled Workers Gain from High Tech Employment Growth? High-Technology Multipliers, Employment and Wages in Britain*, 48 Research Pol'y 1, 10 (2019).

[32] Black residents of Pittsburgh experienced a double-digit decline in median wage during the tech boom period (2005 to 2015). In contrast, white workers realized an 8% gain in wages. Metro Monitor 2017 Dashboard (2017), Brookings https://www.brookings.edu/interactives/metro-monitor-2017-dashboard/.

[33] Perry, *supra* note 25, at 41,

to Black communities" effectively limiting growth and investment. By erasing the story of Black-owned businesses as entrepreneurship, we perpetuate a harmful cycle of race and place-based devaluation. We ignore the value these enterprises bring to the community, minimizing their contributions and ultimately deeming them as unworthy of investment. This causes immediate harm and hardship, but it also causes larger systemic and societal harms by maintaining practices that extract value from marginalized communities.[34]

2. Exclusion by Scale: Small and Necessity Entrepreneurs

In addition to excluding entire communities, the dominant narrative erases entire classes of entrepreneurship because of the scale of an enterprise or the economic sector in which the labor is performed.[35] Many excluded entrepreneurs are subject to interlocking systems of subordination based on gender, nationality, race, and class.[36] For example, there is no room in our story of successful entrepreneurship for self-employed entrepreneurs in the domestic and care-taking economy. This sector provides essential services from home daycares, residential and commercial cleaning services, and home healthcare workers. These sectors are heavily staffed by women and racial minorities.[37] Often the entrepreneurs and workers in this

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[34] PERRY, *supra* note 25, at 39 (stating that "[i]nclusive growth can't happen without investment in existing talents and social network within the neighborhoods where they reside").

[35] Timothy Bates, William E Jackson & James H. Johnson, *Advancing Minority Research on Minority Entrepreneurship*, 613 ANNALS AM. ACADEMY POL. & SOC. SCI. 10, 11–12 (2007); Steven J. Gold, *A Critical Theory Approach to Black American Entrepreneurship*, 39 ETHNIC & RACIAL STUD. 1697, 1685 (2016).

[36] Susan R. Jones, *Alleviating Poverty—What Lawyers Can Do Now*, 40 HUM. RTS. 11, 13 (2014) [hereinafter Jones, *Alleviating Poverty*] ("For some, like immigrants and people with criminal records, microbusiness may be their only option for earning income, a phenomenon known as necessity entrepreneurship. For others, it's an alternative to a second or third job."); *see also* Susan R. Jones, *Representing Returning Citizen Entrepreneurs in the Nation's Capital*, 25 J. AFF. HOUSING & COMM. DEV. L. 45, 52 (2016) ("[E]ntrepreneurship is especially important for returning citizens in D.C. who have been incarcerated in jurisdictions outside of the city and may lack the necessary social capital to obtain gainful employment. . . . [S]upported by shared workspaces, business incubators and accelerators, microbusiness training and loan programs, and community development financial institutions, entrepreneurship in D.C. is rapidly advancing, necessitating special efforts to include returning citizens in the entrepreneurial eco-system. . . . [S]elf-employment through entrepreneurship is a form of necessity entrepreneurship for some returning citizens.").

[37] *See generally* ENOBONG BRANCH, OPPORTUNITY DENIED: LIMITING BLACK WOMEN TO DEVALUED WORK (2011); *see also* Nina Banks, *Black Women's Labor Market History Reveals Deep-Seated Race And Gender Discrimination*, ECON. POL'Y INSTITUTE: WORKING ECON. BLOG (Feb. 19, 2019), https://www.epi.org/blog/black-womens-labor-market-history-reveals-deep-seated-race-and-gender-discrimination/; PHI, *U.S. Home Care Workers: Key Facts* (2019), https://www.phinational.org/resource/u-s-home-care-workers-key-facts-2019/.

sector have been steered into these jobs by historical and structural forces based in race, class, and gender subordination.[38] One such obvious example is care work in the healthcare industry. While paid care work is still predominantly performed by women, "[w]omen of color are concentrated in the most physically demanding direct care jobs (nursing aide, licensed practical nurse, or home health aide), along with the "back-room" jobs of cleaning and food preparation in hospitals, schools, and nursing homes."[39] Another vital example of care work is childcare. The vast majority of home-based daycare owners are also women. Data from California and Wisconsin is illustrative: (i) 98% of the home-based Family Childcare Center (FCC) owners in California (surveyed from a representative sample) are women[40] and (ii) 99.6% of the home-based family providers surveyed in Wisconsin are women, with 21% being Black, "a share well above the state's Black population share of 6%."[41]

Despite being tracked into undervalued sectors, these entrepreneurs build businesses under these unlikely and stressful circumstances. You may find yourself thinking, these are workers, not entrepreneurs! However, this is yet another fallacy of the hegemonic narrative. These day care owners are entrepreneurs as Shane defines entrepreneurs—they are taking on "the activity of organizing, managing, and assuming the risks of a business or enterprise."[42] Numerous entrepreneurs are self-employed and may even be the only full-time employees of their enterprises.[43] They still pay taxes, provide important goods or services, and contribute to their local economy and community. We should not erase their value merely because their scale is

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[38] Evelyn Nakano Glenn, *From Servitude to Service Work: Historical Continuities in the Racial Division of Paid Reproductive Labor*, 18 SIGNS 1–43 (1992), http://www.jstor.org/stable/3174725 (discussing the historical development of reproductive labor that ultimately results in the disproportionate representation of women of color in low-level reproductive labor positions); *see also* Marina Zhavoronkova, Rose Khattar & Mathew Brady, *Occupation Segregation in America*, CTR. FOR AM. PROGRESS (Mar. 29, 2022), https://www.americanprogress.org/article/occupational-segregation-in-america/.

[39] Janet Dill & Mignon Duffy, *Structural Racism and Black Women's Employment in the US Health Care Sector,* 41 HEALTH AFFAIRS 265 (2022), https://www.healthaffairs.org/doi/10.1377/hlthaff.2021.01400.

[40] Anna Powell, Elena Montoya & Yoonjeon Kim, *Demographics of the California ECE Workforce*, CT. FOR STUDY OF CHILD CARE EMP. (Jan. 13, 2022), https://cscce.berkeley.edu/publications/data-snapshot/demographics-of-the-california-ece-workforce/.

[41] Leah Awkward-Rich, Ceri Jenkins & Laura Dresser, *Wisconsin's Early Care and Education Workforce: Summary Report on the Survey of Family Providers*, WIS. DEPT. CHILDREN & FAMILIES 4–5 (Sept. 2021), https://dcf.wisconsin.gov/files/childcare/pdf/pdg/wi-ece-workforce-family-provider-report.pdf.

[42] SHANE, *supra* note 9, at 2.

[43] *See supra* note 24 and accompanying text.

different from Sam Walton[44] or Nipsey Hussle.[45] Likewise, many of these entrepreneurs also qualify as "necessity entrepreneurs." Necessity entrepreneurship refers to individuals who enter self-employment or entrepreneurship "due to low income, lack of job opportunities, and limited government support."[46] Often necessity entrepreneurs are undervalued because their entrepreneurial activities do not generate large-scale economic gains or growth.[47]

Again, erasing the value of these entrepreneurs results in the perpetuation of harmful hegemonic norms and investment strategies. Investment dollars and government programs are tracked towards entrepreneurs and firms that will have a return on investment. Invariably, these firms and entrepreneurs are not burdened by the same race, class, gender, and class based systemic forces that have uplifted certain individuals and communities. These recursive policies thus focus on luring new firms rather than investing in existing community members in the name of entrepreneurship as economic development.

When we define success as "going public"[48] or achieving "unicorn"[49] status, we reinforce hegemonic norms, limiting entrepreneurship to a certain privileged subset. Worse, by doing so, we erase the labor and contributions of thousands of people. This is both culturally and legally problematic. Erasure of marginalized entrepreneurs means continuing to perpetuate harmful myths that work against the interest of individuals and communities of color by continuing to ignore and devalue them. Additionally, it prevents any large-scale law reform or creative lawyering because by ignoring their stories, we ignore the problems, barriers, and challenges raised by the experiences of these entrepreneurs.

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44 Richard S. Tedlow, *Sam Walton: Great From the Start*, HARV. BUS. SCHOOL: WORKING KNOWLEDGE PAPERS (July 23, 2001), https://hbswk.hbs.edu/item/sam-walton-great-from-the-start.

45 Julian Mitchell, *The Art of Being Self-Made: A Conversation with Nipsey Hussle,* FORBES (Mar. 1, 2018), https://www.forbes.com/sites/julianmitchell/2018/03/01/the-art-of-being-self-made-a-conversation-with-nipsey-hussle/?sh=232c9d55a07f.

46 Laura Serviere, *Forced to Entrepreneurship: Modeling the Factors Behind Necessity Entrepreneurship*, 22 J. BUS. & ENTREPRENEURSHIP 37, 41 (2010).

47 Priya Baskaran, *Respect the Hustle: Necessity Entrepreneurship, Returning Citizens, and Social Enterprise Strategies*, 78 MD. L. REV. 323, 344–347 (2019).

48 "Going public" refers to selling shares to the public as a means of raising funds. This is commonly connected to an Initial Public Offering (IPO). *See* Richard A. Mann, Michael O'Sullivan, Larry Robbins & Barry S. Roberts, *Starting from Scratch: A Lawyer's Guide to Representing A Start-Up Company*, 56 ARK. L. REV. 773, 828–29 (2004).

49 Lynnise E. Pantin, *Race and Equity in the Age of Unicorns*, 72 HASTINGS L. J. 1453, 1455 (2021) (noting that "unicorn" status refers to an enterprise receiving a one billion dollar valuation on the private market).

3. Importance of Counternarratives for Excluded Entrepreneurs

In contrast, an inclusive definition of entrepreneurship unveils persistent structural and systemic forces that engender necessity entrepreneurship. We give voice to excluded, impacted entrepreneurs. Richard Delgado and other critical race theorists emphasize the dangers of narratives in "silencing" divergent views and experiences.[50] The act of silencing is a type of racial gaslighting—leaving marginalized communities to "suffer in silence" and isolation.[51] Counternarratives are a beneficial tool to positively impact both individual entrepreneurs and usher in systemic reforms.[52] By giving voice to the voiceless, counternarratives can act as a means of healing—allowing excluded entrepreneurs to reclaim their narratives and value. Additionally, it forces the rest of us to listen. The counternarrative provides alternative evidence, facts, and theories to explain exclusion and agitate for a "paradigm shift."[53] We understand that the mountain of systemic and historic barriers make entrepreneurship a necessity for many. We understand the limits of entrepreneurship in the absences of social safety nets like housing, healthcare, and public education.[54] We are forced to acknowledge that—much like interest—injustice compounds.

B. The Costs of Exclusion to Attorneys

1. Attorney-Client Relationship

The dominant narrative of entrepreneurship—the white, male, cisgender, neurotypical, tech entrepreneur—is harmful not only to the

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[50] DELGADO & STEFANIC, *supra* note 18, at 49.

[51] *Id.*

[52] Melissa Hauber-Ozer, Meagan Call-Cummings, Sharrell Hassell-Goodman & Elisabeth Chan, *Counter-Storytelling: Toward a Critical Race Praxis for Participatory Action Research,* 36 INT'L J. QUAL. STUD. IN EDUC. 1175–1190 (2023) (noting that CRT-based storytelling "can help to surface and communicate experiential knowledge of oppression" and be used to advocate for meaningful social change), https://doi.org/10.1080/09518398.2021.1930252.

[53] DELGADO & STEFANIC, *supra* note 18, at 50.

[54] For a full discussion of common criticisms of entrepreneurship as an effective strategy, *see generally* Rashmi Dyal-Chand & James V. Rowan, *Developing Capabilities, Not Entrepreneurs: A New Theory for Community Economic Development*, 42 HOFSTRA L. REV. 839, 843 (2014) (exploring the failures of entrepreneurship initiatives in benefitting low-income individuals and in creating "widespread and reliable local economic development and poverty relief"); Pantin, *supra* note 1 (summarizing the structural barriers that have prevented black-owned businesses from competing successfully in the American market). For a historical overview of entrepreneurial endeavors, *see generally* Robert W. Fairlie & Alicia M. Robb, *Why Are Black-Owned Businesses Less Successful Than White-Owned Businesses? The Role of Families, Inheritances, and Business Human Capital*, 25 J. LAB. ECON. 289 (2007); W. Sherman Rogers, *The Black Quest for Economic Liberty: Legal, Historical, and Related Considerations*, 48 HOW. L.J. 1 (2004).

entrepreneur, but also to the attorney-client relationship in the transactional legal clinic. We have seen the disappointment time and time again on the face of a law student who holds assumptions about entrepreneurship yet finds themselves sitting across the table from a clinic client who does not fit the dominant narrative. Clients who, for example, are selling packages of used clothing to the families of returning citizens so that they can have clean clothes to wear home when they are released from prison. Or clients who want to organize a worker cooperative among several cleaning crews to improve the female owners' personal safety and financial security. In our collective experience, we see law students entering our clinics with some version of the dominant narrative of entrepreneurship in their minds. They do not necessarily think that they will represent the next Steve Jobs, but they tend to expect a college-educated client who is a natural-born leader, charismatic, and confident. They expect a client with a fully-formed business plan. But as Shane points out "there's no good evidence that new businesses founded by people with these characteristics perform any better than other start-ups. Believing these myths might focus your attention on the very things that you shouldn't spend your time on."[55]

The reality of our clinic clients is much messier than students anticipate. There is no fully-formed business plan with a market analysis and financial projections. Usually, there is no business plan at all! Furthermore, the client is likely already to have begun operating without any business entity formed or regulatory filings. The business may be the client's "side hustle" to supplement their existing low-wage job. Students experience some cognitive dissonance as they process their assumptions versus reality in their client interviews. Successful clinic students are able to reflect on their assumptions, pivot, and serve their client using client-centered lawyering. For some students, this pivot takes more time—and maybe the entire semester—including participation in structured reflections and clinic rounds. We have had students doubt their client's ability to start and run a successful business, largely based on how differently their client presents themselves against the dominant narrative of entrepreneurship.

This cognitive dissonance conveyed as doubt certainly affects the attorney-client relationship. Here, an illustration may help. Two students in one of our clinics became incredibly focused on the client's bottom line. They set as the goal for the client that their business would be profitable in five years. During clinic rounds, it became apparent that this goal was set by the clinic students, not the client. In-

[55] SHANE, *supra* note 9, at 5.

deed, the client was building a social enterprise—a double-bottom line business—and cared equally about their social mission and financial success. The client was also from a background that does not fit the dominant or data-driven narrative of who an entrepreneur is. Clinic rounds were used to identify this dissonance between the clinic students' goals for the client and the client's actual goals. Some of the clinic rounds discussion delved into the identity of the client—particularly their neurodivergence and personal reasons for starting their business. The students were then able to shift how they approached their representation of the client to become student lawyers in service of their actual client, rather than an archetype.

2. Creative Lawyering & Law Reform

Counternarratives are essential for creative lawyering. The industry standard dictates the structure, tools, and defaults needed to best serve the dominant actors and power players in an entrepreneurial ecosystem.[56] Marginalized, underrepresented, and ignored entrepreneurs must create their own creative solutions—legal and non-legal—to navigate a world designed for other interests.[57]

In our experiences, entrepreneurs are particularly creative when it comes to raising capital and finding other resources for their enterprises. For example, many underrepresented entrepreneurs must be extremely innovative when procuring funds to build or grow their business. The standard sources include financial institutions like banks, self-financing, outside investors, and crowdfunding.[58] Each of these mechanisms has its own shortcomings, but we limit our discussion in this essay to the two leading forms of capital for our clinic clients—financial institutions and self-financing. Financial institutions may require a certain credit score, personal guarantees, or collateral that may make it impossible for many entrepreneurs to secure financing.[59] Furthermore, Black communities and households are often historically devalued, impacting the worth of any collateral they may pos-

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[56] Renee Hatcher, *Solidarity Economy Lawyering,* 8 TENN. J. RACE, GENDER & SOC. JUST. 24, 35 (2019) ("The current statutory framework is largely designed to regulate adverse self-interests of economic actors in the mainstream economy, like the employer/employee, landlord/tenant, and producer/consumer relationship. As such, our laws often fail to account for the diverse economic arrangements.").

[57] *See, e.g.,* Alicia E. Plerhoples, *The Promise of Social Enterprise for Poor Communities*, *in* THE CAMBRIDGE HANDBOOK OF SOCIAL ENTERPRISE LAW (Benjamin Means & Joseph W. Yockey eds., 2018) (making the case for social entrepreneurship as a creative and superior form of enterprise for economic development in marginalized communities in order to build and retain wealth within such communities and prevent gentrification.).

[58] GEORGE W. KUNEY & BRIAN K. KRUMM, THE ENTREPRENEURIAL LAW CLINIC HANDBOOK, Chapter 5 (2013).

[59] *Id.*

sess.[60] Self-financing, sometimes also called bootstrapping[61], has similar limitations. An entrepreneur's ability to self-finance is directly linked to their personal assets and those of their personal networks.[62] The legacy of racism in the United States has led to a racial wealth gap,[63] which in turn makes it exceedingly difficult for Black entrepreneurs to self-finance.[64] Their homes, credit, savings, and those of their friends have been systemically and intentionally undervalued by public and private actors.[65] When the inputs needed to run your business are difficult to access because of capital shortages, entrepreneurs get creative.

Marginalized enterprises may explore resource sharing, bartering,

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[60] VICTOR HWANG, SAMEEKSHA DESAI & ROSS BAIRD, KAUFFMAN FOUND., ACCESS TO CAPITAL FOR ENTREPRENEURS: REMOVING BARRIERS 10-14 (2019) (indicating that studies have shown bias in lending practices and their impact on Black businesses), https://www.kauffman.org/wp-content/uploads/2019/12/CapitalReport_042519.pdf; *see also* Gene Marks, *Black-Owned Firms Are Twice As Likely To Be Rejected For Loans. Is This Discrimination?* GUARDIAN (Jan. 16, 2020), https://www.theguardian.com/business/2020/jan/16/black-owned-firms-are-twice-as-likely-to-be-rejected-for-loans-is-this-discrimination. Likewise, much has been written on the historic devaluation of assets in Black communities. *See, e.g.,* Jonathan Rothwell & Andrew M. Perry, *Biased Appraisals and the Devaluation of Housing in Black Neighborhoods*, BROOKINGS (Nov. 17, 2021), https://www.brookings.edu/research/biased-appraisals-and-the-devaluation-of-housing-in-black-neighborhoods.

[61] Elizabeth Pollman, *Startup Governance* 168 U. PA. L. REV. 155, 170 (2019) (noting "founders often 'bootstrap' the business using their own funds, and those of family and friends, to finance development efforts and early operations.").

[62] Pantin, *supra* note 1, at 443 (defining the friends and family round of investing).

[63] The racial wealth gap refers to disparities in economic security along racial lines in the Unites States. It refers to both the intergenerational transfer of wealth and the value of assets owned by a household. Benjamin Harris & Sydney Schreiner Wertz, *Racial Differences in Economic Security: The Racial Wealth Gap*, U.S. DEP'T TREASURY (Sept. 15, 2022), https://home.treasury.gov/news/featured-stories/racial-differences-economic-security-racial-wealth-gap#:~:text=Several%20key%20contributors%20to%20the,accumulation%20of%20wealth%20over%20time. At its core, the racial wealth gap displays inequality compounded over time, manifesting in very real poverty and continued exclusion based on race. The American racial wealth gap is the combined legacy of Jim Crow and extractive, racialized capitalism writ large. For a discussion of the connection between the entrepreneurial eco-system and racial wealth gap, *see* Pantin, *supra* note 53, at 1496–97. This should not be confused with income inequality, which refers to disparities in individual income. Although this too has a major negative impact across lines of race and gender, the racial wealth gap is a far bleaker indicator of inequality.

[64] Phillip Gaskin & Demetric Duckett, *Leveraging Entrepreneurship to Close Racial Wealth Gaps*, KAUFFMAN FOUND. CURRENTS BLOG (Oct. 20, 2020), https://www.kauffman.org/currents/leveraging-entrepreneurship-to-close-racial-wealth-gaps-living-cities/.

[65] For a riveting discussion of the private sector manipulations to undervalue certain communities through the municipal bond market, *see* DESTIN JENKINS, THE BONDS OF INEQUALITY: DEBT AND THE MAKING OF THE AMERICAN CITY (2022). For a discussion of the role of redlining as an extractive and racially-motivated federal policy, *see* Priya Baskaran, *Thirsty Places*, 2021 UTAH L. REV. 501, 511–541 (2021); ROTHSTEIN, *supra* note 28.

time-sharing, and other creative, low-cost, sustainable techniques.[66] In addition to the practical and operational considerations, many entrepreneurs are also motivated by the ethos behind these practices. Resource sharing is an act of collaboration and solidarity, not merely a cost-effective solution in the moment.[67] As interest in the sharing economy grows, so do the creative operational and legal solutions accompanying this new, non-traditional way of doing business.[68] This poses an interesting problem for transactional lawyers. Relying on the industry standard makes creative solutions impossible.[69] The industry standard assumes enterprises have access to sufficient capital and resources, thus a lack of these resources is indicative of a risky or unworthy venture. The industry standard fails to consider the systemic forces that marginalize entrepreneurs; nor does it explore the merit worthiness of the actual business plan or underlying concept. The standard, built to exclude these types of enterprises, generally determines the venture is unsatisfactory based on the status quo. Thus lawyering—in accordance with the industry standard—further disenfranchises and erases marginalized entrepreneurs. It can also become banal.

Navigating a bank loan, securitizing collateral, advising clients on the risks—these are all important but standard deliverables for a transactional attorney. The exciting work involves more novel and dynamic legal problem solving. For example, an early-stage venture may seek assistance negotiating and drafting a resource-sharing agreement with a community development corporation.[70] We are suddenly in uncharted waters, with no templates or form documents, relying on our research, critical thinking, and drafting skills to create agreements.

In addition to direct representation, law reform and legal advocacy efforts are becoming an increasingly important core competency for creative lawyers. Many entrepreneurs—particularly those operating in the social enterprise, solidarity economies, and community spaces—need advocates who will help them challenge the law when it is insufficient.[71] Only by listening to the experiences of entrepreneurs

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[66] For an illustration of this phenomenon with a hypothetical client, *see* Hatcher, *supra* note 56, at 30.

[67] Jenny Kassan & Janelle Orsi, *The Legal Landscape of the Sharing Economy*, 27 J. Envtl. L. & Litig. 1,15–17 (2012).

[68] *See* Hatcher, *supra* note 56.

[69] *Id.* at 31 ("[Sharing economy] lawyers must have a broad understanding of the full range of legal structures. Otherwise, the tendency may be to propose those structures with which they are most familiar, leaving other potential options unexplored."

[70] This scenario is adapted from a client matter. For examples of similar situations, *see* Janelle Orsi, Practicing Law in the Sharing Economy (2012).

[71] Hatcher, *supra* note 56, at 25 (noting the important role of lawyers as outdated legal regimes are "ill suited for these new types of enterprise. So, while solidarity economy prac-

and understanding how the law fails them can we work towards reform.[72]

An important example of this work is the Community Enterprise & Solidarity Economies Law Clinic at the University of Illinois Chicago Law School.[73] The Community Enterprise & Solidarity Economies Law Clinic "focuses specifically on helping people build community enterprises—worker-owned cooperatives, non-profits, or small businesses that operate for the benefit of an underserved community."[74] The clinic provides much needed legal expertise in the various legal systems enterprises must navigate. In particular, social enterprises immersed in the solidarity economy require guidance on traditional substantive areas—employment law, securities law, intellectual property, tax law, etc. However, as Professor Renee Hatcher notes—lawyers engaged in this work must interface with "a wide range of legal issues far beyond these traditional bodies of business law."[75] This places such lawyers in an important and novel role. As attorneys working with social enterprises are "well positioned to identify the insufficiencies of the law," they can advocate for reforms that better serve their clients.[76]

As part of their law reform and creative lawyering efforts, the Community Enterprise & Solidarity Economies Law Clinic joined local coalitions to advocate for the creation of a new entity structure suitable for worker cooperatives.[77] An early pain point for many enterprises pursuing worker cooperative models was an outdated and unclear state statutory regime. The existing statutory vehicle—the Illinois Co-operative Corporation Act[78]—was created to serve producer and consumer cooperatives.[79] Worker cooperatives in Chicago faced

titioners are reimagining the economy and means of economic exchange, solidarity economy lawyers are attempting to reimagine the law to reflect the needs of their clients.")

[72] *Id*.

[73] *Community Enterprise & Solidarity Economy Clinic*, UNIV. ILL. CHI., https://law.uic.edu/experiential-education/clinics/community-enterprise/ (last visited Sept. 5, 2023).

[74] *Community Enterprise & Solidarity Economy Clinic - Clinic Brochure* 2, UNIV. ILLINOIS CHICAGO, https://uofi.app.box.com/s/zi55z2stog25hm2oojloqmuvu59ebe0p (last visited Sept. 5, 2023).

[75] Hatcher, *supra* note 56, at 31.

[76] *Id.*

[77] A worker cooperative is a type of enterprise that prioritizes the interests of worker owners over the interests of investors. These stated interests may be value driven as well as economic. In this manner, the enterprise model operates very differently than standard business entities, which traditionally prioritize the interest of investor. Worker Cooperatives may also subscribe to the core principles shared by all cooperatives. Priya Baskaran, *Introduction to Worker Cooperatives and Their Role in the Changing Economy*, 24 J. AFF. HOUSING & COMM. DEV. L. 358 (2015).

[78] 805 Ill. Comp. Stat. 310 (2020).

[79] ILLINOIS WORKER CO-OPERATIVE ALLIANCE AND THE JOHN MARSHALL LAW

numerous challenges when attempting to form under this inadequate statutory regime. In particular, the law made it difficult to raise funds from worker-owners without quickly conflicting with state securities laws. Additionally, the existing statutory regime made it impossible to attract outside investors, a common source of funding for small businesses.[80] Another hurdle was a lack of clarity between owners of a cooperative enterprise and employees. Muddling these two distinct categories of actor—owner and employee—carried tax consequences and made it difficult for immigrant entrepreneurs to form or join cooperative enterprises.[81]

The Community Enterprise & Solidarity Economies Law Clinic successfully advocated for the passage of the Limited Worker Cooperative Association Act in Illinois.[82] The LWCA Act created a new entity specifically designed for worker cooperatives. Among the benefits of the new statute was an exemption to the Illinois Securities Law of 1953, making it easier to raise capital and add worker-owners.[83] The statute also clearly delineated that worker-owners are not default employees.[84] This provision is particularly important for enterprises where owners may have mixed and varied documentation statuses.[85] By engaging in much needed legislative advocacy, the Community Enterprise & Solidarity Economies Law Clinic embodied the type of creative lawyering most needed by their clients. Rather than accepting the status quo, the lawyers challenged an ineffective regime. The result was an important step in helping foster community based, wealth-building enterprises that place underrepresented and marginalized entrepreneurs at the forefront.[86]

School Business Enterprise Law Clinic, Cooperation Chicago: Building Chicago's Worker Cooperative Ecosystem 14 (2018) (on file with author).

[80] *Id*. 12-14.

[81] Univ. Chicago Illinois, *Worker Cooperatives will now have their own corporate entity in Illinois* (June 7, 2019).

[82] Pathway to a People's Economy, *Illinois Limited Worker Cooperative Act*, Peoples Economy.org (last visited Sept. 7, 2023).

[83] 805 Ill. Comp. Stat. 317/70 (2020).

[84] 805 Ill. Comp. Stat. 317/12(c) (2020).

[85] La Risa Lynch, *Worker Cooperatives Face Particular Challenges in Illinois*, Chi. Rep. (Oct. 17, 2018), https://www.chicagoreporter.com/worker-cooperatives-face-particular-challenges-in-illinois/.

[86] Pathway to a People's Economy, *Illinois Limited Worker Cooperative Act*, Peoples Economy.org, https://peopleseconomy.org/illinois-resolution/ (last visited Sept. 7, 2023). ("To provide explicit recognition to worker cooperatives in Illinois. To provide more opportunity and structure for worker-owners to maintain control over their businesses, specifically for startup cooperative businesses in working class Black & Brown communities in Chicago.").

III. Pedagogical Strategies

A. Storytelling – Alicia's Clinic

How do the authors' clinics break the hegemonic narrative of the entrepreneur in an entrepreneurship clinic? With D.C.-specific data, storytelling comparing dominant, data-driven, and alternative narratives of entrepreneurship, and by representing clients that demonstrate the diversity of entrepreneurship. The Social Enterprise & Nonprofit Law Clinic (SENLC) introduces students to the dominant, data-driven, and alternative narratives of entrepreneurship immediately. The first assignment for clinic orientation asks students to read a few chapters in Scott Shane's *The Illusion of Entrepreneurship* as well as review the U.S. Small Business Administration's data on small businesses in D.C. Students must then reflect, through written answers to discussion questions, on their understanding of who becomes an entrepreneur in the United States versus who becomes a small business owner in D.C. and to consider the reasons for the discrepancies. The goal of this assignment is to orient students to D.C.'s demographics and the likelihood—based on those demographics—that their client will not be an upper-class white male, cisgender, neurotypical tech entrepreneur.

For clinic orientation, students also listen to three episodes of the well-known How I Built This (HIBT) podcast hosted by NPR's Guy Raz. The HIBT podcast features entrepreneurs who tell their stories of the beginnings of their business or brand, what challenges they overcame, and how their business ultimately became successful. The HIBT podcast uses narrative told directly by an entrepreneur. Each episode on the clinic's syllabus presents a different perspective of what it means to be an entrepreneur. One of the selected HIBT podcast episodes highlights the founders of Luke's Lobsters, one of whom is Luke Holden, who was two years out of college and working as an analyst at an investment firm when he wrote a business plan and started selling lobster rolls in Manhattan. Luke started Luke's Lobsters in 2009 with $30,000, of which 50% came from his own savings and 50% came from his father who owned a seafood company in Maine.[87]

The second podcast that clinic students listen to features Wendy Knopp, founder of Teach for America (TFA), a charitable organization. Wendy conceived the idea of TFA as her senior thesis at Princeton University. After graduating, she worked on TFA full

[87] How I Built This With Guy Raz, *Live Episode! Luke's Lobsters: Luke Holden and Ben Conniff*, NPR (Nov. 7, 2019), https://www.npr.org/2019/11/06/776829547/live-episode-lukes-lobster-luke-holden-and-ben-conniff.

time.[88] Finally, the third podcast that students listen to highlights Daymond John, founder of the clothing company FUBU. Daymond John did not go to college; after high school, he waited tables at Red Lobster as he started FUBU.[89] Students listen to these podcasts and in class we discuss each narrative—what were the keys to each entrepreneur's success and who supported them financially, creatively, reputationally, or otherwise? We pinpoint the similarities and differences in each narrative—Luke Holden leased a space for his restaurant while Daymond John sold hats and T-shirts on a corner without a vendor's license. But both were able to leverage their parents' monetary support—Luke Holden through his father's cash investment from his retirement account and Daymond John through his mother's second mortgage on their family home.

Wendy Knopp's narrative does not indicate how she supported herself financially while starting Teach for America but students have plenty of opinions about the socio-economic status of a Princeton graduate who has access to Ross Perot to pitch her ideas. When discussing Wendy Knopp's story, we consider that not all entrepreneurship results in a for-profit venture—nonprofit founders can be entrepreneurial too. We discuss the legality and illegality of some of the entrepreneurs' actions while starting their businesses—Daymond John once trespassed at a trade show to get his product in front of the right buyers—and whether it's likely or not that any of the entrepreneurs had lawyers as they were getting their businesses off the ground. We discuss the race, class, and age of the entrepreneurs and how they fit or do not fit into the dominant narrative, Shane's data-driven narrative, or the U.S. Small Business Administration's data on who an entrepreneur is.

This assignment and class discussion—done on the first day of clinic orientation—begins our student lawyers down the path of questioning their assumptions about entrepreneurship. It puts the entrepreneurs' stories first in an attempt to shift students from thinking of themselves as the center of the narrative (clients are the center of the principal-agent client-attorney relationship). It also exposes students to non-white, non-male, non-middle-to-upper class entrepreneurs and broadens the idea of entrepreneurship to include nonprofits and other forms of organizations. This assignment is not a panacea. The HIBT podcasts still represent a small slice of the diversity of entrepreneurship and we are constantly looking to improve this assignment with

[88] How I Built This With Guy Raz, *Teach for America: Wendy Knopp*, NPR (July 8, 2019), https://www.npr.org/2019/07/05/738989797/teach-for-america-wendy-kopp.

[89] How I Built This With Guy Raz, *FUBU: Daymond John*, NPR (Nov. 4, 2019), https://www.npr.org/2019/11/01/775448775/fubu-daymond-john.

counternarratives—told in first person—that represent entrepreneurs in other service industries such as home care work or home-based child care work. Until then, this is a first step that we then build on throughout the semester as students represent their clients.

B. Client Selection – Priya's Clinic

The Entrepreneurship Law Clinic (ELC) at American University's Washington College of Law is committed to serving the full spectrum of D.C. small businesses and social enterprises. Some of the most challenging and innovative legal work originated from our micro-entrepreneurs, solo shops thinking creatively about building, operating, and growing their enterprises. These entrepreneurs approached every obstacle with creativity and revolve, forcing students to think critically and dynamically about possible solutions. The ELC developed a relationship with the D.C. Small Business Development Center (DCSBDC) based out of Howard University.[90] The DCSBDC is committed to assisting entrepreneurs of all sizes, including many nascent enterprises. Through our close collaboration, the ELC is directly connected with numerous early-stage businesses in need of a variety of legal services. An important part of our current docket includes assisting self-employed entrepreneurs in the care-work space. Here, we use care work to refer to general domestic work including housekeeping, childcare, and elder care. These enterprises are often unable to afford legal services despite operating in important and thus heavily regulated sectors. Again, because of the demographics of D.C. and the care-work industry, we represent many women of color entrepreneurs. Our clients include doulas,[91] nannies, and elder-care specialists.

Students interfacing with these clients have opportunities to draft contracts for services in plain English and empower clients to advocate for themselves. The immersive experience underscores the importance of lawyering for present and future transactions as students build dynamic documents to grow with a client's enterprise. Students also confront, alongside their clients, the frustration of financing and regulatory systems created for large scale enterprises. They commiserate with clients who encounter limits due to financial constraints and

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[90] District of Columbia Small Business Development Center, DCSBDC.ORG, https://dcsbdc.org/about-dcsbdc/ (last visited Sept. 9, 2023).

[91] A "doula" is a trained professional who provides non-clinical physical, emotional, and informational support to birthing parents, often with an emphasis on person-centered care with particular sensitivity towards racial, ethnic, and cultural diversity considerations. Maryland Department of Health, *Medicaid Doula Program*, MARYLAND.GOV, https://health.maryland.gov/mmcp/medicaid-mch-initiatives/Pages/DoulaProgram.aspx (last visited Sept. 7, 2023).

appreciate local government resources in Chocolate City[92] committed to supporting and uplifting D.C.'s small businesses.

Although many law students come to the ELC in hopes of working on global transactions with multinational corporations, they leave with a firm foundation in lawyering that exceeds their initial expectations. Certainly, the skills they acquire—drafting, research, time-management, interviewing, client counseling, and negotiation—is a huge asset. However, it is their ability to engage in complex problem solving and analysis, coupled with embracing their role as advocates, that has a profound and lasting impact. Working with these clients transforms students from transactional mercenaries to client-centered attorneys, championing their clients' enterprises one deal at a time.

Conclusion

This essay has documented the dominant and data-driven narratives of entrepreneurship and used critical race theory to present counter-narratives as well as explore the costs—to clients, communities, and attorneys—of exclusion of the true diversity of entrepreneurship. In our clinics, we expand our law students' conceptions of entrepreneurship through narrative, case selection, in-class rounds, and other pedagogical strategies so that they can employ more creative lawyering and problem solving as they represent their clients. Washington, D.C., presents a diverse entrepreneurial environment to engage in inclusive lawyering. Nonetheless, entrepreneurial diversity exists everywhere—from rural farms that have agricultural or worker cooperatives[93] to care-work and other types of necessity entrepreneurship. One can employ an inclusive definition of entrepreneurship—and provide legal services and resources to an inclusive set of entrepreneurs—in any locality in the United States. Lawyering to an inclusive set of entrepreneurs helps break down structural and systemic barriers to entrepreneurship and economic development and growth for underrepresented communities.

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[92] Chocolate City is a nickname for Washington, D.C., referencing the city's role as a center for Black political power, culture, and art. *See* Megan McArdle, *Goodbye, Chocolate City*, Wash. Post (Aug. 14, 2021), https://www.washingtonpost.com/opinions/2021/08/14/goodbye-chocolate-city/.

[93] For examples of worker cooperatives on farms, *see Worker Co-op Farms*, U.S. Fed. Worker Coops, https://www.usworker.coop/blog/tag/workercoopfarms/ (last visited Sept. 9, 2023).

ADVANCING RACIAL JUSTICE THROUGH CIVIL AND CRIMINAL ACADEMIC MEDICAL-LEGAL PARTNERSHIPS

YAEL ZAKAI CANNON AND VIDA JOHNSON*

The medical-legal partnership (MLP) model, which brings attorneys and healthcare partners together to remove legal barriers to health, is a growing approach to addressing unmet civil legal needs. But MLPs are less prevalent in criminal defense settings, where they also have the potential to advance both health and legal justice. In fact, grave racial health inequities are deeply intertwined with both civil and criminal injustice. In both spheres, health justice is racial justice. Building on the experiences of the authors in their respective civil and criminal law school clinics at Georgetown University in Washington, D.C., this Article argues that academic medical-legal partnerships provide a unique vehicle for advancing racial justice by training future leaders in law and healthcare to understand, address, and dismantle intertwined health inequities and injustice across both civil and criminal legal systems.

I. INTRODUCTION - HEALTH JUSTICE AS RACIAL JUSTICE

In Washington, D.C., life expectancy in the city's predominantly white Ward 3 is 87 years.[1] Less than fifteen miles south and east, in Ward 8, which is majority Black, life expectancy is only 72 years, a full fifteen years shorter.[2] Other racial health disparities abound in D.C., with higher rates of asthma, cancer, maternal mortality, and other health conditions among Black Washingtonians.[3]

The disparities experienced by Washingtonians behind bars are compounded by additional environmental and structural threats to their health. For every year in prison, life expectancy decreases by two

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[1] CHRISTOPHER J. KING & PATRICIA CLOONAN, GEO. UNIV., HEALTH DISPARITIES IN THE BLACK COMMUNITY: AN IMPERATIVE FOR RACIAL EQUITY IN THE DISTRICT OF COLUMBIA 1 (2020).

[2] *Id.*

[3] *Id.*

years.[4] With Black people about five times more likely to be sentenced to prison time than their white counterparts,[5] there can be no justice without health. Health justice *is* racial justice.[6]

Health inequities, like legal ones, are deeply connected to social, structural, economic and political determinants of health. Research shows that as much as 80% of health is not driven by biology or medical care, but by the "social determinants of health," which are the conditions in which people live, work, learn, eat, and age.[7] These determinants of health are not just social, they are structural and political,[8] shaped by laws and policies deeply rooted in structural racism.[9] Racism itself harms health,[10] as do destructive conditions such as unsafe housing and incarceration.[11]

As a movement and scholarly framework, health justice requires the leveraging of law and policy to dismantle subordination as a root cause of health inequities.[12] Building on a vision of health equity in which all people have a fair and equal opportunity to achieve health, the term "justice" centers the importance of law in facilitating such equity. For people to achieve health and well-being, law must be used to ensure access to safe and affordable housing, healthy neighborhoods free of environmental hazards, housing and food security, and

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[4] Christopher King, Bryan O. Buckley, Riya Maheshwari & Derek Griffith, *Race, Place, and Structural Racism: A Review of Health and History in Washington D.C.*, 41 HEALTH AFFS. 273, 274 (2022).

[5] Leah Wang, *Punishment Beyond Prisons: Incarceration and Supervision by State*, PRISON POL'Y INITIATIVE (May 2023), https://www.prisonpolicy.org/reports/correctionalcontrol2023.html.

[6] Sheila Foster, Yael Cannon & Gregg Bloche, *Health Justice Is Racial Justice: A Legal Action Agenda for Health Disparities*, HEALTH AFFS. BLOG (July 2, 2020), https://www.healthaffairs.org/content/forefront/health-justice-racial-justice-legal-action-agenda-health-disparities.

[7] *Social Determinants of Health*, WORLD HEALTH ORG., https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1 (last visited May 25, 2023).

[8] DANIEL E. DAWES, THE POLITICAL DETERMINANTS OF HEALTH 7 (2020).

[9] Ruqaiijah Yearby, *Structural Racism and Health Disparities: Reconfiguring the Social Determinants of Health Framework to Include the Root Cause*, 48 J.L. MED. & ETHICS 518, 518 (2020).

[10] *Id.* at 518-19.

[11] Katherine Beckett & Allison Goldberg, *The Effects of Imprisonment in a Time of Mass Incarceration*, 51 CRIME & JUST. 349, 354-358 (2022); Thalia González & Emma Kaeser, *Race, Public Health, and the Epidemic of Incarceration*, 13 NEB. L. REV. BULL. 1, 2-4 (2022); Frank Griffin, *Administering Housing Law as Health Care: Attorneys as Healthcare Providers*, 71 S.C. L. REV. 349, 351, 355-356 (2019); Dayna Bowen Matthew, *Health and Housing: Altruistic Medicalization of America's Affordability Crisis*, 81 LAW & CONTEMP. PROBS. 161, 166-167 (2018); Emily A. Benfer & Allyson E. Gold, *There's No Place like Home: Reshaping Community Interventions and Policies to Eliminate Environmental Hazards and Improve Population Health for Low-Income and Minority Communities*, 11 HARV. L & POL'Y REV. ONLINE S1, S3 (2017).

[12] Lindsay F. Wiley, Ruqaiijah Yearby, Brietta R. Clark & Seema Mohapatra, *Introduction: What is Health Justice?*, 50 J.L. MED. & ETHICS 636, 636 (2022).

freedom from police violence, surveillance, and incarceration. Ultimately, health justice should engage the law and lawyers, as well as their interdisciplinary partners, in building the power of individuals and communities affected by health inequities "to create and sustain conditions that support health and justice."[13]

Medical-legal partnerships (MLPs) advance health justice by integrating lawyers onto healthcare teams to address legal needs that harm health and to advance policy change to promote health equity.[14] Most MLPs, including academic MLPs situated in universities, focus on civil justice issues that impact health, such as income, housing, utilities, education, employment, immigration, and family law.[15] But criminal injustice also contributes to health injustice. The MLP model, and the academic MLP in particular, can be used to advance racial and health justice by addressing the many legal needs and harmful policies that impact the health and well-being of people in the criminal legal system. Academic MLPs are uniquely positioned to advance racial justice by educating the next generation of lawyers and health professionals to understand and address the connections between structural racism, health, criminalization, and incarceration. Health justice crosses civil and criminal legal spheres, and academic MLPs can and should work towards health justice on both fronts.

Building on the experiences of the authors in their respective law school clinics at Georgetown University in Washington, D.C. and the research supporting the critical connections between racial inequities in both legal systems and health, this Article argues that academic medical-legal partnerships (A-MLPs) provide an important vehicle for training future attorneys, physicians, and other health professionals to advance health and racial justice not only through civil legal advocacy, but also through criminal legal advocacy. The Article offers specific approaches that A-MLPs should adopt in order to meaningfully promote racial justice in both the civil and criminal spheres.

A. Civil Injustice and Racial Health Inequities

Many areas of civil injustice lead to racial health inequities. Housing injustice provides a powerful example. Historically, redlining and restrictive covenants kept Black people and other people of color out of many neighborhoods and segregated them into areas with environ-

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13 *Id.*

14 Yael Zakai Cannon, *Medical-Legal Partnership as a Model for Access to Justice*, 75 STAN. L. REV. ONLINE 73, 74 (2023).

15 Kate Marple, *Chart: How Legal Services Help the Health Care System Address Social Needs*, NAT'L CTR. FOR MED.-LEGAL. P'SHIP (Jan. 21, 2015), https://medical-legalpartnership.org/mlp-resources/messaging-chart/.

mental hazards and substandard housing conditions.[16] Housing discrimination, zoning ordinances and policies that promote gentrification continue to further these inequities in housing and neighborhood conditions.[17] Evictions and homelessness also disproportionately impact people of color.[18]

These housing injustices result in health injustices.[19] For example, mold, rodents, and roaches in a home exacerbate asthma and other respiratory conditions.[20] Lead in peeling paint and water can lead to brain damage and developmental delays for young children.[21] Evictions harm the health and mental health of children and adults.[22] Even the threat of eviction is a powerful stressor that impacts health and well-being.[23] Homelessness is tied to lower life expectancy and a number of health and mental health conditions, and can lead to traumatic experiences for children that are linked to long-term health harms.[24]

In Washington, D.C., racial inequities in housing that impact health abound. Black residents are overrepresented in the population of unhoused Washingtonians, making up 86.4 percent of this group, while representing only 46.6 percent of the District's population.[25] The rate of both eviction filings and executed evictions is substantially higher in Wards 7 and 8, which are wards with the largest share of Black residents and the highest poverty rates in the city.[26] In contrast, the wards with the lowest filing rate – Wards 2 and 3 – had among the lowest poverty rates and the smallest share of Black residents in the

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16 Foster et al., *supra* note 6.

17 *See id.*; Bruce Mitchell & Juan Franco, NCRC, HOLC "Redlining" Maps: The Persistent Structure of Segregation and Economic Inequality (2018).

18 Foster et al., *supra* note 6.

19 Ericka Petersen, *Building a House for Gideon: The Right to Counsel in Evictions*, 16 Stan. J. C. R. & C. L. 63, 68–69 (2020); Yael Cannon, *Injustice is an Underlying Condition*, 6 U. Pa. J.L. & Pub. Affs. 201, 240–41 (2020).

20 Emily A. Benfer & Lindsay F. Wiley, *Health Justice Strategies to Combat COVID-19: Protecting Vulnerable Communities During A Pandemic*, Health Affs. Blog (Mar. 19, 2020), https://www.healthaffairs.org/do/10.1377/hblog20200319.757883/full/ ("Low-income people are more likely to live in homes with poor air quality, mold, asbestos, lead, pest-infections, and inadequate space to separate the sick from the well. . . . which have all been linked to poorer health outcomes."); Cannon, *supra* note 19, at 250.

21 Emily A. Benfer, *Health Justice: A Framework (and Call to Action) for the Elimination of Health Inequity and Social Injustice*, 65 Am. U. L. Rev. 275, 294–95 (2015); Cannon, *supra* note 19, at 245.

22 Petersen, *supra* note 19, at 69; Cannon, *supra* note 19, at 242.

23 Cannon, *supra* note 19 (2020), at 241–42.

24 Allyson E. Gold, *No Home for Justice: How Eviction Perpetuates Health Inequity among Low-Income and Minority Tenants*, 24 Geo. J. on Poverty L. & Pol'y 59, 61 (2016); Cannon, *supra* note 19 at 240–41.

25 Kate Akalonu, *Homelessness & Racial Inequity*, Everyone Home DC (June 11, 2020), https://everyonehomedc.org/homelessness-racial-inequity/.

26 Eva Rosen & Brian McCabe, Geo. Univ., Eviction in Washington, DC: Racial and Geographic Disparities in Housing Instability 14 (2020).

city.[27]

The city also has significant disparities in home ownership. Although higher education is typically tied to higher incomes which should make homeownership more attainable, in 2016, 80 percent of white D.C. residents with a high school diploma or less were homeowners, while less than 45 percent of all Black D.C. residents, regardless of their educational attainment, were homeowners.[28] Homeownership is associated with fewer health conditions and improved psychological health; the connection between homeownership and health outcomes for members of racial minority groups, however, may be mitigated by the ongoing effects of structural racism and racial biases.[29]

Housing inequality and the legacy of redlining also present obstacles to access to healthcare for minoritized communities and people with low-income. Over the past two decades in Washington D.C., several hospitals that historically served communities of color have shut down essential healthcare services or closed down altogether.[30] For example, in 2001, District of Columbia General Hospital, which was known for its culturally nuanced care and medical education, closed its inpatient services and trauma wards.[31] United Medical Center (UMC), the only hospital in the predominantly Black wards east of the Anacostia River, recently ended many of its services, including a nursing facility and obstetrics ward, with plans to close the hospital by the end of 2023.[32] The closing of these hospitals serving majority Black communities in neighborhoods that are functionally medical deserts created even more obstacles for families with low income to access adequate primary care, emergency services, and prenatal care,[33] and exacerbated health inequities in Washington, D.C., such as

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[27] *Id*.

[28] Kilolo Kijakazi, Rachel Marie Brooks Atkins, Mark Paul, Anne Price, Darrick Hamilton & William A. Darity, Jr., Urb. Inst., The Color of Wealth in the Nation's Capital 7 (2016).

[29] *See* Selena E. Ortiz & Frederick J. Zimmerman, *Race/Ethnicity and the Relationship Between Homeownership and Health*, 103 Am. J. Pub. Health e122, e127 (2013).

[30] *See* King et al., *supra* note 4 (discussing the influence of structural racism on health outcomes).

[31] *See id.* at 277 (explaining that D.C. General Hospital was known for its culturally nuanced care in providing inpatient and trauma for over 200 years in Washington D.C. before closing down. The hospital was a "medical home for the disenfranchised, low income, and uninsured").

[32] *See id.* at 278 (explaining that the closures were the result of a confluence of factors including an "[i]nability to compete with more attractive and centralized medical establishments").

[33] *See id.* (stating that the absence of prenatal services east of the Anacostia River creates "another obstacle in a citywide effort to reduce high rates of infant and maternal mortality [in Washington D.C.]").

grave racial disparities in maternal and infant mortality.[34]

Food and income insecurity are also key social determinants of health connected to civil injustice.[35] Income insecurity means that some Americans must choose between buying food or paying other essential bills, such as rent and utilities, leading to dangerous and unhealthy phenomena that have been described as "heat or eat" or "the rent eats first."[36] Lack of nutritious food leads to a number of health concerns including "obesity, low birthrate, iron deficiency, and developmental problems including aggression, anxiety, depression, and attention deficit disorder."[37] According to the D.C. Policy Center, 11% of D.C. is in a food desert, with higher rates in the city's predominantly Black wards (51% of food deserts are located in Ward 8 and 31% in Ward 7).[38] Consequently, Wards 7 and 8 only have four grocery stores in their entire 17.1 square mile area.[39] In comparison, the predominantly white Ward 3 of D.C. has zero food deserts.[40] Moreover, 29.3% of Latinx households with children and 21% of Black households with children reported food insufficiency in April 2021.[41] In contrast, white households with children reported statistically no food insufficiency in April 2021.[42]

Income inequality is also a significant issue in Washington, D.C., where the median household income for white residents is $141,650,

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[34] *See id.* (explaining that the absence of prenatal services east of the Anacostia River creates "another obstacle in a citywide effort to reduce high rates of infant and maternal mortality").

[35] Maureen Black, *Household Food Insecurities: Threats to Children's Well-Being*, AM. PSYCH. ASS'N (June 2012), https://www.apa.org/pi/ses/resources/indicator/2012/06/household-food-insecurities; Cannon, *supra* note 19 at 219–20 (2020).

[36] S*ee* Petersen, *supra* note 19, at 70 ("Soaring rents lead most low-income tenants to spend over half of their income on rent, leading to excruciating budget choices and the inability to afford other basic necessities, such as electricity, water, food, and medicine. As a result, these low-income tenants frequently sacrifice food, medical care, and medications to pay rent."); Cannon, *supra* note 19, at 219–20 ("Food insecurity has cascading effects for low-income Americans; it can force a choice between buying food or paying rent and other important bills, such as utilities payments. This choice, sometimes called "heat or eat," is impossible because people need all of these necessities to thrive.").

[37] Cannon, *supra* note 19, at 219–20; *Food Insecurity,* HEALTHYPEOPLE2030, https://health.gov/healthypeople/priority-areas/social-determinants-health/literature-summaries/food-insecurity (last visited Sept. 5, 2023); Maureen Black, *Household Food Insecurities: Threats to Children's Well-Being*, AM. PSYCH. ASS'N (June 2012), https://www.apa.org/pi/ses/resources/indicator/2012/06/household-food-insecurities.

[38] Daniel Ashat, Nicole Tepper & Caroline Pawlow, *An Evaluation of Food Insecurity in the D.C. Community*, 2 GEO. SCI. RSCH. J. 78, 80 (2022).

[39] *Id*.

[40] *Id*.

[41] D.C. OFF. OF PLAN. & D.C. FOOD POL'Y COUNCIL, THE ROAD AHEAD: 2021 UPDATE ON FOOD ACCESS & FOOD SECURITY IN THE DISTRICT OF COLUMBIA 3 (2021).

[42] *Id*.

over three times higher than that of Black residents at $45,072.[43] Furthermore, Black residents are nearly two times as likely to be rent-burdened, meaning that housing costs cut into 30% or more of a household's income.[44] When compared with all racial and ethnic groups, the percent of Black families in poverty is highest at 22%.[45] Unemployment percentages are highest in Wards with the highest proportions of Black residents: Ward 5 (6.9%), Ward 7 (9.7%), and Ward 8 (12.5%).[46]

Black residents are also more likely to work in production, service and sales industries that require manual labor, pay lower wages, and have fewer benefits such as health insurance, paid leave, and retirement plans.[47] Because over 50 percent of service occupations are held by Black residents, Black residents were disproportionately negatively affected by the restricted activity and closure of restaurant and tourism industries during the COVID-19 pandemic.[48]

Educational injustices are also drivers of poor health.[49] Graduation rates are lower for people of color, especially people of color with disabilities,[50] and whether a person graduates high school is a strong predictor of lifelong health.[51] School policing, exclusionary school discipline, and the school-to-prison pipeline, all disproportionately impact Black students, indigenous students, and other students of color, and all harm the health, mental health, and well-being of students.[52]

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[43] Camille Busette & Samantha Elizondo, *Economic disparities in the Washington, D.C. metro region provide opportunities for policy action*, Brookings Inst. (Apr. 27, 2022), https://www.brookings.edu/blog/how-we-rise/2022/04/27/economic-disparities-in-the-washington-d-c-metro-region-provide-opportunities-for-policy-action/.

[44] *Id*.

[45] King & Cloonan, *supra* note 1, at 10.

[46] *Id.*

[47] *D.C. Racial Equity Profile for Economic Outcomes*, D.C. Pol'y Center (Jan. 2021), https://static1.squarespace.com/static/5ffa2eb4a24aef1e5b91c0d6/t/607df46d185dd55abe40f644/1618867332939/.

[48] *Id*.

[49] Yael Cannon & Nicole Tuchinda, *Critical Perspectives to Advance Educational Equity and Health Justice*, 50 J.L. Med. & Ethics 776, 778 (2022); *Cf.* Thalia González & Paige Joki, *Discipline Outside the Schoolhouse Doors: Anti-Black Racism and the Exclusion of Black Caregivers*, 70 UCLA L. Rev. Discourse 40, 42 (2022) (asserting that critical race theory is a "powerful framework in the domain of education justice").

[50] Cannon & Tuchinda, *supra* note 49 at 780 (2022); Nat'l Ctr. for Educ. Stats., Students with Disabilities 6 (2023), https://nces.ed.gov/programs/coe/pdf/2023/cgg_508.pdf.

[51] Cannon & Tuchinda, *supra* note 49 at 777; S. Jay Olshansky et al., *Differences in Life Expectancy Due to Race and Educational Differences Widening, and Many May Not Catch Up*, 31 Health Affs. 1803, 1806–07 (2012).

[52] Cannon & Tuchinda, *supra* note 49 at 777;Thalia González, *Race, School Policing, and Public Health*, 73 Stan. L. Rev. Online 180, 180 (2021) ("[S]chool policing is an obvious public health issue. It sits at the nexus of two critical social determinants of health — education and racism—and requires targeted attention as such.").

In Washington, D.C., Black students make up 66% of the charter and traditional public school student population, but receive 82% of in-school suspensions, 90% of out-of-school suspensions, and 95% of expulsions.[53] Only 74% of Black students and 68% of Latinx students graduate high school in four years, compared to 94% of white students.[54] When compared with all other races and ethnicities, non-Hispanic Black residents had the lowest percentage (31.1%) of bachelor's degree attainment at age twenty-five and older in Washington, D.C. between 2017 to 2021.[55]

These racial inequities are not limited to Washington, D.C., but are evident around the nation, and all are impacted by law and policy, such as laws in the areas of housing, public benefits, employment, and education.[56] Rectifying these inequities requires the intentional and active pursuit of health justice and the training of future lawyers and health professionals to that end. Racial justice and health justice, which are intertwined, necessitate housing justice, economic justice, educational justice, and other forms of civil justice.[57]

B. Criminal Injustice and Racial Health Inequities

Like our civil legal systems, our criminal legal system contributes to ill-health and other life-threatening racial injustice. America is the most criminally punitive and carceral of any other wealthy nation.[58] Our poor carceral medical system, the structural and social determinants of health, and the punitive harms of the American criminal legal system compound the problems of the other. These American failures hurt people of color most of all, having also been more likely to be subjected to the civil injustices described in the section above.[59] Ad-

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[53] *Education*, DC KIDS COUNT, https://dckidscount.org/education/ (last visited Sept. 5, 2023).

[54] *Id.*

[55] *People 25+ with a Bachelor's Degree or Higher*, D.C. HEALTH MATTERS, https://www.dchealthmatters.org/indicators/index/view?indicatorId=340&localeId=130951&localeChartIdxs=1%7C2%7C4. (last updated Feb. 2023).

[56] *See generally* DAYNA BOWEN MATTHEW, JUST HEALTH: TREATING STRUCTURAL RACISM TO HEAL AMERICA (2022); s*ee also* Sally Magnan, *Social Determinants of Health 101 for Health Care: Five Plus Five*, NAT'L. ACAD. MED. PERSP. 1, 1 (Oct. 9, 2017), https://nam.edu/wp-content/uploads/2017/10/Social-Determinants-of-Health-101.pdf; Yael Cannon, *Closing the Health Justice Gap: Access to Justice in Furtherance of Health Equity*, 53 COLUM. HUM. RGTS. L. REV. 517, 523 (2022).

[57] *See* Foster et al., *supra* note 6.

[58] *See, e.g.,* Wendy Sawyer & Peter Wagner, *Mass Incarceration: The Whole Pie 2023*, PRISON POL'Y INITIATIVE (Mar. 14, 2023), https://www.prisonpolicy.org/reports/pie2023.html.

[59] *See* ELIZABETH HINTON, LESHAE HENDERSON & CINDY REED., VERA INST. OF JUST., AN UNJUST BURDEN: THE DISPARATE TREATMENT OF BLACK AMERICANS IN THE CRIMINAL JUSTICE SYSTEM 2 (2018); Kathryn A. Sabbeth & Jessica K. Steinberg, *The Gender of Gideon*, 69 UCLA L. REV. 1130, 1145-57 (2023) (showing that people of color,

dressing any of these problems are steps towards racial justice. Addressing them all is vital to achieving it.

While medical professionals may know that "those with an incarceration history report higher chronic health problems, lower self-reported health, higher obesity, more infectious diseases, stress-related illness, and psychological disorders," judges and attorneys may not fully understand the repercussions on health of those they incarcerate.[60] So, without sharing that knowledge with the courts, advocates do a disservice to their clients. Yet, most law students do not receive that type of education in law school and medical students do not often learn how they can play a role in addressing these issues, compounding the injustice.

For every year of incarceration, prisoners lose on average two years of their lives.[61] Even once liberated, at the end of their life, people who have been imprisoned are sicker and need more care than their counterparts who have been free. In the District of Columbia, like in many cities, this impacts the Black community, more than any other. While the District's population is around 45% Black, Black individuals make up an overwhelming majority of the jail population.[62] Because D.C. is not a state and does not have its own prison facilities, once a person is sentenced to prison time in a felony case, they are sent to a federal Bureau of Prisons (BOP) facility to serve their sentence.[63]

There are more than 4,000 D.C. residents behind bars in the BOP.[64] More than 11 percent of the prisoners in the BOP are over the age of 55.[65] About 100 District residents live in federal medical prisons.[66] Across BOP facilities, 95% of these District residents forced

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especially Black women, are often disproportionately represented in the civil justice system, as seen in eviction cases, child welfare cases, and certain debt collection cases).

[60] Sebastian Daza, *The Consequences of Incarceration for Mortality in the United* States, 57 DEMOGRAPHY 577, 578 (2020) (examining the long-term association between individual incarceration and mortality in a longitudinal study spanning nearly forty years).

[61] Emily Widra, *Incarceration Shortens Life Expectancy*, PRISON POL'Y INITIATIVE BLOG (June 26, 2017), https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/.

[62] Malcom B. Morse, *True Justice: The Disturbing Truth About Incarceration in D.C.*, GEO. J. L. & MOD. CRITICAL RACE PERSP. (February 17, 2020), https://www.law.georgetown.edu/mcrp-journal/blog/true-justice-the-disturbing-truth-about-incarceration-in-d-c/.

[63] Martin Austermuhle, *D.C. Inmates Serve Time Hundreds of Miles from Home. Is it Time to Bring Them Back?,* AM. U. RADIO (AUG. 10, 2017), HTTPS://WAMU.ORG/STORY/17/08/10/D-C-INMATES-SERVING-TIME-MEANS-HUNDREDS-MILES-HOME-TIME-BRING-BACK.

[64] D.C. CORR. INFO. COUNCIL, ANNUAL REPORT 2019 2 (2019).

[65] *Statistics on Inmate Age*, FED. BUREAU OF PRISONS, https://www.bop.gov/about/statistics/statistics_inmate_age.jsp (last visited May. 28, 2023).

[66] *Id.*

against their will to live in the Bureau of Prisons are Black.[67] These stark numbers show the racial injustice of the District's legal system.

Food in BOP facilities is high in salt, sugar, and refined carbohydrates.[68] In a survey asking formerly incarcerated individuals about their meals while in prison, sixty-two percent of respondents reported that they rarely or never had access to fresh vegetables while incarcerated.[69] The commissary food available for purchase is even worse, with no fresh food available at all.[70] Furthermore, the partnerships with private food service providers has lowered food quality standards as a result of cost cutting efforts to maximize efficiency at a lower cost.[71] These low-quality, high-calorie foods are a cheaper yet inadequate alternative to nutritionally dense food, which contribute to the elevated rates of diabetes and heart disease among the incarcerated population.[72]

Studies show these nutritional deficiencies also cause declines in an incarcerated individual's mental health, citing a link between persistent malnutrition and depression, aggression, and antisocial behavior.[73] Moreover, the standards for medical treatment of prisoners are very low. Similarly to food service provision, prison health care providers in the BOP, and in state prisons more broadly, have increasingly prioritized efficiency at the expense of prisoners' access to quality medical care.

Medical treatment in the BOP is subpar.[74] There are no standards

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[67] Rachel Weiner & Justin Wm. Moyer, *Inmates from D.C., who are mostly Black, fare worse prison conditions*, WASH. POST (February 8, 2022; 11:46 AM), https://www.washingtonpost.com/dc-md-va/2022/02/08/bop-lawsuit-dc-inmates/#.

[68] Jessica Carns & Sam Weaver, *Two Cups of Broth and Rotting Sandwiches: The Reality of Mealtime in Prisons and Jails*, ACLU NEWS AND COMMENT. (Nov. 23, 2022), https://www.aclu.org/news/prisoners-rights/the-reality-of-mealtime-in-prisons-and-jails#:~:text=the%20typical%20prison%20diet%2C%20which,illness%20than%20the%20general%20population.

[69] *Eating Behind Bars: Ending the Hidden Punishment of Food in Prison*, IMPACT JUST. (2020), https://impactjustice.org/wp-content/uploads/IJ-Eating-Behind-Bars-Executive Summary.pdf (describing the scarcity of fresh and nutritious foods available in prisons).

[70] Stephen Raher, T*he Company Store: A Deeper Look at Prison Commissaries,* PRISON POL'Y INITIATIVE (May 2018), https://www.prisonpolicy.org/reports/commissary.html.

[71] *Eating Behind Bars: Ending the Hidden Punishment of Food in Prison*, *supra* note 72 (explaining how the systematic slashing of prison food budgets on a national scale have resulted in a widespread deterioration in the quality of food).

[72] *Id.* (prison food consumption long term causes rises in cholesterol and body fat and other diet-related diseases).

[73] *Id.* (Research shows that the nutritional deficiencies in prisons can result in "an increased risk of diet-related diseases", immune suppression issues "making incarcerated people more vulnerable to viruses such as Covid-19" and contribute to "a wide range of mental health and behavioral issues.").

[74] Walter Pavlo, *Federal Bureau of Prisons' Medical Care Falls Short of its Own* Policy, FORBES (Apr. 19, 2022; 11:41 PM);https://www.forbes.com/sites/walterpavlo/2022/04/19/

for the timely delivery of care and facilities are plagued with serious staffing shortages that impact prisoners' access to medical care.[75] With Black citizens more likely to be caged behind bars, and the BOP's terrible record of delivery of care, it is unsurprising that life expectancy is shorter for Black residents and those who spend time in prison.

The next generation of leaders in law and health need to understand the connections between criminal, health, and racial injustice and learn to advocate and collaborate to address those injustices. Academic MLPs are in a unique position to advance this important mission at both an individual and structural level. Freeing the people trapped in this racist and punitive system is imperative to their health and to racial justice. To that end, the American Public Health Association has advocated for abolition of the carceral system as an important public health strategy.[76] Because racial disparities in health and the carceral system stem from centuries of oppression, legal scholars like Amna Akbar have argued that individual-level advocacy will not suffice to address "structural and historically rooted" issues.[77] As one interdisciplinary team of MLP scholars put it, "carceral exposure . . . has a significant negative impact on . . . health and well-being. . ."[78]

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federal-bureau-of-prisons-medical-care-falls-short-of-its-own-policy/?sh=46a8662b5eab.

[75] Keri Blakinger, *Prisons Have a Health Care Issue– And it Starts at the Top, Critics Say*, THE MARSHALL PROJECT (July 01, 2021; 6:00 AM), https://www.themarshallproject.org/2021/07/01/prisons-have-a-health-care-issue-and-it-starts-at-the-top-critics-say (2021).

[76] *Advancing Public Health Interventions to Address the Harms of the Carceral System*, AM. PUB. HEALTH ASS'N (Oct. 24, 2020), https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2021/01/14/advancing-public-health-interventions-to-address-the-harms-of-the-carceral-system; ERNEST DRUCKER, A PLAGUE OF PRISONS: THE EPIDEMIOLOGY OF MASS INCARCERATION IN AMERICA 163 (2d ed. 2013) ("To employ a public health model of prevention we must also think beyond the usual clinical model of care that is premised on'fixing what is broken' in the individual case. In the public health approach we need to consider each part of the epidemiological triad—not just the host—by reducing exposure to the harsh punishment of imprisonment.").

[77] Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CAL. L. REV. 1781, 1839 (2020) ("Mass incarceration and broken-windows policing are only decades-old phenomena, while racialized modes of exploitation, dispossession, and confinement have existed since at least the dawn of colonialism and enslavement."); *Advancing Public Health Interventions to Address the Harms of the Carceral System,* AM. PUB. HEALTH ASS'N (Oct. 24, 2020), https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2021/01/14/advancing-public-health-interventions-to-address-the-harms-of-the-carceral-system ("While efforts to improve health conditions both during and after incarceration are important, they do not address the root causes of incarceration or prevent the associated negative health consequences. . . . Abolition requires that we take a critical approach and investigate the root cause of the various levels of policy and the ingrained frameworks that limit our conceptions of—and responses to—safety, punishment, and violence.").

[78] Nicolas Streltzov, Ella van Deventer, Rahul Vanjani & Elizabeth Tobin-Tyler, Article, *A New Kind of Academic MLP: Addressing Clients' Criminal Legal Needs to Promote*

Improving prison conditions or even medical care in prisons is insufficient to address health inequities because physical incarceration has powerful negative impacts on health.

The early exposure that A-MLPs provide to law and medical students of the realities of the criminal, health, and racial injustice nexus creates a formative experience for these new professionals, which can counteract the siloing and traditional status quo of their industries. Through their firsthand experiences, law and medical students also gain insight into the importance of linking clinical experiences to efforts for expansive and radical social change. With this education, the next generation of legal and health leaders will be prepared to push for structural reform in concert with their client/patient advocacy.[79]

II. Interprofessional Academic Medical-Legal Partnership Advocacy to Advance Health and Racial Justice Across Civil and Criminal Legal Advocacy

A. Academic Medical-Legal Partnerships (A-MLPs)

Medical-legal partnerships (MLPs) provide an important vehicle for the advancement of health justice and racial justice.[80] MLPs integrate lawyers onto healthcare teams to address health-harming legal needs.[81] In a traditional MLP, lawyers train physicians and other healthcare professionals to identify unmet legal needs that impact health and refer patients to the attorney team for legal assistance.[82] The attorneys and healthcare providers collaborate to address those legal needs, with attorneys helping the healthcare team understand laws that serve as determinants of health and the legal rights of their patients, and the healthcare team lending information and expertise in support of legal advocacy.[83] MLPs also engage in patients-to-policy advocacy, which involves the identification of gaps and problems with

Health Justice and Reduce Mass Incarceration, J.L. Med. & Ethics (forthcoming 2024) (manuscript at 3) (on file with authors).

[79] Megan Sandel, Mark Hansen, Robert Kahn, Ellen Lawton, Edward Paul, Victoria Parker, Samantha Morton & Barry Zuckerman, *Medical-Legal Partnerships: Transforming Primary Care By Addressing the Legal Needs of Vulnerable Populations*, Health Affs. Blog (Sept. 2010), https://www.healthaffairs.org/doi/10.1377/hlthaff.2010.0038 (describing the "patients to policy" model of MLPs).

[80] Cannon, *supra* note 56, at 561–62 (2022).

[81] *Id*. at 61; Elizabeth Tobin Tyler & Joel B. Teitelbaum, *Medical-Legal Partnership: A Powerful Tool for Public Health and Health Justice*, 134 Pub. Health Rep. 201, 203 (2019).

[82] Cannon, *supra* note 19 (2020), at 265 (2020); *The Response*, Nat'l Ctr. For Med. Legal P'ship, https://medical-legalpartnership.org/response/ (last visited Sept. 5, 2023).

[83] Cannon, *supra* note 14 (2023), at 78 (2023).

the law that necessitate systemic change and advocacy to pursue necessary reforms.[84]

A-MLPs are based in university settings and engage pre-professional learners in interprofessional MLP learning environments that are often experiential.[85] They can also leverage their roles within research institutions to develop research and scholarship to study the impact of MLP advocacy and teaching and to explore the connections between health and justice.[86] Many A-MLPs are housed in law school clinics, where law students partner with medical, nursing, social work, public health, or other health profession students and professionals in seminars, case rounds, and/or casework on behalf of clients with low-income.[87] Some A-MLPs also use the patients-to-policy advocacy approach to engage in work towards systemic reform.[88]

MLPs have traditionally engaged in civil advocacy on behalf of clients. The National Center for MLP has put forth the I-HELP framework to capture the types of health-harming civil legal needs most often encountered and addressed by civil legal aid, which include Income, Housing & Utilities, Education & Employment, Legal Status, and Personal & Family Stability.[89] The only criminally-related legal issue explicitly included on the I-HELP chart is the clearing of criminal histories, through efforts such as sealing and expungement of criminal records, in the Legal Status category.[90] Traditionally, criminal justice-related advocacy was not within the purview of MLPs, most of which involve civil legal advocacy by legal aid organizations or law

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84 Yael Cannon, *Unmet Legal Needs as Health Injustice*, 56 U. Rich. L. Rev. 801, 862 (2022).

85 *See* Vicki W. Girard, Deborah F. Perry, Lisa P. Kessler, Yael Cannon, Prashasti Bhatnagar & Jessica Roth, The Academic Medical-Legal Partnership: Training the Next Generation of Health and Legal Professionals to Work Together to Advance Health Justice, Nat'l Ctr. for Med.-Legal P'ship 5, 15 (2022); *see* Edward B. Healton, William M. Treanor, John J. DeGioia & Vicki W. Girard, *Training Future Health Justice Leaders – A Role for Medical-Legal Partnerships*, 384 New Eng. J. Med. 1879, 1880 (2021).

86 Vicki W. Girard et al., *supra* note 85, at 18.

87 *Id.* at 12.

88 Cannon, *supra* note 84, at 847 (2022); *see generally* Deborah N. Archer, *Political Lawyering for the 21st Century*, 96 Denv. L. Rev. 399 (2019) (describing a practice of political lawyering through which lawyers can "tackle both new and chronic issues of injustice through a broad array of advocacy strategies").

89 Marple, *supra* note 15.

90 Marsha Regenstein, Jennifer Trott & Alanna Williamson, The State of the Medical-Legal Partnership Field 15 (2017) (explaining that "I-HELP™ is a system of categories designed by the National Center for Medical-Legal Partnership to capture the types of health-harming civil legal needs most often encountered and addressed by civil legal aid. The I-HELP™ categories are defined as Income and insurance, Housing and utilities, Education and employment, Legal status, and Personal and family stability."); *see also* Marple, *supra* note 15.

school clinics.[91] This Article argues that the Academic Medical-Legal Partnership model provides an important opportunity to advance racial justice by training the next generation of lawyers, doctors, and other healthcare professionals not only to address the civil legal determinants of health, but to address the criminal legal determinants of health as well.

B. MLP Advocacy to Advance Racial Justice Across Civil and Criminal Spheres

It was not until the COVID-19 pandemic that Georgetown Law's two criminal law clinics recognized that the MLP model could benefit clients. Through the experience of litigating compassionate release cases with clinical law students that involved review of and arguments about clients' medical records, these clinics realized that criminal defense expertise was not sufficient to provide excellent delivery of legal services. Faculty in the criminal clinics reached out to the already-existing Health Justice Clinic (HJA) A-MLP at Georgetown for help connecting with faculty at Georgetown's medical school who already worked with HJA. The partnership between the medical school and the law school grew to include criminal legal advocacy, helping the partners in both schools see how A-MLPs could advance health and racial justice through advocacy in civil and criminal legal systems.

MLPs focused on health and the criminal legal system are rare. Of the over 400 medical-legal partnerships around the country, the vast majority focus on civil legal issues.[92] Development of the traditional MLP model stemmed from the understanding that low-income Americans were not guaranteed assistance of counsel in civil matters.[93] A new MLP approach is beginning to emerge to address crimi-

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[91] REGENSTEIN ET AL., *supra* note 90, at 10 (finding that of MLP legal respondents to a survey by the National Center for Medical-Legal Partnership, three-quarters were a civil legal aid organization and one-fifth were a law school clinic), 15-16 ("[e]ighty-nine (89) percent of MLP civil legal organizations received referrals from health care partners for income and insurance needs, 88 percent had referrals for housing and utilities needs, and 92 percent had referrals related to personal and family stability. Slightly fewer reported referrals for education and employment needs (83 percent) or needs related to legal status (68 percent).").

[92] *The Response*, NAT'L CTR. FOR MEDICAL-LEGAL P'SHIP, https://medical-legalpartnership.org/response (last visited June 15, 2023).

[93] Rahul Vanjani, Sarah Martino, Sheridan F. Reiger, James Lawless, Chelsea Kelly, Vincent J. Mariano & M. Catherine Trimbur, *Physician-Public Defender Collaboration- A New Medical-Legal Partnership*, 383 NEW ENG. J. MED. 2083, 2084 (2020) (explaining that the MLP model stemmed from "the understanding that in the United States low-income people have no guarantee of assistance in civil matters." Despite efforts from Congress to establish the Legal Services Corporation, " a private 501(c)(3) organization that distributes federal funding to civil legal aid organizations. . .. There is not enough funding. . ..to meet the high demand for civil legal services.").

nal legal needs in addition to civil legal needs.[94] Incorporating this model into academic MLPs, where future lawyers and health professionals can learn to practice differently, provides a critical opportunity for holistic advocacy to advance racial justice for people involved in the criminal legal system.

While most academic MLPs focus on civil rather than criminal legal advocacy, some have focused their *civil* legal advocacy on people involved in the juvenile delinquency or criminal legal systems. For example, the University of New Mexico Medical-Legal Alliance provides civil legal advocacy, along with health, behavioral health, educational and other non-legal services delivered through partner health clinics, to help at-risk youth stay out of detention.[95] Yale Law school has an A-MLP with the Yale-New Haven Hospital working to keep returning citizens out of the legal system through the delivery of civil legal assistance.[96] Focusing on the civil justice issues that determine whether a person ends up in or cycles back into the carceral system is important advocacy to advance racial justice.

Some non-academic MLPs have recently begun to advocate around criminal legal issues. MLPs in Boston, Massachusetts[97] and Rhode Island are based out of public defender offices that collaborate with physicians to address common health-related social and legal needs.[98] The partnership between the Rhode Island Public Defender's office and the Lifespan Transitions Clinic (LTC), a primary care program within the Rhode Island Hospital Center, is an example of this emerging approach to MLPs.[99] The MLP in Boston advocates on behalf of their clients by asking doctors to write medical affidavits for use in persuading decision makers to consider their client's medical

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[94] *MLP in Health Centers Guide Webinar Series Part 4: The Medical-Public Defender Partnership,* Nat'l Ctr. for Medical-Legal P'ship (June 28, 2022) https://medical-legalpartnership.org/mlp-resources/medical-public-defender-partnership.

[95] Julia Sclafani, *From Detention to Deliverance*, Searchlight New Mexico (Oct. 21, 2020), https://searchlightnm.org/from-detention-to-deliverance.

[96] *Medical-Legal Partnerships*, Solomon Ctr. for Health L. & Pol'y at Yale L. Sch., https://law.yale.edu/solomon-center/projects-publications/medical-legal-partnerships (last visited Sept. 5, 2023).

[97] Press Release, "Our Patients Our Clients" (OPOC), collaboration between Boston's public defenders and the Internal Medicine Residency at Brigham and Women's Hospital (2023) (on file with author).

[98] Streltzov et al, *supra* note 78, at 5-6; Vanjani et al., *supra* note 93, at 2085 (discussing a new partnership between Rhode Island Public Defenders and a primary care medical program).

[99] Streltzov et al, *supra* note 78, at 5-6; Vanjani et al., *supra* note 93, at 2085 ("Despite a shared mission of caring for people at their most vulnerable, collaboration between public defenders and health care providers in aiding low-income people has not historically been formalized in MLPs.") .

conditions while they decide the issue of punishment.[100]

While traditional MLPs address many of the civil issues that disproportionately affect patients with involvement in the criminal justice system, this type of MLP model takes the advocacy one step further, citing that the academic medical literature has "generally focused on screening and treatment among populations with such involvement, rather than on preventing incarceration itself, as part of an achievable or even tenable treatment plan."[101] This medical-public defender partnership works by creating an open field of communication between physicians and public defenders.[102] For public defenders, medical information serves as valuable evidence in advocating to keep their client out of prison.[103] Many patients involved in this program respond positively to having their physician involved in their legal process, as it affords patients additional opportunities to discuss their case or provide documentation that can positively affect outcomes.[104] Proponents of this model state that unlike certain forms of structural inequality that traditional MLPs address such as homelessness and food insecurity, incarceration itself as a determinant of poor health has not "entered the standard medical lexicon."[105] While these medical-public defender examples are not academic MLPs, their success speaks to the benefits of integrating MLPs beyond civil advocacy.

Despite the fact that healthcare providers have become more aware of the ways that involvement in the criminal justice system negatively impacts patients' health, physicians are understandably limited in their ability to address these issues in their capacity as health care providers. MLPs that engage in both civil and criminal advocacy are a

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[100] Kate Marple, *Framing Legal Care as Health Care*: *How Legal Services Can Address the Social Determinants of Health*, NAT'L CTR FOR MED. LEGAL-P'SHIP (2015), https://medical-legalpartnership.org/wp-content/uploads/2014/02/How-Legal-Services-Help-Health-Care-Address-SDOH-August-2017.pdf.

[101] Vanjani et al., *supra* note 93, at 2084; Streltzov et al., *supra* note 78, at 4) (proposing that medical-legal partnerships can "serve as a vital intervention to prevent or reduce criminal system involvement, while also addressing social and structural determinants of health").

[102] Vanjani et al., *supra* note 93, at 2084.

[103] Streltzov et al., *supra* note 78, at 10 ("In numerous instances, judges reported being moved by the medical reports to reduce or completely spare incarceration due to consideration of the individual's health."); Vanjani et al., *supra* note 93, at 2085 (explaining how this medical-public defender partnership enables doctors and attorneys new and effective ways to advocate for the communities that they serve).

[104] Vanjani et al., *supra* note 93, at 2086-88 (describing how this partnership has assisted patients living with substance use disorders who are prone to have a long history in the criminal justice system).

[105] Vanjani et al., *supra* note 93, at 2085 (describing a "growing awareness [amongst physicians] that incarceration and community supervision hinder patients' attainment of stable housing, meaningful employment, medication adherence and other determinants of health").

collaborative solution to this gap that has potential to reduce harm in communities and improve health outcomes.

By approaching criminal cases and incarceration as obstacles to health, and using their client's medical information as evidence of injustice, defense lawyers in MLPs impart a new framework for judges and the legal system to evaluate the utility of various forms of punishment and rehabilitation. Medical providers impact their patient's health outside of prescribing medication and giving advice through the medical expertise shared with the legal system through the MLP, thus impacting their patient's health in a substantial way. In particular, *academic* MLPs are uniquely positioned to advance racial justice by training lawyers and doctors to take this new approach through collaborative advocacy before their careers even start.

1. A-MLP Civil Advocacy

Academic MLPs have long been engaged in civil legal advocacy. Early university-based MLPs involved law school clinics at University of New Mexico, Georgia State, and other law schools advocating to address civil legal issues facing patients of their medical partners in areas such as housing, family, education, and public benefits law.[106] While MLPs that address civil legal needs, including academic MLPs, have traditionally framed their work through the lens of poverty, scholars are increasingly calling on MLPs to explicitly work to advance racial justice, especially given the structural racism that drives both health inequities and civil injustice and the histories of racism in both medical and legal systems. In training the next generation of doctors, lawyers, and other health professionals, A-MLPs provide a unique opportunity to advance racial justice by educating learners during a critical formational period prior to launching their careers.

In an A-MLP, students from law, medicine, and other health disciplines can learn about the complicated and compounding nature of the issues facing clients as a result of structural racism, the intersecting identities of many clients, and the need for intentional approaches that advance justice on multiple fronts.[107] For example, in the Health Justice Alliance Law Clinic at Georgetown University Law Center, law and medical students learn about approaches from critical race

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[106] Vicki W. Girard, Yael Z. Cannon, Deborah F. Perry & Eileen S. Moore, *Academic Medical-Legal Partnerships: Centering Education and Research to Help Advance Health Justice*, J.L. Med. & Ethics (forthcoming 2023) (manuscript at 5) (on file with authors).

[107] *See* Healton et al., *supra* note 85, at 1880; *Georgetown's Health Justice Alliance Unites Law and Medical Centers to Advance Health Equity* [Hereinafter *Georgetown's Health Justice Alliance*], Geo. L.: News (May 19, 2021), https://www.law.georgetown.edu/news/georgetowns-health-justice-alliance-unites-law-and-medical-students-to-advance-health-equity/.

theory and other critical legal studies, such as intersectionality and counternarratives,[108] which help them to understand important contexts surrounding the issues they are confronting in their casework.[109] They learn about structural racism embedded in the laws, policies, and systems in which they are operating, such as the racist tropes that shaped welfare reform in 1996 and the ramifications of pro-gentrification policies on communities of color.

Students develop interdisciplinary collaboration skills as part of the intentionally antiracist pedagogy.[110] They experience the process and product of including a "legal check-up" as part of a medical appointment that recognizes that the structural and social determinants are the primary drivers of health and to see the role that law plays in driving health inequities.[111] The students learn to identify problems holistically and to see their clients as people, rather than legal issues or medical diagnoses, who are in need of holistic advocacy to resolve intertwined issues.[112]

Moreover, students learn to help clients understand where the challenges they are facing actually implicate legal rights and have legal remedies, which is important to building the power of clients to self-advocate and assert their rights in the long-term within systems that often subordinate people of color.[113] Through low-barrier access to justice that includes proactive legal screening in the familiar setting of a pediatrician's office, law and medical students learn how legal advocacy can prevent crises, including preventing entry into systems that cause racialized violence, such as eviction courts, the family regulation system, and the school-to-prison pipeline.[114] For example, by screening for and identifying public benefits, housing voucher, and housing conditions legal issues for families struggling to pay rent, the HJA Law Clinic can advocate for increased benefits and rental assistance and remediation of substandard housing conditions. Such advocacy can work upstream to prevent outcomes of racial injustice, such as by

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[108] Cannon & Tuchinda, *supra* note 49 at 778 (citing Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2438, 2415 (1989)).

[109] *See* Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 346-48 (1997); Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2437-40 (1989).

[110] *See* Anna Louie Sussman, *Stronger Together*, GEO. L., Spring/Summer 2020, at 50, 54.

[111] *See* Healton et al., *supra* note 85, at 1881; Vicki Girard, Yael Canon, Prashasti Bhatnagar & Susan Coleman, *How Medical-Legal Partnerships Help Address the Social Determinants of Mental Health*, 35 ARCHIVES PSYCHIATRIC NURSING 123, 125 (2021).

[112] *See* Cannon, *supra* note 14 at 78 (2023).

[113] *See id.*

[114] *See id.* at 82-83.

serving to prevent evictions,[115] which disproportionately impact Black women and cause tremendous harms to the health and mental health of families of color.[116]

Law and medical students also learn to engage in a "patients-to-policy" approach through which they identify gaps and problems with the law and advocate for systemic reform that advances racial justice. For example, after representing families whose children had been lead poisoned in rental homes with substandard housing conditions, law and medical students testified before the D.C. Council to advocate for legislation that would prevent lead exposure and provide more accountability for landlords to address a systemic problem that disproportionately affects Black children in Washington, D.C., with grave harms to their health and development.[117] Students also learn to build the power of clients and communities to drive and advance a health justice agenda by preparing their clients for legislative testimony and connecting them with grassroots organizations mobilizing to advocate for law and budget reforms that advance racial justice in a city where racial inequities abound.[118]

A-MLPs are uniquely positioned to promote racial justice by training future lawyers and health professionals to approach their work differently before their careers even start, while their professional identities, values, skills, and knowledge base are still in formation.

2. A-MLP Criminal Advocacy

Criminal legal advocacy provides a new frontier for the advancement of racial justice by MLPs—and for A-MLPs in particular. Georgetown University Law Center's criminal clinics seized on this opportunity during the COVID-19 pandemic by building on the work of Georgetown's Health Justice Alliance and joining that existing partnership in A-MLP collaboration to advance racial justice through criminal legal advocacy. Litigating the federal First Step Act's compassionate release provisions and the D.C. Compassionate Release statutes placed medical records of long-serving prisoners in the Bureau of Prisons into the hands of lawyers and judges outside prison walls.[119] Both statutes allow judges to revisit long prison sentences of

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115 *Id.* at 74.

116 Sabbeth & Steinberg, *supra* note 59 at 1147-48.

117 *See* Sussman, *supra* note 113, at 50, 60; Healton et al., *supra* note 85, at 1881; *Georgetown's Health Justice Alliance*, *supra* note 110.

118 *See* Yael Cannon, *Equipping the Next Generation of Health Justice Leaders*, HARV. L. SCH. PETRIE FLOM CTR. BLOG (Sept. 20, 2021), https://blog.petrieflom.law.harvard.edu/2021/09/20/health-justice-leaders/.

119 Ann E. Marimow, *Sick, Elderly Prisoners are at Risk for Covid-19. A new D.C. Law*

elderly and sick people who are still forced to live behind bars.[120] These statutes, and similar ones across the country, gave the legal community an opportunity to address the suffering of the vulnerable incarcerated community who have no choices with respect to their medical care or the food they eat.

Initially, much of the litigation of compassionate release motions was focused around removing older prisoners and those with medical conditions from crowded prisons so they might avoid contracting COVID-19.[121] Thousands of petitions were filed on behalf of people serving sentences in the BOP.[122] Over 4000 federal prisoners were released by judges under the federal First Step Act compassionate release provision.[123] Over 200 people have been released by the D.C. Superior Court under D.C.'s compassionate release statute.[124] Dozens of those released were represented by Georgetown's criminal clinics.[125]

Georgetown Law's criminal clinics' students and post-graduate fellows began filing compassionate release motions on behalf of District of Columbia residents serving sentences in the Bureau of Prisons in 2020. The law students and the clinical law faculty had no medical training and it quickly became apparent that high quality legal work on compassionate release cases required medical expertise, and a partnership between the criminal clinics and the medical school began.

Criminal clinic students at Georgetown started to participate in the relationship during the 2020-2021 school year and it has continued in the years since. It may be the first MLP within a law school criminal defense clinic. The relationship between the Health Justice Alliance, the criminal clinics and the medical school has underscored that

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Makes it Easier for them to Seek Early Release, WASH. POST (Dec. 30, 2020), https://www.washingtonpost.com/local/legal-issues/sick-elderly-inmates-coronavirus-release/2020/12/29/5342816c-3fcd-11eb-8db8-395dedaaa036_story.html; *see also,* Laetitia Haddad, *Law Students Win Compasionate Release for Clients Through GULC Clinics,* THE HOYA (Apr. 23, 2021), https://thehoya.com/law-students-win-compassionate-release-for-clients-through-gulc-clinics/.

120 18 U.S.C. § 3582 (c)(2) (2018)(Imposition of a Sentence of Imprisonment for Sentencing Relief); D.C. CODE § 24-403.04 (2021)(Motions for Compassionate Release for Individuals Convicted of Felony Offenses).

121 Benjamin A. Barsky, Sunny Y. Kung & Monik C. Jiminez, *Covid-19, Decarceration, and Bending the Arc of Justice- The Promise of Medical-Legal Partnerships*, HEALTH AFFS. BLOG (May 28, 2021), https://www.healthaffairs.org/content/forefront/covid-19-decarceration-and-bending-arc-justice-promise-medical-legal-partnerships.

122 U.S. SENT'G COMM'N, COMPASSIONATE RELEASE DATA REPORT 4 (2022).

123 *Id.* at Table 1.

124 Records on file with authors.

125 As of the writing of this paper, the Georgetown clinic students and E. Barrett Prettyman fellows have secured the release of more than 40 men. Records on file with authors.

MLPs can be fruitful across legal disciplines and impact client outcomes, including judicial decisions, in both civil and criminal cases, as well as student learning in ways that advance health and racial justice.

The partnership with medical faculty and students has shown the Georgetown Law criminal clinics and faculty that justice is not possible in any sphere, especially racial justice, without health justice. The collaboration has meant freedom for dozens of criminal clinic clients—elderly and sick men. Clients have been reunited with their families and communities before the end of their lives—something many of them thought would never happen. Clients have been connected with renal specialists, oncologists, and other specialists once they have been released into the community, often after decades of incarceration. Almost every single client was African American. Maybe most importantly, the Georgetown Law criminal clinics have had the opportunity to educate D.C.'s bench about the health impacts of prison, and have educated medical and law students—future leaders in medicine and law—alike.

Once a week, fourth-year medical students and a medical school professor meet with third year law students, fellows and faculty in the criminal clinic to review medical records provided by the Bureau of Prisons in connection with legal representation of clients on motions for compassionate release. These "case rounds" allow for education across disciplines, for law students to have the experience of working with experts outside of law, and for medical students to review medical records kept by a prison and see the impacts of prison on the human body. In a few instances, the medical school supervisor has even assumed temporary medical care for sick clients who get released from prison while an appropriate physician is identified.

The partnership also gives each medical student the opportunity to deliver a lecture (supervised and evaluated by a medical faculty partner) once a month on a relatively common health condition among our client population like—heart disease, hepatitis, kidney disease, eye disorders—that are uploaded to a medical library accessible to the law students and faculty. This has increased medical knowledge for everyone.

Many in the public health and medical communities have long known that a person's zip code is more important than their genetic code in determining health outcomes.[126] It is understood that the social determinants impact an individual's health in many ways. Factors

[126] Garth Graham, MaryLynn Ostrowski & Alyse Sabina, *Defeating the ZIP Code Health Paradigm: Data, Technology, and Collaboration Are Key*, HEALTH AFFS. BLOG (Aug. 6, 2015), https://www.healthaffairs.org/content/forefront/defeating-zip-code-health-paradigm-data-technology-and-collaboration-key.

like where a person lives, grows up, attends school, and whether they have experienced trauma can all impact a person's health. This is certainly true of prisons.

The medical school partners found expected health issues in almost all of the clients, which is unsurprising, since these incarcerated clients were asking for compassionate release. But medical partners also identified health issues that had not been identified by the prison medical staff. Students were able to help clients get more appropriate care even if they were not released from prison.

The fact that most of the compassionate release clients served by the Georgetown Law criminal clinics have been Black people is a reflection of the population of indigent D.C. residents in the Bureau of Prison serving long sentences and the existing racism in our legal system and other institutions. Therefore, the curriculum for the Georgetown law criminal clinic students includes the topic of race and/or racism in nearly every conversation–whether it is with respect to a racist algorithm used to identify kidney disease by the BOP (and many other medical providers),[127] explicit racial bias by police, prosecutors and judges, or in conversations about the Fourth Amendment. The curriculum and conversations in seminar deepen the learning that students receive in the field and through the collaboration.

Georgetown's medical-legal partnership so far has only served clients on requests for release from the federal Bureau of Prisons under the District of Columbia's compassionate release statute.[128] While this criminal MLP is focused on post-conviction release, MLPs in defender offices and law school criminal defense clinics can be used not only to get sick and elderly people out of prison, but to advocate for alternatives to pre-trial detention and incarceration, to address how all conditions of confinement harm health, and to help address substance abuse, psychiatric issues, head injuries, birth injuries, and pain management as well. They can also work interdisciplinarily towards systemic reform of the carceral system and the broader criminal legal system.

Hopefully, the emerging model of public defender MLPs and A-MLPs, such as the one at Georgetown University, will broaden the reach of these alliances across systems. As Georgetown criminal clinic law students who go on to public defender offices and other legal and

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[127] Rae Ellen Bichell & Cara Anthony, *For Black Kidney Patients, an Algorithm May Help Perpetuate Harmful Racial Disparities*, WASH. POST (June 6, 2021), https://www.washingtonpost.com/health/black-kidney-patients-racial-health-disparities/2021/06/04/7752b492-c3a7-11eb-9a8d-f95d7724967c_story.html.

[128] D.C. CODE § 24-403.04 (2021) (Motions for Compassionate Release for Individuals Convicted of Felony Offenses).

policy settings and the medical students graduate and become physicians, they can build on their MLP experience and work to advance health and racial justice in criminal and other legal spheres, helping individuals achieve justice and transforming health and legal systems and structures.

III. A-MLP Advancement of Racial Justice

Law school clinics engaged in A-MLP advocacy are uniquely situated to advance racial justice. Seminars, case rounds, experiential learning, and client cases offer opportunities to advance racial justice across criminal and civil legal spheres. Given the work that the authors have done developing companion A-MLPs at the same law school in both civil and criminal law school clinics, the collaboration has allowed for sharing inspiration drawn from our attempts to make these clinics springboards for racial justice. This Article argues that A-MLPs are well-positioned to advance racial justice not only through civil legal advocacy, but through criminal legal advocacy as well. This section examines specific approaches that A-MLPs should adopt in order to promote racial justice across civil and criminal legal advocacy.

A. Naming and Centering Racial Justice and Anti-Racist Advocacy

A-MLPs across the civil and criminal spheres should begin their racial justice work by explicitly naming and framing their racial justice missions and centering anti-racism in their work.[129] A-MLP scholar and law clinic professor Medha Makhlouf has argued that a focus on structural racism has been traditionally absent from the MLP movement, with poverty instead most commonly serving as the focal point.[130] The poverty focus results from longstanding perspectives of legal services and healthcare, and has the potential to reinforce structural inequality.[131] With a singular focus on poverty, MLPs risk overlooking the structural racism in our institutions that underlies disparities in health.[132] Given that racial disparities in health, housing, education, and the criminal legal system persist even when controlling for socioeconomic status,[133] a poverty orientation is inadequate to

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[129] Medha Makhlouf, *Addressing Racism through Medical-Legal Partnerships*, Harv. L. Sch. Petrie-Flom Ctr. Blog (September 24, 2020), https://blog.petrieflom.law.harvard.edu/2020/09/24/addressing-racism-medical-legal-partnerships/.

[130] Medha D. Makhlouf, *Towards Racial Justice: The Role of Medical-Legal Partnerships*, 50 J. L. Med. & Ethics 117, 119 (2022); Girard et al., *supra* note 106, at 12.

[131] *See* Makhlouf, *supra* note 130, at 119.

[132] *See* Makhlouf, *supra* note 130, at 121.

[133] *See* Dina Shek, *Centering Race at the Medical-Legal Partnership in Hawai'i*, 10 U. Mia. Race & Soc. Just. L. Rev. 109, 114 (2019); Makhlouf, *supra* note 130 at 118 ("Sys-

provide the foundation needed for MLP advocacy in pursuit of health justice. In a society where many are in denial of both the existence and ubiquity of racism, naming it is particularly critical.[134]

Similarly, A-MLP scholar and law clinic professor Dina Shek has argued that MLPs must work explicitly to combat structural racism so that they do not unintentionally "uphold and legitimize the structures that maintain institutional racism."[135] Failing to specifically recognize racism also undermines the goal of MLPs to affect transformational change—and risks creating regular clients as opposed to building the power of clients as self-advocates.[136] An intersectional approach centering structural racism, rather than limiting the scope to poverty can ensure that MLPs are not creating returning clients, but rather increasing collective power and dismantling racial injustice perpetuated by legal and medical systems.[137]

Naming and framing the work of MLPs through the lens of racial justice is also important because racial health inequity is a "wicked problem," or a problem that is interdisciplinary, deep-rooted, chronic, and unremitting, with multiple sources.[138] Wicked problems require attention to the structures at their root that contribute to their longevity.[139]

Such an approach requires going beyond traditional framing of criminal defense or civil legal advocacy work and naming and framing racial justice as a core value and goal of A-MLP work. An explicit anti-racist focus and acknowledgement of structural racism can deepen interprofessional student learning about health equity and health justice.[140] For example, A-MLP faculty at Loyola Law School recently introduced a new interprofessional course for law, medical,

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temic health differences by race and ethnicity in the United States are the fruits of structural racism. . .."); DAYNA BOWEN MATTHEW, CTR. FOR HEALTH POL'Y AT BROOKINGS, THE LAW AS HEALER: HOW PAYING FOR MEDICAL-LEGAL PARTNERSHIPS SAVES LIVES AND MONEY 20-24 (2017).

134 *See* Catherine Siyue Chen, Fernando P. Cosio, Deja Ostrowski & Dina Shek, *Developing a Pedagogy of Community Partnership Amidst COVID-19: Medical-Legal Partnership for Children in Hawai'i*, 28 CLINICAL L. REV. 107, 119 (2021).

135 Shek, *supra* note 133, at 112-13; Makhlouf, *supra* note 130, at 120–21.

136 *See* Shek, *supra* note 133, at 124-25.

137 *See, e.g.*, Makhlouf, *supra* note 130, at 120; Emily Benfer, James Bhandary-Alexander, Yael Cannon, Medha Makhlouf & Tomar Pierson-Brown, *Setting the Health Justice Agenda: Addressing Health Inequity & Injustice in the Post-pandemic Clinic*, 28 CLIN. L. REV. 45, 80-82 (2021).

138 *See* Benfer et al., *supra* note 137, at 80-82 (citing Horst W. J. Rittel & Melvin M. Webber, *Dilemmas in a General Theory of Planning*, 4 POL'Y SCIENCES 155, 160-167 (1973)).

139 *See* Benfer et al., *supra* note 137, at 51-52 (citing Horst W. J. Rittel & Melvin M. Webber, *Dilemmas in a General Theory of Planning*, 4 POL'Y SCIENCES 155, 160-167 (1973)).

140 *See* Makhlouf*, supra* note 130 at 121; *See* Girard et al., *supra* note 106, at 12.

and public health students called "Health Justice Lab: Race and Health Equity," in which students study the role of racism in medicine, public health, and law through discussions, case studies, community outreach, and advocacy work.[141]

Shek also argues that MLPs should not only name institutional racism but work to understand its local mechanisms and act to dismantle it.[142] For both criminal and civil A-MLPs, racial justice should be a stated and prevalent value guiding their work and teaching goals.[143]

B. Educating Future Lawyers, Doctors and Other Health Professionals Interprofessionally Through Antiracist Pedagogy

A-MLP law clinics should serve as a vehicle for the advancement of health and racial justice by helping future lawyers and health professionals to make the connections between these forms of justice. Students learn to identify "racism in order to address racial disparities in health and in other aspects of life which impact on health," such as education, employment, economic and housing insecurity, and incarceration.[144] They work interdisciplinarily to "understand the local mechanisms and impacts of racism," including asking the question "how is it operating here?"[145] Students consider the "messy social realities" of their clients, centering their voices and ideas, and consider how subordinated racial groups experience justice efforts.[146] This work includes investigating the role of racism in the social and structural components of health, as well as the ways in which racism itself harms health, both of which are critical components of understanding and addressing health injustice.[147]

A-MLPs should apply a health justice framework that centers racial justice interventions across their teaching and service work in both criminal and civil legal collaborations.[148] A-MLPs can aim to educate students on inequitable power formations (such as the carceral and eviction systems) and the health impacts of intersectional discrim-

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141 L. Kate Mitchell, Maya K. Watson, Abigail Silva & Jessica L. Simpson, *An Interprofessional Antiracist Curriculum Is Paramount to Addressing Racial Health Inequities*, 50 J.L. MED. & ETHICS 109, 112-13 (2022).

142 *See* Shek, *supra* note 133, at 131.

143 Cannon, *supra* note 118.

144 Shek, *supra* note 133, at 131 (citing Camara Phyllis Jones, *Confronting Institutionalized Racism*, PHYLON 7, 18-20 (2003))

145 *Id.*

146 *Id.* at 125-26 (citing Eric Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 828 (1997)).

147 Makhlouf, *supra* note 129; Benfer et al., *supra* note 137, at 77.

148 Benfer et al., *supra* note 137, at 77.

ination across both criminal and civil legal systems.[149] They can help students surface the inadequacy of the law on the books from their practice experience, the ways they can approach their work from a racial justice perspective, and the need for non-reformist reforms and abolition work to dismantle systems that cause racialized violence.[150]

Such interprofessional learning must involve exploring the role of structural racism in law and healthcare—the very professions and disciplines of A-MLP learners—as a root cause of health inequities, along with broader examination of the ways criminal and civil legal systems drive racial health disparities. In the classroom and in the field, interprofessional collaboration promotes not only cultural humility, but also "structural competency," to ensure that professionals across disciplines understand "governmental policies, residential patterns, and environmental inputs [and criminal justice system harms] outside the clinical setting that impact health," which can expand the impact of lawyers and medical providers on population health.[151]

By integrating anti-racist pedagogy into interprofessional collaboration, A-MLP learners can strengthen their understanding of racial health injustice, better reflect on their own roles in maintaining racial subordination, and work with others in their careers to address and prevent the health harms of systemic racism.[152] The interprofessional environment also encourages students to collaborate, learn, teach, and exercise new skills.[153]

This type of curricular focus also advances the goal of the American Bar Association (ABA) that every law student be educated "on bias, cross-cultural competency, and racism" at least twice, which is now required of law school curricula per ABA Standard 303.[154] For

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149 Makhlouf, *supra* note 129; Amna Akbar, *Demands For a Democratic Political Economy*, 134 HARV. L. REV. 90, 97 (2020) ("Organizers are increasingly using the heuristic of non-reformist reforms to conjure the possibility of advancing reforms that facilitate transformational change."); Amna Akbar, *Teaching Penal Abolition*, L. & POL. ECON. BLOG (July 15, 2019), https://lpeproject.org/blog/teaching-abolition/.

150 Makhlouf, *supra* note 129; Amna Akbar, *Demands For a Democratic Political Economy*, 134 HARV. L. REV. 90, 97 (2020) ("Organizers are increasingly using the heuristic of non-reformist reforms to conjure the possibility of advancing reforms that facilitate transformational change.") Amna Akbar, *Teaching Penal Abolition*, L. & POL. ECON. BLOG (July 15, 2019), https://lpeproject.org/blog/teaching-abolition/.

151 Peter S. Cahn, *How Interprofessional Collaborative Practice Can Help Dismantle Systemic Racism*, 34 J. INTERPROFESSIONAL CARE 431, 433 (2020); *see* Jonathan M. Metzl & Helena Hansen, *Structural Competency: Theorizing a New Medical Engagement With Stigma and Inequality,* 103 SOC. SCI. & MED. 126, 129-30 (2014).

152 Cahn, *supra* note 151, at 433.

153 *See* Girard et al., *supra* note 106, at 7.

154 STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. § 303(c) (AM. BAR ASS'N 2022) (stating that law students should be educated on these topics at the beginning

example, the curriculum of Boston University School of Law's Health Justice Practicum contributes to this requirement, with the student cohort engaging in individual reflections and project rounds that center the role of structural racism.[155] In turn, the students view their patient/clients more holistically.[156]

In cultivating interprofessional *experiential* education in particular, both medical and legal students gain not only knowledge, but actual experience, vocabulary, and skills in addressing racism and its detrimental impacts in healthcare and legal systems.[157] Law students learn to collaborate, as well as how to work with an expert. The medical students learn not to blindly trust other doctors and to be inquisitive about the origin of health issues in their patients. The experience of working with court-involved clients and clients with health-harming civil legal needs will benefit them in their medical careers, as they will have a better understanding of the role of structural racism in driving health inequities and draw on their experience as physician advocates within a law clinic setting. Medical students come to understand the importance of legal interventions, not just medical ones. A-MLPs provide unique opportunities for students to not just learn about these important contexts, but to put this knowledge into practice early in their careers.[158]

Early exposure to these issues gives aspiring attorneys and health professionals the tools and skills to identify and address systemic causes of racial health disparities in their future work.[159] Future doctors and other health professionals can grow more confident in their own abilities to advocate for their patients through a racial justice lens, even without legal help, and can learn to identify when a lawyer is critical to advancing their patients' needs.[160]

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of their legal education and at least one additional time before graduation); *see also* Danielle Pelfrey Duryea, Peggy Maisel & Kelley Saia, *Un-Erasing Race in a Medical-Legal Partnership: Antiracist Health Justice Advocacy By Design,* 70 WASH. U. J.L. & POL'Y 97, 117 n.67 (2023).

155 Duryea et al., *supra* note 154, at 110-11.

156 *Id.* at 110-11(noting that student-advocate teams included Black-led community organizations and Black elected officials, even if not focused on health issues, in a stakeholder and power map and that other teams proposed a requirement for licensed mandated reporters and family regulation agency staff to take classes to combat implicit bias).

157 *See* Girard et al., *supra* note 106, at 8.

158 *See* L. Kate Mitchell, L. Kate Mitchell, Maya K. Watson, Abigail Silva & Jessica L. Simpson, *An Interprofessional Antiracist Curriculum Is Paramount to Addressing Racial Health Inequities*, 50 J.L. MED. & ETHICS 109, 112-13 (2022).

159 Makhlouf, *supra* note 129.

160 *See* Dina M. Shek & Alicia G. Turlington, *Building a Patient-Centered Medical-Legal Home in Hawaii's Kalihi Valley*, 78 HAW. J. MED. & PUB. HEALTH 55, 56 (2019).

C. Grounding A-MLP Work in CRT and Other Critical Legal Studies

A-MLPs should also develop racial justice strategies across their pedagogy and advocacy based on principles of critical race theory (CRT).[161] Makhlouf argues for incorporation of a CRT framework in MLPs to educate legal and medical professionals about structural racism and its effects, intersectional discrimination, and the insufficiency of our laws in addressing racial health inequity, as well as to facilitate interdisciplinary collaboration and education.[162] Using CRT frameworks in A-MLP teaching can also help pre-professional students understand these concepts, as well as implicit biases in the legal and health professions they are entering.[163]

Myriad approaches from CRT can be used by A-MLPs to advance health and racial justice. Some of the CRT approaches for which health justice and public health scholars have advocated include counternarratives, centering the voices and stories of people traditionally relegated to the margins, practicing race consciousness, understanding intersectionality, and praxis.[164]

Counternarratives are stories which "disrupt. . .complacency and engage the conscience" thereby "help[ing] policymakers understand why the status quo is unacceptable and what impactful reform would entail."[165] A-MLPs can help students learn storytelling skills and thus deploy counternarratives in their advocacy, such as sharing stories with judges and policymakers that serve to disrupt dominant narratives, including individualistic narratives that blame people of color for the health inequities they experience. Centering in the margins similarly involves approaches that A-MLPs can use in their teaching and curricular choices, and advocacy both in individual civil and criminal cases and for policy change, "ensur[ing] that the perspectives of historically and currently marginalized groups are 'the central axis around which discourse . . . evolves.'"[166]

Race conscious approaches require exploring racialized social contexts, identifying salient aspects of contemporary racism and

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161 Benfer et al., *supra* note 137, at 77.

162 *See* Makhlouf, *supra* note 129.

163 *See* Girard et al., *supra* note 106, at 12.

164 Benfer et al., *supra* note 137, at 77; Girard et al., *supra* note 106, at 12.; *see also* Dina Shek, supra note 133, at 126 (citing Eric Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 830 (1997)); Chandra L. Ford & Collins O. Airhihenbuwa, *Critical Race Theory, Race Equity, and Public Health: Toward Antiracism Praxis*, 100 AM. J. PUB. HEALTH S30, S31-34 (2010).

165 Cannon & Tuchinda, *supra* note 49 at 778 (citing Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2438, 2415 (1989)).

166 *Id.* at 779.

racialized power imbalances, and fighting against the notion of a colorblind society.[167] For example, in seminar in the criminal clinic, offering a class about how the racism and poverty clients have endured can cause trauma responses is an approach that embodies the CRT principle of intersectionality. Exploring intersectionality in this context helps future lawyers and physicians understand that a "person may experience multiple marginalizations. . .and the distinct experiences of a multiply marginalized person, including their health, cannot be fully understood and addressed by looking at and treating each form of marginalization separately."[168]

CRT approaches also include the centering by A-MLPs of the role of racism across both civil and criminal legal systems and active work by A-MLPs to keep patients, including those with intersectional identities, out of systems that inflict racialized harm (such as the criminal justice system, eviction courts, the school-to-prison pipeline and family regulation system), to reduce the racialized harm that those systems exact, and to dismantle those systems.[169] For example, a recent proposal for Boston University A-MLP to support patients of a Massachusetts health center providing substance abuse treatment to pregnant individuals emphasizes the need for an anti-racist design reflecting CRT principles like race consciousness and intersectionality.[170] The interdisciplinary seminar curriculum centers "anti-Black racism and misogyny in the family regulation, drug policy, health care, and related systems, and offered a health justice frame for the students' work."[171] It also proposes comprehensive legislative and policy proposals that "drew more expansive connections among forms of racism, misogyny, and stigma."[172]

A-MLPs should also deploy the CRT principle of praxis, which is "the iterative process of deploying knowledge derived through study and experience to take direct action"[173] that requires "tak[ing] account of how subordinated racial groups experience justice efforts"[174]

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[167] Chandra L. Ford & Collins O. Airhihenbuwa, *Critical Race Theory, Race Equity, and Public Health: Toward Antiracism Praxis*, 100 Am. J. Pub. Health S30, S31 (2010).

[168] Cannon & Tuchinda, *supra* note 49 at 778 (citing Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 Stan. L. Rev. 1241 (1991)).

[169] Cannon, *supra* note 14 at 83 (2023) (citing Colleen F. Shanahan, Jessica K. Steinberg, Alyx Mark & Anna E. Carpenter, *The Institutional Mismatch of State Civil Courts*, 122 Colum. L. Rev. 1471, 1475-76 (2022)).

[170] Duryea et al., *supra* note 154, at 98.

[171] *Id.* at 109.

[172] *Id.* at 111.

[173] *See* Benfer et al., *supra* note 137, at 77 (citing Chandra L. Ford & Collins O. Airhihenbuwa, *Critical Race Theory, Race Equity, and Public Health: Toward Antiracism Praxis*, 100 Am. J. Pub. Health S31, tbl. 1 (2010)).

[174] *See* Shek, *supra* note 133, at 126 (citing Eric Yamamoto, *Critical Race Praxis: Race*

and listening and acknowledging the experiences of members of marginalized groups.[175] For example, MLP Hawai'i seeks out and listens to the "race stories" of their clients, attends community meetings to understand the needs and goals of community members, and contributes to grassroots efforts.[176]

D. Patients-to-Policy Advocacy

As described above, advocacy by A-MLPs in pursuit of health and racial justice includes enforcing and implementing existing laws that often go under-enforced or under-implemented for people from minoritized and marginalized communities, such as housing codes that require that tenants are provided with humane and habitable conditions and compassionate release statutes, resulting in health-harming legal needs and health inequities.[177] A-MLP advocacy can also advance racial justice by identifying patterns and gaps in extant laws and locating opportunities to reform law and policy, which is known as a "patients-to-policy" approach.[178] Students can work towards the dismantling of structural racism by listening to patient-clients to identify harmful policies and practices and then supporting and collaborating with community-led efforts to push for policy change.[179] This frame was used by the Health Justice Alliance Law Clinic in the aforementioned advocacy by law students, medical students, physicians, and clients to amend laws to promote prevention of lead exposure among children, which disproportionately affects Black children.[180]

Students gain a lot from learning about and engaging in systemic advocacy with racial justice aims. For example, recognizing that laws and policies are often at the root of disproportionate harm inflicted on communities of color, medical students are increasingly embracing advocacy at the local and national levels and looking to their academic institutions to provide the training they need to be effective advo-

Theory and Political Lawyering Practice in Post-Civil Rights America, 95 MICH. L. REV. 821, 881 (1997)).

175 *Id.* at 126 (citing Eric Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America*, 95 MICH. L. REV. 821, 830 (1997)).

176 *Id.* at 127.

177 *See generally* Cannon, *supra* note 19 (2020).

178 *See* Shek, *supra* note 133, at 111-12; Makhlouf, *supra* note 130, at 119; Cannon, *supra* note 118 (2021).

179 *See* Shek, *supra* note 133, at 111-27; Cannon, *supra* note 14 (2023), at 79 (citing *Story Series Features Teams that Took SDOH Problem-Solving from Patients-to-Policy*, NAT'L CTR. FOR MED.-LEGAL P'SHIP (May 2, 2018), https://perma.cc/VE4F-RXHF.).

180 Deniz Yeter et al., *Disparity in Risk Factor Severity for Early Childhood Blood Lead among Predominantly African-American Black Children*: *The 1999 to 2010 US NHANES*, 17(5) INT. J. ENV'T. RSCH. PUB. HEALTH 1 (2020).

cates.[181] A-MLPs can play a role in providing this type of training and opportunities for activism in pursuit of racial justice.

E. Building Client and Community Power

A-MLPs should advance racial justice by building the power of the clients at the center of their work in order to avoid maintaining the destructive systems which necessitated the involvement of the A-MLP.[182] Medical-legal teams can give clients health education and the legal knowledge and tools necessary for clients to assert their own rights in the future when they encounter criminal and civil systems, such as during police encounters or landlord-tenant disputes.[183] Helping equip clients with tools for future problem-solving and self-advocacy can promote legal consciousness and build power in ways that advance racial justice.[184] These efforts provide valuable experience to students that can change the way they practice and provide tangible benefits to clients.[185]

MLPs increasingly work to build the collective power of affected communities by collaborating with clients and grassroots organizations to serve as resource allies and ensure that affected individuals drive health justice agendas.[186] For example, the HJA Law Clinic team prepared a client to testify and tell her story of the lead poisoning experienced by her children in order to advocate for systemic justice.[187] This approach has been "prioritized by the Health Justice Alliance Law Clinic to elevate clients' power in pursuit of transformative change"[188] by giving them opportunities to share their stories and ideas for reforms directly with policymakers and opportunities to get involved with grassroots organizations working towards racial justice. Similarly, Boston University School of Law's Health Justice Practicum partners with Black-led organizations to engage in stakeholder and power mapping and to design broader policy solutions and goals to

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[181] *See* Student Nat'l Med. Ass'n., Racism is a Public Health Issue 19 (2020), https://cdn.ymaws.com/snma.org/resource/resmgr/hlpa/report_racism.pdf.

[182] *See* Shek, *supra* note 133, at 122; Benfer et al., *supra* note 137, at 73.

[183] *See* Shek, *supra* note 133, at 122; Benfer et al., *supra* note 137, at 73.

[184] *See* Catherine Siyue Chen et al., *supra* note 134, at 117; Shek, *supra* note 133, at 127; Dina M. Shek & Alicia G. Turlington, *Building a Patient-Centered Medical-Legal Home in Hawaii's Kalihi Valley*, 78 Haw. J. Med. Pub. Health 55, 57-58 (2019); *see also* Cannon, *supra* note 14 (2023), at 78.

[185] *See* Girard et al., *supra* note 106, at 8; Cannon, *supra* note 118 (2021) (describing multiple forms of successful advocacy conducted by students at the Health Justice Alliance Clinic); Benfer et al., *supra* note 137, at 63.

[186] Cannon, *supra* note 14 (2023), at 80.

[187] Cannon, *supra* note 118 (2021).

[188] Cannon, *supra* note 14 (2023), at 79.

advance health justice.[189]

F. Cross-System Advocacy

For years, the legal and medical professions and the academy have siloed criminal and civil legal systems from one another, with A-MLPs primarily focused on civil systems. But the reality is that many of the people ensnared in one legal system will be ensnared in the other.[190] Individuals in both systems suffer from ill-health long blamed on independent choices rather than the structural inequities forced upon them. Many of these systems are deeply racially unjust. In light of the country's history of enslavement, Jim Crow, and other instances of legalized subjugation that have been propped up by our legal systems, preparing future lawyers and doctors to address these injustices with every available tool is imperative for the legal profession.

Though the legal field views the civil and criminal systems to be distinct,[191] the many people of color embroiled in these two systems and cycles know based on their own experiences that these systems have fluid boundaries.[192] Access to justice legal scholar Lauren Sudeall argues that the siloed approach suffers from practical problems, as it does not recognize the lived experiences of the many individuals in both systems.[193] And people of color are disproportionately represented across both systems. The same people (or their family members, friends, or neighbors) might be clients of a criminal defense law clinic or a public defender's office *and* a law school civil advocacy clinic or civil legal aid organization. Structural racism and its resulting impoverishment of people of color have ensured that these are the same people, just in different courtrooms.

The distinction between civil and criminal legal systems fails to acknowledge the interaction between the two systems and how legal issues arise in people's lives,[194] and the extent to which health, mental

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189 Duryea et al., *supra* note 154, at 110-11 (noting that student-advocate teams included Black-led community organizations and Black elected officials, even if not focused on health issues, in a stakeholder and power map and that other teams proposed a requirement for licensed mandated reporters and family regulation agency staff to take classes combating implicit bias).

190 *See generally* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (The New Press 2010).

191 *See* Lauren Sudeall, *Rethinking the Civil-Criminal Distinction*, *in* TRANSFORMING CRIMINAL JUSTICE: AN EVIDENCE-BASED AGENDA FOR REFORM 268, 268 (NYU Press 2022).

192 *See* Lauren Sudeall, *Integrating the Access to Justice Movement*, 87 FORDHAM L. REV. 172, 174 (2019); Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1289 (2016); *see also* Sudeall, *supra* note 191 (2022), at 275.

193 *See* Sudeall, *supra* note 191 (2022), at 270.

194 *See Id*.

health, and well-being are harmed by inter-connected entanglement across systems. For example, participation in the civil justice system can lead to incarceration and its resulting health harms when a parent fails to pay court-ordered child support.[195] Or an individual may experience homelessness after being evicted, an outcome disproportionately wrought on women of color, who experience the highest rates of evictions.[196] While the person may have been evicted through civil court proceedings, they might be prosecuted for trespassing into a warm place to sleep or panhandling for money to buy food.[197] The person's eviction, homelessness, food insecurity, and criminalization all have grave consequences for their health and for people of color, all of these circumstances drive health inequities.

On the other side, for example, involvement in the criminal legal system can lead to civil penalties like deportation or eviction from public housing.[198] Yet, even the penalties themselves are not neatly separate to those facing them; while a court might find a penalty to be civil and non-punitive, many defendants may experience that penalty as deeply punitive and harmful, such as a deportation or the loss of custody that can occur when a parent is incarcerated.[199] Deportation can result in significant stress, trauma, and poor health and mental health for people and their family members,[200] as can parental incarceration.[201]

And of course a single matter might lead to both civil and criminal cases with health and racial justice implications. For example, a survivor or a person accused of domestic violence may be involved in civil and criminal matters resulting from the same instance of violence;

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195 *See* Colleen F. Shanahan, Jessica K. Steinberg, Alyx Mark & Anna E. Carpenter, *The Institutional Mismatch of State Civil Courts*, 122 COLUM. L. REV. 1471, 1475 (2022); *see also* Elizabeth D. Katz, *Criminal Law in a Civil Guise: The Evolution of Family Courts and Support Laws*, 86 U. CHI. L. REV. 1241, 1252 (2019) ("[A] substantial component of family law has long been criminal law.").

196 *See* Kathryn A. Sabbeth, *Housing Defense as the New* Gideon, 41 HARV. J.L. & GENDER 55, 67 (2018) (citing MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY 98 (2016)); Tonya L. Brito et al., *Racial Capitalism in the Civil Courts*, 122 COLUM. L. REV. 1243, 1246 (2022).

197 *See* Sabbeth, supra note 196, at 67.

198 *See* Sudeall, *supra* note 191 (2022), at 270 ; Lauren Sudeall, supra note 192 (2019), at 174; Kathryn A. Sabbeth, *The Prioritization of Criminal Over Civil Counsel and the Discounted Danger of Private Power*, 42 FLA. STATE U. L. REV. 889, 913 (2015).

199 *See* Sudeall, *supra* note 191 (2022), at 271-72.

200 *See* Samantha Aritga & Barbara Lyons, *Family Consequences of Detention/Deportation: Effects on Finances, Health, and Well-Being*, KAISER FAMILY FOUNDATION (Sept. 18, 2018) https://www.kff.org/racial-equity-and-health-policy/issue-brief/family-consequences-of-detention-deportation-effects-on-finances-health-and-well-being/.

201 *See* Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, NAT'L INST. OF JUST. (March 1, 2017), https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children.

these matters could include a criminal case for battery, a civil protective order, a civil case for custody, and more, entangling people in systems where people of color are over-represented, with health consequences.[202]

To address the issue of strictly distinct systems, Sudeall suggests early engagement with law students, where they might learn to examine clients and their problems holistically.[203] A-MLPs provide an important vehicle for this type of education and have the added benefit of training students and providers from health professions to also think holistically about the needs of clients. Future lawyers and health professionals can work across civil and legal systems through integrated advocacy to advance racial justice.

Conclusion

The Academic Medical-Legal Partnership model provides an important opportunity to advance racial justice because it reaches attorneys, physicians, and other health professionals at formative stages of their careers. Before they have fully developed professional identities, habits, skills, values, and knowledge, they can learn to identify and critically examine the civil and criminal injustices and connected health inequities that result from structural racism—and have the tools and experience to address them. They can learn how and why both evictions and incarceration, for example, disproportionately impact Black people and other people of color, to the detriment of their health and well-being, and can learn how to collaborate to prevent and disrupt those individual outcomes, as well as reform the systems that create such disparities.

Both law and health professions students learn to see clients/patients as people, not cases or medical diagnoses, which is equally important for individuals experiencing civil and criminal legal needs. Students learn to think about how various legal needs are intertwined both across systems and with health, social service, and other needs. This type of client-centered and structural thinking in collaborative problem identification, analysis, and advocacy can serve to advance racial justice, as the needs of clients/patients across civil and criminal legal systems both implicate structural determinants of health and health inequities driven by structural racism that require intentionally antiracist approaches. Interprofessional experiential education through both civil and criminal A-MLPs can prepare future lawyers, physicians, and other health professionals to advance racial and health

[202] Sudeall, *supra* note 191 (2022), at 273.
[203] *See Id.* at 286-87.

justice throughout their careers.

ENVISIONING REPARATIVE LEGAL PEDAGOGIES

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As numerous reports, student movements, and forms of scholarship-activism have noted, the traditional U.S. law school classroom remains a space of hierarchy, privilege, and unnamed systems of power. Particularly for students holding historically marginalized and minoritized identities, legal education remains both a remnant of and conduit for harmful pedagogies. In recognition of these realities and of those that bring me to legal academia, I believe that my task as an early-career educator is one of advancing repair in/from the profession I now join. By looking to liberatory pedagogies from both the clinical legal context and beyond, this Essay repositions all U.S. legal educators as inheritors to two dissonant lineages: centuries of educational harm and genealogies of pedagogical dreaming. In rejecting the historically harmful pedagogies that are normatively embedded in legal education, this piece implores U.S. legal educators to fulfill our shared duty of pedagogical care by developing collective visions of instruction that are grounded in aims of truth and healing, or reparative legal pedagogies.

INTRODUCTION

"The way to right wrongs is to turn the light of truth upon them."[1]
–Ida B. Wells

In February of 2021, U.S. Congressmembers Barbara Lee and Cory Booker introduced a concurrent resolution, *Urging the establishment of a United States Commission on Truth, Racial Healing, and*

* Project Lead, Innovation 4 Justice Lab, University of Arizona James E. Rogers College of Law and University of Utah David Eccles School of Business. They/them/elle pronouns. Antonio is an interdisciplinary educator, legal storyteller, and cross-jurisdictional advocate committed to the liberatory work of realizing community-led justice. As a classroom facilitator, they are dedicated to pedagogical practices of dreaming, disrupting, and radical reflection. This Essay is part of the *Promoting Justice: Advancing Racial Equity Through Student Practice in Legal Clinics Symposium* at Georgetown University Law Center. Immense gratitude to the attendees and my co-panelists at the Law and Society Association 2023 Annual Meeting. Your comments affirmed the urgency and necessity of healing in this dangerous, meticulous work of pedagogy- and world-rebuilding. Special thanks to Amna Akbar, Cayley Balser, Deborah Epstein, Nikola Nable-Juris, and Swethaa Ballakrishnen for your insights on earlier drafts of this piece.

[1] Ida B. Wells, *Miss Ida B. Wells, A Lecture, in* WASHINGTON BEE (Oct. 22, 1982) at 1; *see* IDA B. WELLS, THE LIGHT OF TRUTH: WRITINGS OF AN ANTI-LYNCHING CRUSADER (Mia Bay & Henry Louis Gates eds., Penguin Classics 2014).

Transformation.[2] Citing the forty countries that have sought to reckon with "historical injustice and its aftermath" through truth and reconciliation commissions, the resolution aligned with the four-hundredth anniversary of the first ships that trafficked enslaved Africans to the U.S.[3] Their measure drew a direct line from the enforcement of racially discriminatory federal and local policies to the embedded racial hierarchy that continues to haunt the country.[4] Of note, the resolution never made it out of its respective committees in the U.S. House and Senate.[5]

I start with this congressional (in)action because of its clarity in situating intersecting, centuries-long harm: the U.S., as a settler-colonial nation,[6] has continually failed "to properly acknowledge, memorialize, and be a catalyst for progress, including toward permanently eliminating persistent racial inequities."[7] As both the congressional resolution and preceding movements for Black liberation[8] and Indige-

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[2] H.R.J. Res. 19, 117th Cong. (2021).

[3] S.J. Res. 6, 117th Cong. (2021) ("This concurrent resolution (1) affirms, on the 400th anniversary of the arrival of the first slave ship, that the nation owes a debt of remembrance not only to those who lived through the injustices of slavery but also to their descendants; and (2) urges the establishment of a U.S. Commission on Truth, Racial Healing, and Transformation to properly acknowledge, memorialize, and be a catalyst for progress, including toward permanently eliminating persistent racial inequities."); *see also The 1619 Project*, N.Y. TIMES ("In August of 1619, a ship appeared on this horizon, near Point Comfort, a coastal port in the English colony of Virginia. It carried more than 20 enslaved Africans, who were sold to the colonists. No aspect of the country that would be formed here has been untouched by the years of slavery that followed. On the 400th anniversary of this fateful moment, it is finally time to tell our story truthfully").

[4] H.R.J. Res. 19.

[5] H.R.J. Res. 19; S.J. Res. 6.

[6] Here, I am intentional to use the language of "settler-colonial nation" to name the ways that imperial violence serves as the base of U.S. legal structures and to insist that we recognize settler colonialism, as Evelyn Nakano Glenn writes, "as an ongoing structure rather than a past historical event." Evelyn Nakano Glenn, *Settler Colonialism as Structure: A Framework for Comparative Studies of U.S. Race and Gender Formation*, 1 SOC. RACE ETHNICITY 54, 54 (2015). This piece joins numerous liberatory writers in acknowledging the reality of settler colonialism by historically grounding our writing and analyses. *See, e.g.*, Angelique Townsend EagleWoman, *The Ongoing Traumatic Experience of Genocide for American Indians and Alaska Natives in the United States: The Call to Recognize Full Human Rights as Set Forth in the UN Declaration on the Rights of Indigenous Peoples*, 3 AM. INDIAN L.J. 424 (2015); Roxanne Dunbar-Ortiz, *The United States Is Not "a Nation of Immigrants,"* BOS. REV. (Aug. 16, 2021), https://www.bostonreview.net/articles/the-united-states-is-not-a-nation-of-immigrants/.

[7] H.R.J. Res. 19; S.J. Res. 6.

[8] *See, e.g.*, The Black Panther Party for Self-Defense, *Ten Point Program*, 1 BLACK PANTHER 3 (1967), http://post-what.com/1967/05/hueys-re-mix-1967-the-first-appearance/ ("We believe that this racist government has robbed us, and now we are demanding the overdue debt of forty acres and two mules. Forty acres and two mules were promised 100 years ago as restitution for slave labor and mass murder of Black people. We will accept the payment in currency which will be distributed to our many communities").

nous sovereignty[9] have identified, truth and reconciliation are needed from this country. But, as history readily reveals, setting the record straight on the history of this nation-state has been continually met with white supremacist, reactionary violence.[10] In fact, it is our continued national devotion to historical revisionism—not unlike fake news[11] or alternative facts[12]—that limits our capacity to teach recorded and lived truths of legal violence in the U.S.

This pattern of educational violence figures most poignantly in the so-called "culture wars" that currently rage across U.S. classrooms.[13] According to the UCLA's *CRT Forward Tracking Project*, a whopping 699 anti-Critical Race Theory bills have been advanced by 214 local, state, and federal entities since September of 2020.[14] Similarly, PEN American, "a U.S.-based nonprofit . . . dedicated to free expression through literature," reports that 1,145 books were banned

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[9] *See, e.g.*, *Truth and Healing Commission on Indian Boarding School Policies Act*, National Native American Boarding School Healing Coalition, https://boardingschoolhealing.org/truthcommission/ (last visited June 12, 2023); *Healing U.S. Divides Through Truth and Reconciliation Commissions*, NPR (Oct. 11, 2020, 4:57PM), https://www.npr.org/2020/10/11/922849505/healing-u-s-divides-through-truth-and-reconciliation-commissions.

[10] *See, e.g.*, Kimberle Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 Harv. L. Rev. 1331 (1988); Vivian E. Hamilton, *Reform, Retrench, Repeat: The Campaign against Critical Race Theory, through the Lens of Critical Race Theory*, 28 Wm. & Mary J. Race Gender & Soc. Just. 61 (2021). Here, I am intentional to name the intersecting and self-reinforcing sub-structures of white supremacy as a paradigm of violence, including racism, classism, heterosexism and transphobia, ableism, anti-Semitism, and xenophobia.

[11] William Cummings, *'Alternative Facts' to 'Witch Hunt': A Glossary of Trump Terms*, USA Today (Jan. 17, 2018), https://www.usatoday.com/story/news/politics/onpolitics/2018/01/16/alternative-facts-witch-hunt-glossary-trump-terms/1029963001/ ("Originally used to describe the false stories promulgated on social media by the Russian government as part of their effort to influence the 2016 election, the term was enthusiastically co-opted by Trump to refer to any news story he finds unflattering or that might hinder his agenda").

[12] *Id.* ("White House counselor Kellyanne Conway . . . explained that White House spokesperson Sean Spicer was using 'alternative facts' to support his demonstrably false claim that the crowd for Trump's swearing-in was 'the largest audience to ever witness an inauguration—period'").

[13] *See, e.g.*, Erin Aubry Kaplan, *Donald Trump Is (Still) President of White America*, Politico (Nov. 20, 2022, 7:00AM), https://www.politico.com/news/magazine/2022/11/20/donald-trump-culture-white-supremacy-00069597 ("this culture war is increasingly veering toward actual combat. American history has been written in violence, most often perpetrated by whites against the "Other" — Indigenous folks, Black people, immigrants of color. In today's culture war, though, Trump's opponents are all the indistinguishable Other — the 54 percent of Americans who don't support Trump or Trumpism, according to the latest polling by FiveThirtyEight, and who see democratic progress as the truer American path"); Tim Walker, *The Culture War's Impact on Public Schools*, Nat'l Ed. Assoc. (Feb. 17, 2023), https://www.nea.org/advocating-for-change/new-from-nea/culture-wars-impact-public-schools.

[14] *CRT Forward*, UCLA Sch. L. Critical Race Stud., https://crtforward.law.ucla.edu/ (last visited June 12, 2023).

in U.S. classrooms and libraries between July 2021 and March 2022.[15] This sharp rise in law-sanctioned social control is mirrored in the context of anti-LGBTQ+ educational policies, with over 540 measures being introduced in the 2023 legislative session alone.[16] This is but a vignette into the mounting forms of subordination that make their way through our systems of law-making, but they make clear that we are bearing witness to linked forms of ideological, structural, and material violence in the name of white supremacy.

By looking to the ways that entrenched white supremacy animates the waves of book-banning, historical revisionism, and identity-based subjugation, we can understand the current moment as both by-product and driver of unacknowledged violence, of persistent white power and of its defense by our institutions.[17] We cannot and will not reckon with the violent lessons of *The 1619 Project* if it is barred from our educational spaces.[18] We cannot center the needs and experiences of historically marginalized communities in this country if our faces, stories, and lineages of survival are wiped from school bookshelves.[19] We cannot heal if we do not learn, and this country remains both reticent and violently reactive to learning its own history.

Critical scholars across the globe have grappled with the question

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[15] Morgan Stevens, *Tracking Banned Books*, CTR. DATA INNOVATION (July 7, 2022), https://datainnovation.org/2022/07/tracking-banned-books/ (citing PEN AMERICA, PEN AMERICA'S INDEX OF SCHOOL BOOK BANS (2021-2022), https://docs.google.com/spreadsheets/d/1hTs_PB7KuTMBtNMESFEGuK-0abzhNxVv4tgpI5-iKe8/edit#gid=1171606318).

[16] Cullen Peele, *Weekly Roundup of Anti-LGBTQ+ Legislation Advancing in States Across the Country*, HUM. RTS. CAMPAIGN (May 2, 2023), https://www.hrc.org/press-releases/weekly-roundup-of-anti-lgbtq-legislation-advancing-in-states-across-the-country-3; *see also* Abby Baggini, *Judge Blocks Arkansas Law Criminalizing Libraries And Bookstores for Providing 'Harmful' Books to Minors*, CNN (July 30, 2023, 8:41PM), https://www.cnn.com/2023/07/30/politics/arkansas-library-book-ban-judge-blocks/index.html (detailing a now-temporarily-halted bill in Arkansas that would have levied criminal charges against librarians for providing minors with materials that appealed to "to a prurient interest in sex"—this a dog whistle for content that is inclusive of sexual and gender minorities).

[17] The surge of state and local school policies that have proliferated in the past few years complement one another in seeking to control the learning and lives of marginalized youth. Transgender actress and activist, Laverne Cox, identifies this alignment of violence, saying that the rise of anti-Semitism and anti-trans legislation are of no coincidence. James Factora, *Laverne Cox: "Trans People Are Exhausted" by Anti-Trans Legislation*, THEM (Jan. 20, 2023), https://www.them.us/story/laverne-cox-anti-trans-legislation. The driving force was and remains white supremacy; *see* discussion of recent legislative efforts in furtherance of the "culture wars" *supra* notes 21-26.

[18] *See, e.g.*, Brittany Luse, Barton Girdwood, Jessica Mendoza, Alexis Williams, Liam McBain, Corey Antonio Rose, Jamal Michel, Jessica Placzek, Veralyn Williams, *Fear, Florida, and the 1619 Project*, NPR (Feb. 24, 2023, 5:13PM), https://www.npr.org/2023/02/22/1158724309/fear-florida-and-the-1619-project.

[19] *See, e.g.*, Maureen Downey, *We Shut Down Pools to Fight Diversity; Now It's Libraries*, ATLANTA J.-CONST. (Apr. 26, 2023), https://www.ajc.com/education/get-schooled-blog/opinion-we-shut-down-pools-to-fight-diversity-now-its-libraries/FX6C5P2QZBESLAYFPOITPLGG5I/.

of what role—if any—educational spaces can play in disrupting these legacies of erasure through processes of truth and reconciliation in the classroom.[20] How might educators not just *interrupt* harms but *envision* a future premised on healing from state violence and naming lasting inequities? It is from this question and with an eye toward developments in reparative pedagogy beyond the law that this piece begins. What role might legal educators play in joining national efforts to redress injustice and to—at last—"properly acknowledge, memorialize, and be a catalyst for progress"?[21]

In threading two complementary theoretical approaches to critical pedagogy, this Essay makes the case that "reparative" and "engaged" pedagogical theories provide pathways for envisioning pedagogical repair for the past, present, and future harms of U.S. legal education. This, I assert, can best be conceptualized as the diverse but joint efforts to forge what we might call "reparative legal pedagogies:" practices and processes of atonement, healing, self-actualizing, and reimagining that disrupt the normative underpinnings of traditional legal education writ large. Despite differing language and theoretical frameworks for critical,[22] social justice,[23] liberatory,[24] anti-racist,[25] and disruptive legal pedagogies,[26] this Essay argues that sustained and emergent efforts to radically reorient U.S. legal education from inside

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[20] *See, e.g.*, Nicholas Biddle & Naomi Priest, *The Importance of Reconciliation in Education*, Aus. Nat'l Univ. Ctr. Soc. Res. Methods, May 2019, at i; James Miles, *Teaching History for Truth and Reconciliation: The Challenges and Opportunities of Narrativity, Temporality, and Identity*, 53 McGill J. Educ. 294 (2019).

[21] H.R.J. Res. 19; S.J. Res. 6.

[22] *See, e.g.*, Chantal Thomas, *Reloading the Canon: Thoughts on Critical Legal Pedagogy*, 92 Univ. Co. L. Rev. 955 (2021); Karl Klare, *Teaching* Local 1330*—Reflections on Critical Legal Pedagogy*, 7 Unbound 58 (2011).

[23] *See, e.g.*, Duncan Kennedy, *The Social Justice Element in Legal Education in the United States*, 1 Unbound 93 (2005); Rosa Castello, *Incorporating Social Justice into the Law School Curriculum with a Hybrid Doctrinal/Writing Course*, 50 J. Marshall L. Rev. 221 (2017); Julie D. Lawton, *Teaching Social Justice in Law Schools: Whose Morality Is It?*, 50 Ind. L. Rev. 813 (2017); *see* Margaret Martin Barry, A. Rachel Camp, Margaret E. Johnson & Catherine F. Klein, *Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinic*s, 18 Clin. L. Rev. 401 (2012).

[24] *See, e.g.*, Natsu Taylor Saito, *A Pedagogy of Liberatory Belonging: Learning from Charles R. Lawrence III*, 44 Univ. Haw. L. Rev. (forthcoming Spring 2022); Hallie Jay Pope, *Liberatory legal design and radical imagination* (Design Research Society Conference Papers, 2022), https://doi.org/10.21606/drs.2022.689.

[25] *See, e.g.*, Norrinda Brown Hayat, *Freedom Pedagogy: Toward Teaching Antiracist Clinics*, 28 Clin. L. Rev. 149 (2021); *see* Anne D. Gordon, *Cleaning up Our Own Houses: Creating Anti-Racist Clinical Programs,* 29 Clin. L. Rev. 49 (2022); Dermot Groome, *Educating Antiracist Lawyers: The Race and the Equal Protection of the Laws Program*, 23 Rutgers Race & L. Rev. 65 (2021).

[26] *See, e.g.*, Christina John, Russell G. Pearce, Aundray Jermaine Archer, Sarah Medina Camiscoli, Aron Pines, Maryam Salmanova, and Vira Tarnavska, *Subversive Legal Education: Reformist Steps Toward Abolitionist Visions*, 90 Fordham L. Rev. 2089 (2022) [hereinafter *Subversive Legal Education*].

and beyond the clinical legal context have already taken up this project and can all be understood under a unifying lens of repair.

Reflecting on my own experiences as a law student leader and as a new legal educator, this Essay engages literatures from within/without the law to aid in naming the collective efforts of movements to transform the aim and possibilities of U.S. legal education. A threaded theory and practice—or praxis—of pedagogical repair links these distinct efforts and provides a roadmap for reimagining the transformative and reparative capacity of law schools, for disrupting histories and realities of harm. By naming our profession's *negligent* pedagogical practices and processes of lawyer socialization, this Essay joins the scholarship-activism of fellow liberatory writers in envisioning the unimagining and remediation of educational harm at multiple levels.

This Essay proceeds in three parts. Section I begins by positioning legal pedagogy in relation to the pedagogies of truth and healing that fellow disciplines have taken up to facilitate repair. Formations across clinical legal scholarships and nascent developments in reparative pedagogies outside the law pose serious implications for the reimaginative work of U.S. legal education. To radically reconfigure the underpinnings and aims of legal education, all of legal education—not just clinicians—must grapple with dimensions of truth and healing in order to realize repair.

Section II investigates how a frame of repair might manifest within legal education by reflecting, first, on the student organizing work that brings me to this conversation of pedagogical care. In looking to the ABA accreditation standards that I and fellow law student leaders invoked in our organizing work, this piece seeks to understand what a negligence-type "standard of care" from legal educators might look like. This piece by no means suggests that our profession (or any educational space) would benefit from a robust tort regime to police and surveil the work of educators. Instead, I use the framework of legal negligence to deeply and meaningfully interrogate the ways that legal educators in particular have advanced *dangerous* and *known* pedagogical harms that materially threaten the well-being of the country.

Finally, Section III explores several potential dimensions of repair in legal pedagogy by assessing the multiple, intersecting levels of harm that inhere in U.S. legal education's past, present, and futures.

I. Positioning Reparative Pedagogies

At the start of 2023, I participated in a panel for the American Association of Law Schools' annual meeting, entitled *New Begin-*

nings.[27] The goal of this space was to reflect on concrete classroom practices that had proven successful for each panelist, while providing tips for fellow legal educators on how to enhance our pedagogical practices. I joined the other panelists in remembering and reflecting upon the classroom spaces we had created—the ones that worked, the ones that didn't, and all the ways that we had adapted.

The conference room was teeming with interest and, truthfully, I was more nervous than I'd care to admit, as a first-year legal educator. I'm a storyteller and facilitator of many years, but the formality of the space (and this profession) left me waiting with bated breath, prepared for an attendee to discover my *unqualified-ness* at any point in the session.

At one point, during our question-and-answer, we received an audience question about how to best incorporate "current events" into the law school classroom. As a then-teaching fellow to a clinic centered on the study of Critical Race Theory[28] and as a lifelong subject to its teachings,[29] I had a lot of thoughts on the topic. I began my remarks by saying, "I'm not sure who needs to hear this in the space, but trauma is not a teaching tool." I went on to discuss the importance of centering history and pedagogical intention in our instruction of the law, underscoring the psychological and emotional roadblock to learning we introduce when we haphazardly stitch together violent classroom materials in the name of being "current." What is your goal, I implored, in introducing harmful content, and how can we orient our classrooms by beginning from a presumption that our legal systems produce harm?[30]

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[27] *New Law Professors*, Assoc. Am. L. Schs., https://memberaccess.aals.org/eweb/DynamicPage.aspx?webcode=&ho]SesDetails&ses_key=1f309646-f250-4d57-ae47-4e2d0013cf2a (last visited Jun. 12, 2023).

[28] The Racial Equity in Education Law and Policy Clinic at Georgetown University Law Center employs a lens of Critical Race Theory to engage student attorneys "in policy advocacy on behalf of clients to advance racial equity in education." *Our Work*, Geo. L., https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/racial-equity-in-education-law-and-policy-clinic/ (last visited Jun. 12, 2023).

[29] U.S. journalist Clarence Page employs this language in their work, *Showing My Color*, to describe the ways that the very vulnerability of potential racism in this country "makes us forever subject to it." Clarence Page, Showing My Color: Impolite Essays on Race in America 60 (1996).

[30] Recorded and lived experiences continue to identify the ways that U.S. legal systems—including legal education—produce harmful outcomes for historically minoritized and marginalized individuals. *See, e.g.*, Aysha Pamukcu & Angela P. Harris, *Health Justice and the Criminal Legal System: From Reform to Transformation*, Harv. L. Petrie-Flom Ctr. (Sept. 10, 2021), https://blog.petrieflom.law.harvard.edu/2021/09/10/health-justice-criminal-legal-system/ (exploring exposure to the U.S. criminal legal system as a social determinant of health for Black, brown, and Indigenous communities); John Lande, *The Law Can Be Hazardous to Your Health*, indisputably (Nov. 4, 2019), http://indisputably.org/2019/11/the-law-can-be-hazardous-to-your-health/; *see also* Lawrence S. Krieger, *Institu-*

As I've processed my feelings from this session, I've come to realize how deeply healing it was to address this room of legal educators as a freshly graduated educator myself. I was granted the time and space to wonder all the things I wish I could have said to my own law school educators—to address all the harms they had ignored and to have my perspectives on legal instruction be taken with a degree of seriousness. It was a type of healing that I'm sure could not have taken place in any other setting; it was *transformative*. These attendees were not my own past professors but releasing the harm I'd navigated in my journey became tied in that moment to the group's collective reworking of what the legal profession could be. My repair was grounded in *communal* and *iterative* processes of reimagining.

Since my participation in this panel, I've worked to understand and name this phenomenon. The closest that I've come to fully capturing the transformative and liberatory nature of this space are what critical scholars beyond the law refer to as "reparative" pedagogies[31] and what Black feminist writer bell hooks envisioned as a practice of "engaged" pedagogy.[32]To best frame this conversation and our discussion of repair in the classroom, let us begin with the histories that bring all of us to the classroom—the ones that insist on being heard and that define our current profession.

A. Envisioning Repair In/From Legal Education

For 150 years now, legal theorists have sought to reimagine the pedagogical practices and potential of U.S. legal education (e.g., the realists,[33] Critical Legal Studies proponents,[34] Critical Race Theorists,[35] and their respective CRT-sub-fields,[36] legal abolitionists[37]). In-

tional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence, 52 J. LEGAL EDUC. 112 (2002).

[31] *Infra* Section I.B.1.

[32] *Infra* Section I.B.2.

[33] *See, e.g.*, Katherine R. Kruse, *Getting Real about Legal Realism, New Legal Realism, and Clinical Legal Education*, 56 N.Y. L. SCH. L. REV. 659, 660 (2011) (reviewing calls from the U.S. Legal Realist movement for the creation of clinical legal education as a means of advancing student training of the "law in action").

[34] *See, e.g.*, DUNCAN KENNEDY, *The Critique of Rights in Critical Legal Studies*, *in* LEFT LEGALISM/LEFT CRITIQUE 179 (Wendy Brown, Janet Halley & Duncan Kennedy eds., 2002); Pierre Schlag, *The Anxiety of the Law Student at the Socratic Impasse - An Essay on Reductionism in Legal Education*, 31 N.Y.U. REV. L. & SOC. CHANGE 575 (2007).

[35] *See, e.g.*, Kimberle Williams Crenshaw, *Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1 (1988); *see* Frances Lee Ansley, *Race and the Core Curriculum in Legal Education*, 79 CALIF. L. REV. 1511 (1991); Judith G. Greenberg, *Erasing Race from Legal Education*, 28 U. MICH. J.L. REFORM 51 (1994).

[36] *See, e.g.*, Swethaa S. Ballakrishnen, *Law School as Straight Space*, 91 FORDHAM L. REV. 1113 (2023); Christina Payne-Tsoupros, *A Starting Point for Disability Justice in Legal Education*, 6 J. NAT'L CONF. DISABILITY JUST. L. EDUC. 165 (2020).

[37] *See, e.g.*, Amanda Alexander, *Nurturing Freedom Dreams: An Approach to Move-*

deed, our articulations of legal pedagogy have continually diverged from their colonial origins to become critical of oppressive systems,[38] anti-racist in approach,[39] socially just in their goals,[40] subversive to hegemony,[41] aligned with social movements,[42] and prefigurative of utopias.[43] In situating these distinct genealogies of legal pedagogy, we might say that they share a unifying tradition of "pedagogical dreaming," or of joining the work of social movements in envisioning liberation from the very realities and institutions in which we are situated.[44]

This kaleidoscope of legal scholarships, however, highlights the ways that legal education's dreaming has tended to focus on the form and substance[45] of our instruction—not always its purpose.[46] After all, *what is* the purpose of U.S. legal education? The answer, I suspect, largely depends on who you ask.[47] But questions such as these dodge the deeper truth that formal U.S. legal education was not intended

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ment Lawyering in the Black Lives Matter Era, 5 How. Hum. & Civ. Rts. L. Rev. 101 (2021); Marbre Stahly-Butts & Amna A. Akbar, *Reforms for Radicals? An Abolitionist Framework*, 68 UCLA L. Rev. 1544 (2022); Jamelia Morgan, *Lawyering for Abolitionist Movements*, 53 Conn. L. Rev. 605 (2021).

[38] *See* sources cited *supra* note 22.

[39] *See* sources cited *supra* note 25.

[40] *See* sources cited *supra* note 23.

[41] *Subversive Legal Education*, *supra* note 26.

[42] *See, e.g.*, Alexander, *supra* note 37.

[43] *See, e.g.*, Sameer M. Ashar, *Pedagogy of Prefiguration*, 132 Yale L.J. Forum 869, https://www.yalelawjournal.org/forum/pedagogy-of-prefiguration.

[44] *See infra* discussion of reparative pedagogies Section I.B1; *Subversive Legal Education*, *supra* note 26.

[45] We might say that one bucket of scholarship and practice has interrogated "how" we teach law students from a practical and, sometimes, critical perspective. *See, e.g.*, Ronald Tyler, *The First Thing We Do, Let's Heal All the Law Students: Incorporating Self-Care into a Criminal Defense Clinic*, 21 Berkeley J. Crim. L. 1 (2016). Another noteworthy formation of work has grappled with "what" we teach law students. *See, e.g.*, Alexander, *supra* note 37; Crenshaw, *supra* note 35; *see supra* notes 22-26. These are by no means distinct categories of scholarship and it would be naïve to assume that the socio-political manifestations of one (form) does not inform the other (substance) in overlapping ways. *See* Critical Race Theory: The Key Writings That Formed The Movement xiii (Kimberlé Crenshaw, Neil Gotanda, Gary Peller, and Kendall Thomas eds., 1995) [hereinafter Critical Race Theory] ("Critical Race Theory embraces a movement of left scholars, most of them scholars of color, situated in law schools, whose work challenges the ways in which race and racial power are constructed and represented in American legal culture and, more generally, in American society as a whole").

[46] *See, e.g.*, Gerald P. López, *Transform – Don't Just Tinker with – Legal Education*, 23 Clin. L. Rev. 471 (2017); Wayne S. Hyatt, *A Lawyer's Lament: Law Schools and the Profession of Law*, 60 Vand. L. Rev. 385 (2007); Bethany Rubin Henderson, *Asking the Lost Question: What Is the Purpose of Law School?,* 53 J. Legal Educ. 48 (2003).

[47] *See, e.g.*, Etienne C. Toussaint, *The Purpose of Legal Education*, 111 Cal. L. Rev. 1, 9 (2023) ("the study of the way legal systems and political institutions further racism, economic oppression, or social injustice must be viewed as endemic to the purpose of legal education").

for, or to serve, all peoples.[48] To best assess the current purpose of legal education, we must acknowledge that settler law[49] and its gatekeeping[50] are inherently violent. Without a sobering and honest account of the ways that lawyering continues to be a protected practice of legal power,[51] the exclusionary law school journey has little meaning to our profession. After all, why would law school be so difficult if the law and legal power were truly intended to be accessible to all? Without history, the LSAT, traditional 1L exams, and state-level bar exams are normalized as discriminatory mainstays of our profession[52]—rather than aspects of licensure that might be otherwise be changed and adapted with the times. More plainly put: we do harm because it's what we've always done.

1. Reimagining the Purpose of Legal Education

As a professional degree program, the *juris doctor* and our formal training of U.S. law students remains roughly aligned with the subject matter of the bar exam.[53] The required doctrinal courses that our stu-

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[48] See, e.g., Christopher Williams, *Gatekeeping the Profession*, 26 CARDOZO J. EQUAL RTS. & SOC. JUST. 171 (2020) (exploring the politics of racial and social stratification that serve as the infrastructure of U.S. legal education); Emma Plante, *"What, like it's hard?": The Systemic Barriers to Law School Applications*, NE. UNIV. POL. REV. (Jan. 27, 2022), https://nupoliticalreview.org/2022/01/27/what-like-its-hard-the-systemic-barriers-to-law-school-applications/.

[49] Conor Friedersdorf, *Enforcing the Law Is Inherently Violent*, THE ATLANTIC (June 27, 2016), https://www.theatlantic.com/politics/archive/2016/06/enforcing-the-law-is-inherently-violent/488828/ (quoting Yale law professor Stephen L. Carter: "Law professors and lawyers instinctively shy away from considering the problem of law's violence. *Every law is violent*. We try not to think about this, but we should. On the first day of law school, I tell my Contracts students never to argue for invoking the power of law except in a cause for which they are willing to kill. They are suitably astonished, and often annoyed. But I point out that even a breach of contract requires a judicial remedy; and if the breacher will not pay damages, the sheriff will sequester his house and goods; and if he resists the forced sale of his property, the sheriff might have to shoot him") (emphasis added); *but see* Douglas NeJaime, *Cause Lawyers Inside the State*, 81 FORDHAM L. REV. 649 (2013).

[50] Underpinning the modern bar exam are historical accounts of the American Bar Association's desire to keep "pure the Anglo-Saxon race." *See, e.g.*, Lauren Hutton-Work & Rae Guyse, *Requiring a Bar Exam in 2020 Perpetuates Systemic Inequities in Legal System*, APPEAL (Jul. 6, 2020), https://theappeal.org/2020-bar-exam-coronavirus-inequities-legal-system/; Dan Subotnik, *Does Testing = Race Discrimination?: Ricci, the Bar Exam, the LSAT, and the Challenge to Learning*, 8 U. MASS. L. REV. 332, 365 (2013); *see generally* Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 10 LA RAZA L.J. 363, 396 (1998) (quoting JEROLD S. AUERBACH, UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA 114 (1976) (citation omitted)).

[51] *See, e.g.*, Antonio Coronado, *Divine Injustice: Myths of Good Lawyers & Other Legal Fictions*, 14 GEO. J.L. & MOD. CRIT. RACE PERSP. 107, 124-27 (2023) (exploring the role of gatekeeping within the U.S. legal profession).

[52] *See* sources cited *supra* note 50.

[53] *See* Emmeline Paulette Reeves, *Teaching to the Test: The Incorporation of Elements of Bar Exam Preparation in Legal Education*, 64 J. LEGAL EDUC. 645 (2015); Joan Howarth, *Teaching in the Shadow of the Bar*, 31 U.S.F. L. REV. 927 (1997).

dents take (e.g., Civil Procedure, Constitutional Law, Property, Contracts, Torts, Criminal Law, Legal Research and Writing, Evidence, and Professional Responsibility) correspond to core aspects of state bar exams across the country. While significant variance exists,[54] this generalization best describes the current triadic relationship between U.S. law schools, bar authorities, and legal practice. From 1L up until a student's preparation for the bar exam, law schools reinforce the notion that one's bar passage is central to their journey into the profession.

To be sure, this configuration has immediate, recorded, and material implications for the practice of law, namely for our capacity to serve communities and be aligned with movements for liberation.[55] Hardly enough attention, though, has been paid to the educational consequences of our bar-serving pedagogy.[56] What does it mean for our profession that law school course syllabi were not required to include "learning objectives, outcomes, and assessments" until 2016-

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[54] *See, e.g., Curriculum B (Section 3)*, GEO. L., https://curriculum.law.georgetown.edu/jd/curriculum-b-section-3/ (last visited June 12, 2023); *see* Morenike Saula, *Crisis-Induced Innovation in U.S. Legal Education*, 69 J.L. EDUC. 689 (2020); Deborah L. Rhode, *Legal Education: Rethinking the Problem, Reimagining the Reforms*, 40 PEPP. L. REV. 437 (2013); Nancy Vettorello & Beth Hirschfelder Wilensky, *Reimagining Legal Education: Incorporating Live-Client Work into the First-Year Curriculum*, 8 MICH. B. J. 56 (2017).

[55] The normative infrastructure of U.S. legal education has had a profoundly harmful impact on the mental, physical, and emotional well-being of students. As confirmed by a 2022 report from the American University Washington College of Law, U.S. law students are not okay. In their national study of 5,400 of U.S. law students, researchers found that 18% of student participants reported a diagnosis of depression since starting law school, 68% reported needing help with their emotional or mental health in the prior year, 22% reported a diagnosis of anxiety since beginning their journey into legal education, and 11% reported having experienced suicidal ideation in their prior year alone. *See* David Jaffe, Katherine M. Bender & Jerome Organ, *"It Is Okay to Not Be Okay": The 2021 Survey of Law Student Well-Being*, 60 U. LOUISVILLE L. REV. 441, 463-467 (2022). Additionally, scholarship underscores the ways that traditional U.S. legal pedagogy does not prepare students for movement work. *See, e.g.*, Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405 (2018)*;* Alexander, *supra* note 37; Touissant, *supra* note 47; John Bliss, *From Idealists to Hired Guns: An Empirical Analysis of Public Interest Drift in Law School*, 51 U.C.D. L. REV. 1973 (2018); Howard S. Erlanger & Douglas A. Klegon, *Socialization Effects of Professional School - The Law School Experience and Student Orientations to Public Interest Concerns*, 13 LAW & SOC'Y REV. 11 (1978) (finding that law student socialization at the University of Wisconsin Law School emphasized "traditional legal forums, . . . at the expense of other, less traditional modes of practice").

[56] *See, e.g.*, Antonio Coronado, *HTTPS://404-Error: The Continued Crash of the Legal Industry*, NE. U.L. REV. FORUM (Sept. 4, 2020), https://nulronlineforum.wordpress.com/2020/09/04/https-404-error-the-continued-crash-of-the-legal-industry/ ("The failures of our model of legal education as mirrored across the industry have never been more transparent, bursting at the seams with calls for accountability and reflection on the law's complicity in maintaining systemic oppression. As a BIPOC law student, I am frequently forced to wonder: 'Who is this model for—who does this model of legal education serve?' But the answer has always been clear"); Touissant, *supra* note 47, at 15-21; s*ee also* Russell L. Weaver*, Langdell's Legacy: Living with the Case Method*, 36 VILL. L. REV. 517 (1991).

2017?[57] What does it mean that racial equity and well-being are only *now* entering the law's lexicon of licensure?[58] From my personal and political position as a multiply marginalized legal educator, as a recent bar examinee, and as someone aligned with the work of movements to realize liberation, I'm often left with more questions than answers.

Of one thing, however, I'm most certain. Legal pedagogy, not unlike the legal precedents of our lectures, is tethered in time to the past. It is bound up in the colonial dreams of its founding architects and the present pedagogical dreams of its inheritors—a dueling *past-present* that we all inhabit. In line with this conclusion, countless legal scholars before me have noted the ways that traditional legal pedagogy is normatively grounded in perspectivelessness[59] and otherizing[60] as linked practices of white supremacy within the law.[61] Law student movements have equally drawn attention to the legacies of structural and pedagogical violence that define our law school experiences.[62] As a

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[57] *See* Laura M. Padilla, *Whoosh - Declining Law School Applications and Entering Credentials: Responding with Pivot Pedagogy*, 39 U. La Verne L. Rev. 1, 13 (2017) (citing Managing Director's Guidance Memo: Standards, Section of Legal Education and Admissions to the Bar (June 2015) (Mem. at 301-02, 314-15)).

[58] Here, I reference February 2022 revisions to Standards 303(b) and (c), concerning law school curriculum under the ABA Standards and Rules of Procedure for Approval of Law Schools. The revised standards place an explicit emphasis on the inclusion of curriculum that fosters professional identity development, including "well-being practices considered foundational to successful legal practice," and education on "bias, cross-cultural competency, and racism." ABA, Revisions to the 2021-2022 ABA Standards and Rules of Procedure for Approval of Law Schools 1, 2 (2022).

[59] *See* Crenshaw, *supra* note 35, at 2 ("While it seems relatively straightforward that objects, issues, and other phenomena are interpreted from the vantage point of the observer, many law classes are conducted as though it is possible to create, weigh, and evaluate rules and arguments in ways that neither reflect nor privilege any particular perspective or world view").

[60] *See, e.g.*, Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 Cardozo L. Rev. 1577, 1578 (1992) (discussing the ways that U.S. legal education socializes law students to engage in a "bleaching out" of their identities); Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 Fordham L. Rev. 2081 (2005).

[61] *See, e.g.*, Doron Samuel-Siegel, *Reckoning with Structural Racism in Legal Education: Methods toward a Pedagogy of Antiracism*, 29 Cardozo J. Equal Rts. & Soc. Just. 1 (2022); Ballakrishnen *supra* note 36; Peter Goodrich & Linda G. Mills, *The Law of White Spaces: Race, Culture, and Legal Education*, 51 J. Legal Educ. 15 (2001); *see also* Bennett Capers, *The Law School as a White Space*, 106 Minn. L. Rev. 7, 31 (2021) ("While [race-conscious curricular] endeavors are important, the argument I make here is somewhat different, and perhaps broader. The problem is not that race is absent from the classroom. It is that the whiteness of the curriculum goes unsaid and unremarked upon. It is like the whiteness of the portraits that line law school hallways, or the whiteness of Lady Justice. The whiteness itself is too often invisible").

[62] *See, e.g.*, *Calling All Students Past, Present, and Future: Join in Demanding Change at Northeastern University School of Law*, Call to Action – Demanding Change at NUSL (2021), https://bit.ly/DemandingNUSLChange [hereinafter Call to Action]; A Collective of DisOrientation Student Organizers, *DisOrientation: A Call for Self-Preserva-*

law student and now-educator, this has included:

- **The disparate burdening** of marginalized and minoritized law students, faculty, and staff alike with the onus of changemaking to legal education's white supremacist foundations and lasting curricula.[63] Countless scholars have written on this issue, and this piece adds to the scholarship in this area by naming the ways that historically excluded and minoritized members of the legal profession have taken up the mantle of mending a profession that was not built for us.[64]

- **The systematic absence** of cases, classes, or lessons that contextualize violent legal institutions against the violent social realities that produced them. This, in turn, engenders the above-mentioned phenomena, wherein cases, law, and class may exist in a falsely neutral analytical "white" space.[65]

- **The still-dominant testimony model** of the Socratic method,[66]

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tion, HARV. L. RECORD (Oct. 7, 2019), https://hlrecord.org/disorientation-a-call-for-self-preservation/; Richard Delgado, *Liberal McCarthyism and the Origins of Critical Race Theory*, 94 IOWA L. REV. 1505 (2009) (overviewing the distinct but convergent student movements that serve as CRT's origin story).

[63] Antonio Coronado, "Report on the State of BIPOC at Northeastern University School of Law," Commissioned by the Committee Against Institutional Racism at Northeastern University School of Law (Sept. 2020), bit.ly/CAIR-Report [hereinafter CAIR Report]; *see also* Coronado, *supra*, note 56 ("It is irresponsible and devoid of understanding to ask BIPOC to enter the war room that is whiteness and to make white supremacist institutions less violent").

[64] Of note, legal historian Robert Stevens recounts the ways that modern law schools sought to attract young, white men in the middle of the 19th Century by appealing to the ways that U.S. legal education could prepare them to inherit estates, property, and control of the settler-nation's commerce in the lead-up to the American Civil War. ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S 21 (2001); *see also* sources cited *supra* note 50. This historical trend necessarily informs the current profession.

[65] Capers, *supra*, note 61, at 58 ("We live in a world built on racialized hierarchies and inequality, and much of the reason we live in such a world is because of what we call the law, from Slave Codes to the enshrinement of slavery in the Constitution to the doctrine of manifest destiny to anti-miscegenation laws to the Chinese Exclusion Act to zoning rules to qualified immunity to racialized highway construction to so much more). For a discussion of the ways that some scholar-educators are working to "stop citing slavery" in their work and curricula, Diane J. Kemker, *Three Steps to Stop Citing Slavery*, 71 J. LEGAL EDU. 348 (2022); *see* Justin Simard, *Citing Slavery*, 72 STAN. L. REV. 79 (2020).

[66] *See, e.g.,* Crenshaw, *supra*, footnote 35 at 6 ("An equally stressful, but conceptually more obscure experience is what I call subjectification. This is experienced by minority students when, after learning to leave their race at the door, their racial identities are unexpectedly dragged into the classroom by their instructor to illustrate a point or to provide the basis for a command performance of 'show and tell.' The eyes of the class are suddenly fixed upon the minority student who is then expected to offer some sort of minority 'testimony'").

> whereby law students are expected to grapple with questions of life, liberty, and law—personal ones that are disparately felt and navigated based on power, position, and place—without transparent and routine pedagogical intention in the creation of their educational space.

Ironically (and painfully), the very legal harms that many of us entered law school to disrupt remain embedded and central to the pedagogies we endure along our way to practice.[67] Both graduates and current law student movements make it clear that U.S. law schools have failed "to properly acknowledge, memorialize, and be a catalyst for progress."[68] Once again, we are reminded that healing cannot happen without meaningfully engaging our personal-political histories.

2. Locating the Limits of Law School

Buttressing our efforts to envision repair in/from legal education as a site of lawyer socialization and social reproduction are the material limitations of the profession. As numerous scholars before me have noted, traditional reforms to U.S. legal education fall short in realizing the potential of law schools as sites for liberatory change, given the legal profession's political economic order and position as an apparatus of the state.[69] Accordingly, the question of what forms of meaningful, lasting social change might derive *in* or *from* legal education has been the subject of countless scholarship interventions to the work of pedagogical repair.

Indeed, many prior liberatory legal scholarships have emphasized the need to build a movement for radical transformation within legal academia while simultaneously accounting for the many careers, cur-

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[67] As a law student leader, my work in coalition with other student organizers sought to name the contradiction of "social justice" values espoused by the neoliberal institution we attended versus the pedagogical harm that they dispensed. *See* CALL TO ACTION, *supra* note 62, at 4 ("We write to express our collective frustration, disappointment, and anger with the lack of change we have witnessed during our time at [Northeastern University School of Law]. The mission to reimagine legal education serves as the very bedrock of Northeastern as a law school—for many of us, it is the very reason we are now students here. Yet, as NUSL receives praise for its place as "number one" in experiential learning, we're left to wonder: Experiencing what exactly? Organizing by NUSL students who are Black, Indigenous, and People of Color (BIPOC) has consistently shown that the answer is *inequity*. The experiential education that we advertise is one of disparate experiences, disparate support, disparate [course] placements, disparate resources, disparate treatment, disparate training, and disparate forms of violence").

[68] H.R.J. Res. 19; S.J. Res. 6.

[69] *See, e.g.*, Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 601 (1982); *Subversive Legal Education*, *supra* note 26; *see* Akbar, supra note 55; LOUIS ALTHUSSER, *Ideology and Ideological State Apparatuses (Notes Towards an Investigation)*, *in* LENIN AND PHILOSOPHY AND OTHER ESSAYS (Ben Brewster trans., New York and London: Monthly Review Press 1971) (1970).

ricula, relations, hierarchies, institutions, influences, and realities of the legal profession that hinder its own reimagining. Across these scholarships, a common practice and belief in movement-based "utopia" locates the liberatory potential of any form of legal work beyond the current manifestation of the law; these works are premised on future worlds that do not yet exist and that are foregrounded by the end of our present oppressive regimes, including modern legal education.[70] They share overlapping visions of snapping the structural synapses of the modern law school and breaking the settler logics of legal education, each as preconditions for our freedom.

Here, with the dream of utopic classrooms in mind, enters the promise of pedagogical repair. By looking to developments beyond the law to advance educational repair, this piece seeks to extend decades of liberatory legal scholarship and experiment with new steps toward freedom by examining the role that theories of "reparative"[71] and "engaged"[72] pedagogies might play in realizing utopic futures in/from legal education. As evidenced by recent and sustained efforts by our colleagues beyond the law to engage in pedagogical dreaming, traditional U.S. legal education has *much to learn* from the work of fellow liberatory instructors in resituating the classroom as a site of healing, not harm.

The following section explores these forms of scholarship-activism beyond the law, with an eye toward the ways that they might aid us in reimagining the purpose and potential of U.S. legal education.

B. Looking Beyond the Law

Before starting law school—or, as I often joke with my partner, what feels like three lives ago—I worked as an academic skills tutor for students at my undergraduate institution. Through our institution's

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[70] This lineage spans countless scholarships and includes those of Amna Akbar, Amanda Alexander, Sameer Ashar, Bennett Capers, Norrinda Brown Hayat, Duncan Kennedy, Russell Pearce, and Etienne C. Toussaint, as non-exhaustive examples. *See, e.g.*, Akbar, *supra* note 55; Alexander, *supra* note 37; Ashar, *supra* note 43; Capers, *supra* note 61; Hayat, *supra*, note 25; Kennedy, *supra* note 69; Pearce, *supra* note 60; Touissant, *supra* note 47; *see also Prefiguring Border Justice: Interview with Harsha Walia*, 6 CRITICAL ETHNIC STUD., Spring 2020, https://manifold.umn.edu/read/prefiguring-border-justice-interview-with-harsha-walia ("prefiguration is primarily an organizing ethic stemming from feminist and trans and disability justice communities of care. The entire logic of capitalism and colonialism, in addition to being extractive and exploitative, is to break communal ways of living, to sever ties to the land especially for Indigenous communities, to foreclose kinship as a political process and instead generate competitive, individualistic, atomized ways of relating to one another. Prefiguration, then, is a communal ethic: everything that I think and say comes not from me as one individual organizer or writer but as one person in a constellation of comrades and mentors").

[71] *See infra* Section I.B.1.

[72] *See infra* Section I.B.2.

tutoring center, I provided workshop-based and individual peer support to students on a myriad of topics, ranging from students' time management to their exam prep, test-taking strategies, distance learning, tending to well-being, and semester goal setting.[73] I had a general understanding of how to hold intentional pedagogical spaces for students, and this knowledge was only further enriched by my tutoring of English as an Additional Language (EAL) learners and my facilitation of an experiential learning course affiliated with the Latinx student cultural center where I worked as a graduate student. (Two lives ago,) I'd had the opportunity to support a law professor and dear mentor in co-developing materials for a tenants' rights community education initiative. In short: I had taught before law school, and they were some of the greatest experiences of my life thus far. Through it all, I learned that I loved practicing critical, experiential, and intersectional pedagogy, and these experiences allowed me to create the space for deep inquiry I wished I'd had from past educators.

You might imagine my surprise and questions, then, upon encountering the form, the substance, and the (very often opaque) goals of U.S. legal education. Why were we teaching cases[74] instead of the generally applicable rules and formations of a given content area (as the bar review companies do[75])? *Because we always have*. Why did I need to make an "outline"[76] in order for my exam prep to be valid? *Because we always have*. Why were these 1L courses the chosen canon of a profession that concerns all areas of life? Why were housing law,

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[73] *Academic Skills*, THINK TANK, https://thinktank.arizona.edu/academic-skills/resources (last visited June 13, 2023).

[74] *See* sources cited *supra* note 56; David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. Times (Nov. 19, 2011), https://www.nytimes.com/2011/11/20/business/after-law-school-associates-learn-to-be-lawyers.html.

[75] There is a paucity of legal scholarship that addresses the role played and content provided by commercial bar review companies in the U.S. While some scholars have looked to bar review companies in the context of reforming normative legal education, none seem to address what exactly it is that bar companies do as a matter of legal pedagogy. *See, e.g.*, Mario W. Mainero, *We Should Not Rely on Commercial Bar Reviews to Do Our Job: Why Labor-Intensive Comprehensive Bar Examination Preparation Can and Should Be a Part of the Law School Mission*, 19 CHAP. L. REV. 545 (2016); William K. S. Wang, *The Restructuring of Legal Education Along Functional Lines*, 17 J. CONTEMP. LEGAL ISSUES 331 (2008). From my own anecdotal experience with a bar prep company and with sitting for the New York bar exam, case law was not central.

[76] *See, e.g.*, *Outlines: They Can Save or Break You in Law School*, Thomas Reuters, https://lawschool.thomsonreuters.com/survival-guide/outlines-they-can-save-or-break-you/ (last visited June 13, 2023); Jennifer M. Cooper, *Smarter Law Learning: Using Cognitive Science to Maximize Law Learning*, 44 CAP. U. L. REV. 551, 587 (2016) ("While most professors do not teach outlining techniques, most professors do expect students will outline their course materials by extracting rules from cases read for class, synthesizing rules from related cases, breaking rules into elements, including examples, explanations, and policies").

consumer protection and fraud, employment law, civil and social rights, and education law not made doctrinal and required? *Because Langdell and the bar* (I suppose), *but equally because money and our country's values* (I know). Law school was "disorienting" because, as many before me have identified,[77] it didn't make sense in my lived and learned experiences as a multiply marginalized, interdisciplinary student-educator. I didn't grow up knowing any lawyers, and the law felt like a strange space,[78] a liminal one to be sure, that was neither *present* nor *personal*. And it was this *distant* and *impersonal* experience that informed my decision to become a legal educator. I needed to affirm for myself and for those after me that this experience was not a fault or "deficit"[79] of our own, but that it was the visible and violent institutional architecture of a profession sketched from colonial dreams. I did not need to change; legal pedagogy did.

Even if we accept that legal pedagogy must change—*this already being a bridge too far for many of my colleagues in the law*, what and how might we change to meet the realities that our centuries-old pedagogies now inhabit and the students that our lessons were never intended to serve? To this, I propose a frame of "reparative legal pedagogy." In no adjudicated case, publicly available legal scholarship, or published course materials is there such mention of a legal pedagogy that aims in scope or focus to be reparative.[80] The aim of this piece, then, is to disrupt this silence. Through the forging of pluralistic "reparative legal pedagogies," ones that advance repair across multiple, intersecting dimensions of educational harm, I join the greater tradition of pedagogical dreaming in legal education by interjecting a praxis of reparative pedagogy to normative discourses on the purpose and potential of legal education. Reparative legal pedagogies, I contend, thread the liberatory scholarship-practices that have emerged in the clinical legal context as well as beyond the law to ad-

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[77] *See* A Collective of DisOrientation Student Organizers, *supra* note 62; Touissant, *supra* note 47, at 5; *DisOrientation*, Nat'l Law. Guild, https://www.nlg.org/disorientation/ (last visited June 13, 2023).

[78] *See* sources cited *supra* note 60 and 61 and accompanying text for an examination of U.S. legal education as a racist, white, and straight space.

[79] Richard R. Valencia, Dismantling Contemporary Deficit Thinking: Educational Thought and Practice (2010) (exploring deficit thinking as a model of education that pathologizes students based on racist and classist biases). I have previously explored the way that law students are evaluated in their "fitness" to lawyer based on a deficit metric of wielding falsely-objective, neutral forms of legal power. *See* Coronado, *supra* note 51 at 150 (2023) ("To students: Fasten yourself to one another. Hold tight against the currents that churn through augur pipelines. Know that it was never you, or your lack of Latin, or your propensity for [legal] prophecy; it was always about divine injustice").

[80] A simple search of HeinOnline, Google Scholar, and ResearchGate yielded zero exact matches for any theoretical or analytical frameworks of "reparative legal pedagogy."

dress the broader ideological and normative realities of legal education. In making legal education reparative, we might aim to re-ground our pedagogy, severing the hold that past harms have on legal education by naming and healing from the histories that bring us here.

1. Practices of Truth

As seen in the fields of art studies,[81] film and media studies,[82] and curriculum studies more broadly,[83] a frame of "reparative pedagogy" has emerged outside legal academia to subvert the processes that present certain curricula as canonic. As one scholar notes, a pedagogy of reparations "recognizes and diagnoses our current pedagogies as pedagogies of occupation, where white supremacist . . . academic systems enact a colonial and imperial occupation of thought."[84] It demands a form of "clear-eyed accountability" from educators for prior acts of pedagogical harm as a means of envisioning other restorative futures.[85] Such repair, they contend, necessitates community accountability "from all of us" within academia.[86]

Other critical scholars have described reparative curriculum as "education's shaky attempt to make lessons from terrible human history that cannot be saved, will not be redeemed, refuses to be forgotten, struggles for articulation, and must be heard."[87] By their account, reparative curriculum makes no claim to authority or canon and, instead, proposes subjective views to history through suppressed, collective versions of violence.[88] Such an approach closely parallels the legal scholarship-activism of Critical Race Theory and its accompanying practice of counter-storytelling.[89] First formalized by legal scholars Mari Matsuda, Patricia Williams, Richard Delgado, and countless others,[90] CRT's core tenet of counter-storytelling undermines the heg-

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[81] *See, e.g.*, Aliza Shvarts, *Toward a Reparative Pedagogy: Art as Trigger, Art as Repair*, ART J. OPEN (Apr. 7, 2022), http://artjournal.collegeart.org/?p=16702.

[82] *See, e.g.*, Usha Iyer, *A Pedagogy of Reparations: Notes Toward Repairing the Film and Media Studies Curriculum*, 8 FEMINIST MEDIA HIST. 181 (2022).

[83] *See, e.g.*, Aparna Mishra Tarc, *Reparative Curriculum*, 41 CURRICULUM INQUIRY 350 (2011).

[84] Iyer, *supra* note 82, at 184.

[85] *Id.* at 185.

[86] *Id*.

[87] Tarc, *supra* note 83, at 350.

[88] *Id.* at 351.

[89] Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989).

[90] *Id*.; RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: THE CUTTING EDGE (3rd ed. 2013); Racquel Armstrong & Cynthia Tyson, *Say Their Name: Early Critical Race Theory Scholars and Their Place in the Debate*, DIVERSE: ISSUES IN HIGHER EDUC. (Jan. 31, 2022), https://www.diverseeducation.com/opinion/article/15287996/say-their-name-early-critical-race-theory-scholars-and-their-place-in-the-debate (extending the

emonic assumptions of the law through processes of truth-telling by the forever subjects (but seldom drivers) of the law.[91] Despite critique from legal institutionalists,[92] counter-storytelling has broadened legal pedagogy's reach and scope, demanding that we, as formally trained legal writers and workers, affirm the "many voices" it will take to get to "a place called justice."[93]

Reparative pedagogies incorporate this aim of truth-telling and go on to explicitly ask that we work in collective, generative ways to reimagine the sites of knowledge production within which we are located. Aliza Shvarts, for instances, explores the ways that the study of art might facilitate profession-wide repair through knowledge (re)production:

> To say that pedagogy can "repair" us is to insist that we can do more with each other than the paranoid work of cataloging the harms that could befall us either inside or outside of the classroom—as important as that task can be. It is to insist that we can use the resources of our field to creatively assemble the disparate pieces of knowledge that our criticality has parsed into something like a whole[.][94]

For Shvarts, these processes necessarily include a reconfiguration of the classroom as a site of inquiry:

> Reparative pedagogy is therefore one that allows students and teachers to creatively and provisionally assemble the resources they find in the course materials, in themselves, and in each other. It is one where neither teacher nor student presumes to know the outcome beforehand.[95]

To the latter of these points, a chorus of disparately positioned legal scholars, educators, and practitioners might share in taking umbrage; the purpose of legal pedagogy likely serves as one of the few areas where they overlap ideologically. *We do know* the outcome beforehand, they might counter, *our graduates must* know x, y, and z in order to practice the law. *Law professors must lead* and *dispense*[96]

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lineage of CRT legal scholars to critical writer-theorists Dr. Carter G Woodson, Ida Wells Barnett, W.E.B. DuBois, and the Black Radical Tradition).

[91] Delgado & Stefancic, *supra* note 90; Critical Race Theory, *supra* note 45.

[92] See, e.g., Daniel A. Farber and Suzanna Sherry, Beyond All Reason: The Radical Assault on Truth in American Law (1997); *but see also* Richard Delgado, *On Telling Stories in School: A Reply to Farber and Sherry*, 46 Vand. L .Rev. 665, 67 (1993) (exploring the theoretical shortcomings of critiques to "outsider jurisprudence").

[93] Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 Harv. C.R.-C.L. L. Rev. 323, 324 (1987).

[94] Shvarts, *supra* note 91.

[95] *Id*.

[96] Paolo Freire criticizes this mode of pedagogical thought and what they describe as the "banking" concept of education: "The raison d'etre of libertarian education, on the other hand, lies in its drive towards reconciliation. Education must begin with the solution of the teacher-student contradiction, by reconciling the poles of the contradiction so that

legal knowledge to best prepare students for____ (*fill in the blank*). Whether in preparation for the bar, practice, or work in service of communities, the formulaic structure of legal education as a professional degree program presupposes law school as one of several variables that produce a "fit" and "zealous" advocate.[97]

But our formula equally produced lawyers with visions of capital sieges;[98] it yielded attorneys intent on subverting democratic elections, reprimanded by the profession only after the fact;[99] it's given power to divine legal beasts[100] and horrors that are still largely unspoken by our curricula.[101] If we are to understand legal education as one part of an equation for licensure and law practice, we must also understand the normative values of our courses, our degree's structure, and the stories that we don't teach as (not-so-)hidden variables to lawyer produc-

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both are simultaneously teachers and students. This solution is not (nor can it be) found in the banking concept. On the contrary, banking education maintains and even stimulates the contradiction through the following attitudes and practices, which mirror oppressive society as a whole." PAOLO FREIRE, PEDAGOGY OF THE OPPRESSED (Myra Bergman Ramos trans., Continuum 2000) (1970).

[97] For a discussion of the white supremacist and eugenics interconnections between measures of "fitness" and "zealous" advocacy in the legal profession, *see* Coronado, *supra* note 51, at 127; MODEL RULES OF PRO. CONDUCT Preamble: A Lawyer's Responsibilities (AM. BAR ASS'N 2020) ("As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system"); Robin West, *The Zealous Advocacy of Justice in a Less Than Ideal Legal World*, 51 STAN. L. REV. 973 (1999); *but see also* Jana DiCosmo, *Racism in the Legal Profession: A Racist Lawyer Is an Incompetent Lawyer*, 75 NAT'L LAW. GUILD REV. 82 (2018).

[98] *See, e.g.*, Reuters, *'Let's Have Trial by Combat' over election -Giuliani*, REUTERS (Jan. 6, 2021), https://www.reuters.com/video/watch/idOVDU2NS9R.

[99] *Compare* Austin Sarat, *Trump's Lawyers Will Get Away with Facilitating His Anti-Democratic Antics and They Know It*, VERDICT (Dec. 11, 2020), https://verdict.justia.com/2020/12/11/trumps-lawyers-will-getaway-with-facilitating-his-anti-democratic-antics-and-they-know-it (naming the anti-democratic role that lawyers played in the Trump Administration); *with* Mario Nicolais, *John Eastman Is a Traitor Who Tried to Kill Our Democracy*, COLORADO SUN (June 19, 2022), https://coloradosun.com/2022/06/19/nicolais-eastman-january-6-opinion/ (condemning attorney John Eastman for his role in the January 2022 Capitol Insurrection); *and* David Enrich, *How a Corporate Law Firm Led a Political Revolution*, NY TIMES (Aug. 25, 2022), https://www.nytimes.com/2022/08/25/magazine/jones-day-trump.html (examining the institutional role that law firms played in the January 2022 Capitol Insurrection). *But see also Statement of ABA President Patricia Lee Refo Re: Violence at the U.S. Capitol*, ABA (Jan. 6, 2021), https://www.americanbar.org/news/abanews/aba-news-archives/2021/01/statement-of-aba-president-patricia-leerefo-re--violence-at-the/ (statement of then-ABA President condemning the January 2022 insurrection at the U.S. Capitol).

[100] Here, I refer to disgraced former Trump attorney, Sidney Powell, and her claim of advancing a "Kraken" of an election lawsuit in the wake of the 2020 U.S. Election. *See, e.g.*, Alison Durkee, *Sidney Powell Still Wants Her Election 'Kraken' Case Heard in Court*, FORBES (Apr. 22, 2021, 4:36PM), https://www.forbes.com/sites/alisondurkee/2021/04/22/sidney-powell-still-wants-herelection-kraken-case-heard-in-court/?sh=465f43204863.

[101] *See, e.g.*, Dylan C. Penningroth, *Race in Contract law*, 170 U. PA. L. REV. 1199 (2022); Brant T. Lee, *Teaching the Amistad*, 46 ST. LOUIS U. L.J. 775 (2002); Thomas, *supra* note 8.

tion. Borrowing from theorists beyond the law,[102] we must acknowledge that legal education defines the profession—that the truths we teach (and don't) to lawyers define the truths our laws recognize. Undoubtedly, our courts and law-making institutions designate truth.[103] Why, then, would we not recognize that legal educators have an active hand in preparing law graduates to engage in this law- and reality-defining endeavor?

Reparative legal pedagogies take up the issue(s) of truth-telling in legal education and seek to shatter the colonial lens of imperial truth within which our doctrines are situated. They disrupt the notion that there is a true "canon" to legal education and ask instead how we might facilitate "clear-eyed accountability"[104] in/from a profession that has been instrumental in legitimizing harm. Through practices that (re)position our instruction in the lived realities of historically marginalized, minoritized, and silenced voices, our pedagogy might lend themselves to the broader work of movements to realize truth and reconciliation from the settler nation-state. As not just a co-conspirator but a fully-fledged apparatus of the state in reproducing its ideologies,[105] legal educators inherit a *liability* for the law's past and ongoing socio-legal wrongs. We are *pedagogically liable* for state harms that demand our healing.

2. Practices of Healing

Next, I turn our attention to the work of Black critical theorist, bell hooks, and the writings of fellow liberatory educators committed to pedagogical practices of healing. I begin, first, with the notion that our pedagogy might be "engaged" with the lived realities and harms in which they exist.[106] In *Teaching to Transgress*, hooks describes "en-

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[102] Critical theorists have continued to identify the ways that school spaces are inherently political sites of socialization that reproduce state and social hierarchies of power. *See, e.g.*, BELL HOOKS, *Understanding Patriarchy*, *in* THE WILL TO CHANGE: MEN, MASCULINITY, AND LOVE 17 (2004); Kennedy, *supra* note 69, at 607; ALTHUSSER, *supra* note 69.

[103] *See, e.g.*, Edward D. Cavanagh, *Countering the Big Lie: The Role of the Courts in the Post-Truth World*, 107 CORNELL L. REV. ONLINE 64 (2021-2022) (exploring the role that courts played in giving space for former U.S. President Trump's claims of voter fraud and election illegitimacy to take root in 2020).

[104] Iyer, *supra* note 82, at 185.

[105] *See* sources cited *supra* note 102.

[106] Black critical theorist bell hooks developed a theory of "engaged pedagogy" through reflections on her own experiences in the classroom and the lessons gained from educators before her: "many students still seek to enter feminist classrooms because they continue to believe that there, more than in any other place in the academy, they will have an opportunity to experience education as the practice of freedom. Progressive, holistic education, 'engaged pedagogy' is more demanding than conventional critical or feminist pedagogy"). BELL HOOKS, TEACHING TO TRANSGRESS: EDUCATION AS THE PRACTICE OF FREEDOM 13, 15 (1994).

gaged pedagogy" as a "progressive, holistic" form of education that emphasizes well-being.[107] Reflecting on the teachings of Paolo Freire and Thich Nhat Hanh, hooks situates educators as healers, insisting that we work to recast the role and goal of educators: "teachers must be actively committed to a process of self-actualization that promotes their own well-being if they are to teach in a manner that empowers students."[108] For hooks, self-actualization is necessary for liberatory pedagogy.[109] "Professors who embrace the challenge of self-actualization," she argues, "will be better able to create pedagogical practices that engage students, providing them with ways of knowing that enhance their capacity to live fully and deeply."[110]

As an extension of our prior discussion of truth-telling in education, hooks goes on to note the ways that truth and healing are interconnected:

> [students] want an education that is healing to the uninformed, unknowing spirit. They do want knowledge that is meaningful. They rightfully expect that my colleagues and I will not offer them information without addressing the connection between what they are learning and their overall life experiences.[111]

Healing, by hooks' account, is predicated on our pedagogical commitment to interrogating not just *what* we teach but *how* we teach and *in what ways* we show up as educators in doing so. Healing requires truth.

This politic and practice of healing pedagogy is consonant with efforts within the law to "heal" law students[112] and to center vulnerability in our legal practice.[113] Vulnerability, as legal scholar-activist Camilo Romero argues, is instrumental to lawyers' advocacy "for a more wholesome and inclusive society."[114] Workers within the law

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[107] *Id*.

[108] *Id*.

[109] *Id.* at 16-17 ("The self was presumably emptied out the moment the threshold was crossed, leaving in place only an objective mind . . . . Not surprisingly, professors who are not concerned with inner well-being are the most threatened by the demand on the part of students for liberatory education, for pedagogical processes that will aid them in their own struggle for self-actualization.").

[110] *Id.* at 22.

[111] *Id.* at 19.

[112] *See, e.g.*, Tyler, *supra* note 45 (discussing the successes and theoretical grounding of mindfulness-oriented instruction in the clinical legal context).

[113] *See, e.g.*, Camilo A. Romero, *May It Please the Soul: On the Practice of Law and Vulnerability*, 69 J. LEGAL EDUC. 672, 674 (2020) ("the fact remains that I have privileges that many seek and few attain. Those privileges as advocates must be thoughtfully acknowledged, with oneself and those with whom one communes, to develop trust and truly be proximate. Indeed, this is where proximity makes way for vulnerability. In sharing our own story—its insecurities and incongruities—trust is strengthened and so is our advocacy partnership.").

[114] *See Id*.

must be prepared to show their "full self," to communicate their trauma, and to "reveal our 'othered' side" or "that which makes us human."[115] Healing, in/from legal education, similarly requires that educators view their personal healing as a political matter for the legal profession. How can we expect our law graduates to be vulnerably present in their work and to tend to their well-being in a profession that does not,[116] or when educators are not expected to do the same? Engaged pedagogy reveals that we cannot expect care from members of our profession if we do not practice it as a value in their education and training.

In the past decade especially, an ever-growing cadre of critical clinical legal scholars have taken up the work of building engaged legal pedagogies, albeit without using this exact language.[117] Self-reflection, they emphasize, must be practiced by both educators and students as co-participants to the work of learning and living liberatory futures.[118] Reparative legal pedagogies, I argue, encompass this work and the scholarship-activism of fellow critical writers outside the clinical legal context by demanding that we radically transform, "not just tinker," with legal education.[119] For both truth and healing to be central to any legal pedagogy, we must disrupt the idea that legal educators are anything but neutral dispensers of doctrine; we are either extensions of or interruptions to a lineage of normative ideologies

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[115] *Id.* at 675.

[116] Jaffe, Bender, & Organ, *supra* note 55; *see also* Antonio Coronado, *Beyond Burnout & the Law's Culture of Crisis*, MASS. LAW. WEEKLY (Mar. 10, 2023), https://masslawyersweekly.com/2023/03/10/beyond-burnout-and-the-laws-culture-of-crisis/ (providing an embodied and learned account of the ways that burnout is normatively embedded in the infrastructure of the U.S. legal profession); NATIONAL TASK FORCE ON LAWYER WELL-BEING, THE PATH TO LAWYER WELL-BEING: PRACTICAL RECOMMENDATIONS FOR POSITIVE CHANGE 7 (2017), https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf.

[117] *Compare* Hayat, *supra* note 25, at 165-67 ("Reflection is key. I can and want to do better. I am trying again this semester, ... The point though is not to give up even if these changes do not work the first time. Try again and again"), *with* Alexander, *supra* note 37, at 130 ("It is one thing to describe a utopian set of values and quite another to figure out how to make them real in our society. They require constant practice and *self-reflection*. It helps to keep them present . . . . Better yet, we can use them as a shared language, as guiding questions in our meetings, and to help each other think through our next moves") (emphasis added). *See* Touissant, *supra* note 47; Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLIN. L. REV. 5 (2016); Sameer M. Ashar, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CALIF. L. REV. 201, 218 (2016) (making the case that the practice and instruction of poverty law requires a "capacity of deep critique" by both educator and student); Harold McDougall, *The Rebellious Law Professor: Combining Cause and Reflective Lawyering*, 65 J. LEGAL EDUC. 326 (2015); E. Michelle Rabouin, *Gifting Children of Promise: Re-Imagining the Academic Margins as Transformative Legal Space*, 3 J. GENDER RACE & JUST. 581 (2000).

[118] *Id*.

[119] *Id*.; López, *supra* note 46; *Subversive Legal Education*, *supra* note 26.

designating who has been harmed and who deserves a remedy.

So, after 150 years, let's interrupt in the strongest of terms. Repair, as a reflective verb of dreaming up the legal pedagogies of tomorrow, aims to do just this by looking in all directions—by situating the classroom in the past and present realities that define it. In the sections that proceed, I explore what duty, if any, legal educators have to reflect on the practices of repair that this piece unearths, beginning with the student organizing that brings me to pedagogical care in legal education.

II. Developing a Duty of Pedagogical Care

My first engagement with a pedagogical "duty" of care began during my work as a law student leader and as a member of my law school's Committee Against Institutional Racism.[120] Astounded by our experiences in the classroom and by the stories of our peers—of the lack of care and intention we collectively felt from our legal educators, we organized as student advocates. One of the ways that we drew attention to what we saw as the *haphazardness* and *careless racism* of our legal education was through an open letter calling for change.[121] The letter was signed by over two hundred members of the school's student body, past, present, and future—a testament to the sheer magnitude of students' frustrations.[122]

Styled as a mock complaint against the law school, the letter alleged four counts of educational harm: i) *fraud*, for the school's mischaracterization of the experiential education that it offered; ii) *breach of contract*, for the lack of performance on the part of our school in its delivery of effective legal education; iii) *unjust enrichment*, through the "continued and unacknowledged exploitation of labor and lived experiences from BIPOC students" that in turn "conferred a financial, emotional, developmental, and pedagogical benefit upon the white student body;" and iv) *negligence*, for a breach of what we identified as the school's duty of "pedagogical care."[123]

Most relevant for this Essay, our claim for negligence proceeded as follows:

COUNT II. NEGLIGENCE

- We reallege and incorporate by reference herein all of the lived

120 "The Committee Against Institutional Racism at Northeastern University School of Law is currently a rotating standing committee of students, faculty, and administrators tasked with developing programs and strategies to eradicate institutional racism and to enhance the overall quality of life for all BIPOC in the law school community") See CAIR Report, *supra*, note 63; *see* Call to Action, *supra* note 62, at 6.

121 Call to Action, *supra* note 62.

122 *Id.* at 1.

123 *Id.* at 6.

> facts contained in the above paragraphs.
>
> • That [the law school's] BIPOC students bring this claim for the mental anguish, emotional pain and suffering, financial loss, lost opportunities, and other damages for the true "experience" of education that occurred as a direct and proximate result of the negligence and breaches of the applicable standards of pedagogical care by [the law school] and through its Professors, Teaching Assistants, Lawyering Fellows, Staff, Faculty, and Administrators.
>
> • That these standards of care are established under Standards 315 and 403(b) of the ABA Standards and Rules of Procedure for Approval of Law Schools 2021-2022. ABA Standards and Rules of Procedure Standards 315, 403(b) (2021).
>
> • That [the law school's] Administration failed to take reasonable efforts to ensure teaching effectiveness . . . across the Law School, despite knowledge of the need for such efforts.
>
> • That [the law school's] Administration failed to make "appropriate changes to improve the curriculum," despite knowledge of the need for such changes.[124]

Furthermore, we alleged that the school had been given actual and physical notice of its past and ongoing pedagogical harm to its BIPOC student populations:

> • That the [the law school's] Administration was given actual notice of the many forms of violence that BIPOC students regularly navigate in their time at the Law School . . . and that they knew or should have known of the "dramatic impact" that ignoring Diversity, Equity, and Inclusion in its many forms at [the law school] continues to have on the well-being of students. *See Massachusetts Supreme Judicial Court Standing Committee on Lawyer Well-Being, A Guide to Preparing Law Students and Rising Lawyers to Thrive in Law School, the Legal Profession, & Beyond* 11 (2021) (citing Report on the State of BIPOC).
>
> • That [the law school's] Faculty continue to deliver class instruction without a comprehensive plan or intention-setting process, directly and proximately resulting in disparate outcomes, disparate experiences, and disparate forms of interpersonal harm between Law Offices.
>
> • That [the law school] has refused repeated demands for structural and curricular change and knew or should have known of the harms that BIPOC students navigate . . . across the Law School.[125]

As we noted in this (ac)count of harm, our claim for negligence was grounded in two of the American Bar Association's *2021-2022 Standards and Rules of Procedure for Approval of Law* Schools, these be-

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[124] *Id*.
[125] *Id.* at 6-7.

ing ABA Standards 315 and 403(b).[126] Our Call to Action made the case that ABA Standards 315 and 403(b), when read in conjunction, imposed a negligence-type duty of care on our legal educators for their pedagogical practices within and beyond the classroom. These standards became a vehicle and organizing tool for the "collective frustration, disappointment, and anger with the lack of change" we had witnessed at the law school.[127]

To be clear, the document was intended as a theorizing and naming of our harm—never as a legal one. We did not have the resources or time (or precedent) to sue our specific law school for the pedagogical harms that are normatively embedded in traditional legal pedagogy. But if we (or other student organizers across this country) did so, would we have a case? Do legal educators actually owe *any* duty of care in their formal training of lawyers? The following subsections explore this question and investigate whether any pedagogical duty might inhere at a national level in either the ABA Standards that our efforts cited or the relevant case law of educational negligence.

A. Interpreting the ABA Standards for Accreditation

For nearly a century, the Council of the American Bar Association Section of Legal Education and Admissions to the Bar ("the Council") has published an annual set of standards and rules that "contain the requirements a law school must meet to obtain and retain" accreditation.[128] Of great relevance to my work as a student organizer and the work of examining pedagogical intention in legal education is Standard 315. First adopted for the 2015-2016 academic year,[129] Standard 315 concerns the assessment of a law school's respective program of legal education:

> The dean and the faculty of a law school shall conduct ongoing evaluation of the law school's program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.[130]

Guidance on the interpretation of Standard 315 notes that assessment methodologies may include "review of the records the law school maintains to measure individual student achievement . . .; evaluation

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[126] ABA, ABA Standards and Rules of Procedure for Approval of Law Schools 1, 25, 28 (2022) [hereinafter 2021-2022 ABA Standards].

[127] CALL TO ACTION, *supra* note 62, at 4, 6.

[128] 2021-2022 ABA Standards, *supra* note 126, at v.

[129] Managing Director's Guidance Memo: Standards, Section of Legal Education and Admissions to the Bar (June 2015) (Mem. at 315).

[130] 2021-2022 ABA Standards, *supra* note 126, at 41.

of student learning portfolios; *student evaluation of the sufficiency of their education*; student performance in capstone courses or other courses that appropriately assess a variety of skills and knowledge; bar exam passage rates;" and outside assessment by prior graduates.[131]

The Council does not prescribe any uniform methods of assessment under this Standard and makes clear that evaluation of "student achievement of learning outcomes" will likely differ from school to school.[132] The open menu of assessment tools provided by the ABA injects a degree of ambiguity that presented a serious problem in discerning what degree and to what level student attainment was being assessed. Previous scholars have noted the difficulty of developing precise qualitative assessment metrics in the context of law school accreditation;[133] Standard 315, I argue, is no exception to this issue. But, if a duty to provide concrete quality instruction did not explicitly inhere in a law school's broader program of study, where else might it lie? To this question, I turned next to Standard 403(b) and the ABA's regulation of individual educators.

The second accreditation standard that our student organizing cited was ABA Standard 403(b).[134] The relevant part of Standard 403 provides that "[a] law school shall ensure effective teaching by all persons providing instruction to its students."[135] The Council provides guidance on the types of metrics and methodologies a law school may use to ensure teaching "effectiveness," including:

> orientation, guidance and mentoring for new faculty members; a faculty committee on effective teaching; class visits; critiques of videotaped teaching; institutional review of student course evaluations; colloquia on effective teaching; and recognition and use of creative scholarship in law school teaching methodology.[136]

Our interpretation of Standard 403(b) might be paired with the language of ABA Standard 401, requiring that law school faculty "possess a high degree of competence, as demonstrated by academic qualifications, experience in teaching or practice, teaching *effectiveness*, and scholarship."[137] While not explicitly explored in the writing of our Call to Action, Standard 401 echoes this language of "effective"

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131 *Id.* (emphasis added).

132 *Id*.

133 *See, e.g.*, Daniel Gordon, *Does Law Teaching Have Meaning: Teaching Effectiveness, Gauging Alumni Competence, and the Maccrate Report*, 25 FORDHAM URB. L.J. 43 (1997) (discussing the difficulty of assessing teaching effectiveness); Gordon Russell, *The ABA Section on Legal Education Revisions of the Law Library Standards: What Does It All Mean?*, 106 LAW LIBRARY J. 329 (2014).

134 2021-2022 ABA Standards, *supra* note 126, at 28.

135 *Id*.

136 *Id*.

137 *Id.* at 27 (emphasis added).

teaching in U.S. legal education and provides a quality standard that diverges from the even more subjective standard of teaching "sufficiency" seen in interpretative language of Standard 315.[138] "Effectiveness," then, seemed to be the closest thing to a cognizable standard of care that our student complaint could cite to.[139] The motion, and the student movement work underlying it, made the case that our legal educators have failed to meet their duty of care in providing effective instruction and that, while not a compulsory metric under the standards, our collective dissatisfaction with the adequacy of the program helped evidence this.[140]

I understood that this claim was significantly more than any mere novel legal argument; it was a theoretical and structural indictment of U.S. legal education writ large using the material arms of the ABA's regulatory structure against itself. But there was a *reclamatory power* in using the language and Latin that had been pressed upon us for three years to make some sense of the harms we were navigating. It was *healing*. And, in many ways, the citations to Standards 315 and 403(b) were as metaphorical as they were literal. It didn't matter if our claim for pedagogical negligence would hold up in court. We sought to provide actual and written notice of the harms inherent to U.S. legal education that are disparately felt by historically marginalized and minoritized students. In all cases, the Standards provided a vocabulary to question the normative assumptions that the canonic case method and legal pedagogy's business as usual were anything but "effective" to our learning. The question remains, however, what exactly "effective" instruction in U.S. legal education looks like.

This uncertainty, I know, is more telling of the country and our values than of legal education specifically. Even as a law student, I had read *San Antonio v. Rodriguez*.[141] I keenly understood (then as now) that U.S. settler law treats education and its quality as a *de minimis* floor, never as a right or a clearly articulated set of stan-

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138 *Id* at 25, 27.

139 CALL TO ACTION, *supra* note 62, at 6.

140 *Id.*

141 San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973) (finding in the context of education that class did not serve as a protected classification warranting equal protection under the 14th Amendment); *see also* Camille Walsh, *Erasing Race, Dismissing Class: San Antonio Independent School District v. Rodriguez*, 21 BERKELEY LA RAZA L.J. 133 (2011) (criticizing the *Rodriguez* court for negating the possibility of intersecting legal frameworks for race and class based discrimination); *but see also* Sarah G. Boyce, *The Obsolescence of San Antonio v. Rodriguez in the Wake of the Federal Government's Quest to Leave No Child Behind*, 61 DUKE L.J. 1025 (2012) ("actions of Congress and the executive branch in the sixty years following the decision have established an implicit federal right to education that is equivalent—and perhaps even superior—to any right the Court might have established").

dards.[142] But, with white supremacist surveillance of our classrooms continuing to permeate and scrutinize all aspects of U.S. classrooms,[143] surely "effective" teaching must mean something in the context of legal education.[144] Can we even define effective legal instruction before it is wrapped up next in the silencing and erasure that grips our country? Faced with an absence of concrete interpretation, the following section looks to the courts for prior legal assessments of educational negligence and what precisely constitutes a pedagogical failing in the classroom.

B. A Tort of Pedagogical Negligence

The case law concerning judicial oversight of educational spaces makes one thing clear: courts are leery of issuing pedagogical mandates.[145] When confronted with claims for negligence, courts have consistently found that state legislatures and their local education agencies are best positioned to stipulate the type of care required in U.S. classrooms.[146] The same deference can be seen in courts' hesita-

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[142] The Supreme Court's 1982 decision in *Plyler v. Doe* and more recent developments out of the 6th Circuit point to literacy as the implicit constitutional floor beneath which a standard of education in the U.S. cannot fall: "The stigma of illiteracy will mark [students] for the rest of their lives. By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation . . . . In light of these countervailing costs, the discrimination [against undocumented students] can hardly be considered rational unless it furthers some substantial goal of the State." Plyler v. Doe, 457 U.S. 202, 223 (1982); *see also* Gary B. v. Whitmer, 957 F.3d 616, 655 (6th Cir. 2020) (finding that the right to a basic minimum education is implicit in the concept of ordered liberty and a fundamental right under the Due Process Clause of the 14th Amendment), *vacated en banc* 958 F.3d 1216 (6th Cir. 2020); William R. Blanchette*, Sufficiently Fundamental: Searching for a Constitutional Right to Literacy Education*, 64 B.C. L. REV. 377 (2023).

[143] *See supra* notes 13-16 and accompanying text.

[144] 2021-2022 ABA Standards, *supra* note 126, at 28; *see* sources cited *supra* note 133.

[145] As the U.S. District Court for the Northern District of Illinois once put it: "Educational malpractice is a tort theory beloved of commentators, but not of courts. While often proposed as a remedy for those who think themselves wronged by educators, educational malpractice has been repeatedly rejected by the American courts." Ross v. Creighton Univ., 740 F. Supp. 1319, 1327 (N.D. Ill. 1990); *see* John Elson, *Common Law Remedy for the Educational Harms Caused by Incompetent or Careless Teaching,* 73 NW. U. L. REV. 641 (1978-1979); Stephen D. Sugarman, *The Failed Quest for Equal Educational Opportunity: Regulating Education the Way We Regulate Business*, 50 J.L. & EDUC. 1 (2021); Ethan Hutt & Aaron Tang, *The New Education Malpractice Litigation*, 99 VA. L. REV. 419 (2013).

[146] *See, e.g.*, *Ross*, 740 F. Supp. at 1327 (citing Peter W. v. San Francisco Unified School District, 60 Cal. App. 3d 814 (1976); Hoffman v. Board of Education of City of New York, 49 N.Y.2d 121; Donohue v. Copiague Union Free School District, 47 N.Y.2d 440 (1979); Wilson v. Continental Ins. Co., 87 Wis. 2d 310 (1979); D.S.W. v. Fairbanks North Star Borough School District, 628 P.2d 554 (Alaska 1981); Hunter v. Board of Education, 292 Md. 481 (1982); Tubell v. Dade County Public Schools, 419 So. 2d 388 (Fla. App. 1982)); *see also* Elson, *supra* note 145, at 645-46 (overviewing the rhetoric employed by courts in

tion to disrupt established norms of an individual educator's license to craft pedagogy under academic freedom at the higher education level.[147] In fact, just one U.S. case makes reference to the language of "pedagogical negligence," this being the 2013 case of *Ball v. Board of Education of the City of Chicago*.[148]

Ball v. Board of Education concerns the revocation of tenure and dismissal of a Chicago Public Schools ("CPS") teacher for their negligent abandonment of grade-school students.[149] There, the Board of Education of the City of Chicago and its investigators had concluded that Vera Ball, an elementary school teacher at Paul Revere Elementary School ("Paul Revere"), had violated numerous provisions of CPS' employee discipline and due process policy.[150] Video footage and hearing testimony indicated that Ball had failed to comply with Paul Revere's own internal policy of supervising students at all times and that, as result of Ball's brief abandonment of her students, several students had engaged in sexual intercourse.[151] Ball oversaw a class of nine students, all of various learning and cognitive abilities and ranging in school level from fifth to eighth grade.[152] The record indicates that Ball did not abide by the elementary school's policy of constant supervision and, in fact, was attempting to register for a mandatory training at the time of the incident. When assessing Ball's 30- to 45-minute period of absence from instruction and supervision, a hearing officer found that Ball's conduct "closely constituted pedagogical negligence."[153] On appeal, the Appellate Court of Illinois affirmed the Board's dismissal and revocation of Ball's tenure.[154]

The student identities, overlapping local policies, and posture of this case bear no legal or pedagogical implications for our assessment

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not legislating the classroom as "super school boards"); Laurie S. Jamieson, *Educational Malpractice: A Lesson in Professional Accountability*, 32 B.C. L. REV. 899, 902 (1991) (examining "the public policy elements that have affected courts' recognition of an educational malpractice cause of action"); John S. Elson, *Suing to Make Schools Effective, or How to Make a Bad Situation Worse: A Response to Ratner*, 63 TEX. L. REV. 889 (1985) (exploring the impracticability of judicial review as a form of education reform in the educational malpractice area).

147 Sweezy v. State of New Hampshire, 354 U.S. 234 (1957); Keyishian v. Bd. of Regents of Univ. of the State of N.Y., 385 U.S. 589 (1967); *see also* Victoria L. VanZandt, *The Assessment Mandates in the ABA Accreditation Standards and Their Impact on Individual Academic Freedom Rights*, 95 U. DET. MERCY L. REV. 253, 256 (2018) (overviewing the history of U.S. courts development and treatment of "academic freedom").

148 *See* Ball v. Bd. of Educ. of City of Chicago, 2013 IL App (1st) 120136, ¶ 21.

149 *Id.* at ¶¶ 4-5.

150 *Id.* at ¶¶ 1-4.

151 *Id.* at ¶¶ 6-7, 10-12.

152 *Id.* at ¶ 8.

153 *Id.* at ¶ 21.

154 *Id.* at ¶¶ 36.

of care by legal educators. Indeed, instruction in the special education context carries its own unique standard of care,[155] and the *Ball* court had found a pedagogical duty in the local policies where the school was situated as an administrative matter.[156] Additionally, it's of note that it was an administrative hearing officer—not the Illinois courts—who first made the finding of "pedagogical negligence."[157] Yet I draw our attention to this case to situate my own understanding of care in the classroom. Pedagogical care, in both *Ball* and our mock complaint, can be seen as a sort of extra-legal imagination that attaches to the configurations of negligence law in the education context to name harmful educational practices. It was Paul Revere's and CPS' policies prohibiting negligent employee conduct that produced a duty against pedagogical negligence, not the common law tort of negligence.[158] In recognition of this, the *Ball* hearing officer determined that she was liable for negligent acts, not *negligence*.[159] The notion of pedagogical negligence, then, is limited to this singular legal instance.

By contrast, a sizeable body of scholarship since the 1970s has grappled with the shared doctrinal and policy question of what a tort regime of educational malpractice might look like.[160] One of these early pieces is John Elson's *A Common Law Remedy for The Educational Harms Caused By Incompetent or Careless Teaching*.[161] There, Elson traces the remedial possibilities and judicial limitations of a cognizable cause of action for educational negligence.[162] In surveying the case law of educational malpractice claims at the time, Elson maintains that the courts would be unlikely to legally impose any uniform standard of care to classroom educators:

> both the lack of empirical evidence on effective and ineffective pedagogical practices and the discretionary or judgmental nature of the

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155 The Individuals with Disabilities Education Act (IDEA) provides for free, appropriate public education (FAPE) for all children with disabilities. Education for All Handicapped Children Act of 1975., 20 U.S.C. § 1400. Since IDEA's passage, the exact quality of education owed to disabled students has been clarified by amendment and by the courts as being whether instruction confers a "meaningful benefit" to disabled students. *Id.* (superseding Bd. of Educ. v. Rowley, 458 U.S. 176 (1982)); N.B. v. Hellgate Elem. Sch. Dist., 541 F.3d 1202 (9th Cir. 2008). *See also* Jennifer C. v. L.A. Unified Sch. Dist., 168 Cal. App. 4th 1320 (2008) (articulating a standard of care for educators of students with disabilities in California that rises above that owed to non-disabled students); Drew Millar, *Judicially Reducing the Standard of Care: An Analysis of the Bad Faith/Gross Misjudgment Standard in Special Education Discrimination*, 96 Ky. L.J. 711 (2007).

156 *Ball*, 2013 IL App (1st) at ¶ 25

157 *Id.* at ¶ 21.

158 *Ball*, 2013 IL App (1st) at ¶ 34.

159 *Id.* at ¶¶ 34, 36.

160 *See supra* notes 145-46 and accompanying text.

161 Elson, *supra* note 145.

162 *Id.* at 693-97.

> teaching process make it unlikely that teachers can be held accountable in negligence to any predetermined, mechanically applied standard of necessary teaching skills or procedures.[163]

While scholars note that empirical developments since the time of Elson's writing have seriously invalidated or at least weakened the first of these points, the latter of Elson's forecasts continues to hold up in the classroom and courts.[164]

In the past decade, legal scholars have urged our "rethinking" of educational malpractice claims, arguing that education reform and data-driven standards in teaching methodologies have provided "new legs" to a cause of action for educational negligence.[165] By adopting a frame of quality assurance to the input of educators and their institutions, some scholars contend that recognition of "claims for educational malpractice based on institutional negligence could play a vital role in promoting the quality and accountability of educational institutions."[166] An implementation of this theory can be seen in the case *Ambrose v. New England Association of Schools, Inc.*, in which graduates unsuccessfully brought suit against their alma mater's accrediting association for "inadequate or nonexistent investigation of the 'quality of [their] program [of study] or its conformity with the accreditation standards."[167] Still, other scholars note the ways that adversarial legalism fails outright as a regulatory regime for advancing meaningful equal educational opportunity in U.S. schools.[168] In any case, the fact remains that educational malpractice remains a "tort theory beloved of commentators, but not of courts."[169]

But if there is no true duty of pedagogical care in education—as the courts and a lack of precision from legal interpretations suggest—we are left with dreams of what such standards of care in our teaching might be. One such vision, I argue, is to advance truth and healing through a practice of constant and reflective pedagogical repair for the realities that situate U.S. law schools: to envision *reparative legal pedagogies*. Like the mock complaint and student organizing that

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163 *Id.* at 744-45.

164 *See, e.g.*, Hutt & Tang, *supra* note 145 at 427 (arguing that education reform and data-driven standards in teaching methodologies provide "new legs" to a cause of action for educational negligence); Sugarman, *supra* note 145 (discussing the failure of adversarial legalism as a regulatory regime for equal educational opportunity in primary and secondary education).

165 *Id*.; Stijepko Tokic, *Rethinking Educational Malpractice: Are Educators Rock Stars*, 2014 BYU EDUC. & L.J. 105 (2014) (applying a quality assurance frame to revitalize a theory of educational malpractice).

166 Tokic, *supra* note 165, at 108.

167 Ambrose v. New Eng. Ass'n of Sch. & Colls., Inc., 252 F.3d 488 (1st Cir. 2001).

168 Sugarman, *supra* note 145.

169 *Ross*, 740 F. Supp. at 1327.

brings me to this work, this Essay is a naming of harm—a locating of the violent pedagogical assumptions that have become commonplace to, expected from, and otherwise characteristic of legal education.

The following section takes up the work of pedagogical dreaming by providing potential points of reflection on the intersecting dimensions of harm that uniquely constitute U.S. legal education.

C. Forging Futures of Pedagogical Care

In the glaring absence of any exact legal or theoretical framework through which to advance truth and healing in U.S. legal education, this Essay suggests instead that we embrace the messy, the difficult, and the deeply unsatisfying conclusion *that it will always and forever depend.* In drawing from hooks' notion of engaged pedagogy and the liberatory writers whose shoulders I now stand upon, I propose that we conceptualize reparative legal pedagogies as addressing any number of considerations across axes of *truth-fiction*, on the one hand, and *healing-harm* on the other.

This is to say that, in seeking to advance goals of truth and healing from legal pedagogy, I implore legal educators to more meaningfully, clearly, and intentionally engage in a multivariate analysis of who and/or what to prioritize and in what settings or ways as we co-create educational spaces. As historically marginalized and minoritized law students are all too aware,[170] unfiltered legal histories in the classroom can be as psychologically triggering or harmful as they are truth-advancing. The below chart visualizes this point, along with the dimensions across which repair must be actively and constantly assessed:

[170] *See, e.g.*, Crenshaw, *supra* note 35; CAIR Report, *supra*, note 63.

	Healing	*v.* *Harm*
Truth	**Repair** Reparative legal pedagogies aim to advance practices of healing and truth-telling to atone for and reckon with violent legal histories.	**Example: Pedagogical Triggers** Law student-activists know too well that lessons can be as truthful as they are harmful. Educators must assess whether the risk of harm is outweighed by the power of truth-telling in a given moment-context.
v.	**Example: Psychological Safe Lessons** It is a historical and legal fiction to erase the foundations of U.S. settler law and the law courses that are co-constituted by chattel enslavement, genocide, and racial capitalism. But educators equally owe a pedagogical duty to their students to ensure a shared level of psychological safety in the classroom, even if our lessons are an incomplete account of harm.	**Hegemony & Canon** When neither truth nor healing are prioritized, we are left instead with fictional and harmful accounts of past lived and embodied harms. Here, at this intersection, is where reparative legal pedagogies depart from their predecessors: they aim to break the normatively colonial mold of legal pedagogy along with the cases and methods we've deemed canonic.
Fiction		

But not all pedagogies are created equal. As the above matrix explores, legal educators negotiate a multitude of truths and harms in the classroom in crafting their own pedagogical practice. As further illustration of the calculus that pedagogical repair requires from us, the below case studies ask that we reflect on how *truth-fiction* and *healing-harm* manifest in each of our classrooms:

- **Nascent CRT Bans** – In seeking to ban and erase the stories of racial and ethnic minorities, these policies and resulting classroom spaces are historical fictions that harm all students, generally (in learning ahistorical settler narratives), and racially marginalized and minoritized students, specifically (in being both subject to and of settler violence).

- **Historically Accurate Case-Based Lessons** – The incorporation of cases and class materials that more accurately or fully depict the violent legal realities underlying a given legal doctrine undoubtedly advance truth in/from legal education. Such an approach, however, runs the constant risk of either overemphasizing or under-characterizing the historical role of U.S.

legal violence, with each disparately harming either marginalized or identity-privileged students in any discussion of harm.[171]

- **Abolitionist Texts** – As a healing but fictive pedagogical practice, abolitionist materials invite the classroom to imagine a reparative future that does not yet exist. They are, by definition, utopic forms of fiction that bring about healing in grappling with present truths.

International campaigns to advance processes of truth and reconciliation make it clear that novel educational efforts to advance repair will not be infallible; they, like our institutions, are subject to the same legacies of oppression, biases, and material limitations as any other form of justice-making.[172] In line with such a conclusion, reparative legal pedagogies must be crafted with the utmost care and caution for the ways that they might *unintentionally* or *unapologetically* generate harm. So, too, must educators assess the ways that *truth* and *healing* vary by place, time, position, power, and context. Accordingly, the following section of this piece extends the preceding discussion of truth and healing to explore how and when legal educators might advance pedagogical repair.

III. Without Duty, There Are Dreams of Care

The morning before my *New Beginnings* panel, I participated in a conversation on the political polarization of U.S. education.[173] As a way of engaging legal educators on the rise of anti-CRT local school measures, transphobic school policies, and book bans that have proliferated in the past few years, I joined the conversation by offering my perspective on the unifying elements of white supremacy that animate these policy developments.

One of my co-panelists, in reflecting on the landscape of the "modern day" classroom, expressed their own fears of pedagogical surveillance, saying that "anyone" can record classes nowadays and that such a reality brought them great fear as an educator. I responded

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171 CAIR Report, *supra*, note 63, at 9-14 (discussing the unique forms of mental, emotional, physiological exhaustion that BIPOC college students, and law students specifically, navigate).

172 *See, e.g.*, Mahmood Mamdani, *Amnesty or Impunity? A Preliminary Critique of the Report of the Truth and Reconciliation Commission of South Africa (TRC)*, 32 Diacritics 33 (2002).

173 *Education Law*, Assoc. Am. L. Schs., https://memberaccess.aals.org/eweb/DynamicPage.aspx?webcode=&ho]SesDetails&ses_key=18ac8d69-e0a6-467b-b291-8ba76fb6e865 (last visited June 14, 2023).

to this comment by reiterating several points from my presentation. First, I emphasized that Black and Indigenous pedagogies have always been under violent scrutiny—that U.S. anti-literacy laws pushed the education of enslaved Black peoples to steamboats beyond state jurisdiction,[174] that Indigenous teachings have always been criminalized, undermined, and delegitimized,[175] and that these racist realities have entrenched a caste system of education in this country.[176] A regime of scrutiny, like a true tort of pedagogical negligence, will not save us. Second, I added that every educator, in any place or classroom, should be prepared to name the pedagogical goals and methods of their teachings—that novel surveillance should not prompt heightened levels of attention by educators; the inherent violence of legal pedagogy *demands* heightened attention each time we teach. The anti-CRT bans and recent web of white supremacist local school policies,[177] I argued, provide an entry point for necessary conversations on academic freedom in legal education, a space that remains an ideologically conservative institution at the national level.[178]

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174 From 1730 to the mid-1800s, a series of anti-literacy laws were advanced across the U.S., prohibiting the instruction of reading and writing to enslaved Black peoples. Janet Cornelius, *"We Slipped and Learned to Read": Slave Accounts of the Literacy Process, 1830-1865*, 44 PHYLON 171 (1983). In the face of these bans, Reverend John Berry Meachum established what was termed the "Floating Freedom School," a steamboat on the Mississippi River that provided instruction to enslaved Black peoples as a school site beyond the jurisdiction of state law. *See* Dennis L. Durst, *The Reverend John Berry Meachum (1789-1854) of St. Louis: Prophet and Entrepreneurial Black Educator in Historiographical Perspective*, 7 N. STAR: J. AFR. AM. RELIGIOUS HIST. 1 (Spring 2004); Peri Stone-Palmquist, *Still Not Free: Connecting the Dots of Education Injustice*, DIGNITY IN SCH. (Feb. 13, 2020), https://dignityinschools.org/still-not-free-connecting-the-dots-of-education-injustice/.

175 *See, e.g.*, Melissa Mejia, *The U.S. History of Native American Boarding Schools*, INDIGENOUS FOUND., https://www.theindigenousfoundation.org/articles/us-residential-schools (last visited June 14, 2023); Smithsonian, *Chapter 3: Boarding Schools*, NAT'L MUSEUM AM. INDIAN, https://americanindian.si.edu/nk360/code-talkers/boarding-schools/ (last visited June 14, 2023); Heather Benson, *Keepers of the Canton Indian Asylum Share History*, S.D. PUB. RADIO (updated Nov. 7, 2019), https://www.sdpb.org/blogs/arts-and-culture/keepers-of-the-canton-indian-asylum-share-history/; *see* sources cited *supra* note 20.

176 *See, e.g.*, W.E.B. DU BOIS, BLACK RECONSTRUCTION IN AMERICA, 1860–1880 (The Free Press 1998) (1935) (examining the ways that white supremacy and anti-Blackness have enshrined a tiered system of education in the U.S.); Clayton Pierce, *W.E.B. DuBois and Caste Education: Racial Capitalist Schooling from Reconstruction to Jim Crow*, 54 Am. Educ. Res. J. 23S (2017); Michael J. Dumas, *Against the Dark: Antiblackness in Education Policy and Discourse*, 55 THEORY INTO PRAC. 11 (2016); Gloria Ladson-Billings, *Landing on the Wrong Note: The Price We Paid for Brown*, 33 EDUC. RES., 3 (2004).

177 *See supra* notes 13-16.

178 Touissant, *supra* note 47, at 5 (discussing the ways that U.S. law students across the country have organized "to challenge the doctrinally conservative, racially homogenous, and socially hierarchical culture of legal education"); *but see also* Adam Bonica, Adam Chilton, Kyle Rozema, & Maya Sen, *The Legal Academy's Ideological Uniformity*, 47 J. LEGAL STUD. 1, 32 (2018) (finding "that the liberal [political] tilt of the legal academy is primarily the result of the relative scarcity of conservatives as opposed to a more leftward

This article makes the case that pedagogical repair, as a practice and process of transforming and reimagining legal pedagogy, explicitly recontextualizes U.S. legal education as a violent arm of the settler-nation and as an ideological state apparatus.[179] Reparative legal pedagogies recognize this material and ideological manifestation by *disrupting* and *subverting* the normative assumption that our teaching must perpetuate harm. Reparative legal pedagogies seek to advance inter-temporal and multi-level restoration for the past, lasting, and continued harms of legal education. Like other reparative approaches to education, a politic of reparative legal pedagogies makes no claim to canon or authority. It is a forever-ongoing process that is expansive to account for the realities of our profession while equally specific to the personal-political position of each educator. Rather than identify any one set of classroom methods or pedagogical practices, this Essay proposes a non-exhaustive inventory of reflection questions that might serve as points of intervention for our collective imagining of repair as an roadmap to classrooms premised in freedom. As with all aspects of repair, this work must begin by confronting our histories.

A. Atoning for the Past Profession

As American poet and critical theorist James Baldwin once noted, "[t]he great force of history comes from the fact that we carry it within us, are unconsciously controlled by it . . . history is literally present in all that we do."[180] Both theoretically and materially, the past and all of its preceding legal horrors are bound up with the present and continues to define our futures.[181] In the context of U.S. legal education, this necessarily has implications for the work and political-personal position of legal educators. We are the profession that legitimized Jim Crow,[182] the one that imposed a doctrine of genocidal discovery,[183] the people who sanctioned caging and still do,[184] and we are

shift in liberal faculty").

179 *See* sources cited *supra* note 102 and accompanying text regarding education as a site of social reproduction.

180 James Baldwin, *The White Man's Guilt*, *in* James Baldwin: Collected Essays, 722, 722-273. (Library of America 1995).

181 *Id*.; Rob Hunter, *Critical Legal Studies and Marx's Critique: A Reappraisal*, 31 Yale J.L. & Human. 389, 392 (2021) (arguing that "[t]he systematic critique of political economy must include an account of the legal constitution of commodities, production relations, and money. It must also include a thorough consideration of how law is mutually constitutive with other forms of capitalist social relations").

182 *See, e.g.*, Rachel D. Godsil, *Race Nuisance: The Politics of Law in the Jim Crow Era*, 105 Mich. L. Rev. 505, 510 (2006) (chronicling the ways that southern state judges in the era of Jim Crow enforced racially restrictive covenants, as they "allowed the judges to see themselves as simply enforcing private agreements" while upholding the "legal ideal of equal treatment").

183 *See* Johnson v. M'Intosh, 21 U.S. 543, 576-77 (1823) (locating a "doctrine of discov-

the ones at the forefront of fascism.[185] The legally violent actions of our profession are a shadow, stain, and centralized history to any changemaking work that we seek to advance pedagogically.

I do not mean to suggest that any one legal educator is individually responsible for the choices and harms of Rudy Giuliani, of the justices that decided the *M'Intosh* decision,[186] the *Plessy* attorney general that opposed integration,[187] or any of their students who may go on to wage violent legal wars in the name of lawyering. But if we are to understand pedagogical negligence in legal training as a societal and civil wrong—as this piece suggests, we might understand the harmful conduct of law graduates as imputing a form of liability to our entire profession. Legal workers, one could argue, are the product of formal legal education and of a harmful infrastructure of pedagogy and values that exist before their minting as attorneys. Are legal educators, then, not liable for submitting the fruits of our defective design into the stream of commerce?[188]

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ery" that legally sanctioned the claim of Christian colonial powers to the North American continent); Jedediah Purdy, *Property and Empire: The Law of Imperialism in Johnson v. M'Intosh*, 75 GEO. WASH. L. REV. 329 (2007).

184 *See, e.g.*, MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 2 (2011) (drawing a historical link from chattel enslavement to the current regime of mass incarceration); ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? 18 (2003) (linking the logics and aims of chattel enslavement that carry on through practices of incarceration).

185 *See* sources cited *supra* notes 99 and 100 regarding lawyers' current role in advancing antidemocratic aims.

186 *M'Intosh* was unanimously decided by the justices of the Marshall court. *M'Intosh*, 21 U.S. 543.

187 Homer Plessy's now landmark lawsuit challenging the constitutionality of racially segregative public accommodations was initially brought against the Honorable John H. Ferguson, judge of the criminal District Court for the parish of Orleans, for Ferguson's enforcement of Louisiana's 1890 segregation law. Plessy v. Ferguson, 163 U.S. 537 (1896). On *writ* to the U.S. Supreme Court, Ferguson and the state of Louisiana was represented by Attorney General Milton Joseph Cunningham, an attorney who served in the Confederate Army and was barred in Louisiana. Gabrielle E. Clark, *The Southern and Western Prehistory of "Liberty of Contract": Revisiting the Path to Lochner in Light of the New History of American Capitalism*, 60 AM. J. LEGAL HIST. 253, 266 (2020); *Milton J. Cunningham (1842-1916)*, LA. DIGITAL LIBR., https://louisianadigitallibrary.org/islandora/object/lasc-nonjusticesportraits%3A14 (last visited June 14, 2023). Of note, Plessy was pardoned for his "crime" by the Governor of Louisiana 126 years after the fact. The Associated Press, *126 Years After the 'Separate but Equal' Ruling, Homer Plessy Is Pardoned*, NPR (Jan. 5, 2022, 1:36PM), https://www.npr.org/2022/01/05/1070593964/homer-plessy-posthumous-pardon-plessy-v-ferguson-separate-but-equal. But 127 years later, will we hold Cunningham and similarly situated legal actors to account for their/our role in legal violence?

188 Here, again, I borrow from torts principles to explore an educator's obligations through a lens of enterprise liability in the context of defective products. In products liability cases, an actor might be held liable if their implementation of a defective product design caused injury when said product was "placed into the stream of commerce." Restat 3d of Torts: Products Liability, § 2; Richard C. Ausness, *Sailing under False Colors: The Continu-*

Whether imposed by law or through our commitment to healing, pedagogical repair recognizes our collective responsibility for the violent profession we *willingly* inherit. To advance truth and healing, we might ask:

- *How can we as educators be accountable for the past educational negligence, structural harms, and socio-legal violence advanced by our law schools, our institution(s), and our colleagues?*
- *Who are we accountable to for these past harms, and what does meaningful accountability look like from legal educators?*
- *Does your classroom room extend or disrupt a history of pedagogical violence in perpetuating white supremacy?*
- *In what novel and reparative ways can our classrooms be a space of healing—not harm?*
- *And what role do we play in facilitating pedagogical truth and reconciliation?*

B. Healing the Past Self

As bell hooks recognized, a liberatory pedagogical practice requires that an educator reflect on their respective personal-political position relative to the work they engage in.[189] This necessarily includes a prioritization of our well-being as educators and a legitimization of holistically caring for ourselves in a profession that does not. Educators, hooks insisted, must heal in order to best facilitate co-learning.[190]

For the legal profession, this is a tall order. There is tremendous lived and recorded evidence of the adverse well-being culture that our profession imposes and navigates.[191] Law students, educators, and professionals alike continue to report record levels of adverse mental and emotional health.[192] Early on, law students experience unforgiveable levels of stress and psychological pain from our profession.[193] As educators and co-learners seeking to advance pedagogical repair, we either continue or interrupt that legacy of harm at a personal level.

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ing Presence of Negligence Principles in Strict Products Liability Law, 43 U. DAYTON L. REV. 265, 277 (2018). As we look forward to the ways that we might re-configure the practice of law in this settler-nation, we must center the possibility for harm and importance of care in our work of justice-making.

189 HOOKS, *supra* note 106, at 16-17, 22.

190 *Id.* at 15.

191 *See* sources cites *supra* 116 cataloging the adverse mental and emotional well-being of the U.S. legal profession.

192 *Id*.

193 *See* Jaffe, Bender, & Organ, *supra* note 55, at 463-467.

In order for legal education to advance a politic of truth and healing, pedagogical repair must be understood to include legal educators as one of the first points of contact for students in entering this profession. Pedagogical repair urges us to dream of the supportive educational experience we may have craved in our own journey and to find ways of realizing such a reality each and every day. It implores us to reflect on the normative lessons and educational wounds that bring us to the work of teaching. It asks, first and foremost: in what ways do you still carry the harms of your own legal (mis)education? An assessment of self in this work might seek to unearth:

- *In what ways did you navigate harm in your law school/educational experience; what did those experiences teach you about yourself and the values of our profession?*
- *How can we heal the parts of ourselves that never recovered from law school?*
- *How are we upholding the same harmful narrative scripts that were employed against us (e.g., "I had to do it and so do you; students today have it so much better than I did; the law is harmful, so I have to be harmful to best prepare my students")?*
- *Are we committed to reinforcing or reimagining the level of pedagogical care we may have experienced from legal education?*

C. Addressing the Past Student

Next, I turn our attention to the aspect of repair in legal education that has likely received the most attention of those enumerated by this piece. Through the institutional and movement-led work to advance diversity, equity, and inclusion ("DEI") in U.S. law schools, there has been a steady effort to redress exclusion in legal education.[194] A practice of pedagogical repair would ask that we join and uplift these movements to atone for the harms inflicted against prior formally designated law students and organic jurists, or "legal scholars without traditional educational prerequisites."[195]

As a step toward the abolition and unimagining of legal education's current manifestations of exclusion and power, we might start

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[194] *See, e.g.*, *Findings on Racial Justice and DEI Efforts at U.S. Law Schools and Legal Employers*, NAT'L ASSOC. L. PLACEMENT (Oct. 2020), https://www.nalp.org/1020research (finding that "[a]s of early August 2020, nearly 90% of law schools had implemented new anti-racism and/or DEI efforts and initiatives since the murder of George Floyd"); *Exploring Diversity in Legal Education*, UC DAVIS SCH.L. (Mar. 29, 2023), https://law.ucdavis.edu/deans-blog/exploring-diversity-legal-education; *but see* Williams, supra note 48 (discussing the ways that gatekeeping are entrenched in U.S. legal education).

[195] *Subversive Legal Education*, *supra* note 26, at 2092.

by asking:

- *Who was not allowed to teach at and attend my law school?*
- *How have I benefited from processes of exclusion in legal education?*
- *What structures were created for exclusion and in what forms do these structures remain?*
- *What can I do to desist from serving as a gatekeeper to this profession and how do I work to reverse patterns of exclusion?*

D. Accounting for the Present Self & Classroom

Related but distinct from our assessment of the past self is a critical reflection of the ways that we show up in and beyond the classroom. In positioning the continued rise of white supremacy in education and associated scrutiny of learning at all levels, the need for educators to lay bare their methodologies and pedagogical goals has never been clearer.

This is not, by any means, to insinuate that the CRT bans have value beyond ideological violence. I mean only to say that this moment may force us all to reckon with the reality that educators and classroom are never neutral, that our classrooms have never been anything short of political spaces. From the lessons we teach to the syllabi and guest speakers that make up our courses, our facilitation of learning is—as critical writers have always held[196]—an inherently political process.

Accordingly, pedagogical repair urges us to account for the personal-political position that we occupy within the broader ecosystem of the legal profession and the ways that our choices as educators lend to the co-construction of an infrastructure that socializes lawyers. By engaging in this form of deep self-reflection, we might seek to account for the ways that we have failed as a profession to be present in our teachings and to name the normative underpinnings of the doctrine we dispense. Questions in this area of care might include:

- *How might our healing allow us to be more intentional in pedagogical development?*
- *In what ways are we reflecting on the normative lessons and cultures we are creating through course design (e.g., attendance policies, DEI and positionality statements, inclusion of mindfulness practices in our classes, ensuring our courses are inherently accessible, etc.)?*
- *Are we transparent about the pedagogical goals and methodol-*

[196] *See* sources cited *supra* note 102.

ogies that our courses employ or prioritize?

- *Are we disrupting the assumption that legal education is a neutral site of consumption?*
- *Are we truly accountable to our students and the broader legal community for the lessons we teach?*
- *Does our pedagogy align with the values we hope to see in our profession?*

E. Supporting the Present Student

Through active reflection on the classroom spaces that we hold and make, pedagogical repair equally looks to the ways that legal educators can identify and address the unique needs of our students. Complementary to any efforts we make to be *engaged* in our pedagogy should be a politic of *engagement* with the lived realities of our students.[197] As has become clear in my practice as a legal educator, it is *negligent* for educators to suppose that their own pedagogical dreams align with those of their students. The things that I most craved in my journey through formal training in settler law *are not* identical to those of my students, and it would be egotistical for me to assume otherwise.

The resources, information, and support I needed in legal education (or expect that law students may need) are specific to my own personal-political position. If my students are to be co-educators in the classroom, their position must be addressed too. Reparative legal pedagogies, then, seek to locate the needs of our students and to assess the how we might serve them in our facilitation of knowledge sharing.

Taken together, questions at this dimension of care seek to investigate the educational and professional relationship between *myself*, as an educator, and *my students*, as inheritors and future stewards of law-sanctioned justice. Our shared development of reparative legal pedagogies aims to repudiate the negligence, vacate the violence, and reimagine the level of care owed in legal education. We might do this by asking:

- *How can I best serve my students' particular needs in resisting the DisOrientation*[198] *that law school has demanded of them?*
- *How can I understand the distinct and shared goals of my stu-*

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[197] Tiffany D. Atkins, #*ForTheCulture: Generation Z and the Future of Legal Education*, 26 MICH. J. RACE & L. 115, 154 (2020) (exploring the ways that incoming law students, and Gen Zers in particular, expect their legal educators "to stay engaged, expect to experience discomfort, speak truth, and accept a lack of closure").

[198] *See* footnotes cited at *supra* note 62.

dents in navigating a profession that has rarely supported them?

- *How can I support my students' own visions of future legal work while demonstrating the importance of an anti-oppressive lens?*
- *How am I decentering my own vision of legal pedagogy and allowing for a plurality of pedagogical dreams?*

F. Centering Present Community Legal Workers

As previous scholar-activists have noted, the expertise of community legal advocates and of public intellectuals has historically been delegitimized by our legal institutions.[199] From this normative understanding of legal knowledge, law students (and their professors, by virtue of pedagogy) have been centered in our formulation of U.S. legal education. This is to say that students with the resources and access to formal legal training are prioritized in our profession's provision of legal information and research at a national level. What might be otherwise understood as a public right that should be afforded to all, as some scholar-activists have argued,[200] continues to be figured as a benefit conferred upon those whom we have professionally deemed worthy of the practice of lawyering. Legal work, in many senses, persists as a closed practice of power.

But, in an overwhelmingly white and privileged profession,[201] such a structure must be seen as operating at the express exclusion of informally trained and historically minoritized legal advocates. A frame of pedagogical repair interrogates the subjects and recipients of our legal lessons and asks, above all, who they serve in material and institutional ways. Radical reflection on this dimension of reparative legal pedagogies might ask:

- *How can we, as educators, be accountable to the communities within which we exist (e.g., the personal-political position of us as educators, of our campus, our law school, our students, our staff and faculty)?*
- *What might a pedagogical duty to contextualize our classroom*

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199 *Community Legal Advocates*, Detroit Just. Ctr., https://www.detroitjustice.org/community-legal-advocates (last visited June 13, 2023); *see Subversive Legal Education*, *supra* note 26, at 2092.

200 *Subversive Legal Education*, *supra* note 26, at 2115-17.

201 As of January 2022, the ABA reports that 81% of all U.S. lawyers identified as white and that 61.5% identified as male. ABA, *Demographics*, https://www.abalegalprofile.com/demographics.php (last visited June 14, 2023). At firms specifically, the ABA provides data indicated that 98.78% of lawyers identified as non-disabled and 96.3% did not identify as LGBT. *Id*.; Atkins, *supra* note 197, at 115.

look like?

- *Who do our lessons serve and in what ways have community legal advocates been excluded from this vision of legal education?*
- *Are communities centered in our legal pedagogy and, if not, what concrete steps can we take to ensure their compensated inclusion in our work of legal knowledge sharing (e.g., guest lectures, compensated panelists, community partners)?*
- *Are we dismantling the false assumption that grounded learning is limited to the clinical legal context (e.g., centering communities, lived realities, and lived experience experts in doctrinal courses)?*

G. Envisioning the Future Profession

Lastly, and perhaps most importantly, repair invites us to dream of a legal profession that does not yet exist—one that is free from the pedagogical pains of the past and premised in collective liberatory futures. As a point of interrogation that is linked to all others, an assessment of how we might contribute to the future of the profession is grounded in our recognition of the *past-present* that we occupy; our acknowledgement or ignorance of the past defines the future we will help foster as educators.

The development of reparative legal pedagogies requires that we look beyond any one semester or syllabus and that we work in coalitions across institutions, across siloes, and across time to ask in earnest how we might realize futures premised in freedom. It asks us to imagine the eventual abolition of the modern law school as an institution of settler harm and, as we build and dream toward this future, that we ask one another:

- *How can we be accountable to members of the legal profession, given that legal educators serve as entry points to the profession?*
- *How are we disrupting the perceived inevitability of pedagogical precedent in law schools (e.g., "I had to do it and so do you; this is just the way the law is; we've always had ___ so we need to keep it")?*
- *How are legal educators helping shape the profession of tomorrow?*
- *Do we understand that our classes co-construct the culture of tomorrow's courts, cases, and legal realities?*
- *How might communities dictate the goals of legal education and in what ways can our pedagogy lend itself to a goal of com-*

munity sovereignty?
- *How are we contributing to a movement of legal education that goes beyond the law school as a site of harm and toward a future of community legal power?*

The Urgency of Reimagining Legal Pedagogy

For several years now, I've started each class, event, or conference space that I participate in with a mindfulness activity to help ground participants in the presence of the moment. "Mindfulness," for me, is a way of (re-)connecting to parts of self that are often severed and discouraged in traditional legal spaces. As I tell fellow legal educators, I believe exercises like this aid our students in cultivating a competency of radical self-reflection. This practice, I argue, invites folks to check into a space physically and includes closing our mental and emotional "tabs"—not unlike the closing of computer windows, tabs, and screens—to connect with the physical or virtual space we're in. Before beginning, I typically start by acknowledging several things:

- First, I share that my mindfulness practice comes from the mentorship and lessons of women and femmes of color, queer and trans* storytellers of color, and multiply marginalized folks.
- Second, I acknowledge that closing your eyes during these types of activities can be triggering for survivors of trauma and navigators of harm, so I encourage participants to engage at their own level of comfort. I always note that I'll keep my eyes open throughout but that I invite folks to close theirs if they feel comfortable doing so.
- Lastly, I always name that practices like these will look different for each of our bodies, classrooms, spaces, and selves, and that participants should feel free to engage at their own level of comfort and in whatever way best serves them.

We breathe together for several moments while I ask a short set of guiding questions. One that I typically ask includes: *Who are you beyond the degrees and work that you do?*

Here, usually, I get some smiles (maybe smirks) at the notion of delinking work from oneself. But, in a profession that ties one's position to legal power, this response is expected. My practice asks us when—if not now—will we be present in the work we do? When will we be aligned in our intentions for a space, if not from the start? As a legal educator, I aim to be *engaged* in the creation of educational spaces; I prioritize truth and healing. This self-imposed duty to myself

and others is the dream of reparative legal pedagogies.

The work of pedagogical repair—of forging collective futures with better ways of sharing educational space—has never been more urgent. In a personal-political moment where history and its truth-telling in classrooms are under fierce attack at every level, it is incumbent on all educators to assess what role they will play in bringing truth and healing to a nation engrossed in harm. As waves of ideological violence make evident, educators can and must dispel the myth that classrooms are anything but neutral sites of learning. Our books, syllabi, stories, and practices are conscious political articulations of our values as instructors and serve to either interrupt or continue a history of educational harms.

While law school clinics might, at first, seem uniquely positioned to take up this mantel of repair,[202] this Essay identifies the ways that all of U.S. legal education is structurally liable for intergenerationally negligent pedagogical practices.[203] No matter how tempting under our neoliberal institutions, this labor of (un)learning cannot fall to one clinic, one department, or one person. All agents of legal education—doctrinal, clinical, administrative, and otherwise—must take on a heightened duty of care in our work if we are to intentionally shape the profession of tomorrow. By joining the lineage of pedagogical dreaming that comes before us, we can collectively work to adopt a practice of reparative legal pedagogy and to at last address the countless people, cases, places, harms, and horrors that bring us to the classroom.

In seeking to reimagine legal education, reparative legal pedagogies aim to *unimagine* legal pedagogy's current form by centering truth and healing in the work we do. Carrying on with legal pedagogy's normative form and substance serves neither us nor our students. As countless others have said before me, reform of legal education will not remedy the interlocked violence that ties law schools to the past and future harms of our legal systems—to white saviors

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202 *See, e.g.*, SpearIt & Stephanie Smith Ledesma, *Experiential Education as Critical Pedagogy: Enhancing the Law School Experience*, 38 NOVA L. REV. 249 (2014) (exploring the ways that "[e]xperience-based teaching is more than training students in particular legal competencies but also, a means of empowering students professionally and helping them achieve greater justice); @ClinicalLegal, Twitter (Nov. 3, 2021, 5:40AM), https://twitter.com/ClinicalLegal/status/1455832183306965009 (arguing that law school clinics are uniquely situated to provide students with the "opportunity to work alongside clients and community partners" in the environmental justice context).

203 *See, e.g*, Russell Engler, *The MacCrate Report Turns 10: Assessing Its Impact and Identifying Gaps We Should Seek to Narro*w, 8 CLIN. L. REV. 109 (2001) (writing that the burden to improve the teaching of "fundamental lawyering skills" is borne by all of law school curricula); *see* discussion *infra* Section I.A.

and supremacists and to patterns of imperial harm.[204] Only through collective and active forms of dreaming might we unimagine the educational harms that inhere in law schools, while working in service of liberation movements to reimagine the personal and political context of learning in this country. We must commit to this work anew each day.

And so, with questions of dreamwork and repair in mind, it's my hope that you leave this piece with the same hope, the same fervor, and the same joy for reimagining U.S. law schools as I felt in writing it; I hope you share in my eagerness to lending our classrooms, our energies, and our time to the work of imagining freedom. If you leave with nothing else from my writing, it's my sincere hope that you enjoyed this space to dream.

[204] *See* Coronado, *supra* note 51, at 137, 141 (exploring the ways that white saviorism and prophecy are normatively, rhetorically, and ideologically embedded in the U.S. legal profession).

CRITICAL CLINICAL FRAMES: CENTERING ADOLESCENCE, RACE, TRAUMA, AND GENDER IN PRACTICE-BASED PEDAGOGY

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ABSTRACT

Notwithstanding the claims to neutrality of the law and the systems and stakeholders who enforce it, social science research and the lived experience of our primarily Black youth clients reinforce how assumptions and biases – conscious and unconscious – undermine such claims. These assumptions and biases too often become the frames through which our clients and their behavior are perceived, flattening their narratives to fit more neatly into the box of "delinquent" and reinforcing existing systems of power, control, marginalization, and oppression. As a result, our job as youth defenders in the Georgetown Law Juvenile Justice Clinic is often to shift the frame through which we and others view our clients and to develop a counternarrative that advances our clients' expressed interests.

To that end, over the last ten years, we have developed a pedagogical approach designed to prepare our students as nascent attorneys to engage more strategically in the work of frames analysis, critical reflection, and narrative reconstruction. The approach centers around the use of "pedagogical frames" or explicit schemata through which students intentionally and critically examine and interpret everything they encounter in furtherance of their clients' expressed interests. While professors can identify different pedological frames best suited to their course and client work, the Georgetown Law Juvenile

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Justice Clinic uses adolescence; race; trauma; and sexual orientation, gender identity, and gender expression (SOGIE) as its principal frames. This essay will explain in further detail what we mean by "pedagogical frame," how we selected our principal frames, and how we apply them in our course and client work. Ultimately, as this essay explains, this pedagogical approach seeks to translate the essence of critical legal theory into critical legal praxis and to integrate such praxis into the clinical model.

Introduction

The work of social justice is the work of narrative reconstruction, building new stories around facts that are often disregarded, invisibilized, and taken for granted as acceptable and unremarkable features of social life.

– Kimberlé Crenshaw[1]

Meet "Kayla."[2] Kayla was a seventeen-year-old, Black girl who lived with her mother in a pre-dominantly Black neighborhood in the District of Columbia. She was a sophomore at a DC public high school. She enjoyed school, attended almost daily, and earned primarily Bs and Cs. Kayla had an Individualized Education Plan (IEP) for emotional disturbance. Kayla was on the dance team and liked spending the night at her friends' homes and hanging out with her first serious boyfriend, DeAngelo.

DeAngelo was a charismatic seventeen-year-old who liked the attention he received from the girls at his school. Recently, Kayla had been hearing rumors from her friends that DeAngelo was "talking to" another female classmate. Upset at the rumors, Kayla confronted DeAngelo about it at school during the lunch period. When he denied that he was cheating on Kayla with another girl, Kayla grabbed his cellphone out of his hand and scrolled through his text messages while making her way down the hallway.

A school resource officer (SRO) stationed at the school observed the interaction between Kayla and DeAngelo and stepped in front of Kayla as she was walking down the hallway. This SRO had observed prior arguments between Kayla and DeAngelo and did not want them to continue "disturbing" the school environment. When Kayla tried to

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[1] African American Policy Forum, "Under the Blacklight: Narrating the Nightmare and (Re)Imagining the Possible," YouTube (May 20, 2020), https://www.youtube.com/watch?v=E0ppfjbESV4.

[2] For confidentiality and pedagogical reasons, "Kayla" is a composite of the experiences of a number of clients. She is primarily based on the experiences of our clients "Sharice" and "Shanna" profiled in Chapters 6 and 7, respectively, of Kristin N. Henning, The Rage of Innocence: How America Criminalizes Black Youth (2021) [hereinafter The Rage of Innocence].

walk by the officer, he grabbed Kayla's arm and asked her to come with him. Kayla pulled away and began to run away from the officer. After a brief chase, the officer caught up to Kayla and performed a "takedown maneuver." As he tried to place her in handcuffs, Kayla continued to struggle and made it difficult for him to handcuff her. The officer placed Kayla under arrest for robbery-snatch and resisting arrest. The prosecutor filed a petition with those same counts the following day. She was also suspended from school for this incident.

Despite this being Kayla's first arrest and the fact that DeAngelo's phone was immediately returned to him undamaged, the prosecutors charged Kayla in delinquency court. During our initial interview of Kayla, we learned from Kayla that her father passed away when she was four years old. Kayla did not remember much about her father or his passing. She told us that her mother struggled with depression and substance abuse issues after his death. Kayla also shared with us that she had been living in a series of group and foster homes for youth in the child welfare system for the last few weeks after being removed from her home due to allegations of physical abuse. Due to "outbursts" at and abscondences from her child welfare placements, Kayla's social worker asked that the delinquency court detain Kayla in this new matter. Kayla told us that she wanted to go home to live with her mother, notwithstanding the allegations of physical abuse.

Unfortunately, Kayla's case, while a composite of two clients, represents many of the all-too-common lived experiences of young people who become entangled in the juvenile legal system and the common manner in which they are perceived by a variety of system stakeholders. Indeed, for far too many of our clients, "delinquency" is the dominant frame through which they and their behavior are viewed. The result is that our clients' rich and complex lives are too often flattened by a focus on the event that brought them before the court, casting suspicion on and attributing malintent to all of the client's past and future behaviors. For example, when viewed through the frame of delinquency, it is easy to reduce Kayla's narrative to that of an angry, Black girl; a woman scorned; an oppositional and defiant teen; a child who never learned to do right; or a girl who is acting too grown for her own good. In effect, one page of one chapter in the story of Kayla's life becomes the title of her book in the eyes of those around her – "disregard[ing], invisibiliz[ing], or tak[ing] for granted"[3] the varied nuanced layers of Kayla's story in furtherance of their own aims. Our job as youth defenders is to shift the frame through which we, others, and the law and systems view our clients and to develop a

[3] *See* African American Policy Forum, *supra* note 1.

narrative that advances the expressed interests of our clients.[4] And our job as clinicians is to equip our students as bourgeoning attorneys to engage strategically in that work of critical analysis, deeper understanding, and narrative reconstruction.

This essay lays out a pedagogical approach that we have been developing and refining in the Georgetown Law Juvenile Justice Clinic over the last ten years to enhance our ability to better accomplish this dual aim of more effectively representing our clients and better equipping our students to further the work of social justice. Part I of this essay introduces our Pedagogy of Frames. This section explains the concept of "pedagogical frames," the primary frames we have selected for the Juvenile Justice Clinic, and why we selected these particular frames for our work. Part II of this essay summarizes how we apply this Pedagogy of Frames at the Georgetown Juvenile Justice Clinic. While this paper explains the concept of pedagogical frames from the perspective of a youth defense clinic, the approach can be applied to most, if not all, clinics. Indeed, we believe the frames approach can be incorporated into a wide swath of doctrinal and other experiential courses endeavoring to equip students with the skills necessary to effectively represent their clients and make this a more just world.

I. The Pedagogy of Frames Defined

Advancing justice for our primarily Black youth clients – both at the individual and systemic levels – has been the animating motivation for developing our pedagogy of frames. At the heart of this pursuit is an effort to unmask and combat the various ways that supposedly neutral laws and systems are used against our clients to reify an unjust status quo and to perpetuate the marginalization and oppression of historically disadvantaged groups. While grounded generally in critical

[4] *See* Nat'l Juv. Def. St'ds R. 1.2 (2012) ("Counsel's primary and fundamental responsibility is to advocate for the client's expressed interests"), https://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf; *see also* Model Rules of Prof'l Conduct R. 1.2 (2023) (a lawyer shall abide by a client's decisions concerning the objectives of representation and . . . shall consult with the client as to the means by which they are to be pursued"); Model Rules of Prof'l Conduct R. 1.14 (2023) ("When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client"); Model Rules of Prof'l Conduct R. 1.14, Comment 1 (2023) ("Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.")

legal theory, our endeavor, given our status as client-centered advocates and clinicians, is practical. As a result, our pedagogy of frames can be considered a framework for translating critical legal theory into critical legal praxis and for integrating such praxis into the clinical model.[5]

A. The Elements of a Pedagogical Frame

Broadly speaking, framing theory and frames analysis is a multidisciplinary approach to understanding how people make sense of the world around them. Erving Goffman, the father of frame analysis, begins his examination of how individuals come to understand the world with the assumption that "when individuals attend to any current situation, they face the question: 'What is it that is going on here?'"[6] In other words, individuals seek to find the "definition of a situation," even if they are not consciously or intentionally constructing such a definition themselves but rather adopting a definition socially created for them.[7] Goffman argues that the definition an individual adopts for a specific situation[8] depends on a host of layered issues, including, but not limited to, focus,[9] perspective,[10] a simplification bias,[11] time orientation,[12] and natural and social norms.[13] To Goffman, a "frame" then is the sum of the "principles of organization" or the "schemata of interpretation" that an individual applies to a given situation to "render[ ] what would otherwise be a meaningless aspect of the scene into something meaningful."[14] And "frame analysis" is the process of examining how this "organization of experience" takes place.[15]

Building upon the work of Goffman and others, communication theory defines a "frame" as a "central organizing idea for making sense of relevant events and suggesting what is at issue."[16] Frames

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[5] *See e.g.,* Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 Am. U. J. Gender Soc. Pol'y & L. 161, 171-84 (2005) [hereinafter *Integrating Critical Theory and Clinical Education*].

[6] Erving Goffman, Frame Analysis: An Essay on the Organization of Experience, 8 (1974).

[7] *Id*. at 1-2.

[8] *Id*. at 10 (defining a "strip" as "any arbitrary slide or cut from the stream of ongoing activity, including here sequences of happenings, real or fictive, as seen from the perspective of those subjectively involved in sustaining an interest in them.").

[9] *Id*. at 8.

[10] *Id*. at 8-9.

[11] *Id*.

[12] *Id*. at 9.

[13] *Id*. at 22.

[14] *Id*. at 21.

[15] *Id*. at 11.

[16] Jim A. Kuypers, *Framing Analysis from a Rhetorical Perspective*, *in* Doing News Framing Analysis: Empirical and Theoretical Perspectives (eds. Paul D'Angelo &

draw their power by "filtering our perception of the world" by increasing or reducing the saliency of information in a manner that gives the information particular meaning.[17] Communication theory explores the manner in which individuals not only use frames to understand their world, but also employ frames to attempt to persuade others to make sense of the world in a particular way.

In his essay "Framing Analysis from a Rhetorical Perspective," Jim A. Kuypers describes framing from the perspective of the "framer" as "the process whereby communicators act – consciously or not – to construct a particular point of view that encourages the facts of a given situation to be viewed in a particular manner, with some facts made more noticeable than others."[18] This process "act[s] to define problems, diagnose causes, make moral judgments, and suggest remedies."[19] As a result, Kuypers describes the action of framing – when done intentionally – as a rhetorical process[20] as it involves "[t]he strategic use of communication, oral or written, to achieve specifiable goals."[21] As such, framing in the rhetorical sense is a device used to persuade others to agree "with the communicator that a certain value, action, or policy is better than another."[22] Thus, frames are used by individuals both as a way of personally understanding the world and as a way to construct the world for those around them.[23]

Using framing theory and frame analysis as the foundation of our "pedagogy of frames," we define a "pedagogical frame" as an explicit schema through which students are encouraged to intentionally and critically examine and interpret everything they encounter in furtherance of their representation of their clients' expressed interests. Our definition of a pedagogical frame has five key elements.

First, the foundation of the pedagogical frame is the schema. The schema is the central idea, theory, construct, or theme through which information is filtered and organized.[24] We split possible schema into

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Jim A. Kuypers), 300 (2010).

[17] *Id*.

[18] *Id*.

[19] *Id*. at 301.

[20] *Id*. at 300.

[21] *Id*. at 288 (requires intentional selection of language and knowledge of goals prior to choosing language).

[22] *Id*.

[23] A number of studies have shown that the manner in which a proposed solution is framed can have a significant impact on the level of support for the proposed solution. *See* Edward A. Zelinsky, *Do Tax Expenditures Create Framing Effects – Volunteer Firefighters, Property Tax Exemptions, and the Paradox of Tax Expenditure Analysis*, 24 VA. TAX REV. 797, 807-11, 821-25 (2004) (providing various examples of the impact of framing on the adoption of particular proposals).

[24] Goffman, *supra* note 6, at 21 ("Primary frameworks vary in degree of organization. Some are neatly presentable as a system of entities, postulates, and rules; others – indeed,

two broad categories – experiential and structural. We define experiential schema as those organized around a body of research, theory, or construct that relates to the "structure of experience individuals have at any moment of their social lives."[25] Examples of experiential frames include race, life stages, gender, trauma, disability, and socioeconomic status. We define structural schema as those organized around more abstract themes that are related to "the structure of social life" and, thus, can cut across experiential frames.[26] Examples of structural frames include essentialism, epistemology, anti-subordination, and agency.[27]

Second, pedagogical frames are explicit. Based on a professor's experience representing clients and their learning goals for the course, the professor selects and names specific schema or schemata that 1) will aid their students in their client representation and 2) will add layers of learning to explore throughout the coursework.[28] This naming of the pedagogical frames should take place both on a practical and metacognitive level. On a practical level, naming schema makes the implicit, explicit, and the invisible, visible.[29] As discussed *supra*, individuals often use frames either implicitly or subconsciously to

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most others – appear to have no apparent articulated shape, providing only a degree of understanding, an approach, a perspective. Whatever the degree of organization, however, each primary framework allows its user to locate, perceive, identify, and label a seemingly infinite number of concrete occurrences defined in its terms.").

[25] Goffman, *supra* note 6, at 13.

[26] *See id.; see also id.* at 22 ("Social frameworks . . . provide background understanding for events that incorporate the will, aim, and controlling effort of an intelligence, a live agency, the chief one being the human being. Such an agency is anything but implacable; it can be coaxed, flattered, affronted, and threatened.").

[27] *See* Carolyn Grose & Margaret E. Johnson, *Braiding the Strands of Narrative and Critical Reflection with Critical Theory and Lawyering Practice*, 26 CLIN. L. REV. 203, 215 (2019) ("normative narrative construction is guided by critical theories. By 'critical theories,' in general, we mean theories of thought and argument that critique current systems, structures, and practices through various lenses, such an anti-subordination, agency, equality, and justice."); Johnson, *Integrating Critical Theory and Clinical Education*, *supra* note 5, at 177-84 (discussing the use of critical theory to explore "differences and their impact on lawyering," "a systemic critique of the various legal and governmental institutions with which the clients and students will interact throughout the year," and "the role of power, privilege, and agency within the context of differences and the systemic critiques.").

[28] *See* Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLIN. L. REV. 101, 117 ("We also reinforce the importance of "naming" our activities and techniques for students so that they are clearly identified for later use. Naming involves giving students frameworks within which they can fit the teachers' questions. For many students, a failure to "name" may result in the student knowing how to do a specific task but not how to translate the lesson to other similar tasks. Naming also serves to create a shared vocabulary for the teachers and students to use during the clinic and for the student to use as he or she develops into a professional.") (citations omitted).

[29] Grose & Johnson, *supra* note 27, at 217 ("We need to make explicit to ourselves the lenses we use to see the world, and how those lenses affect how we see our clients."); Johnson, *Integrating Critical Theory and Clinical Education*, *supra* note 5, at 163.

make meaning of information. Thus, the process of naming the selected schemata models intentionality both in understanding and persuasion. On a metacognitive level, students should come to understand frame analysis itself so they may learn how to identify, analyze, and select frames themselves as well as deconstruct, shift, or reinforce the frames selected by others. Indeed, in an ideal world, students should be able to critique the specific pedagogical frames chosen by the professors themselves. Thus, the purpose of the pedagogical frame is not merely to encourage students to view the casework and material through a particular filter chosen by the professor, but to equip students with the transferable skill of frame analysis generally.

Third, because information is clarified through a schema and because frame analysis is a skill, a pedagogical frame is fundamentally a tool. It is a tool for narrative construction, deeper understanding, meaning making, and persuasion.[30] Importantly, the use of the tool is not the end, but rather a means to achieve the end of the expressed interests of the client.[31] Consequently, selected schema must be used strategically. Doing so, requires students, among other things, to understand their client's expressed interests and think ahead about the potential impact and efficacy of applying a particular schema to a situation.[32] In other words, while students might use a pedagogical frame to seek a better personal understanding of a particular client or case, they may not necessarily deploy the use of such frame for the purposes of persuasion in that case. Thus, at its core, a pedagogical frame is an intentional, client-centered tool.[33]

Fourth, pedagogical frames employ a critical approach.[34] Pedagogical frames are critical as they encourage students to engage in "the systematic process of illuminating and evaluating products of

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[30] *See* Grose & Johnson, *supra* note 27, at 206 ("Narrative construction requires identifying and working with (or around) embedded norms, and persuasive narratives depend on filtering information through a normative lens. But the theory of narrative construction does not direct the narrative constructor as to what norms to include or through which lens to filter information.").

[31] Kuypers, *supra* note 16, at 297 ("Perspectives are to help a critic, not direct the criticism. . ..").

[32] *See id.* at 288 ("Persons who are interested in influencing how their messages are received will plan ahead; they think ahead to the potential impact of their words).

[33] *See* Grose & Johnson, *supra* note 27, at 208 ("Narrative theory leads to an understanding that lawyers with their clients are constructors of narratives, and, as such, need to make intentional choices about that construction.").

[34] *See id.* at 215 ("normative narrative construction is guided by critical theories. By 'critical theories,' in general, we mean theories of thought and argument that critique current systems, structures, and practices through various lenses, such as anti-subordination, agency, equality, and justice.").

human activity"[35] with the goal of "promot[ing] greater appreciation and understanding."[36] This critical process requires students to evaluate and adopt various perspectives that serve as a "frame of reference" for the student in their evaluation of the case.[37] And while the various pedagogical frames may aid the student with their analysis, it is ultimately the student who is directing the process.[38] Students examine the frames through which other stakeholders view the client and the case while also selecting their own frames to apply to their evaluation.[39] When strategic, students also attempt to persuade other stakeholders to adopt and apply a particular frame selected by the student in the same manner in which the student is applying it.[40] In inviting their audience to agree with the student's interpretation of the client or case, the student must justify the selection of the frame of reference and provide evidence in support of why their analysis is valid.[41] Essentially, students must build an argument convincing the audience that their critical perspective is one the audience should espouse as well.[42]

Fifth, pedagogical frames are pervasive as students are encouraged to apply them to everything they encounter in clinic – the law, the facts, root causes, solutions, relationships, values, and our cli-

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[35] Kuypers, *supra* note 16, at 290 (citing Andrews, Leff, Terrill (1998) at 6).

[36] *See id.* at 290; *see also* Johnson, *Integrating Critical Theory and Clinical Education*, *supra* note 5, at 171 ("With the assistance of critical theory, clinical students strengthen the lawyer-client relationship by developing greater empathy and a stronger sense of client-centeredness; improve their creative lawyering due to a better understanding of context and case theory; and further their lawyering for social justice.").

[37] Kuypers, *supra* note 16, at 296-97 ("Simply put, a critical perspective serves as a frame of reference for the critic; it guides the apprehension of an interaction with the rhetorical act being analyzed. Different perspectives allow critics to see different aspects of the rhetorical act. . .. When a perspective is adopted, it allows critics to see an artifact differently than if no perspective was adopted. In a sense, the critic is allowed to see the world in a particular way."); *see also see id.* at 293 ("the best criticism allows for flexible application of a perspective, allowing for personal insight and interests to guide the criticism.").

[38] *See id.* at 297 ("The best criticism does not use perspectives as formulas. Although they do suggest a particular way of viewing the world, it is the critic who directs the criticism.").

[39] Students will also appraise the reasons why other stakeholders have selected – consciously or unconsciously – specific frames. *See* Goffman, *supra* note 6, at 8 ("Different interests will . . . generate different motivational relevancies.").

[40] Kuypers, *supra* note 16, at 290 (citing Andrews, Leff, Terrill (1998) at 6) ("[C]riticism presents and supports one possible interpretation and judgment. This interpretation, in turn, may become the basis for other interpretations and judgments.'"); *see also id.* at 293 ("The best critics simply do not make a judgment without supplying good reasons for others to agree with them.").

[41] *See id.* at 292. ("In short, critics must invite their audiences to agree with them. This is accomplished through stating their case and then providing evidence for the audience to accept or reject.").

[42] *See id.* at 292-96.

ent's experiences.[43] Pedagogical frames then help students develop "new ways of seeing law, lawyers, and communities in action"[44] and "braid the strands of narrative, critical reflection, and critical theory."[45] In this way, the use of pedagogical frames itself becomes a meta-frame – a methodology for confronting the false claims of neutrality, certainty, and replicability of the law and the systems and people that enforce it. As a result, pedagogical frames are as much a practice – a mode of moving in the world – as they are a tool that provide a structure for engaging in critical legal praxis.[46]

In sum, a pedagogical frame is an explicit, intentional, critical tool designed to equip students with the ability to 1) develop a deeper appreciation and understanding of their casework and coursework; 2) more effectively advocate on behalf of their client's expressed interest; and 3) sharpen their skills as an attorney.

B. Pedagogical Frames for a Youth Defense Clinic

Founded in 1973 by Judith Areen and Wallace Mlyniec, the Georgetown Law Juvenile Justice Clinic (JJC) was one of the first law school clinics specializing in children's issues to launch in the United States and remains the longest continuously running.[47] Founded six years after the landmark Supreme Court decision extending the right to counsel and procedural due process to children charged in juvenile court, the JJC sought to fulfill the mandate of the *Gault* decision, expand the legal rights of children, and protect children from maltreatment by their parents or the government. In its early years, the clinic handled all types of cases involving children – delinquency, education, and child welfare among others – and helped formulate policy at the local and federal levels. Today, the Georgetown Law Juvenile Justice Clinic zealously and holistically represents youth charged in delinquency court in the District of Columbia.[48]

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[43] *See id.* at 301 ("When highlighting some aspect of reality over other aspects, frames act to define problems, diagnose causes, make moral judgments, and suggest remedies."); Phyllis Goldfarb, *Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory*, 43 Hastings L.J. 717, 718 (1992) (highlighting "rule skepticism" and "fact skepticism" as examples of overlapping concerns between clinical legal education and critical legal studies).

[44] Anthony V. Alfieri, *Rebellious Pedagogy and Practice*, 23 CLIN. L. REV. 5, 15-16 (2016).

[45] Grose & Johnson, *supra* note 27, at 205.

[46] *See id*. at 204-05.

[47] *About Our* Clinic, GEORGETOWN LAW, https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/juvenile-justice-clinic/about-our-clinic-5/ (last visited Aug. 16, 2023)

[48] In 2015, the Juvenile Justice Clinic launched the Georgetown Juvenile Justice Initiative (GJJI) in order to increase Georgetown's commitment and capacity to tackle the most pressing issues facing the juvenile legal system, including the over-criminalization of youth,

Our clients in the clinic are almost exclusively Black youth between the ages of 12 and 21 from historically under-resourced families and neighborhoods in the District of Columbia. Indeed, Black youth typically comprise between 90% and 95% of annual youth arrests in DC,[49] and approximately 70% of DC youth arrested reside in the three poorest (and easternmost) wards of the city.[50] Additionally, the vast majority of our clients have experienced some level of trauma prior to becoming system-involved.[51] Given the demographics and common experiences of our clients, we have adopted four primary pedagogical frames for our clinic: 1) Adolescence; 2) Race; 3) Trauma; and 4) Sexual Orientation, Gender Identity, and Gender Expression ("SOGIE").[52] In developing the schema for each of these four frames, we looked to social science, critical legal theory,[53] and our clients' lived experience for inspiration. Below we will discuss not only how we construct the schema for each frame but also provide concrete ex-

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the racial and economic disparities that exist within the system, and the inadequate legal representation far too many youth receive. The Juvenile Justice Initiative operates national, regional, and local initiatives, including serving as the host of the Mid-Atlantic Gault Center. The mission of the Georgetown Juvenile Justice Initiative is to advocate for a smaller, better, and more just juvenile legal system in the District of Columbia, the Mid-Atlantic region, and across the country.

[49] *See e.g.* Criminal Justice Coordinating Council, District of Columbia FY18 Disproportionate Minority Contact Plan 1-2, https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/dc-fy18-dmc-plan_508.pdf (last visited Aug. 16, 2023) (reporting that Black youth made up 93% of arrests in FY18 and that "so few White youths have penetrated the District's juvenile justice system, that we cannot calculate Relative Rate Indices for any point of contact beyond the referral to juvenile court"). In contrast, Black youth only make up two-thirds of the adolescent population in DC. Puzzanchera, C., Sladky, A. and Kang, W. (2021). "Easy Access to Juvenile Populations: 1990-2020," https://www.ojjdp.gov/ojstatbb/ezapop/ (last visited Aug. 16, 2023).

[50] Biannual Reports on Juvenile Arrests, Metropolitan Police Department, https://mpdc.dc.gov/node/208852 (analysis on file with author).

[51] For example, a study of a sample of DC youth with delinquency-system-involvement found that approximately 12% had experienced homelessness; 50% of the youth had reported cases of neglect; 23% had reported cases of abuse; nearly 15% had been removed from their homes prior to delinquency-system-involvement; nearly 25% received TANF; and nearly 75% had received Medicaid for over one year. Criminal Justice Coordinating Council, A Study of Factors that Affect the Likelihood of Juvenile Justice System Involvement 11 (2022), https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/CJCC%20-%20A%20Study%20of%20Factors%20that%20Affect%20the%20Likelihood%20of%20Juvenile%20Justice%20System%20Involvement%20%28October%202022%29.pdf.

[52] These are not the only frames that we discuss throughout the year. For instance, disability and poverty come up often in our clinic work as well. However, these four pedagogical frames are the ones that we intentionally name and center in our teaching and representation. *See* Johnson, *Integrating Critical Theory and Clinical Education*, *supra* note 5, at 174 (discussing antisubordination and essentialism as frames).

[53] *Id.* at 162 ("Feminist legal theory, critical race theory, and poverty law theory serve as useful frameworks to enable students to deconstruct assumptions they, persons within institutions, and broader society make about the students' clients and their lives.").

amples of how we might apply the frame in an individual case using Kayla's case as an example.

1. Adolescence

The scientific research regarding adolescent development provides the foundation upon which we constructed our pedagogical frame of adolescence.[54] Specifically, there are three key interrelated concepts from the research that comprise the schema for the frame: 1) normative adolescent development; 2) neurological immaturity; and 2) psychosocial immaturity.

"Normative adolescent development" refers to a set of common milestones and characteristics that describe the typical pattern of development for the period of adolescence.[55] Given the existence of this norm across adolescents as a group, the law and practice can and should treat all youth as a discrete class separate from adults and must accommodate these common developmental characteristics when applied.[56] Neurological and psychosocial immaturity are examples of normative features of adolescence that the law and practice should accommodate.[57]

The concept of neurological immaturity recognizes that the brain of an individual is not fully developed until approximately the individual's mid-twenties. Indeed, the period of adolescence is marked by rapid and important changes in terms of brain composition and structure. For instance, during adolescence, the brain is rewiring itself through the processes of pruning and myelination in order to become more efficient and more effective at responding to the individual's lived environment. Additionally, the various regions of the brain continue to develop, with the region responsible for executive functioning being the last region to fully develop.[58] As a result, youths' brains are particularly malleable and, thus, have a greater capacity for change and growth than adults. In that context, a delinquent act most often reflects transitory behavior not the character of the individual who committed the act.

The concept of psychosocial immaturity recognizes that while youth reach a similar cognitive maturity to adults at around age 16,

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[54] *See generally* Eduardo R. Ferrer, *A New Juvenile Jurisprudence: How Adolescent Development Research and Relentless Defense Advocacy Revolutionized Criminal Law and Jurisprudence*, *in* RIGHTS, RACE, & REFORM: 50 YEARS OF CHILD ADVOCACY IN THE JUVENILE JUSTICE SYSTEM (Henning, Cohen, & Marrus, eds., 2018) [Hereinafter *A New Juvenile Jurisprudence*].

[55] *See id.* at 55-66.

[56] *See id.*

[57] *See id.*

[58] *See id.* at 58-60.

youth do not develop the same psychosocial maturity as adults until they are around age 25. This lack of psychosocial maturity manifests as youth being more impulsive, more focused on short-term rewards, less averse to risk, and more susceptible to the influence of peers, among other things.[59] Given this underdeveloped psychosocial capacity, youth have diminished decision-making capacity relative to adults, especially when under stress,[60] and, as a result, are less culpable. Moreover, once a youth's brain is fully developed and they reach the same psychosocial maturity as adults, the vast majority of adolescents – including those charged with violent crimes – naturally desist engaging in delinquent behavior.[61] This again reinforces that delinquent behavior, by and large, is a normative feature of adolescence and not indicative of who the individual will grow to be in adulthood.

The frame of adolescence thus lends itself easily to being used for mitigation. Because youth as a class are less culpable and more malleable, adolescence is both a time of great opportunity and great peril. Positive interventions during adolescence promote healthy development and desistance whereas negative interventions can do significant harm and increase recidivism.[62] Thus, the manner in which judges,

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[59] Laurence Steinberg, Dustin Alpert, Elizabeth Cauffman, Marie Banich, Sandra Graham, & Jennifer Woolard, *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 DEV. PSYCHOL. 1764 (2008); Laurence Steinberg, Elizabeth Cauffman, Jennifer Woolard, Sandra Graham, & Marie Banich, *Are Adolescents Less Mature than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip, Flop"*, 64 AM. PSYCHOLOGIST 583, 587 (2009).

[60] B.J. Casey & Kristina Caudle, *The Teenage Brain: Self Control*, 22 CURRENT DIRECTIONS PSYCHOL. SCI. 82, 82–87 (2013) (finding that cognitive capacity of a teenager is undermined by stress); Bernd Figner et al., *Affective and Deliberative Processes in Risky Choice: Age Differences in Risk Taking in the Columbia Card Task*, 35 J. OF EXPERIMENTAL PSYCHOL. 709, 728 (2009) (finding that adolescents in emotional situations were more likely than children and adults to take risks).

[61] *See* Edward P. Mulvey, *Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders* 1 (Office of Juvenile Justice & Delinquency Prevention (March 2011), https://www.pathwaysstudy.pitt.edu/documents/OJJDP%20Fact%20Sheet_Pathways.pdf (finding that "approximately 91.5 percent of youth in the study reported decreased or limited illegal activity during the first 3 years following their court involvement.").

[62] *See id.* at 2 (finding that "Longer stays in juvenile institutions do not reduce recidivism, and some youth who had the lowest offending levels reported committing more crimes after being incarcerated."); MARK W. LIPSEY ET AL., CTR. FOR JUVENILE JUSTICE REFORM, IMPROVING THE EFFECTIVENESS OF JUVENILE JUSTICE PROGRAMS: A NEW PERSPECTIVE ON EVIDENCE-BASED PRACTICE 23-25 (2010), (finding that "programs with a therapeutic philosophy were notably more effective than those with a control philosophy"), https://njjn.org/uploads/digital-library/CJJR_Lipsey_Improving-Effectiveness-of-Juvenile-Justice_2010.pdf; RICHARD MENDEL, THE SENTENCING PROJECT, WHY YOUTH INCARCERATION FAILS: AN UPDATED REVIEW OF THE EVIDENCE 12-19 (March 2023), https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/ (discussing the harms and counterproductive outcomes resulting

prosecutors, and probation officers respond to "delinquent" behavior can undermine not only the young person's individual development but also public safety. For example, in Kayla's case, there is likely little to no *factual* dispute – she took the phone from her boyfriend and struggled when the officer tried to handcuff her. As a result, from the perspective of many of the system's stakeholders, the primary question of the case is what to do with Kayla, and, more specifically, whether to detain and/or commit Kayla. As non-defense stakeholders seek to answer those questions, we advocate for stakeholders to view Kayla's behavior through the above-described frame of adolescence. Specifically, to the extent delinquency court intervention is even appropriate in Kayla's case, it should be the lightest touch possible given the nature of the offense, Kayla's lack of prior contacts with the delinquency court system, and her low risk of recidivism. Thus, any requests for detention or commitment should be denied as harmful and counterproductive and any interventions by the juvenile legal system should be minimal.

While adolescence is an effective frame to deploy for purposes of mitigation, it is critical to consider how the frame may be used in all other aspects of the case, including litigation. Specifically, in order to push back on the criminalization of normative adolescence itself, we consider how we might use the frame of adolescence to challenge the legal interpretation of Kayla's undisputed behavior. For instance, robbery in the District of Columbia requires proof that the individual "took the property and carried it away without right to do so and with the specific intent to steal it."[63] The instruction defines "specific intent to steal" as the intent "to deprive [name of complainant] of his/her property and to take it for his/her own use."[64] On its face, Kayla's undisputed behavior appears to meet the criteria – she took DeAngelo's phone against his will so that she could view his text conversations. However, when viewed through the frame of adolescence, Kayla's intent reflects the hallmarks of adolescence – impulsive, dominated by emotion, focused on immediate gratification – not a desire to cause harm, realize unearned gain, or break the law. Kayla was in love with DeAngelo. She was not breaking up with DeAngelo when she took his phone; to the contrary, Kayla just wanted to make sure DeAngelo was not cheating on her. Ultimately, but for the immediate intervention by the SRO, Kayla very likely would have given De-

from youth incarceration.)

[63] Comment, Criminal Jury Instructions for the District of Columbia, No. 4.300 (LEXIS 2022) (comment to the Criminal Jury Instruction for "Robbery").

[64] Criminal Jury Instructions for the District of Columbia, No. 4.300 (LEXIS 2022) (the Criminal Jury Instruction for "Robbery").

Angelo his phone back (or else risk damaging a relationship she wanted to continue). Thus, when her intent is understood through the frame of adolescence, it fails to meet the legal elements of robbery.

Additionally, the frame of adolescence can also be used to build a defense theory to the resisting arrest charge. Given the overall context of the situation,[65] one could argue that the SRO used more force than "reasonably necessary" when he tackled Kayla to the ground instead of following her, enlisting the assistance of other school staff, or otherwise attempting to deescalate the situation before using such violent force.[66] Because the officer used excessive force, then Kayla is entitled to use an amount of force "reasonably necessary for protection."[67] Here, utilizing the frame of adolescence, we would argue that Kayla not only used no more force than a reasonable person would use in a similar situation, but that she certainly used no more force than a "reasonable child" would use after being tackled from behind by an officer in a similar situation.[68]

2. Race

Social science research and the lived experiences of our clients provide the foundation upon which we constructed our pedagogical frame of race.[69] Specifically, there are two broad key interrelated concepts that comprise the schema for the frame: 1) implicit racial bias; and 2) policing as trauma.

Implicit racial bias is unfortunately a factor that can influence the decision making of all juvenile legal system stakeholders, including defense counsel.[70] Indeed, this bias can be thought of as the result of

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[65] For instance, the officer knew Kayla; the situation occurred in school between two youth who were in a romantic relationship; and the officer had additional resources for finding and discussing the situation with Kayla.

[66] Criminal Jury Instructions for the District of Columbia, No. 4.116 (LEXIS 2022) (the Criminal Jury Instruction for "Resisting Arrest or Preventing Arrest or Detention of Another").

[67] *See id.*

[68] *See generally* Marsha L. Levick & Elizabeth-Ann Tierney, The United States Supreme Court Adopts a Reasonable Juvenile Standard in J.D.B. v. North Carolina for Purposes of The Miranda Custody Analysis: Can a More Reasoned Justice System for Juveniles Be Far Behind?, 47 Harv. C.R.-C.L. L. Rev. 501 (2012) (explaining the concept of the reasonable child standard).

[69] *See generally* Henning, The Rage of Innocence, *supra* note 2; Kristin N. Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, 67 Am. U. L. Rev. 1513 (2018) [hereinafter *The Reasonable Black Child*].

[70] *See* Kristin N. Henning, *Race, Paternalism, and the Right to Counsel*, 54 Am. Crim. L. Rev. 649, 653–57 (2017) (summarizing studies showing evidence of implicit racial bias in the juvenile legal system); *see also* Henning, *The Reasonable Black Child*, *supra* note 69 at 1544 ("These types of cognitive biases are not limited to rogue officers who abuse their power or intentionally target racial minorities with discriminatory motives. People of all races have implicit racial biases that may negatively affect their behavior, even those who

subconsciously interpreting information through a negative frame of race.[71] The research shows that implicit racial bias can have particularly devastating effects on Black youth. For instance, Black youth are often perceived as significantly older and, thus, both more culpable and less deserving of the protections of adolescence than White youth of the same age.[72] Black youth are also perceived to be more aggressive and more dangerous, and, therefore, as more of a threat than White youth.[73] Left unchecked, implicit racial bias leads to the increased surveillance, arrest, prosecution, detention, commitment, and transfer to adult court of Black youth. As a result, it is critical that defenders intentionally name implicit racial bias subconsciously influencing the decisions making of juvenile legal system stakeholders and advocate for stakeholders to correct and overcome them.[74]

"Policing as trauma" refers to the significant traumatic toll that over-policing has on Black youth.[75] Numerous research studies have confirmed the negative impact that Black youths' direct experience

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ardently reject racism and discrimination and have positive relationships with people of other races. Even black Americans have some implicit racial bias in associating blackness with crime.").

[71] Henning, *The Reasonable Black Child*, *supra* note 69, at 1543 ("Implicit bias is so subtle that we are generally not aware of it and may act on it reflexively without realizing it. Implicit racial bias evolves from our repeated exposure to cultural stereotypes in society and is activated by environmental stimuli, including cultural stereotypes, that cause us to associate crime and race, particularly crime and blackness. Once stereotypes and biases are subconsciously triggered, they may evoke negative judgments and behaviors that are involuntary and unplanned.").

[72] *See* Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. Personality & Soc. Psychol. 526, 527-32 (2014); Henning, *The Reasonable Black Child*, *supra* note 69 at 1538-60 (summarizing the research); Rebecca Epstein, Jamila J. Blake & Thalia González, Georgetown Ctr. on Poverty & Inequality, Girlhood Interrupted: The Erasure of Black Girls'Childhood (2017), https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf [hereinafter *Girlhood Interrupted*].

[73] L. Song Richardson, *Arrest Efficiency and the Fourth Amendment*, 95 Minn. L. Rev. 2035, 2046–48 (2011); Justin D. Levinson & Danielle Young, *Different Shades of Bias: Skin Tone, Implicit Racial Bias, and Judgments of Ambiguous Evidence*, 112 West. Va. L. Rev. 307, 310-11 (2010); Kurt Hugenberg & Galen V. Bodenhausen, *Facing Prejudice: Implicit Prejudice and the Perception of Facial Threat*, 14 Psychol. Sci. 640, 640 (2003); Joshua Correll et al., *Across the Thin Blue Line: Police Officers and Racial Bias in the Decision to Shoot*, 92 J. Personality & Soc. Psychol. 1006, 1009 (2007); Joshua Correll et al., The Police Officer's Dilemma: Using Ethnicity to Disambiguate Potentially Threatening Individuals, 83 J. Personality & Soc. Psychol. 1314, 1317 (2002); *see also* Henning, *The Reasonable Black Child*, *supra* note 69 at 1538-60 (summarizing the research).

[74] John F. Irwin & Daniel L. Real, *Unconscious Influences on Judicial Decision-Making: The Illusion of Objectivity*, 42 McGeorge L. Rev. 1, 8–9 (2010); Jerry Kang, *Trojan Horses of Race*, 118 Harv. L. Rev. 1489, 1529–30, 1529 n. 207 (2005); Jeffrey J. Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?*, 84 Notre Dame. L. Rev. 1195, 1196-97 (2009); *see also* Henning, *The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment*, at 1572.

[75] *See* Henning, The Rage of Innocence, *supra* note 2, at 210-29.

with police and exposure to police violence in the media have on their physical and mental health.[76] For instance, Black youth who have been stopped by the police report heightened stress, anxiety, anger, fear, a lack of safety, depression, insomnia, sweating, difficulty breathing, nausea, shame, and other symptoms of physical and psychological distress.[77] In all, the chronic toxic stress that Black youth experience from invasive, aggressive, and sometimes violent policing can reduce their life expectancy and puts them at greater risk for a host of negative health outcomes as adults.[78] Moreover, Black youth do not need to experience discriminatory policing or police violence directly to be impacted and harmed by it.[79] Additionally, over-policing does not just impact the health and mental health of Black youth, but also shapes their behavior. Black youth come to fear law enforcement and seek to avoid them at all costs.[80] Black youth have no choice but to learn various strategies for avoiding or surviving an encounter with police[81] – strategies which are often ineffective or counterproductive because "Black teenagers always 'look' guilty no matter what they do. And they know it."[82]

This frame of race helps students better understand how the world too often negatively perceives Black children and how Black children too often negatively experience the world. This understand-

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[76] *See* Henning, THE RAGE OF INNOCENCE, *supra* note 2, at 210-17, 226-29.

[77] Dylan B. Jackson et al., *Police Stops and Sleep Behaviors Among At-Risk Youth*, J. Nat. Sleep Foundation (2020); Juan Del Toro et al., *The Criminogenic and Psychological Effects of Police Stops on Adolescent Black and Latino Boys*, 116 PNAS, 8261 (2019); Dylan B. Jackson et al., *Police Stops Among At-Risk Youth: Repercussions for Mental Health*, 65 J. ADOLESCENT HEALTH 627 (2019); Thema Bryant-Davis et al., *The Trauma Lens of Police Violence against Racial and Ethnic Minorities*, 73(4) J. Soc. Iss. 852-871 (2017); Abigail A. Sewell et al., *Living Under Surveillance: Gender, Psychological Distress, and Stop-Question-and-Frisk Policing in New York City*, 159 Soc. Sci. Med. 1-13 (2016); Abigail A. Sewell & Kevin Jefferson, *Collateral Damage: The Health Effects of Invasive Police Encounters in New York City*, 93 J. Urb. Health 42-67 (2016); Amanda Geller et al., *Aggressive Policing and the Mental Health of Young Urban Men*, 104(12) Am. J. Pub. Health 2321–2327 (2014).

[78] Devin English, Sharon F. Lambert, Brendesha M Tynes, Lisa Bowleg, Maria Cecilia Zea & Lionel C. Howard. *Daily Multidimensional Racial Discrimination Among Black U.S. American Adolescents*, 66 J. APPLIED DEVELOPMENTAL PSYCH. 1, 16 (2020); Sirry Alang, Donna McApline, Ellen McCreedy & Rachel Hardeman, *Police Brutality and Black Health: Setting the Agenda for Public Health Scholars*, 107 AM. J. PUB. HEALTH 662-665 (2017).

[79] *Id.* at 15; Brendesha M. Tynes, Henry A. Willis, Ashley M. Stewart & Matthew W. Hamilton, *Race-Related Traumatic Events Online and Mental Health Among Adolescents of Color*, 65 J. ADOLESCENT HEALTH 371, 371-73 (2019).

[80] Henning, *The Reasonable Black Child*, *supra* note 69, at 1554-55; Henning, THE RAGE OF INNOCENCE, *supra* note 2, at 211, 215.

[81] Henning, THE RAGE OF INNOCENCE, *supra* note 2, at 211.

[82] Henning, THE RAGE OF INNOCENCE, *supra* note 2, at 163-66 (discussing stereotype threat), 215.

ing is critical in our student attorneys' pursuit of their clients' goals. Let's look at Kayla's case again. If Kayla was a white student in a predominantly white school, would she have been arrested? Not likely. Delinquency generally, as we discussed above, is a normative feature of adolescence. But it is not just the behavior that matters, but the state's discovery of and response to youth behavior that makes something fall under the jurisdiction of the delinquency court.[83] And, in the case of Kayla, it is likely that implicit bias shaped that response in a number of ways. For instance, the school resource officer determined that Kayla's conduct was a criminal offense – not merely typical adolescent behavior or a violation of the school's code of conduct. The officer justified his decision to arrest Kayla by claiming that he had "no choice" but to arrest her given her past outbursts and disagreements with DeAngelo.[84] Both the officer's perception of her behavior and his perceived lack of options short of arrest reflected many facets of the officer's and the system's implicit bias against Black youth, including perceiving Kayla as more culpable, more threatening, and less deserving of support.[85] And while pointing out the bias would not change the fact that she was arrested, naming the bias and getting system stakeholders to understand how bias influenced the case may help get the case dismissed or resolved in a creative manner short of adjudication.[86]

In addition to better understanding why the officer to responded to Kayla in the manner in which he did, the frame of race is also key to understanding why Kayla's response of running from the school resource officer and "resisting" arrest was objectively reasonable and did not reflect a consciousness of guilt or desire to evade consequences.[87] Indeed, Kayla's response to the school resources officer grabbing her arm was that of a "reasonable Black child" who unfortunately is quite conditioned to be afraid of the police and to avoid interaction with them at all costs.[88] The reasonableness of Kayla's response coupled with the officer's lack of reason to believe that

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[83] *See* Eduardo R. Ferrer, *Razing and Rebuilding Delinquency Courts: De/Reconstructing Delinquency* (work in progress) (manuscript on file with the author) (discussing the legal construct of delinquency as based not only on the definition of the behavior, but also the detection of the behavior and the discretion to respond to the behavior using the apparatus of the juvenile legal system).

[84] HENNING, THE RAGE OF INNOCENCE, *supra* note 2, at 122-23.

[85] *Id.* at 122-46.

[86] *See id*. at 122-23 (in the case upon which Kayla's is based, the government eventually agreed to dismiss the case).

[87] *See* Henning, *The Reasonable Black Child*, *supra* note 69, at 1554-55 ("A black youth's flight from the police is just as likely to reflect a personal desire to avoid contact with a corrupt system as it is to be consciousness of guilt.").

[88] *See id*.

Kayla was a threat to others or to flee school grounds and knowledge that he could easily find Kayla at a later point supports a finding that the tackling of Kayla constituted excessive force. As such, when viewing this case through the frame of race, we shift the narrative from the purported reasonableness of the officer's behavior to the reasonableness of Kayla's behavior.

3. Trauma

The scientific and social science research regarding the impact of childhood chronic toxic stress on development provides the foundation upon which we constructed our pedagogical frame of trauma and resilience.[89] Specifically, there are three key interrelated concepts from the research that comprise the schema for the frame: 1) the high prevalence of childhood chronic toxic stress among youth in the delinquency system; 2) the impact of chronic toxic stress on childhood development; and 3) the impact of chronic toxic stress on childhood behavior.

Unfortunately, the experience of chronic toxic stress during childhood is the norm rather than the exception for youth who become involved in the delinquency system.[90] Studies investigating the prevalence of trauma among justice system-involved youth have found that over ninety percent of youth in the juvenile legal system report having experienced at least one traumatic experience during their childhood – a rate far higher than the average population.[91] For example, one study of system-involved youth in Florida found that "juvenile offenders [were] 13 times less likely to report zero ACES (2.8% compared to 36%) and four times more likely to report four or more ACEs (50% compared to 13%) than [a] population of mostly college-educated adults."[92] Thus, given the high prevalence of complex trauma in the population of system-involved youth, our clients cannot be fully understood without also understanding the potential impact of chronic toxic stress on their development.

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[89] *See generally* Eduardo R. Ferrer, *Transformation through Accommodation: Reforming Juvenile Justice By Recognizing and Responding to Trauma*, 53 Am. Crim. L. Rev. 549 (2016) [hereinafter *Transformation through Accommodation*]. Toxic stress is defined as the "strong and prolonged activation of the body's stress management systems in the absence of the buffering protection of adult support." Harvard Univ., Ctr. on the Developing Child, The Science of Early Childhood Development: Closing the Gap Between What We Know and What We Do 10 (2007), http://developingchild.harvard.edu/wp-content/uploads/2015/05/Science_Early_Childhood_Development.pdf [hereinafter The Science of Early Childhood Development].

[90] *See* Ferrer, *Transformation through Accommodation*, *supra* note 89, at 574-76.

[91] *See id.*

[92] *See* Michael T. Baglivio et al., *The Prevalence of Adverse Childhood Experiences (ACE) in the Lives of Juvenile Offenders*, OJJDP J. Juv. Just. 2, 10 (2014).

Chronic toxic stress during childhood can be especially impactful because it occurs during a period where development is particularly sensitive to experience and environment.[93] As a result, it should come as no surprise that toxic stress has significant negative effects on the developing brain and body.[94] Research over the last fifteen years has identified observable physiological damage to the developing brain as a result of childhood toxic stress.[95] Examples of such damage include decreased volume in regions of the brain responsible for executive functioning, self-regulation, memory storage, memory retrieval, coordination of motor skills, and the regulation of cortisol as well as overactivity in the region of the brain that interprets and responds to social cues.[96] Additionally, toxic stress can disrupt the healthy development of the body's stress response system.[97] Specifically, when a developing child experiences persistent toxic stress, the youth's body will recalibrate its stress response system to adapt to the distressing environment.[98] While wholly rational from an evolutionary standpoint, this adaptation can lead to impulsive and non-prosocial behaviors that can undermine a young person's success in the long-term.[99]

Indeed, the experience of chronic toxic stress during childhood can further diminish the normative decision-making capacity of adolescents. First, chronic toxic stress can cause youth to become hypervigilant.[100] This state of perpetual fear means that a young person perceives the world to be unsafe, and thus, becomes preoccupied with scanning the environment for threats.[101] While this hypervigilance is an adaptive response that promotes survival, hypervigilance also impairs a youth's already-diminished ability to delay gratification and prioritize the long-term over the short-term.[102] Second, chronic toxic stress during childhood may condition a youth to experience hyperarousal.[103] Thus, in addition to being more sensitive to environmental cues, children experiencing hyperarousal are less adept at appropriately interpreting and responding to those cues.[104] As a result,

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93 *See* Ferrer, *Transformation through Accommodation*, *supra* note 89, at 569.

94 *See* THE SCIENCE OF EARLY CHILDHOOD DEVELOPMENT, *supra* note 89, at 2 ("Toxic stress in early childhood is associated with persistent effects on the nervous system and stress hormone systems that can damage developing brain architecture and lead to lifelong problems in learning, behavior, and both physical and mental health.").

95 *See* Ferrer, *Transformation through Accommodation*, *supra* note 89, at 569-70.

96 *See id.*

97 *See id.* at 570-71.

98 *See id.*

99 *See id.*

100 *See id.* at 571.

101 *See id.*

102 *See id.*

103 *See id.* at 571-72.

104 *See id.*

they may misinterpret a neutral or safe situation as threatening and mis-respond accordingly.[105] Third, chronic toxic stress during childhood can also hinder the development of executive function, negatively impacting "learning, social interaction, self-regulation, and impulse control."[106] Given that executive functioning does not typically fully develop until an individual's mid-20's, youth who have experienced childhood trauma may struggle even more than the average adolescent to control their impulses and emotions.[107]

Like the frame of adolescence, the frame of trauma is often used in advocacy regarding mitigation and court intervention. Fundamentally, trauma-responsive care itself is grounded in a shift in framing, from asking the question "what is wrong with the youth?" to asking "what has happened to the youth?"[108] This shift in frame helps with mitigation because it helps break down the victim/offender dichotomy and locates the root cause of the young person's behavior in the trauma they have experienced rather than their character. This shift in frame also provides a roadmap for effective intervention. Specifically, given the experience of trauma, effective intervention must prioritize healing and building resilience and avoid doing further harm.[109]

Again, it is critical to understand how the frame of trauma can also apply to reframing all aspects of the case. For instance, while the frame of adolescence focuses on normative adolescence and thus youth as a class, the frame of trauma focuses on the likely or actual impact of chronic stress on the individual client. Thus, while the frame of adolescence can be used to reframe objective standards like the reasonable person to reflect youthfulness, the frame of trauma can provide a more robust understanding of the individual client's subjective perspective when evaluating culpability. For instance, applying the frame of trauma to Kayla's case helps the factfinder better understand why Kayla reasonably ran from the officer in the first instance and resisted arrest once she was tackled. Prior to the described incident with the school resource officer, Kayla had experienced significant trauma during her childhood. Her father passed away when she was still very young, and she grew up with a mother who experienced depression, abused illegal substances, and allegedly physically abused Kayla.[110] Given these adverse childhood experiences, Kayla is more likely to experience both hypervigilance and hyperarousal, and her in-

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105 *See id.*

106 *See id.* at 572-73.

107 *See id.*

108 *See id.* at 588-89.

109 *See id.* at 590-92.

110 While not a diagnostic tool, depending on the frequency of abuse, Kayla would score at least a 4 on the Adverse Childhood Experiences Scale. *See id.* at Appendix 1.

dividual behavior must be interpreted through this lens. As such, when the school resource officer grabbed her arm unexpectedly, his actions triggered Kayla's more sensitive fight-or-flight response, reasonably causing her to fear and flee him. Similarly, when the school resource officer tackled Kayla, she was reasonably put in fear of imminent danger of bodily harm and did what she could to prevent the school resource officer from harming her. Thus, both her flight and her fight were reasonable autonomic responses, demonstrating both that she lacked the criminal intent to resist and was legally justified in doing so.

Additionally, the frame of trauma can help stakeholders better understand and respond to the non-criminal behavior of youth who are before the court. For instance, given Kayla's alleged outbursts at and abscondences from her foster placements, Kayla is likely perceived as noncompliant at best and outright defiant at worst by her social worker (and perhaps other system stakeholders). However, the research teaches us that healing from trauma requires the feelings of safety and control.[111] As a result, when a trauma-responsive lens is applied to Kayla's case, her behavior is better understood as communicating that she did not feel safe in her placements, needed something she could control, or both. This shift in frame from viewing her behavior as a reflection of character to a form of communication is critical to responding effectively to the behavior. The juvenile legal system is quick to respond to perceived noncompliance or defiance using coercive interventions like outplacement, electronic monitoring, curfews, and other liberty restrictions – interventions that are likely to make a youth like Kayla feel even less safe or in control.[112] Instead, a trauma-responsive intervention would seek to both empower Kayla and help her address the root and immediate causes of why she feels unsafe.

Finally, it is critical to emphasize that, while Kayla's trauma history helps to better understand her, it does not define her or predict her future. Indeed, highlighting Kayla's strengths, including her resilience, is necessary to construct a robust, complete narrative. Here, we might point out that, despite the trauma she has endured, Kayla is very engaged in school. She attends regularly, gets good grades, and is actively involved in extracurricular activities. Moreover, at seventeen,

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111 Alicia Summers, PhD, *Why Trauma-Informed Courts Are Important*, JUVENILE JUSTICE INFORMATION EXCHANGE (Oct. 3, 2016), https://jjie.org/2016/10/03/why-trauma-informed-courts-are-important/ (describing three common conditions for healing and resilience: 1) safety; 2) self-determination; and 3) positive social connection).

112 *See* Ferrer, *Transformation through Accommodation*, *supra* note 90, at 590-92; *see also* Lipsey, *supra* note 62, at 23-25; Mendel, *supra* note 62.

this is the first time she has been arrested. With additional interviews, we could further develop the details of Kayla's resilience – how she has cared for her mother through her depression and substance abuse, the effort she makes to keep her grades up, her commitment to dance, and the strong community she has around her. Thus, the frame of trauma provides a tool for contextualizing and understanding Kayla's alleged misbehavior while also highlighting the strength of her character and resolve.

4. Sexual Orientation, Gender Identity, and Gender Expression

Social science research and the lived experiences of our clients also provide the foundation upon which we constructed our pedagogical frame of sexual orientation, gender identity, and gender expression (SOGIE).[113] The construction of the schema of SOGIE begins with a clear understanding of the distinct aspects of human gender and sexual identity and then explores the individual and systemic biases and drivers that impact cis-girls, LGBTQ+ youth, and cis-boys. This frame helps us reemphasize the importance of combating bias and individualizing our representation of system-involved youth.

First and foremost, the schema is grounded in the recognition and affirmation of the various dimensions of identity as it relates to gender – assigned sex, gender identity, gender expression, and sexual orientation.[114] It also recognizes that each dimension of identity is a spectrum, not a simple binary.[115] For instance, assigned sex is the sex designated at birth, typically based on the child's visible genitalia.[116] While typically designated as either male or female, some intersex individuals are born with either sex chromosomes or reproductive systems that do not fall into the male/female binary.[117] Gender identity is an individual's internal identification along the spectrum of male/female identity.[118] While most individuals' identities align with their assigned sex (i.e., cisgender), the gender identity of transgender

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[113] *See generally* Yasmin Vafa, Eduardo Ferrer, Maheen Kaleem, Cherice Hopkins & Emily Feldhake, Rights4Girls & the Georgetown Juvenile Justice Initiative, Beyond the Walls: A Look at Girls in DC's Juvenile Justice System (2018), https://rights4girls.org/wp/wp-content/uploads/r4g/2018/03/BeyondTheWalls-Final.pdf [hereinafter *Beyond the Walls*]; Shannan Wilber, *Lesbian, Gay, Bisexual, and Transgender Youth in the Juvenile Justice System* (Annie E. Casey Foundation, 2015), https://www.nclrights.org/wp-content/uploads/2015/09/AECF_LGBTinJJS_FINAL2.pdf; Nancy E. Dowd, *Boys, Masculinities and Juvenile Justice*, 8 J. Korean L. 115 (2008).

[114] Wilber, *supra* note 113, at 6-7.

[115] *Id*.

[116] *Id*.

[117] *Id*.

[118] *Id*.

individuals is distinct from their assigned sex.[119] Gender expression is the manner in which an individual chooses to present their gender to others, typically through the use of clothing, hairstyle, or mannerisms.[120] Gender nonconforming individuals present their gender in a manner that differs from the manner in which their assigned gender would present pursuant to cultural norms.[121] Sexual orientation reflects the gender to which an individual is attracted emotionally, sexually, or romantically.[122] Sexual orientation falls on a spectrum, with individuals being attracted to men or women or identifying as bisexual, pansexual, or asexual.[123]

Understanding these various dimensions of gender and sexuality is critical to understanding and framing the unique "drivers, experiences, and needs" facing cis-girls and LGBTQ+ youth in the delinquency system,[124] especially given that the system has developed over time into one that primarily focuses its attention on the behavior of cis-boys.[125] For instance, the primary drivers of system-involvement vary significantly by gender. Specifically, since the founding of the juvenile court, "the offenses that have led to girls' justice-involvement have been inextricably linked to girls' engagement in behaviors that violated social norms about gender, race, and femininity."[126] While boys more often come to the attention of the juvenile court as a result of behavior that allegedly poses a threat to public safety, girls more often are swept into the delinquency system to "protect" them from promiscuity, victimization, or unlady-like behavior.[127] Similarly, though perhaps for less paternalistic reasons, LGBTQ+ youth are often driven into the system – directly and indirectly – as a result of their non-conformance to traditional societal and cultural norms around gender and sexual orientation.[128] Indeed, cis-girls and LGBTQ

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119 *Id.* In addition to identifying as male or female, transgender individuals may also identify as bi-gendered, two-spirit, or third gender. *Id.*

120 *Id*. An individual can choose to present themselves as masculine, feminine, or androgynous. *Id.*

121 *Id*.

122 *Id*.

123 *Id*.

124 *See* Vafa, *supra* note 113, at 2; Wilber, *supra* note 113, at 14-35.

125 *See* Dowd, *supra* note 113, at 117 ("My hypothesis is that the juvenile justice system is one that we have constructed as a gender-specific system to manage, control and respond to boys. It reflects and operates upon assumptions about masculinities, and reflects masculine norms."); 124 ("The juvenile justice system should be understood as a system that focuses on and deals with the behavior of boys.").

126 Vafa, *supra* note 113, at 2.

127 *Id*.

128 *Id*. at 6-9; Bianca D. M. Wilson, Sid P. Jordan, Ilan H. Meyer, Andrew Flores, Lara Stemple, & Jody Herman, *Disproportionality and Disparities among Sexual Minority Youth in Custody*, 46 J. YOUTH & ADOL. 1547, at 1548-50 (2017), https://pubmed.ncbi.nlm.

youth often experience similar pathways into system involvement – pathways associated with or resulting from higher levels of complex trauma, particularly sexual victimization; unmet behavioral health needs; housing instability; school pushout; and child welfare system involvement.[129] The impact of such pathways is that cis-girls and LGBTQ+ youth – both of whom are sexual minorities in the delinquency system – are disproportionately criminalized and detained for status offenses;[130] experience longer length of stays in detention;[131] and endure higher rates of victimization inside detention facilities, inequitable treatment, re-traumatization, and neglect of medical and behavioral health needs.[132] In sum, the research emphasizes the manner in which the non-conformity and victimization of cis-girls and LGBTQ+ youth is criminalized, making students more attuned to the unique needs and obstacles cis-girls and LGBTQ+ youth face and equipping students with a roadmap for issue-spotting and challenging the biases at the root of such criminalization.

Importantly, while cis-boys make up the sexual/gender majority in the delinquency system, system-involved cis-boys also face challenges – albeit different ones – associated with gender conformity, especially as it relates to the social construct of masculinity.[133] As

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nih.gov/28093665/.

129 Vafa, *supra* note 113, at 6-9; Wilson, et al., *Disproportionality and Disparities among Sexual Minority Youth in Custody*, *supra* note 128.

130 Wilson, et al., *Disproportionality and Disparities among Sexual Minority Youth in Custody*, *supra* note 128, at 4 (2017) ("Girls (11%) were far more likely to be in custody for status offenses (e.g., running away, truancy) when compared to boys (4%), as well as for technical violations (24% vs. 16%)."), 6 ("Studies with juvenile justice practitioners document widespread misperceptions and negative attitudes toward sexual minority youth that produce and enable inequitable treatment, neglect of health and medical issues, excessive use of force, sexual and physical victimization, and unwillingness to offer protection"); Angela Irvine, "*We've had three of them": Addressing the invisibility of lesbian, gay, bisexual, and trans-gender youth in the juvenile justice system*, 19 COLUM. J. OF GENDER & L. 675 (2010) (finding the LGBT youth are twice as likely as other youth to be detained for a status offense); BEYOND THE WALLS, *supra* note 113, at 7-8.

131 Wilson, et al, *Disproportionality and Disparities among Sexual Minority Youth in Custody*, *supra* note 128, at 11 ("Sexual minority youth were disproportionately represented in juvenile detention, more likely to have been in custody for more than a year, and were more likely to report being sexually assaulted by other youth compared to straight youth."); BEYOND THE WALLS, *supra* note 113, at 10-11.

132 Wilson, et al, *Disproportionality and Disparities among Sexual Minority Youth in Custody*, *supra* note 128, at 6-7 ("Studies with juvenile justice practitioners document widespread misperceptions and negative attitudes toward sexual minority youth that produce and enable inequitable treatment, neglect of health and medical issues, excessive use of force, sexual and physical victimization, and unwillingness to offer protection") (citations omitted); BEYOND THE WALLS, *supra* note 113, at 10-11; *see also* Wilber, *supra* note 113, at 12-13.

133 *See* Dowd, *supra* note 113, at 131.

> The juvenile justice system is a good example of these patterns. We have generally not focused on gender at all, rendering gender invisible. When we do focus on gen-

Professor Nancy Dowd observes:

> The punishment or rehabilitation of boys, moreover, is not with the goal of making them better or different men with a different sense of masculinity. Rather, the system reinforces traditional notions of masculinity rather than challenging them, at the very time when those traditional notions are the focus of adolescent masculinities and contribute to the actions of boys.[134]

Specifically, the juvenile legal system reinforces "traditional notions of masculinity"[135] by asserting its dominance over the boy-child,[136] modeling violence,[137] and dismissing or punishing non-conformance to the masculine ideal.[138] First, as "[boys] mature, they are taught to suppress emotion and empathy" and project strength.[139] However, in our experience, system-involved boys are often perceived as defiant or obstinate when they do not share openly with a judge, probation officer, or therapist. Additionally, when boys do express themselves, they tend to externalize their feelings.[140] For example, a boy's expression of

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> der, we focus on girls and exclude boys, because we think we can only focus on one rather than both. It is a system that presumptively is about boys, but we do not talk about gender or masculinity. The examination of the system as gendered on behalf of girls has not led to an examination on behalf of boys.

Id.

134 Dowd, *supra* note 113, at 133.

135 *See* Dowd, *supra* note 113, at 128 ("The two most common defining statements of masculinity are imperative commands: do not be like a woman and do not be gay. Thus, masculinity has negativity at its core, not an affirmative sense of identity.").

136 *See id.* ("Men, although power-ful, feel power-less. The hierarchical relationship among masculinities explains this, as well as the demand of masculinity that it constantly be proved. Masculinity is "the Big Impossible," that which is never assured or completely achieved, but always to be demonstrated.").

137 *See* MENDEL, *supra* note 62, at 16-19 (finding that "a comprehensive national review in 2015 revealed that systemic or recurring maltreatment or abuse had been clearly documented in the state-funded youth correctional facilities of 29 states and the District of Columbia since 2000, and in 43 states and the District of Columbia and Puerto Rico since 1970") (*citing* Richard Mendel, MALTREATMENT OF YOUTH IN US JUVENILE CORRECTIONS FACILITIES (Annie E. Casey Foundation, (2015)); *see also* Dowd, *supra* note 113, at 130 ("Finally, violence is a core attribute of masculinity, for both men and boys, and in the adolescent period the most traditional concept of masculinity, including violence, is strongly reinforced.").

138 At a systemic level, this often manifests through the reinforcement of patriarchal hierarchies. *See supra* notes 124-132 and accompany text (discussing the increased victimization and disparate treatment of cis-girls and LGBTQ+ youth by the delinquency system); Dowd, *supra* note 113 at 115 ("Boys of color are particularly dangerous, as are gay boys and lower class boys. So the hierarchy of masculinities is evident in those who come into the system and how they are treated.").

139 Dowd, *supra* note 113, at 129.

140 *See* Tara M. Chaplin & Amelia Aldao, *Gender Difference in Emotion Expression in Children: A Meta-Analytic Review*, 139 PSYCH. BULLETIN 735, 754 (2013) (finding "evidence for significant but very small gender-role-consistent gender differences overall, with . . . boys expressing more externalizing emotions such as anger than girls").

depression may manifest itself as physical aggression.[141] Unfortunately, the system often interprets such a visible expression of emotion as evidence that the boy is a threat rather than understanding that the aggression is a symptom of the invisible, unexpressed grief. Thus, unless a boy expresses himself exactly in the way expected by the court, he is punished.[142] And too often, the boy is punished with violence – increased surveillance, handcuffs, shackles, physical force, prison bars, or solitary confinement.[143] Moreover, when a boy's trauma is raised as context to explain the behavior, his lived experience is often only cursorily considered or dismissed altogether. As a shelter house worker once expressed after being informed of a 14-year-old client's history of trauma: "The boy just needs to just suck it up and be a man." Thus, understanding the role that masculinity plays in shaping the juvenile legal system's interpretation of and response to the behavior of our male clients prepares students to reframe such interpretations and responses and push back against the perpetuation of toxic masculinity and patriarchal hierarchies.

Let's examine Kayla's case again now through the frame of SOGIE. If Kayla and DeAngelo's roles were reversed, would the school resource officer have intervened? Would the prosecutor have charged DeAngelo in the case? Given the roles that masculinity and paternalism play in shaping the system's response to adolescent behavior, the response might have been very different. First, given "the dominance of men in the gender order,"[144] it is possible that the school resource officer would not even perceive DeAngelo's behavior to be troubling, let alone criminal.[145] Rather the school resource of-

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141 *See* Christine Blain-Arcaro & Tracy Vaillancourt, *Longitudinal Associations between Depression and Aggression in Children and Adolescents*, 45 J. ABNORM. CHILD PSYCHOL. 959, 967 (2017) (finding "a positive and significant association between physical and relational aggression, and between both forms of aggression and depression symptoms" and "that boys engage in physical aggression more than girls") (citations omitted); *see also* A.M. Möller Leimkühler & J. Heller, N.-C. Paulus, *Subjective Well-being and 'Male Depression' in Male Adolescents*, 98 J. AFFECTIVE DISORDERS 65, 66 (2007) (discussing research finding that "'male' symptoms like irritability, aggressiveness and antisocial behavior were more strongly intercorrelated in depressed males than in depressed females.").

142 Dowd, *supra* note 113, at 114-15 ("The harsh punishment characteristic of the current system reflects the view of boys as dangerous and inherently violent.").

143 *See* MENDEL, *supra* note 62, at 16-19 (discussing the high rates of maltreatment and abuse that youth experience in juvenile facilities); *see also* Dowd, *supra* note 113, at 115 ("Moreover, the justification of harsh punishment as necessary in order to control boys silently sanctions the worst offenses within confinement, most notably prison rape, leaving them unchallenged and permitted as part of punishment.").

144 *See* Dowd, *supra* note 113, at 115.

145 *See* Yael Cannon & Nicole Tuchinda, *Critical Perspectives to Advance Educational Equity and Health Justice*, 50 J. L. MED. & ETHICS 776, 781 (2022) ("Intersectionality, a tenet of CRT and DisCrit, helps to explain why Black girls experience higher levels of

ficer may have perceived DeAngelo's behavior as justified given the allegations of cheating. Second, because the situation did not pose any threat to public safety, it is quite possible that the school resource officer would not view DeAngelo's behavior as requiring system involvement as a means to protect others. In contrast, while Kayla also did not pose a threat to public safety, given her gender, it is more likely that the school resource officer and prosecutor perceived system involvement as not only necessary to protect her from herself but a vehicle to ensure behavior change. Thus, applying the frame of SOGIE helps students understand that the decision to arrest and charge Kayla represents not only the criminalization of adolescence but also the criminalization of gender.

5. Intersectionality & Overlapping Pedagogical Frames

In addition to adolescence, race, trauma, and SOGIE, we also emphasize the intersectionality of these schema and its centrality to the individualization of representation.[146] In other words, as Goffman pointed out, the most complete or precise narrative often requires the application of multiple overlapping frames.[147] For example, in Kayla's case, it is not just that she is an adolescent, or that she is Black, or that she is a cis-girl who has experienced trauma. Kayla's experience is best understood at the intersection of these identities and experiences – through the overlapping frames of being a Black teenaged cis-girl with a history of trauma.

Social science research and lived experience of our clients again help guide our construction and concretization of intersectionality. While racial hierarchies impact all Black youth and gender hierarchies impact all girls, research highlights the particular impact of the combination of racial and gender bias on Black girls specifically.[148] For instance, mirroring similar research by Dr. Goff regarding Black boys, the Georgetown Law Center on Poverty and Inequality found that, compared to white girls of the same age, adults perceive that: Black girls need less nurturing, protection, support, and comfort; that Black

arrest and restraint than both White children and Black boys. . ..") (*citing* Thalia González *et al.*, *A Health Justice Response to School Discipline and Policing*, 71 AM. U. L. REV. 1927, 1942 (2022) (finding that Black girls with disabilities have the higher rates of school exclusion and referral to law enforcement of any student population)).

146 Katy Steinmetz, *She Coined the Term 'Intersectionality' Over 30 years Ago. Here's What It Means to Her Today*, TIME (Feb. 20, 2020), https://time.com/5786710/kimberle-crenshaw-intersectionality/ (defining intersectionality as "a lens, a prism, for seeing the way in which various forms of inequality often operate together and exacerbate each other.").

147 *See* Goffman, *supra* note 6, at 25-26.

148 *See generally* Epstein, *supra* note 72 (finding that "adults view Black girls as less innocent and more adult-like than their white peers, especially in the age range of 5-14").

girls are more independent; and that Black girls are more knowledgeable about adult topics, including sex.[149] Combining these findings with the disproportionate rates of school exclusion and referral to the justice system that Black girls experience, the authors hypothesize that the adultification of Black girls results in greater use of force and harsher punishment in both school and juvenile legal system settings.[150]

Given this research, layering together the frames of adolescence, race, trauma, and SOGIE strengthens the argument for dismissal of Kayla's case. Kayla's behaviors merely reflected those of typical teenage angst and impulsivity, not criminal behavior. However, because of her race and gender, the school resource officer failed to see her as a child and instead criminalized her behavior. As a result, the arrest and subsequent prosecution are grounded in bias and will do little to further public safety. Additionally, given the trauma she has already experienced and the fact that she is less likely to be seen as in need of protection and support, it is likely that the system will cause further harm to Kayla. Therefore, when combined, the frames together make a compelling case for dismissal.

Importantly, pedagogical frames are not necessarily to be used to tell the entire, most-nuanced narrative of a client in every case, but rather to construct the narrative most likely to advance the client's expressed interests. In other words, students should not be combining all four frames in every case. Rather, in each case, students should strategically consider how each frame in isolation might advance a client's identified goals while also considering the frames in combination and collectively. As a result, while our four pedagogical frames provide a common framework for examining cases, the flexibility and intentionality with respect to how frames are used promotes the individualization of representation in every case.

C. Our Rationale for these Particular Pedagogical Frames for a Youth Defense Clinic

Why did we choose these particular four frames for our youth defense clinic? Three main reasons: prevalence, power, and principle.

First, the age, race, trauma history, and SOGIE of our clients individually and collectively influence every single one of our cases in our clinic. While the degree of influence varies from case to case, we have consistently seen these frames impact our cases and clients in two primary ways. First, even when stakeholders explicitly acknowl-

[149] *See id.* at 1, 7-8.
[150] *See id.* at 1, 9-12.

edge these frames, they often minimize and reduce them to one of many ancillary factors to consider at the mitigation stage of the proceedings of the case. In other words, facts like age and trauma history are seen merely as information to be considered for determining jurisdiction or the disposition of the case, not for determining or understanding issues like culpability or compliance. Second, when stakeholders unconsciously rely on these frames, the frames often lead to or reinforce implicit bias. For example, implicit racial bias often results in our Black clients – both boys and girls – being perceived as older, more dangerous, more culpable, and less deserving of support. Additionally, fundamental attribution bias often results in our youth clients' delinquent behavior being perceived as indicative of their character rather than a normative feature of the transitory stage of adolescence that they will outgrow. Thus, given the prevalence with which we encounter these four frames in our cases and the manner in which they can negatively impact our clients if not identified and addressed, we have to consider these frames in every case in our work.

Second, while we discuss above the manner in which these frames can negatively impact our case, given the research regarding adolescence, race, trauma, and SOGIE, these four frames can be powerful tools to advance our clients' expressed interests when used strategically and intentionally by defense counsel. This is particularly true when we as defense counsel can recast adolescence, race, trauma history, and SOGIE not merely as one factor of many to be considered, but as the frames through which all other factors should be considered. For example, adopting a trauma-responsive frame in a case shifts the focus of the case from the youth's behavior to what happened to the youth prior to engaging in such behavior. This reframe helps stakeholders better evaluate intent and reasonableness of conduct, appropriateness of court intervention, disposition, and other critical decisions in the case. Additionally, when used intentionally and strategically, the frames of adolescence, race, and SOGIE can be used to directly confront, combat, and reverse the various unconscious biases that too often negatively impact our clients.

Third, we chose these four frames because they not only provide additional tools to improve our advocacy, but because they reflect our values as professors and as a clinic – youth justice, racial justice, reparative justice, and gender justice. First, kids should be treated as kids, supported and instructed through mistakes, not scapegoated or thrown away because of systemic forces they played no role in creating. Second, race matters. We must normalize conversations about the manner in which historical and modern systemic racism drive children of color into the juvenile legal system, and we must equip students to

engage intentionally in the work of undoing those systems of oppression.[151] Third, we must seek justice in ways that help individuals – both perpetrator and victim – to meaningfully heal from the harm they have experienced. This includes not just repairing harm at the individual interpersonal level, but also acknowledging and repairing the harm caused by biased and indifferent systems. And, finally, we must strive to ensure that no one is punished or discriminated against as a result of how they were born, who they love, or how they identify. Thus, the four frames we selected provide not only a methodology for equipping students with a transferable skill, but also a platform for students to explore the type of lawyers and people they want to be when they set out into the world to practice law.

II. The Pedagogy of Frames Applied

As Professor Johnson notes and describes in *Integrating Critical Theory and Clinical Education*, there are a variety of ways that Critical Theory can be integrated into clinical pedagogy.[152] The Pedagogy of Critical Clinical Frames defined above forms the foundation for our approach for turning Critical Theory into Critical Praxis. Having defined a pedagogical frame and explained how we have chosen and constructed specific frames for the Juvenile Justice Clinic above, we now turn to how we apply the pedagogy of frames in our clinic.

A. Course design

The Juvenile Justice Clinic encourages students to consider and apply our four frames – 1) adolescence; 2) race; 3) trauma; and 4) SOGIE – throughout every aspect of their client representation and coursework. The intentional and explicit utilization of these critical frames encourages students to deconstruct the law's claim to neutrality, to understand the manner in which carceral systems disproportionately negatively impact youth of color, and to construct counternarratives that advance our clients' expressed interests. Students are also encouraged to explore how these frames apply to their relationships with the client and system stakeholders, their lawyering skills, and their own personal and professional identity formation. Thus, given their pervasive nature,[153] our four pedagogical frames

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[151] Alfieri, *supra* note 44, at 18 ("New rebellious ways of speaking about civil rights and poverty law require new visions of low-income communities of color burdened by stigmatizing identity narratives expressed in the form of 'race talk.'").

[152] Johnson, *Integrating Critical Theory and Clinical Education*, *supra* note 5, at 172-84 (explaining the various ways that one could and that Professor Johnson has integrated Critical Theory into her two clinics).

[153] *See supra* notes 38-41 and accompanying text; *see also* Johnson, *Integrating Critical Theory and Clinical Education*, *supra* note 5, at 174 (describing her decision "to teach

form a key pillar around which our course is designed.[154]

The centrality of the pedagogical frames to our course design is communicated to students explicitly in three ways through our syllabus. First, the syllabus contains an introduction to the four frames along with the course description and learning goals. Both the course description and the learning goals mention the importance of strategically applying the four frames throughout all aspects of representing their clients. Second, the syllabus explicitly names classes that will be devoted to constructing the schema of a particular frame. This raises the salience of the frames and communicates the goals for those particular classes to the students. Third, the syllabus communicates the specific order in which we have chosen to explore each of the four frames. As a result, as will be discussed in more detail below, the syllabus itself guides students to make connections between the theory of the frames and practical application of the frames.

B. Seminars & Readings

The four frames are woven into the fabric of the clinic through three different types of seminar classes that reflect the "prepare, do, reflect" essence of clinical education. First and foremost, there are substantive seminar classes specifically devoted to constructing the various frames and preparing students to use them. These substantive seminars begin during orientation with separate seminars devoted to exploring difference and introducing the research relating to normative adolescent development and implicit racial basis. This introduction to the frames of adolescence and race take place prior to a seminar class on case theory so that students can immediately engage with how the frames can impact all aspects of litigation. Throughout the year, we revisit the frames with additional seminar classes devoted to each of these frames that are intentionally juxtaposed with seminars covering "black letter" law. For instance, we pair a seminar covering Fifth Amendment doctrine with a seminar exploring the ways the law should accommodate adolescence and explore the idea of an objective "reasonable child" standard.[155] Additionally, we pair a seminar covering Fourth Amendment doctrine with a seminar diving deeper into implicit racial bias, policing as trauma, and an objective "reasonable Black child" standard.[156] We also use a seminar on trauma and resilience to highlight ways to use and litigate the subjec-

critical theory pervasively across the curriculum, as opposed to isolated classes").

[154] The learning goals for our clinic include 1) role assumption; 2) case planning; 3) lawyering skills; and 4) reflection.

[155] *See supra* notes 54-68 and accompanying text.

[156] *See supra* notes 69-87 and accompanying text.

tive experiences of our clients to advance their expressed interests and a seminar on SOGIE to reemphasize the role of defense counsel, individualized representation, and the minimization of our own biases.

In preparation for these substantive seminars on frames, students are assigned readings relating to the relevant frame. Readings include law review articles, social science research, literature reviews, policy reports, and annotated bibliographies that we have created for students summarizing research studies on various topics.[157] Indeed, many of the sources cited in Part I, *supra*, are the readings that we assign to students as we help them explore and construct the various frames. For instance, prior to orientation, students are assigned a chapter from the National Research Council report on *Reforming Juvenile Justice: A Developmental Approach* that succinctly explains key research related to the biological and social aspects of normative adolescent development, including the impact of racial discrimination on development.[158] Students are also assigned *Race, Paternalism, and the Right to Counsel*[159] *as well as The Reasonable Juvenile Standard in JDB*[160] in order to introduce how race and adolescence intersect with our representation of youth.

The big picture goals of these substantive seminars on the frames are three-fold. First, these substantive seminars provide students with the information necessary to begin constructing the frames we encourage students to use in our clinic. The seminars and arc of the course are designed and ordered such that the frames become more layered and robust as students acquire more information and gain first-hand experience representing clients. Second, the substantive seminars provide an opportunity to explore how the frames can be used as a tool for challenging the supposed neutrality of the law, systems, and stakeholders and for building strategic counternarratives. As a result, the substantive seminars introduce not only the theory behind the construction of the frame but also examples of how to practically apply the frame in client representation. Third, these seminars seed the ground for discussions of race and SOGIE as well as normative and divergent development. Our hope is to establish a clinic culture that normalizes discussions of these topics in our clinic as well as the use of our frames as a tool to advance client's interests.

In addition to substantive seminars, we also use simulation-based

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157 Defenders can sign up to receive access to these annotated bibliographies as well as additional resources related to the four frames at www.defendracialjustice.org.

158 *See generally* National Research Council, Reforming Juvenile Justice: A Developmental Approach (2013).

159 Kristin N. Henning, *Race, Paternalism, and the Right to Counsel*, *supra* note 70.

160 Levick & Tierney, *supra* note 68.

seminars to practice and reinforce using frames and frame analysis in the context of client representation. Students are often assigned mock exercises that they must complete for class. The exercises vary from writing a disposition argument to drafting a cross examination to drafting and delivering a suppression argument. The exercises are designed to integrate the substantive law and trial skills students have learned to that point while providing students with an opportunity to incorporate the frames of adolescence and race, and their intersection in the form of the reasonable Black child, into their argument. During the second semester, students also argue an oral motion based on a hypothetical designed to encourage students to practice incorporating implicit bias, policing as trauma, and adolescent development into their arguments.

Seminars incorporating traditional case rounds and other forms of group-based reflection provide a third format for incorporating our frames into our course and client work. Case rounds, in particular, provide an effective, structured, class-wide format in which to explore the assumptions and biases that may be at work in a live case.[161] As a result, we have found case rounds to be a ripe opportunity to engage collectively in frame analysis (i.e., what frames are being used by whom and how in the case) and further explore the four frames specific to our clinic.[162]

C. Supervision

Supervision provides another opportunity for students to engage in frames analysis and practice the application of our pedagogical frames in their advocacy. As students develop their case theory and interact with other system stakeholders, students often engage in frame analysis either subconsciously or consciously but incompletely. In supervision, we then guide students to a more explicit, intentional, and extensive analysis of the frames that others have adopted as well as the potential frames and counternarratives that the student has identified as useful to advancing their client's expressed interests.[163]

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[161] Susan Bryant & Elliot Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education*, 14 CLIN. L. REV. 195, n. 35 ("This kind of learning ultimately enables students to see how culture and experience shape their world-views and influence lawyering choices. Good clinical judgment requires a capacity to identify how one's assumptions influence priorities and define what 'makes sense' in the situation and to step away from those assumptions and challenge them.") (citations omitted); 214-15 ("[P]eer conversations often trigger reflection" which "involves surfacing tacit norms or assumptions that underlie a judgment made to take a case in a particular direction.").

[162] *See id.* at 209 ("They begin to identify which contexts matter in problem definition and how they shape solutions.").

[163] *See* Mlyniec, *supra* note 28, at 114 ("Clinical teachers are always 'directing' a student in an exploration that leads to new knowledge or a solution to a problem.").

This guidance can take a number of forms, from a more directive conversation with the student to a roleplay or moot paired with immediate reflection and debrief.[164]

During supervision, we also engage in critical reflection,[165] unpacking the various assumptions that students make, including, but not limited to, assumptions about our clients and how the law is or should be applied.[166] In examining these assumptions, we make clear that defense attorneys are not immune to the same biases or deficits-based thinking present in other stakeholders. Defenders may even be more susceptible to unintentionally adopting, assuming, or reinforcing the same negative frames applied by other system stakeholders.[167] As a result, it is imperative that youth defenders engage in the work of frames analysis and narrative reconstruction to ensure that we understand, appreciate, and center our clients as well as zealously and effectively advance their expressed interests.[168]

Students are also asked to critically reflect during supervision upon systemic issues they have encountered in their cases and relate them back to the research and theory they have learned from the four frames. For instance, using Kayla's case as an example, we would encourage students to not only examine why the school resource officer responded to Kayla the way that he did, but also why the school resource officer was present at Kayla's school in the first place. We might further discuss the proliferation of videos online in which police officers are caught physically disciplining youth in schools and the fact

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164 *See id.*

165 Grose & Johnson, *supra* note 27, at 204.

166 *See id.* at 206. Frame analysis and "parallel universes" thinking complement each other well as tools for confronting our own assumptions and biases. *See* Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33, 70 – 71 (2001) (describing "'parallel universes' thinking" as "a method for exploring alternative explanation for clients' behaviors. . . [that] invites students to look for multiple interpretations, especially at times when the student is judging the client negatively.").

167 *See* L. Song Richardson & Phillip Goff, *Implicit Racial Bias in Public Defender Triage*, 122 YALE. L. J. 100, 105 (2013) ("There is ample reason for concern that [implicit biases] will affect public defenders' judgments because IBs thrive in situations where individuals make decisions quickly with imperfect information and when they are cognitively depleted, anxious, or distracted)*; see generally* MAHZARIN R.R. BANAJI & ANTHONY G. GREENWALD, BLIND SPOT: HIDDEN BIASES OF GOOD PEOPLE (2016) (discussing blind spot bias).

168 Grose & Johnson, *supra* note 27, at 217 ("We need to make explicit to ourselves the lenses we use to see the world, and how those lenses affect how we see our clients."); Johnson, *Integrating Critical Theory and Clinical Education*, *supra* note 5, at 163. Importantly, we as defense counsel must also be careful not to use frames to further pathologize or contribute to flattening or stereotyping of experience. Rather counsel should use frames to help us individualize all aspects of our representation, including, but not limited to, our relationship with our clients, our advocacy on behalf of our clients, how we counsel our clients, and the outcomes we pursue on their behalf.

that police brutality and state violence is not an abstract concept for our clients, but a part of their everyday life. Thus, critical reflection in supervision provides students with the opportunity to not only reflect on how frames analysis applies in their individual case, but also how frames analysis may impact the overall context in which their individual case is situated.

D. Client Representation

Finally, students utilize the four frames in their representation. In doing so, students deconstruct and attempt to replace the numerous false narratives spun about our clients.[169] Students do this by identifying the dominant frames through which other stakeholders view our clients and their cases and seeking to shift those frames in favor of ones that advance our clients' expressed interests. This process of deconstruction and reconstruction is one that engages them directly in the work of combating the system's disproportionate impact on youth of color in the District of Columbia. As a result, in the Juvenile Justice Clinic, our students are not merely studying the law's claim to neutrality and the law's differential effects on subordinated groups, but are actively immersed on a daily basis in trying to deconstruct such claims and stem the impact of the racial disparities and other injustices we see present in our juvenile legal system.

Integrating our clinic's pedagogical frames into their client representation begins immediately upon picking up a client. Upon appointment, students will conduct an initial interview with the client. During this interview, students will begin to learn about the client's history, life, and goals and begin to co-create with the client the narrative and strategy for the case. In developing this narrative and strategy, students are expected to consider not only our four pedagogical frames, but also the frames that other stakeholders may be consciously or subconsciously applying to the case. Within hours of being appointed to a new client, students also will have to make a release argument at the client's initial hearing. Students are expected to explore whether the research relating to normative adolescent development, trauma, and the harms of detention or the data relating to racial disparities in detention in the District of Columbia are compelling arguments to weave into their arguments before the court to counter the narratives being told about our client. This often marks the first time in a case

169 Jay M. Feinman, *The Failure of Legal Education and the Promise of Critical Legal Studies*, 6 CARDOZO L. REV. 739, 758 (1985) ("The Critical example is a powerful element of the Critical transformation. It provides, either imaginatively or actually, a concrete situation which demonstrates the falseness and oppressiveness of existing relations as well as the Critical possibilities of transformation.").

that students apply one or more frames in advocacy. After the initial hearing, students must complete a case planning memorandum detailing their theory of the case, theory of disposition, and strategic plan for achieving client's interests. Again, students are asked to intentionally consider how our four pedagogical frames will impact all aspects of their client's case. This memorandum – and the frames analysis included therein – is an iterative document that should be updated and adjusted as circumstances change or the student learns new information throughout the course of the representation. This continual process of deconstructing false or incomplete narratives and reconstructing counternarratives that advance our client's expressed interests is the heart of transforming the theory of critical clinical frames into practice.

Conclusion

Biases[170] and deficit-based approaches too often unduly shape the narrative that system stakeholders create about the young people we represent in the Juvenile Justice Clinic. Our client's strengths – the assistance they provide to their families; their sense of humor; their artistic ability, academic achievement, or athletic prowess; or the effort they are making to improve in multiple domains of their life – are too often marginalized, minimized, or erased. Moreover, our clients' immaturity, race, gender, and life experiences are too often weaponized against them. Unless intentional care is taken to shape a more accurate narrative of our client's lives, their intent, motivations, and behavior are negatively interpreted through our own biases.[171] Pedagogical frames guide students in this work of counternarrative by helping students better relate to, understand, co-create, and tell the complex story of our clients in an effort to advance their expressed interests in the face of a system that too often seeks to paint them as one-dimensional. As such, the pedagogy of frames equips students with a transferable skill that helps them be better advocates and achieve a more just world.

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[170] Examples of other biases we encounter often include implicit racial bias, paternalism, fundamental attribution error, and adultification bias.

[171] Goffman, *supra* note 6, at 22 ("Motive and intent are involved, and their imputation helps select which of the various social frameworks of understanding is to be applied.")

REFLECTIONS ON THE LAUNCH OF A RACIAL JUSTICE CLINIC AND THE BRAVERY OF LIONS

JANEL A. GEORGE*

This nation is at an inflection point in which the future of a viable, multi-racial democracy stands in the balance. However, this occurrence is not new—the nation has experienced moments of retrenchment before, during which times of racial progress are quickly followed by retrenchment in the form of legal efforts to rollback hard-won civil rights. This Essay explores how clinical legal education is poised to prepare law students to meet moments of retrenchment. Adopting the framework of the "pedagogy of prefiguration," this Essay asserts that shaping clinical pedagogy to ensure that students engage in social analysis, exercise radical imagination, and foster dialogical relationships with clients, can help to prepare them to advance racial justice even in moments when retrenchment seems intractable. To fully equip clinic students to engage in racial justice lawyering during such times of retrenchment, this Essay posits that another component be added to prefigurative pedagogy—bravery. Drawing upon reflections from the launch of a racial justice clinic, this Essay concludes that, to best meet moments of retrenchment, clinicians must also prepare students to take

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risks, sacrifice privilege, and experience discomfort if they wish to engage in the long, challenging, and brave work of transformative racial justice lawyering.

Introduction

"[U]ntil lions have their own historians, the history of the hunt will always glorify the hunter."[1]

-African Proverb

In the spring of 2022, I launched the Racial Equity in Education Law and Policy Clinic (hereinafter "REEL Policy Clinic") at Georgetown University Law Center. The REEL Policy Clinic blends principles of legislative lawyering,[2] critical race lawyering,[3] and movement lawyering[4] to engage students in advancing racial equity in education. Scholar Sameer Ashar's conception of "prefigurative pedagogy,"[5] which encourages imaginative thinking and innovation to transform systems and promote social justice, as a fitting framework for the amalgamation of pedagogical approaches that I employ in the REEL Policy Clinic. I often tell my students that Black civil rights activists who grew up in the Jim Crow regime of the south with segregated schools and the stain of "separate but equal" had to imagine the kind of world they were advocating to secure. Drawing from this practice of imagining,[6] Ashar defines "prefiguration," which is inspired by

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[1] LaGarrett J. King, *When Lions Write History*, 22 Multicultural Education 2 (Fall 2014) ("The African proverb, 'Until the lions have their historians, the tales of the hunt shall always glorify the hunter,' is used to metaphorically describe how dominant groups inscribe power through historical narratives."); *see also* Annalisa Quinn, Chinua Achebe and the Bravery of Lions, NPR (Mar. 22, 2013), https://www.npr.org/sections/thetwo-way/2013/03/22/175046327/chinua-achebe-and-the-bravery-of-lions (quoting Achebe's recounting of an Africa Proverb).

[2] Chai Feldblum, the founding director of Georgetown Law's Federal Legislation Clinic, coined the term "legislative lawyer," whom she described as "the 'legal content person' and the 'conduit' between the political players and the substantive legal players on any particular issue." 34 McGeorge L. Rev. 785, 797 (2003).

[3] Vanita Gupta, *Critical Race Lawyering in Tulia, Texas*, 73 Fordham L. Rev. 2055, 2070 (noting that critical race lawyering is "a form of community-focused, racial justice-oriented lawyering . . . which can actually go a long way toward fundamental and structural reform of an otherwise broken and racist system that is devastating entire communities of color.").

[4] This Essay relies upon scholar and Movement lawyer Betty Hung's conception of movement lawyering as "[l]awyering that supports and advances social movements, defined as the building and exercise of collective power, led by the most directly impacted, to achieve systemic institutional and cultural change." Betty Hung, *Movement Lawyering as Rebellious Lawyering: Advocating with Humility, Love and Courage*, 23 Clin. L. Rev. 663, 664 (2017).

[5] *See* Sameer M. Ashar, *Pedagogy of Prefiguration*, 132 Yale L. J. 869 (2023).

[6] As Ashar notes, "Before it was named as such, prefigurative thinking was embedded in the anticolonial and civil-rights movements of the twentieth century." *Id.* at 871 n.8

utopian thinking,[7] as the "idea [that] we have to build our movement cultures and our leftist institutions in the model of the world we are seeking to create."[8] This expands upon the concept of "prefigurative legality" as conceived by Amy Cohen and Bronwen Morgan. According to Cohen and Bronwen's concept of prefigurative legality, despite the law's potential to entrench inequality, advocates can recognize the utility of the law to explore potential avenues to pursue social justice and persist in the use of legal power, even in the face of uncertain outcomes.[9] Consistent with this concept, Ashar outlines three features of prefigurative pedagogy with which clinicians can experiment to advance utopian imagination to address the social problems that legal clinics work to remedy: (1) social analysis; (2) radical imagination; and (3) dialogical relationship with collaborators. Although I did not have Ashar's framework as a reference when I launched the REEL Policy Clinic, I find that it provides a fitting description of the pedagogical approach I employ in the clinic. In this Essay, I describe how I implement the three components of Ashar's prefigurative pedagogy in the REEL Policy Clinic. I posit that prefigurative pedagogy can be particularly vital in moments of retrenchment during which—according to scholar Kimberlé Crenshaw who coined the concept[10]—hard-won racial progress is undermined by laws that seek to re-entrench racial stratification and relegate Black Americans to second-class citizenship.[11] As scholar Reva Siegel asserts, white supremacy morphs itself into new forms when it is challenged—finding legally palatable ways

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(quoting PAUL RAEKSTAD & SOFA SAIO GRADIN, PREFIGURATIVE POLITICS: BUILDING TOMORROW TODAY 4–8 (2020)).

[7] Ashar, *supra* note 5, at 877 n.35 (noting that everyday utopias "are hugely fruitful places from which to think differently and imaginatively about concepts, particularly when such thinking is oriented to a socially transformative politics.").

[8] *Id*. at 871.

[9] Ashar notes that Cohen and Bronwen identify four characteristics of "prefigurative legality":

> (1) the innate pluralism and indeterminacy of law provide a sense of possibility and encourage the use of 'legal techniques, meanings, and practices';
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> (2) in unpredictable and alchemical ways, people acting collectively draw on 'legal logics and thoughtways' to constitute themselves;
>
> (3) people persist in using legal power 'notwithstanding their dissatisfaction, and sometimes deep loss of faith, in the capacity of traditional state-based modes of law reform'; and
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> (4) people do not allow uncertainty about outcomes to inhibit experimentation with legal change.

Id. at 878 (quoting Amy J. Cohen and Bronwen Morgan, *Prefigurative Legality*, 48 LAW & SOC. INQ. (forthcoming 2023)).

[10] *See* Kimberlé Crenshaw, *Race Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1336 (1988).

[11] *Id.* (noting that race can be a stabilizing force in America).

to re-entrench racial inequality.[12] I posit that encouraging law students to engage in social analysis that helps them to understand the legal landscapes that fuel retrenchment and to exercise radical imagination to devise innovative interventions to respond to such moments of retrenchment in dialogical relationship with clients as collaborators who help students to dream of new social arrangements, can help clinics to be responsive to moments of retrenchment. I also expand Ashar's concept and assert that another component—bravery—be implemented in prefigurative pedagogy so that students build this quality and exercise it as they engage in racial justice lawyering during times of retrenchment in which upsetting the status quo of inequality can engender risk and derision.

In the years following racial progress such as the election of Barack Obama,[13] as well as increased awareness of racial inequality in America (albeit brief) following the killing of George Floyd,[14] I believe that the nation is again in a moment of retrenchment that requires innovative lawyering to help to cure it. The issuance of an Executive Order condemning training on racial inclusion in federal agencies that triggered copycat legislation around the nation barring teaching about racial inequality has left an indelible imprint on the nation, the legal profession, and many legal institutions.[15] These legis-

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[12] *See* Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of State-Enforcing State Action*, 49 STAN. L. REV. 1111, 1113 n. 4 (1997).

[13] Peniel Joseph, *Obama's Efforts to Heal Divisions and Uplift Black America*, THE WASH. POST, (Apr. 22, 2016) https://www.washingtonpost.com/graphics/national/obama-legacy/racism-during-presidency.html (noting that Obama's election "was heralded as the arrival of a 'post-racial' America, one in which the nation's original sin of racial slavery and post-Reconstruction Jim Crow discrimination had finally been absolved by the election of a black man as commander in chief.").

[14] "Protests and demonstrations that erupted in the summer of 2020 following the killings of unarmed Black Americans by law enforcement . . . appeared to signal a clarion call for America to reckon with its racist past." Janel A. George, *The End of 'Performative School Desegregation': Reimagining the Federal Role in Dismantling Segregated Education*, 22 RUTGERS RACE & L. REV. 189, 191 (2021).

[15] Executive Order 13950 issued by former President Trump excluded from federal contracts any trainings deemed to be "divisive" or that included "divisive concepts." The Order also prohibited "race or sex stereotyping" or "race or sex scapegoating." Combatting Race and Sex Stereotyping Exec. Order No. 13950, 3 C.F.R. § 433 (2020) (rescinded) [hereinafter "Exec. Order 13950"].

The order was later invalidated by a federal court and rescinded by President Biden upon taking office. *See* Jessica Guynn, *Donald Trump Executive Order Banning Diversity Training Blocked by Federal Judge*, USA TODAY (Dec. 23, 2020, 6:40 PM), https://www.usatoday.com/story/money/2020/12/23/trump-diversity-training-ban-executive-order-blocked-federal-judge/4033590001/. "The summer of 2020 was an inflection point for legal education's relationship with racial and other inequities. After Minneapolis police murdered George Floyd, faculty, administrators, and students spoke out with increased urgency about the need to address race in law school curricula . . . Many law schools . . . formally (re)dedicated themselves to helping students recognize and analyze structural inequalities and how the law perpetuates them." Alexa Chew & Rachel Gurvich,

lative developments have been followed by rollbacks of civil rights by the courts, including the evisceration of affirmative action in higher education.[16] These events have significantly impacted the nation's law students. In the wake of 2020, many law students began demanding more law school courses addressing racial inequality in America.[17] Even as legislation barring teaching about racial inequality spread,[18] many law schools adopted commitments to addressing racial equity,[19] outlined by institutional learning objectives focused on ensuring that students graduate with knowledge of the role of the law and social stratification, and initiated new centers, clinics, and institutes focused on racial justice issues.[20] The American Bar Association's (ABA)

Saying the Quiet Parts Out Loud: Teaching Students How Law School Works, 100 NEB. L. REV. 887, 887 (2022).

16 *See* Students for Fair Admissions v. President and Fellows of Harvard College, 143 S. Ct. 2141 (2023) (decided together with Students for Fair Admissions, Inc. v. University of North Carolina *et al.*, No. 21-707, 143 S. Ct. 2141 (2023)); *see also* Dobbs v. Jackson Women's Health Center, 142 S. Ct. 2228 (2022) (invalidating the federal constitutionality of abortion, permitting states to regulate or prohibit abortion, and overturning Roe v. Wade, 410 U.S. 113 (1973)).

17 "We are with a generation of students who want concrete actions and outcomes . . . I think they're thirsting to make a difference and to be in an environment that wants to encourage making a difference and also inclusion and wellbeing." Michelle Weyenberg, *Which Law Schools Take the Lead in Racial Justice?*, NAT'L JURIST: PRELAW (Dec. 7, 2022, 8:00 AM), https://nationaljurist.com/prelaw/prelaw-news/which-law-schools-take-the-lead-in-racial-justice/ (quoting James Hackney, dean of Northeastern University School of Law).

18 According to UCLA Law's CRT Forward Tracking Project, since September 2020, a total of 209 local, state, and federal government entities across the United States have introduced 670 anti-Critical Race Theory bills, resolutions, executive orders, opinion letters, statements, and other measures. CRT FORWARD TRACKING PROJECT, https://crtforward.law.ucla.edu/ (last visited Jun 22, 2023).

19 *See* Ilana Kowarski, *How U.S. Law Schools Are Preparing Students for Racial Justice Work*, U.S. NEWS & WORLD REP. (Oct. 21, 2022), https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/how-u-s-law-schools-are-preparing-students-for-racial-justice-work (noting that the BLM protests of the summer of 2020, led many law schools "to begin teaching more thoroughly about the disparate impact of laws and law enforcement methods on marginalized populations"); Weyenberg, *supra* note 17; *see also* Angela Onwuaci-Willig et al., *Law Deans Antiracist Clearinghouse Project*, ASS'N AM. L. SCHS., https://perma.cc/B2RL-BCHT (last visited Oct. 12, 2021).

20 Georgetown University Law Center, like many other legal education institutions, also adopted an Institutional Learning Outcome (ILO), which states that the school seeks to equip students with the "[a]bility to think critically about the law's claim to neutrality and its differential effects on subordinated groups, including those identified by race, gender, indigeneity, and class." Georgetown Law, *Institutional Learning Outcomes*, OFFICE OF ACADEMIC AFFAIRS (Jun. 22, 2023) https://www.law.georgetown.edu/admissions-aid/aba-required-disclosures/institutional-learning-outcomes/ A couple of examples of recently established law school entities focused on racial justice include St. John's University's School of Law's Center for Race and the Law led by Renee Nicole Allen, *What We Do*, CTR. FOR RACE & L., https://www.stjohns.edu/law/academics/centers-institutes/center-race-and-law#:~:text=John's%20Law%20Professor%20Renee%20Nicole,symposia%2C%20dialogue%2C%20and%20scholarship (last visited June 27, 2023) (providing opportunities for students, academics, practitioners, and community members to examine race and engage in

House of Delegates approved accreditation requirements outlined in Revised ABA Standards 303 (b),[21] and 303 (c), which requires that a "law school shall provide education to law students on bias, cross-cultural competency, and racism: (1) at the start of the program of legal education, and (2) at least once again before graduation."[22] While not all in the legal academy share a commitment to addressing racial inequality and the role of the law,[23] recent events have undoubtedly ushered in a new era of legal education in which many legal education institutions—and clinical educators— are exploring how to address these issues. I agree with Movement lawyer and scholar Purvi Shah's assertion that "[m]oments of social unrest offer us an opportunity, if not an imperative, to examine business as usual—to excavate what is

idea exchange about its intersection with the law through lectures, symposia, dialogue, and scholarship); the University of Pennsylvania's Carey School of Law's Advocacy for Racial and Civil Justice Clinic (ARC) led by former LDF attorney Cara McClellan, *Advocacy for Racial and Civil Justice Clinic*, U. PENN. SCH. OF L., https://www.law.upenn.edu/clinic/arc/ (last visited June 27, 2023) (providing students with hands-on experience working in civil rights litigation and policy advocacy in the Philadelphia region using a movement lawyering approach); the University of Minnesota School of Law's Racial Justice Law Clinic, led by former LDF counsel Liliana Zaragoza*, Racial Justice Law Clinic*, UNIV. MINN. L. SCHOOL, https://law.umn.edu/course/7120/racial-justice-law-clinic (last visited June 27, 2023) (teaching students how to engage in direct representation, strategic litigation, and other forms of advocacy as part of a greater movement to advance the rights of Black, Indigenous, Latine/x, Asian American Pacific-Islander and/or other People of Color); and the Center for Racial and Disability Justice at Northwestern Pritzker School of Law, *Center for Racial and Disability Justice, Faculty & Research*, NORTHWESTERN PRITZKER SCH. OF L., https://www.law.northwestern.edu/research-faculty/racial-disability-justice/ (last visited June 27, 2023) (the Center is the first of its kind and focuses on "pressing social justice issues affecting the lives of disabled people of color, women with disabilities, LGBTQIA+ disabled people, and low-income disabled people).

[21] 303(b) notes that law schools shall provide opportunity for students to develop professional identity. *See* ABA Standards & Rules of Pro. for Approval of Law Schools, Standard 303 (2022-2023).

[22] *Id*. New Interpretation 303-6 notes "the importance of cross-cultural competence to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminate bias, discrimination, and racism in the law should be among the values and responsibilities of the legal profession to which students are introduced." *Id*. at 19.

[23] A group of ten Yale Law School professors submitted a joint memo to the ABA protesting its adoption of 303(b) and (c) and noting that the requirements "attempt to institutionalize dogma, mandating instruction in matters that are unrelated to any distinctively legal skill . . . ." *See* Bruce A. Ackerman et al., *Response to May 25, 2021, Notice re Proposed Revisions to Standards 205, 206, & 303 of the ABA Standards and Rules for Procedure for Approval of Law Schools*, COUNCIL OF THE SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR (June 23, 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/comments/2021/june-2021/june-21-comment-yale-law-school.pdf. As scholar Etienne Toussaint observes, "[s]ome legal scholars have questioned whether adopting a cross-disciplinary social justice mission within law school clinical programs has politicized law teaching." Etienne C. Toussaint, *The Purpose of Legal Education*, 111 CAL. L. REV. 1, 46 (2023).

rotten, and rebuild something better . . . if we are courageous inside this vulnerable moment, there is an opportunity for transformation."[24]

This Essay illustrates how Ashar's prefigurative pedagogy is employed in the REEL Policy Clinic and asserts that it offers an approach for rebuilding and expanding upon clinical pedagogy as a tool for preparing law students to advance racial justice in times of retrenchment. It seeks to find a place in the scholarship examining pedagogical innovations in clinical legal education to equip law students to address social injustice.[25] The nation stands at the precipice of a particularly polarizing moment in which the future of a viable multi-racial democracy is in question.[26] Law clinics can offer avenues to advance justice in such a time. As Ashar asserts, "[p]refigurative thinking provides a framework for projects that social-movement organizations may use to defy the inevitable retrenchment that follows from the significant challenges to the status quo."[27] Furthermore, the law school clinic is an opportune place to engage in prefigurative pedagogy as Ashar posits, "[l]aw clinics may engage in experimentation that sets a foundation for ongoing radical visioning that sustains social movements through periods of retrenchment and repression."[28] I also recognize that I am fortunate to work at a law school that values clinical legal education, innovation, and social justice. Georgetown Law's motto is: "Law is the means; justice is the end."[29] I recognize that an

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[24] Purvi Shah, *Rebuilding the Ethical Compass of Law*, 47 HOFSTRA L. REV. 11, 14 (2018).

[25] *See, e.g.*, Margaret E. Johnson, *An Experiment in Integrating Clinical Theory and Clinical Education*, 13 J. GENDER, SOC. POL'Y & L. 161 (2005).

[26] *See* Adam Serwer, *The Capitol Riot Was an Attack on Multiracial Democracy*, THE ATLANTIC (Jan. 7, 2021), https://www.theatlantic.com/ideas/archive/2021/01/multiracial-democracy-55-years-old-will-it-survive/617585/ ("What transpired yesterday was not simply an assault on democracy. It was an attack on *multiracial* democracy, which is younger than most members of the Senate."); *see also* Brandon Tensley, *America's Fragile Multiracial Democracy is at Stake,* CNN (Oct. 21, 2021), https://www.cnn.com/2021/10/21/politics/voting-rights-fannie-lou-hamer-race-deconstructed-newsletter/index.html (noting of Fannie Lou Hamer's legacy, Tensley pointed out that "the fear that if Black people and other marginalized groups had full access to the voting process, they would be able to elect public officials who would advocate for their interests. They would want to dismantle systems of oppression.").

[27] Ashar, *supra* note 5, at 879.

[28] *Id.* at 883.

[29] I value the motto's recognition that law and justice are not interchangeable. This is consistent with William Quigley's assertion that "[w]e must never confuse law and justice. What is legal is often not just. And what is just if often not legal." William Quigley, *Letter to a Law Student Interested in Public Interest*, 1 DEPAUL J. FOR SOC. JUST. 7, 16 (2007). This is particularly resonant in the arena of education in which *de jure* Jim Crow education once had the cover of law. *See Plessy v. Ferguson*, 163 U.S. 537 (1896) (upholding the "separate but equal" Jim Crow segregation regime in public accommodations); *see also* Ella Kohler, *Law Center Celebrates 150 Years*, THE HOYA (Oct. 29, 2020), https://thehoya.com/law-center-celebrates-150-years/ (quoting Wallace Mylniec "We believe in

emphasis on social justice remains rare in many law schools that emphasize preparation for corporate law practice or other lucrative fields of law.[30]

I begin this Essay by recounting the racial justice lawyering work that influenced my approach to clinical teaching. I then turn to the three components of Ashar's framework of prefigurative pedagogy and provide illustrations of how these are implemented the context of the REEL Policy Clinic to engage students in lawyering to address racial inequities in at a time of retrenchment. In Part II, I outline how I engage students in what Ashar terms "social analysis," which entails engaging students in excavating historic inequities and identifying contemporary iterations of them.[31] I embrace Critical Race Theory (CRT) as tool help students engage in this kind of social analysis, particularly the law's complicity in perpetuating racial inequality in a post-Civil Rights era.[32] In Part III, I share examples of how I integrate "radical imagining" into the REEL Policy Clinic.[33] I describe how I urge students to exercise imagination at the outset of the clinical experience and to employ their imaginative muscles throughout their clinical practice to help advance their clients' goals. This is consistent with Ashar's insistence that clinicians seeking to promote social change encourage law students to think beyond the limitations of the law and the "constraining rules of our profession and the material and ideational austerity so deeply inscribed in our culture and ourselves."[34] In Part IV, I demonstrate how I operationalize the concept of "dialogical relationship" with client groups.[35] This approach is a departure from traditional client-lawyer relationships and instead embodies a collaborative client-lawyer relationship in which students

contemplation through action. That is the best of what education does . . . ."); *William M. Treanor*, GEO. L., https://www.law.georgetown.edu/faculty/william-m-treanor/ (noting that Dean Treanor has focused on increasing opportunities for students to pursue careers in public interest law).

30 As Quigley notes "[u]fortunately, the experience of law school and the legal profession often dilute the commitment to social justice lawyering." *Id*. at 16.

31 Ashar, *supra* note 5, at 895.

32 Critical Race Theory (CRT) is a practice of interrogating the role of the law in replicating racial inequality. *See* Janel George, *A Lesson on Critical Race Theory*, AM. BAR ASS'N (Jan. 11, 2021), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/a-lesson-on-critical-race-theory/. Kimberlé Crenshaw, who coined the term CRT, notes that it is a verb and not a noun. *Id.* I agree with Professor Khiara Bridges's response to the inquiry of whether CRT is indeed a theory—"if we embraced a more expansive definition of 'theory'—defining it as analytical framework that can be used to explain or examine facts or events–then CRT would qualify." KHIARA M . BRIDGES, CRITICAL RACE THEORY: A PRIMER 5 (2021).

33 Ashar, *supra* note 5, at 890.

34 *Id.* at 891.

35 *Id.* at 895.

work closely and collaboratively with clients who I consider co-educators in the clinical space. I expand upon Ashar's framework of prefigurative pedagogy and suggest the addition of another component.

In Part V, I underscore how and why I seek to instill in students what I believe is another necessary competency to effectively advance racial justice in times of racial retrenchment—bravery. As scholar Betty Hung asserts, to be real partners in social change, lawyers must "be ready and willing to take risks, relinquish our privileges, make sacrifices, and demonstrate real courage in the face of adversity."[36] Therefore, I share these early reflections of my journey as a clinician in this same spirit. The ability to lawyer in the face of adversity, uncertainty, and discouraging odds is a feature of this bravery.

I close this Essay with some thoughts about working to advance racial justice in this moment of retrenchment. The African Proverb noted at the top of this Essay underscores the importance of telling one's story, even in the face of defeat. When the late Nigerian writer Chinua Achebe was asked by an interviewer about the power of storytelling as recognized in this African proverb, he responded, "storytelling is something that we have to do, so that the story of the hunt will also reflect the agony, the travail—the bravery, even, of the lions."[37] Therefore, I tell this story of embarking on the journey of creating a new clinic dedicated to the long, brave work of racial justice. I outline how the framework of prefigurative pedagogy, coupled with bravery, can prepare students to engage in racial justice work at times of retrenchment. As a junior scholar with a Clinic in its nascent stages, sharing some of these early reflections and vulnerabilities is a challenge, but in the spirit of Chinua Achebe's lesson, I hope it is a brave one. I hope that this story inspires other clinicians to adopt features of prefigurative pedagogy in their clinics and to face the uncertainty of this moment of retrenchment with courage.

I. From Civil Rights Lawyer to Clinician

A. A Legislative Lawyer

I've encountered many law students who don't realize becoming a legislative lawyer is a career option.[38] When I was a law student in

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[36] Betty Hung, *Movement Lawyering as Rebellious Lawyering: Advocating with Humility, Love and Courage*, 23 Clin. L. Rev. 663, 669 (2017).

[37] The title of this Essay is a play on the title of an interview of Chinua Achebe. In detailing a Paris Review interview of the late Nigerian writer Chinua Achebe, a reporter quotes Achebe on storytelling. Quinn, *supra* note 1; *see also* LaGarrett J. King, *When Lions Write History*, 1 Multicultural Educ. 2, 2 (2014).

[38] I wrote an article for the ABA Law Students Division outlining the role of the legis-

the early 2000s, I certainly did not realize that a "real lawyer" could focus solely on policy work rather than litigation. It was my Property professor who highlighted for me the import of public policy.[39] Instead of merely teaching black letter law, he urged students to ask questions such as: What is the particular social and political context in which the court is making its decision? How may that context have played a role in influencing the outcome of the case? What policies likely influenced or impacted the case? He began each lecture by sharing the historic context preceding the case, which proved invaluable in making us all aware that legal decisions are not made in a vacuum. Indeed, CRT recognizes that social and political contexts can influence court decisions and that, as lawyers and scholars, we ought not pretend that legal decisions are immune from the social and political contexts in which they are made.[40] The grounding that my Property professor provided inspired my interest in public policy and my pursuit of a career as a legislative lawyer. A legislative lawyer, I later realized, could have a direct hand in shaping public policy. Chai Feldblum, the founder of Georgetown Law's Federal Legislation Clinic coined the term legislative lawyer and noted that the art of legislative lawyering lies in "combining a thorough knowledge of law, with a sophisticated understanding of politics, in order to devise creative and effective legislative and administrative solutions."[41]

I believe that legislative lawyers play a particularly important role in advancing racial justice by transcending exclusive reliance upon litigation. For example, the massive resistance that ensued throughout the south following the seminal *Brown* ruling is testament to the efficacy of legislative power accompanying litigation. Congress and the Executive helped to bring massive resistance to its knees with enactment of the Civil Rights Act of 1964, particularly its Titles IV and VI, which included federal sanctions for recalcitrant school districts that

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lative lawyer to help raise more awareness of this career option for law students. Janel George, *How the Legislative Lawyer Changes the World*, AM. BAR ASS'N (Jan. 1, 2022), https://www.americanbar.org/groups/law_students/resources/student-lawyer/career-paths/how-the-legislative-lawyer-changes-the-world/.

[39] I also owe a debt of gratitude to my property professor William Lawrence Church, Sherwood R. Volkman-Bascom Professor of Law, University of Wisconsin-Madison School of Law (retired), who inspired my interest in and dedication to public policy and legislative lawyering.

[40] The movement that preceded Critical Legal Studies, whose adherents were known as Legal Realists, challenged traditional beliefs that the law was divorced from society and politics. Instead, they argued that judges ought not pretend that the law was separate from the social and political contexts in which decisions were made. Instead, Legal Realists proposed that the law ordered society. Critical Legal Studies picked up where this movement left off, taking the assertion even further by proposing that the law ordered injustice and maintained a status quo of inequality. *See* Bridges, *supra* note 32, at 24.

[41] Feldblum, *supra* note 2, at 824.

helped to advance school desegregation.[42] Litigation accompanied by legislative action and other legal levers can have powerful effects. For example, while encouraging Congress to pass the Voting Rights Act, former LDF Director-Counsel Sherrilyn Ifill noted that voting rights lawyers and advocates have to essentially "play whack-a-mole,"[43] litigating and challenging discriminatory voting laws while Congress fails to act on reauthorizing the law. Legislation can promote the necessary widespread systemic change needed to implement and enforce laws that promote civil rights and racial equity. Instilling in law students an appreciation for and understanding of legislative lawyering and the competencies of a legislative lawyer, can help them to become well-rounded lawyers who appreciate the range of legal levers needed to advance racial justice.

I began my legal career with a post-graduate fellowship at Georgetown Law designed to steep lawyers in policy advocacy.[44] I had the privilege of working on behalf of a multi-issue organization addressing challenges, such as immigration reform, the impact of domestic violence on undocumented immigrant women, reproductive justice, and healthy workplaces. The fellowship piqued my interest in using my legal skills to shape and advance public policy. After completing the fellowship and working for a couple of years on complex child custody cases, I found my way to Capitol Hill, where I worked as a staffer for a few years. I managed a legislative portfolio that included education, immigration, and health care reform. Working for a Congresswoman and a Senator exposed me to what made for effective strategies for crafting and advancing legislative change. I also honed strong listening skills through the years of taking hundreds of meet-

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[42] The Civil Rights Act and its enforcing regulations empowered the federal government to investigate complaints of discriminatory behavior by federal fund recipients, conduct compliance reviews, and initiate compliance proceedings against non-compliant school districts. By the end of 1966, the Johnson administration had terminated funds for over 32 southern school districts based on their failure to comply with federal law. *See* Janel George & Linda Darling-Hammond, *Advancing Integration & Equity through Magnet Schools*, Learning Pol'y Inst., May 2021, at 6, 7. The strength that the federal government brought to bear made a significant impact on the progress of school desegregation. "In 1961, only 6% of Black children in the South attended schools with white children, but by 1973, almost 90% of Southern schoolchildren attended integrated schools." *Id.* at 7.

[43] Press Release, NAACP Legal Defense and Educational Fund, Inc., On One-Year Anniversary of *Shelby County v. Holder* Decision Ifill Urges Passage of Bipartisan Voting Rights Act (June 20, 2014), https://www.naacpldf.org/press-release/on-one-year-anniversary-of-shelby-county-v-holder-decision-ifill-urges-passage-of-bipartisan-voting-rights-amendment-act/. Ifill served as LDF's Seventh President and Director-Counsel from 2013 until 2022.

[44] *See* Women's Law and Public Policy Fellowship Program, Geo. U. L. Ctr., https://www.law.georgetown.edu/wlppfp/ (last visited Jun. 22, 2023).

ings with constituents and organizations interested in advancing their legislative priorities. I learned to listen to discern their needs, to identify legislative levers to advance those priorities, and to understand challenges and obstacles to achieving those priorities.

B. "All of this About a Boy?!": Lawyering at the Intersection of Racial Equity and Education

I soon found my way to the NAACP Legal Defense and Educational Fund, Inc. (LDF), the storied civil rights organization that litigated major civil rights cases. It was at LDF where my work at the intersection of racial equity and public policy afforded me key lessons. The first lesson that I learned was that racial inequality in America has been perpetuated largely by laws, policies, systems, and practices.[45] Although I didn't name it as such as the time, I was learning a tenet of CRT—that systems and institutions do the bulk of perpetuating racial inequality in America.[46] While *de jure* Jim Crow laws eventually gave way to more facially neutral *de facto* laws that foster racial inequality,[47] I could see how racial stratification was crafted by design, directly belying theories of post-racialism claiming that contemporary America is distant from its racially inequitable past.[48] For example, I learned more with granular specificity how housing segregation–the result of discriminatory practices like redlining[49]– perpetuated segre-

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[45] This recognition of the normalization of racism in America is also embraced by many critical race scholars. "CRT begins with the notion that racism is 'normal, not aberrant, in American society, and, because it is so enmeshed in the fabric of our social order, it appears both normal and natural to people in this culture . . . . Thus, the strategy becomes one of exposing racism in its various permutations." Gloria Ladson-Billings, *Just What is Critical Race Theory and What's it Doing in a Nice Field Like Education?* 11 INT'L J. QUALITATIVE STUDIES IN EDUC. 7, 11 (Nov. 25, 2010).

[46] George, *supra* note 32 (noting "CRT recognizes that racism is codified in law, embedded in structures, and woven into public policy . . . . CRT recognizes that it is the systemic nature of racism that bears primary responsibility for reproducing racial inequality.").

[47] As scholar Kimberlé Crenshaw observed, "[t]he end of Jim Crow has been accompanied by the demise of an explicit ideology of white supremacy. The white norm, however, has not disappeared; it has only been submerged in popular consciousness." Crenshaw, *supra* note 10, at 1379.

[48] This is consistent with the theory of "Post-Racialism," which "denies that the nation today is in any important way proximate to its historical past. It argues instead that, at present, racism is an aberration, a rarity. It posits that enduring racial inequality is not the effect of race or racism, but rather is the effect of other forces, like class or individual behavior." Bridges, *supra* note 32, at 5.

[49] Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (Jun. 2014), https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631/ (defining "redlining" as the practice of "selectively granting loans and insisting that any property it insured be covered by a restrictive covenant–a clause in the deed forbidding the sale of the property to anyone other than whites . . . . Redlining destroyed the possibility of investment wherever black people lived.").

gated and under-resourced Black schools in jurisdictions where education was largely funded through property taxes.

During my time with LDF, my work with the Dignity in Schools Campaign,[50] a national coalition of over one hundred organizations committed to eliminating discriminatory school discipline policies and practices, highlighted the importance of crafting policy interventions in collaboration with those directly impacted.[51] Namely, I learned that those proximate to the problems are best situated to craft interventions to address them. LDF's commitment to working directly with communities, including through its longstanding organizing arm,[52] helped me to understand the vital role that organizing played in legal work. I learned that my role as a legislative lawyer working with community-based organizations was to contribute my legal expertise in service of community crafted interventions—not to impose ideas or interventions in a top-down manner.[53] This understanding of the centrality of community organizing helped to shape my work then and now, as well as my appreciation for the centering of the voices, experiences, and expertise of those directly impacted by issues.

In August of 2014, the killing of 18 year-old Michael Brown in Ferguson, MO, by police officer Darren Wilson[54] changed the trajec-

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[50] *See* Mission, Dignity in Schools Campaign, https://dignityinschools.org/about-us/mission/ (last visited Sept. 4, 2023) (noting that the campaign challenges the systemic problem of pushout in schools and works to dismantle the school-to-prison pipeline).

[51] "Social justice advocacy is a team sport. No one does social justice alone. There is nothing more exciting than being a part of a group that is trying to make the world a better place." Quigley, *supra* note 29, at 21 (2007).

[52] Indeed, LDF has always had a community organizing arm, which has facilitated the development of community relationships and community education. Notably, Rosa Parks was an investigator and community liaison for the NAACP, supporting Black women who reported sexual assault in southern communities. *See* Danielle L. McGuire At the Dark End of the Street: Black Women, Rape, and Resistance (2010); *see also* Leticia Smith-Evans et al., *Unlocking Opportunity for African American Girls: A Call to Action for Educational Equity*, NAACP Legal Def. Fund, & Nat'l Women's L. Ctr. (2014), https://www.naacpldf.org/wp-content/uploads/Unlocking-Opportunity-for-African-American_Girls_0_Education.pdf; Amanda Alexander, *Nurturing Freedom Dreams: An Approach to Movement Lawyering in the Black Lives Matter Era*, 5 How. Hum. & Civ. Rts. L. Rev. 101, 116 (2021).

[53] Scholar Amanda Alexander notes:

> The lesson here is to pay attention to organizing. The law does not have the answers, but organizers often do — they recognize the full scope of problems and locate the roots of those problems in powerlessness . . . . Organizing is so central because it is all about getting to the roots of power imbalance. Organizing builds power. And visionary organizing focuses not just on what we are fighting against but offers a vision of what we are fighting for.

Alexander, *supra* note 52, at 116.

[54] "On August 9, 2014, police officer Darren Wilson shoots and kills Michael Brown, an unarmed Black teenager in Ferguson, Missouri, a suburb of St. Louis. Protests and riots ensue in Ferguson and soon spread across the country." *This Day in History, 2014: Michael Brown is Killed by a Police Officer in Ferguson, Missouri*, Hist. Channel, https://

tory of my work at LDF. I was aware of the emergence of the Black Lives Matter movement in the wake of the killing of Trayvon Martin in 2012,[55] but it was Brown's killing that illuminated for me the stark connections between public education and racial injustice. Nikole Hannah-Jones' education reporting provided particularly compelling insight into this connection. Hannah-Jones observed of Brown's mother, Lesley McSpadden, shortly after Brown's killing, "She's standing in a crowd of onlookers, a few feet from where her son was shot down, where he would lie face down on the concrete for four hours, dead. And this is what she said. 'You took my son away from me. *You know how hard it was for me to get him to stay in school and graduate?* You know how many black men graduate? Not many!' "[56] Education was at the forefront of Ms. McSpadden's mind in the aftermath of her son's killing. Furthermore, Hannah-Jones noted:

> Michael Brown became a national symbol of the police violence against black youth, but when I looked into his education, I realized he's also a symbol of something else, something much more common. Most black kids will not be shot by the police but many of them will go to a school like Michael Brown's.[57]

I realized that the vestiges of the *de jure* segregation in schools that should have been eliminated by the *Brown* ruling persisted almost unabated in communities like Ferguson, Detroit, Baltimore, and other segregated, majority Black communities also impacted by disinvestment, political disenfranchisement, and economic challenges. Shortly following Brown's killing, I penned an op-ed, noting of Brown's educational trajectory:

> By receiving his degree on August 1st, Michael, again, beat the odds; he did not join the estimated 52 percent of Black males nationwide, or Missouri's 56 percent who did not receive a high school diploma."[58] Yet, Brown was still subjected to bias and punitive policing. As I noted, "The same implicit bias that criminalizes black males, resulting in overly punitive and exclusionary discipline practices, was rampant in the Ferguson Police Department and played

www.history.com/this-day-in-history/michael-brown-killed-by-police-ferguson-mo (last visited Jun. 22, 2023).

55 *See generally* PATRISSE KAHN-CULLORS AND ASHA BANDELE, WHEN THEY CALL YOU A TERRORIST: A BLACK LIVES MATTER MEMOIR (2018).

56 Nikole Hannah-Jones, *The Problem We All Live With–Part One*, THIS AM. LIFE, (July 31, 2015), https://www.thisamericanlife.org/562/transcript (emphasis added).

57 *Id.* Hannah-Jones noted, "[i]t took me all of five minutes on the internet to find out that the school district he attended is almost completely black, almost completely poor, and failing badly." *Id.*

58 *See* Janel George, Understanding the School-to-Prison Pipeline, ST. LOUIS POST-DISPATCH (Aug. 31, 2014), https://www.stltoday.com/opinion/understanding-the-school-to-prison-pipeline/article_7a054f9a-534e-54f1-bb94-f8425e5fd1f3.html.

> out in Ferguson's streets in documented confrontations between its black citizens and law enforcement.[59]

For me, Brown's killing underscored starkly the connections between education, the endurance of racial inequality, policing, and the criminalization of Black people, as well as the intersecting issues of poverty, political disenfranchisement, and all of the other various means through which Black people have been relegated to second-class citizenship in this nation. Brown's killing also helped me to understand a similar connection with Trayvon Martin's killing by a racist vigilante. Martin was not supposed to be staying with his father, but because he was suspended from school, he was staying at his father's home that fateful night.[60]

These connections were consistent with Crenshaw's concept of "intersectionality," which she defines as a "lens through which you can see where power comes and collides, where it interlocks and intersects."[61] As Crenshaw noted in recent years, "[i]t's not simply that there's a race problem here, a gender problem here, and a class or LGBTQ problem there. Many times that framework erases what happens to people who are subject to all of these things."[62] Likewise, the lens of intersectionality illuminates the multiple dimensions of a student's identity that intersect with racial identity, such as class, LGBTQ status, gender identity, and other characteristics–all which impact a student's unique educational experience. I believe that analysis of educational inequality is incomplete without analysis of racial subordination, political disenfranchisement, economic inequality, gender identity discrimination, health disparities, and other dimensions which impact the lived experiences and outcomes of too many chil-

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[59] *Id*.

[60] See Brian Hamacher, Lisa Orkin Emmanuel, & Jeff Burnside, Trayvon Martin Suspended from Miami High School for Possession of Empty Marijuana Baggie, NBC Miami (Mar. 26, 2012), https://www.nbcmiami.com/news/local/trayvon-martin-punched-george-zimmerman-slammed-his-head-into-sidewalk-report/1919217/.Trayvon's mother, Sabrina Fulton, noted of the "leaked" information regarding the cause of her son's suspension, "[t]hey killed my son and now they're trying to kill his reputation." *Id.*

[61] Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics,* 1 U. Chi. Legal Forum 8, 139 (1989) (noting anti-discrimination laws focus on the privileged members of the group, "[t]his focus on the most privileged group members marginalizes those who are multiply-burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination.").

[62] *Kimberlé Crenshaw on Intersectionality More Than Two Decades Later*, Colum. L. Sch. (Jun. 8, 2017), https://www.law.columbia.edu/news/archive/kimberle-crenshaw-intersectionality-more-two-decades-later; *see also* Bridges, *supra* note 32, at 14 ("CRT responds that class, gender, religion, and even an individual's behavior are important in explaining social life . . . . The insight upon which CRT insists is that race, almost invariably, is a factor. Race intersects with other axes of identity and -isms to produce the world in which we exist.").

dren of color in this nation.

In seeking to challenge "separate but equal" through the arena of public education, the legal architects of *Brown* recognized that public education, particularly at the k-12 level, provided a compelling demonstration of the myriad evils of the Jim Crow regime.[63] Even today, public education continues to serve as a barometer of the status of racial equity, democracy, and citizenship in this nation. This has been demonstrated most recently through the disparate impact of the pandemic on marginalized communities of color, pervasive school segregation and under-resourcing of segregated schools of Black and Brown children, attacks on affirmative action, among other enduring issues.[64]

In the months after Brown's killing, I recall talking with a former Capitol Hill colleague who noted that the Member of Congress she worked for (who shall remain unnamed) explained with incredulity when observing the unrest following Brown's killing and the insurgence of the #BlackLivesMatter movement: "All of this about a boy?!" Brown's killing illuminated enduring inequalities impacting the lives of Black Americans and re-ignited a reclamation of Black humanity most recently witnessed following the killing of George Floyd. Brown represented so many Black boys, and girls, and adults, including those who had been criminalized, marginalized, and confined to failing schools. Yes . . . all of this . . . about a boy.

C. Applying Lessons Learned from Civil Rights Lawyering to the REEL Policy Clinic

The events of 2020, including the killing of George Floyd and worldwide demonstrations,[65] inspired me to seek a new endeavor in which I could combine my passion for teaching with advocacy to address issues of racial inequality in education. I entered the law professor job "market" hoping to secure a position that would enable me to

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63 "The public schools were chosen because they presented a far more compelling symbol of the evils of segregation and a far more vulnerable target than segregated railroad cars, restaurants, or restrooms." Derrick Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation,* 85 Yale L.J. 470, 473 (1976).

64 *See* Elizabeth DeBray, Kara S. Finnigan, Janel George, & Janelle Scott, *A Civil Rights Framework for the Reauthorization of ESEA*, Nat'l Educ. Pol'y Ctr. (Oct. 2022), https://nepc.colorado.edu/publication/reauthorization.

65 "In death Floyd has indeed 'touched the whole world.' The racial and political reckoning of 2020, and its continuing aftermath, can be traced back to the uprisings that followed the news of his death." Peniel E. Joseph, Who Was George Floyd, N.Y. Times Book Rev. (May 17, 2022), https://www.nytimes.com/2022/05/17/books/review/his-name-is-george-floyd-robert-samuels-toluse-olorunnipa.html (reviewing Robert Samuels & Toluse Olorunnipa, His Name is George Floyd: One Man's Life and the Struggle for Racial Justice (2022)).

engage students in the kind of legislative lawyering work I had done throughout my legal career.[66] Clinical legal education, with its emphasis on social justice,[67] appeared to be the right fit.

The scholarship of Ashar and other clinicians has provided me with the language to name the lessons from legislative lawyering practice that I integrate into the REEL Policy Clinic. For example, Deborah Archer's "political lawyering" which utilizes a systemic reform lens in case selection, advocacy strategy, and lawyering process,[68] requiring the deployment of a variety of tools in the lawyer's toolbox, has informed my multi-prong approach for clinical practice.[69] These tools include legislative research and analysis, legislative drafting, engagement with decision-makers, and a variety of other policy interventions—all lawyering tasks that I employed in my racial justice work that I have integrated into the REEL Policy Clinic students' clinical practice. Before I describe how I integrate components of Ashar's prefigurative pedagogy into the REEL Policy Clinic's practice, I describe how I engage in client and student lawyer selection for the clinic.

As I planned the launch of the REEL Policy Clinic, I was mindful of selecting clients who shared a systemic and multi-prong approach to advancing racial justice. Drafting a theory of change for the REEL Policy Clinic before selecting clients helped me to identify the guiding values that would influence this client selection process. A Theory of Change can function not only as a roadmap of sorts for engaging in social justice work, but also as an articulation of values.[70] As Amanda

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66 What is known as the law professor "market" is an application process that is facilitated by the American Association of Law Schools (AALS), which requires applicants to submit background materials through the Faculty Appointments Register (FAR). Faculty Appointments Register, Ass'n Am. L. Schs., https://aals.org/recruitment/current-faculty-staff/far/ (last visited Jun. 22, 2023).

67 "[C]linical legal education strives to teach about justice and fairness and the roles lawyers play in pursuit of these values." Margaret E. Johnson, *An Experiment in Integrating Critical Theory and Clinical Education*, 13 Am. U. J. Gender Soc. Pol'y & Law, 161, 166 (2005).

68 "Political lawyers recognize that litigation, interdisciplinary collaboration, policy reform, and community organization must proceed together. Litigation is just one piece of a complex advocacy puzzle." Deborah Archer, *Political Lawyering for the 21st* Century, 96 Denv. U. L. Rev., 399, 402 (2019).

69 "Law professors seeking to train the next generation of social justice advocates should expose students to the transformational potential of integrated advocacy—strategic litigation, community organizing, direct action, media strategies, and interdisciplinary collaboration proceeding together–in the fight for social change." *Id.* at 402.

70 I recognize that difference disciplines and entities define "theory of change" in varied ways. An example of a theory of change outlined by a racial justice organization that I think is particularly powerful is that of Race Forward, which notes in part:

> Achieving a just, multiracial democratic society requires addressing structural racism in all its manifestations—policies, institutions, and culture. It means that we must

Alexander asserts, a "theory of change helps us approach problems with a clear plan, a set of values, a sense of whom we are accountable to in our work, and metrics for success."[71] I believe it can also serve as a reminder, particularly when the work is difficult and progress seems unattainable, of why and how we do the work. The mission of the REEL Policy Clinic, to work to eradicate racial inequities in education was clear, but what I learned during my time with LDF and the Dignity in Schools Campaign was that a theory of change could articulate exactly *how* an entity or organization would engage in the work.[72] This entails thinking about *how* and with *whom* the work will be done. Or, as Alexander notes, thinking of your answer to the question—"how does sustainable social change happen?"[73] This includes thinking through how success will be measured. I knew that measuring success in the policy field could be difficult, as "wins" such as getting bills enacted could be relatively rare.

Therefore, the REEL Policy Clinic's Theory of Change[74] begins with naming the problem, including why it existed and how it could be addressed, as illustrated in an excerpt from the REEL Policy Clinic's updated Theory of Change below:

> *Racial inequality persists in public education because laws and policies function to reify racial stratification in America. Litigation alone cannot dismantle these laws/policies that are deeply embedded into systems, institutions, practices, and structures. A coordinated legislative effort—driven by those most impacted by these laws and policies—is necessary to dismantle systemic racial inequality in public education.*

One of the most important components of the REEL Policy Clinic's Theory of Change is its articulation of how we would engage in racial justice work, as detailed below:

> *The REEL Policy Clinic seeks to help law students to understand the role of the law in perpetuating racial inequality in education by applying CRT to engage in legislative advocacy to dismantle this ine-*

> elevate the concept of structural racism and redefine and popularize what a just, multiracial, democratic society truly looks like. It also means that we must harness our collective power to transform systems and culture to advance proactive and long-lasting solutions for equity and justice.

Our Theory of Change, RACE FORWARD, https://www.raceforward.org/about/our-theory-of-change (last visited June 27, 2023).

71 *See* Alexander, *supra* note 52, at 121 (noting that a "[u]nderstanding your own theory of change — and that of other lawyers, organizers, and clients you are working with — can help guide decisions and provide a broader strategy from which tactics will flow.").

72 *See DRAFT Updated Since Retreat—DSC Theory of Change*, DIGNITY IN SCH. CAMPAIGN (Oct. 2017), https://dignityinschools.org/wp-content/uploads/2017/10/UPDATED-Theory-of-Change.pdf.

73 Alexander, *supra* note 52, at 121.

74 On file with author.

> *quality. This work necessitates legislative advocacy that is community-driven and evidence-based (defined as evidence centering the lived experiences and expertise of people of color), with the goal of effecting systems change. Students engage in this advocacy by employing a range of tools, including coalition-building, capacity-building, legal research and drafting, organizing, and oral and written advocacy, and public education.*

Finally, the Theory of Change recognizes the metrics used to gauge our progress in achieving this goal:

> *We seek an education policymaking process in which more leaders of color are centered, welcomed, involved, elevated to leadership positions, and whose ideas are incorporated into policy and practice. We seek policy spaces in which white community members take ownership in the labor to bring about racial equity.*
>
> *We measure our progress through the increased participation and centering of people and children of color in the education policymaking process; incorporation of community-developed policy interventions in education legislation, policy, and practice; and increased representation of people of color and other historically minoritized and marginalized people in policymaking positions, among other metrics.*

I mention the REEL Policy Clinic's Theory of Change here because articulating a theory of change in advance of selecting clients or outlining student projects proved invaluable because it provided guardrails for the kinds of organizations the REEL Policy Clinic would work with as clients and the kind of work that students would engage in. For example, it was important that REEL Policy Clinic clients also believed in centering the voices of communities directly impacted by racial inequality in education. Our clients also recognized that lived experience, as articulated through the stories and voices of those directly impacted[75] by educational inequity, were valuable sources of knowledge. This was vital for ensuring that, when students engaged in research, that they would look beyond "traditional" legal resources and engage directly with impacted community members and

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[75] The term "directly impacted" can also have some negative connotations. In this context, it refers to people who are personally impacted by issues that a particular clinic may be working to address. As one organizer describes the term and her work, "[W]e meet people where they are at—and we hire 'directly impacted people.' I've grown to hate that term as it is used more and more in a tokenistic way and people rarely actually mean it. Working and amplifying the stories of directly impacted people again means seeing people as full people. Personally impacted people are impacted by the same issues you are organizing around and fighting for—or against." Angela Lang, Serving, Organizing, and Empowering Communities of Color: Best Practices for Aligning Research, Advocacy, and Activism, ECON. POL'Y INST. (June 15, 2022, https://www.epi.org/anti-racist-policy-research/serving-organizing-and-empowering-communities-of-color-best-practices-for-aligning-research-advocacy-and-activism/.

advocates to garner needed information for white papers, testimony, and other legislative materials they produced for clients. This value is reflected in students' work product. For example, white papers, testimony, and even fact sheets students have produced include quotes, anecdotes, and policy recommendations directly from clients.[76]

The REEL Policy Clinic's first clients included a youth advocacy organization and a parent advocacy organization. Both clients shared the REEL Policy Clinic's value of centering the voices of those directly impacted by racial inequities in education. The leaders of the organizations included youth impacted by policies like discriminatory school discipline practices and parents who fought for equitable school funding and resources for their children's schools respectively. I was mindful to select clients who not only appreciated the educational goals of clinical education, but who also embodied and could "model" the values of the REEL Policy Clinic's Theory of Change for students. For example, representatives from the youth advocacy organization skillfully interacted with lawmakers who were not aligned with their policy requests. They managed to find common ground to build relationships and find future opportunities for collaboration. During meeting debriefs, I discussed how the representatives displayed these kinds of skills and students shared their thoughts about how they could replicate them. In the following sections I describe how Ashar's framework, including dialogical engagement with clients, in more detail, but I first describe the students who have comprised the early cohorts of the REEL Policy Clinic.

During the student selection process, I consider the diversity of experiences that students bring to the clinic space. Many law students who are drawn to clinics often have a pre-inclination to engage in social justice work. For others, the clinical experience offers an opportunity to engage in public interest lawyering before entering the world of corporate law. Many of the students interested in the REEL Policy Clinic also have backgrounds in education—some have been educators and some have worked in school systems. Some are also drawn to policy work. They are often curious about what legislative lawyering entails and hope to learn more about it in the clinic. Many are also curious about working on issues of racial inequity in education. Georgetown Law students apply for clinics once a year. Students submit detailed applications for consideration and clinic faculty review them. During one of the selection rounds, I met with a student, a white woman, who was interested in the REEL Policy Clinic. "Do I belong in a clinic like this?" she asked me. I was concerned that she was im-

[76] Students are mindful of confidentiality when doing this, particularly with minor clients.

plying that, as a white woman, she didn't belong in a clinic focused on racial justice. However, she clarified her concern — "I don't want to potentially take a spot away from a student of color who wants to be in this clinic." I assured her that the work of racial justice is everyone's responsibility. Often the labor of racial justice work is shouldered by people of color who must find ways to manage the internalization of the work while maintaining a "professional" demeanor as well as the fatigue of shouldering the work, among other challenges. It can be exhausting. "White people have a stake in promoting racial justice," I assured her. I informed her how we would begin with social analysis, including a grounding in the origins of racial inequality in America and use CRT as a tool to understand the role of the law in maintaining them. That student did join the clinic and her contributions were invaluable.

The REEL Policy Clinic has had a range of students, including students of different races, ethnicities, and nationalities, as well as students from immigrant families, students for whom law is their second career, and students who are parents. Some of the most engaged students in the clinic are white students, including those who have attended schools in under-resourced, rural areas, who draw from their experiences to inform their advocacy. I encourage all students to bring their experiences to the clinic space and to learn from the experiences of their peers. In the next section, I detail how I engage students in Ashar's conception of social analysis—an important component of prefigurative pedagogy.

II. Social Analysis: Looking Back and Looking Deeper

In this section, I describe how Ashar's first component of prefigurative pedagogy— deriving a common social analysis — is operationalized in the REEL Policy Clinic. Ashar asserts that "understanding background distributions and structures of power" can challenge conventional approaches to public interest lawyering.[77] Furthermore, Ashar underscores that this analysis can be informed by pedagogy that moves between history and the present and that questions established social norms and hierarchies. I find this to be a vital foundational step for preparing students to engage in racial justice lawyering in times of retrenchment. I emphasize how our nation has experienced times of racial retrenchment in the past and how lawyers can play a pivotal role in such times. This helps students to see retrenchment not as an isolated event but as a development in a historic pattern in which backlash follows times of racial progress.

[77] Ashar, *supra* note 5, at 886.

A. Looking Inward: Social Analysis in the REEL Policy Clinic

I ground students' social analysis of racial inequality in education with "critical historical knowledge,"[78] including foundational lectures during orientation and in the early weeks of the semester that trace the trajectory of the fight for racial inequality in education in America. First, I outline the historic denial of education to enslaved (and, in some cases, free) Black people to help students recognize the anti-Blackness at the root of racial inequities in education in America. I expose the legal system's complicity in this by highlighting the text of laws that penalized Black people who sought to learn to read or otherwise educate themselves in the antebellum south. I then draw from scholarship that explores the rationale of this denial of education — namely to keep Black people enslaved, to maintain a subservient underclass,[79] and keep Black people relegated to second-class citizenship.[80] I excavate obscured history about the development of the contemporary education system, including scholar Derek W. Black's work exposing the role of emancipated Black policymakers in creating publicly-funded education systems and supporting enactment of compulsory education laws.[81] I begin with early cases like *Roberts v. Boston*,[82] and I also include lesser known cases, like *Tape v. Hurley*,[83] *Lum v. Rice*,[84] and *Mendez v. Westminster*[85] to help students understand the reach and impact of school segregation laws and the ways that subordinated communities leveraged the law to secure justice leading up to the *Brown v. Board of Education* victory. Many students express surprise when they realize the long trajectory of legal battles waged by "people of color to secure access to education and the various ways that the legal system has contorted to deny them access to

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[78] *Id.* at 888.

[79] Scholar W.E.B. DuBois asserts that the provision of low-quality education to Black people was part of an effort to ensure a working class that would perform the bulk of the labor in a capitalist economy. DuBois termed this kind of education "caste education." *See* Clayton Pierce, *W.E.B. DuBois and Caste Education: Racial Capitalist Schooling from Reconstruction to Jim Crow*, 54 AM. EDUC. RSCH. J., 23S, 38S (2017).

[80] I have found scholar Michael Dumas' work to be invaluable in teaching students about how anti-Blackness drives education policy. *See* Michael J. Dumas, *Against the Dark: Antiblackness in Education Policy and Discourse,* 55 THEORY INTO PRAC. 11-19 (2016).

[81] Derek W. Black, SCHOOLHOUSE BURNING: PUBLIC EDUCATION AND THE ASSAULT ON AMERICAN DEMOCRACY 110-11 (2020).

[82] 59 Mass. 198 (1849) (upholding Boston's practice of school segregation although no *de jure* school segregation laws existed).

[83] 66 Cal. 473 (1885) (invalidating segregated schools in the state of California). Shortly after the Tapes' legal victory, the California legislature enacted a law mandating segregated schools.

[84] 275 U.S. 78 (1927) (upholding the "separate but equal" doctrine in education).

[85] 161 F.2d 774 (9th Cir. 1947) (invalidating California school segregation law).

quality education." I find this powerful grounding and preparation for students to engage in addressing contemporary forms of racial inequities in education. As Ashar concludes, "[o]ur responses to [these] structural conditions will fall short time after time if we as teachers and students do not engage in social analysis of the problems on which we are working."[86] This is particularly important for racial justice work because there is so much miseducation (and omission) of the historic origins and manifestations of racial inequality in America and the various ways that the legal system has facilitated it. However, "[b]y engaging in ongoing social analysis, undergirded by critical historical knowledge . . . lawyers and law students can expand their understanding beyond dominant paradigms."[87] In addition, by building students' understanding of the ways that racial inequality in education has been embedded in institutions and systems in order to endure, students move beyond seeing racism as a product of specific and isolated incidents between individuals, and instead, as a consequence of systemic and institutional laws, policies, and practices. This grounding establishes the foundation for their analysis of the ways that racial inequities in education currently manifest.

To aid students in social analysis, I build in self-reflection exercises early in their clinical experience. Engaging in self-reflection, a hallmark of clinical education,[88] helps students to unpack their own biases and assumptions. One self-reflection exercise is the telling of their education stories. Students tell their education stories during the first session of orientation. It is an early exercise in vulnerability but students inevitably learn from their peers and identify similar experiences that help them build connections. The instructions for the education story are as follows:

> ***Prepare Your Education Story -*** *Please reflect upon your educational trajectory and consider when you first became aware of racial difference (your own or others) along your journey? Did a particular incident occur that prompted this realization? What happened? How did it impact your educational journey or your perceptions about race?*

I provide enough space for students to choose the story they tell to allow them the flexibility to avoid retelling painful stories, but I also encourage students to reflect and identify ways that race or racial inequality may have impacted them (even unknowingly) along their edu-

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[86] Ashar, supra note 5, at 888.

[87] *Id*.

[88] Wallace Mylniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLIN. L. REV. 101, 165 (2012) (noting that clinical supervisors must teach law students to engage in self-reflection for their development as attorneys.)

cational journeys. The stories that students share are powerful, and many draw upon them to inform their clinical practice.

I also use two other exercises to engage students in self-reflection and social analysis. I borrowed these from the University of Michigan's college of Language Arts and Sciences' (LSA) Inclusive Teaching program.[89] The first exercise is the "Personal Identity Wheel,"[90] which prompts students to reflect upon their personal/individual identity. After filling in the exterior of the wheel, which contains prompts such as birth order, skills you are most proud of, favorite color, and favorite foods, students fill in three adjectives describing themselves in the center of the wheel. Students fill in these wheels and then pair off and share with partners.[91] Not only does this help students to reflect on their individual identities, they recognize similarities with their clinic colleagues. After students share their personal identity wheels, we ask them to fill in the "Social Identity Wheel,"[92] which prompts students to fill in identifiers such as race,[93] religious affiliation, age, ethnicity, first language, and other identifiers.[94] This prompts them to consider how they are externally perceived. After filling out the exterior of this wheel, students then consider prompts in the center of the wheel, including which identities you think about most often; which identities have the greatest effect on how others perceive you; which identities have the strongest effect on how you perceive yourself. We then encourage students to again pair off and share with clinic colleagues.[95] These internal and external reflections prepare students to begin to analyze the social structures and beliefs that impact their educational experiences and those of their clients.

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[89] *Inclusive Teaching – the Basics to Advanced Practices*, UNIV. OF MICH. COLL. OF LITERATURE, SCI., AND THE ARTS, https://sites.lsa.umich.edu/inclusive-teaching/ (last visited June 27, 2023).

[90] *Personal Identity Wheel*, U. OF MICH. COLL. OF LITERATURE, SCI., AND THE ARTS, https://sites.lsa.umich.edu/inclusive-teaching/personal-identity-wheel/. (last visited June 27, 2023).

[91] We provide the caveat that students do not have to share anything that they're not comfortable sharing.

[92] *Social Identity Wheel*, UNIV. OF MICH. COLL. OF LITERATURE, SCI., AND THE ARTS, https://sites.lsa.umich.edu/inclusive-teaching/social-identity-wheel/ (last visited June 27, 2023).

[93] In the Clinic, we acknowledge that race is a social construct and instead encourage students to reflect upon how their perceived race may impact their social interactions and education, health, and economic outcomes.

[94] We also encourage students to add in other characteristics that are not indicated on the wheel and acknowledge that such labels can often stifle one's sense of self and identity.

[95] We also do not require students to turn in anything written in response to this assignment. The goal is to prompt students to reflect about their identities, including their individual identities and their social identities (including how those identities are perceived or presented in particular social contexts, like in law school) and how these identities (or perceived identities) may impact their experience of the world.

B. CRT as a Tool for Social Analysis

I employ CRT as a tool to help students engage in social analysis. Applying CRT aids students in understanding the role of the law in perpetuating racial inequality in education—and its potential to eradicate it. First, CRT provides a valuable lens for students to critique the ways the law has been complicit in reifying racial inequities in education. As Crenshaw (who coined the term CRT) notes, it is a verb, not a noun,[96] it is:

> a way of seeing, attending to, accounting for, tracing and analyzing the ways that race is produced, the ways that racial inequality is facilitated, and the ways that our history has created these inequalities that can now be almost effortlessly reproduced unless we attend to the existence of these inequalities.[97]

This recognition of the role of institutions related to racial inequality also prompts students to understand the ways the law has been complicit in replicating and reifying racial inequality. Namely:

> CRT argues that when race figures centrally in legal scholarship, it allows us to see how racial hierarchies are reflected in and reproduced by areas of law that have seemingly nothing to do with race—like the tax code, securities laws, land use laws and intellectual property laws.

I also employ it as a pedagogical tool. For example, during the REEL Policy Clinic's orientation, I share two photos with students that show only school facilities and resources, including lockers and books. The photos do not contain people. The two schools featured are only fifteen minutes apart. I ask the students to guess the racial demographics of the student populations at each school—simply by looking at the photos. Students always guess the racial demographics correctly— the poorly resourced school with used books and old furniture is comprised mostly of Black and Latino students and the well-resourced school with computers at each desk is attended mostly by white students. CRT, I tell the students, is what helps us to understand not only how we are able to accurately guess the racial demographics of each school merely by looking at photos of resources, but to also uncover the ways the law aids in perpetuating these kinds of resource inequities along racial lines. For example, we delve into the history of

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[96] Jacey Fortin, *Critical Race Theory: A Brief History*, N.Y. TIMES (Nov. 8, 2021), https://www.nytimes.com/article/what-is-critical-race-theory.html (noting that "Professor Crenshaw put it, CRT is more a verb than a noun.").

[97] *Id.* Crenshaw further notes, "For me, critical race theory is a method that takes the lived experience of racism seriously, using history and social reality to explain how racism operates in American law and culture, toward the end of eliminating the harmful effects of racism and bringing about a just and healthy world for all." *Id*.

redlining,[98] dependency upon property values to fund education, and the Supreme Court's failure to recognize a constitutional right to education to understand how and why school resource inequities along racial lines persist.[99]

While there is a lot of misinformation about CRT, there are also great resources that I draw from to help students understand it and apply it in their social analysis, including a primer by scholar Khiara Bridges and a casebook by my colleague scholar Dorothy Brown.[100] I also penned a piece for the American Bar Association's Human Rights Magazine about CRT, which outlines CRT's origins and some aspects of race and the endurance of racism in America that many CRT scholars recognize (in addition to the recognition that systems and institutions can do the bulk of replicating racial inequality),[101] such as:

- Race is a social construct;
- Recognizing that racism is a feature of American life;[102] and
- Recognizing the relevance of people's everyday lives to scholarship.

I explore these various CRT components to aid students in their social analysis. For example, to explore the concept of race as a social construct, I introduce the Human Genome Project and its finding that humans share the majority of the same genes.[103] I also discuss different ways that racism operates in American life to demonstrate how it is a feature of American systems, such as how racial categorization was tied to whether one was classified as enslaved or free. Finally, I encourage students to reflect upon their own experiences, including the education stories that they share during orientation, and to bring those experiences to bear in their clinical practice.

I also curate a seminar syllabus that provides opportunities for students to engage in social analysis.[104] This includes incorporating

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[98] *See* Coates, *supra* note 49.

[99] *See* San Antonio v. Rodriguez, 411 U.S. 1 (1973) (concluding that there is not a fundamental right to education).

[100] *See generally* Bridges, *supra* note 32; DOROTHY A. BROWN, CRITICAL RACE THEORY: CASES, MATERIALS, & PROBLEMS (4th ed. 2023).

[101] George, *supra* note 32.

[102] This is not to concede and declare that racism is unsurmountable, but to recognize that it has impacted so many aspects of American life, including education, health, and economics. *Id.*

[103] See The Human Genome Project, NAT'L HUM. GENOME RSCH. INST., https://www.genome.gov/human-genome-project [last visited Sept. 5, 2023].

[104] "[I]f you are directing an immigration clinic, cite immigrants. If you are directing a criminal clinic, cite incarcerated people. If you are directing a clinic that represents indigenous people, consider populating your syllabus with the intellectual production of Native

readings authored by writers of diverse backgrounds—including non-lawyers such as organizers, educators, and parents. To be clear—this is a starting point, having "token" readings by authors of diverse backgrounds does not alone complete the work of incorporating different perspectives throughout the clinic. This also entails selecting readings that center the voices of impacted individuals. For example, for a seminar on professional ethics, I assign students the applicable rules of professional conduct, but also assign Shah's article *Rebuilding the Ethical Compass of Law*,[105] which prompts students to consider their own ethical motivations for clinic practice and to critique the rules of professional conduct. Shah's experience as a Movement lawyer is vital for this exercise as she draws from and outlines learnings from her own work. Students expressed concerns about why so many rules are restrictive in nature rather than encouraging or incentivizing attorneys to affirmatively act in ways that center and support historically marginalized individuals. Students engage in a group exercise and formulate their own Rules of Professional Conduct that govern their clinical practice for the semester. I encourage students, consistent with Shah's critique of professional rules, to think proactively and affirmatively about representing clients and to recognize what governing principles are important to them.[106] Prior groups of students have developed lists of guiding ethics that include working collaboratively to reach equitable resolution for clients and acknowledging that the legal system has been a site of harm and trauma for some clients and to affirmatively act to try to mitigate this harm.

Through various approaches that I employ in the REEL Policy Clinic students learn to engage in social analysis, including by applying CRT to understand the origination and current manifestations racial inequities that impact the educational experiences of students of color. I posit that CRT is both a pedagogical tool for clinicians and tool for clinic students to engage in social analysis to better understand how the law can be leveraged to uphold a status quo of racial inequality or to eradicate it.

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people. The idea here is to trust oppressed people to prescribe their own emancipation, read what they have writer on their pain and prescriptions, and then as an anti-racist clinic set out to be an ally." Norrinda Hayat, *Freedom Pedagogy: Toward Teaching Antiracist Clinics*, 28 CLIN. L. REV. 149, 162 (2021).

[105] 47 HOFSTRA L. REV. 11 (2018). Shah is the Founder and Executive Director of the Movement Lab and Co-Founder of Law for Black Lives. Purvi Shah, MOVEMENT LAW LAB, https://movementlawlab.org/purvi-shah (last visited June 27, 2023).

[106] *Id.* at 14 (noting the rules are silent "on *what* the *affirmative* role for a lawyer is in society . . .").

III. Radical Imagination

Encouragement of the use of imagination is uncommon in the law school classroom. As Ashar notes, imagination "remains under siege in U.S. educational systems, which are under pressure to prepare students to obediently serve capital and develop historical understanding that reinforces current distributions of wealth and power."[107] Law schools often discourage students from being imaginative as many focus on preparing students to conform to the current social status quo.[108] However, because of their proximity to social justice practice and tradition as laboratories of innovation, law clinics hold the promise of providing students with opportunities to engage in radical imagining. In addition, and as Ashar notes, "[b]oth the duty of loyalty to clients and the principle of academic freedom enable clinical teachers to construct dockets with a rare degree of independence, shielded from the market and state pressure that most progressive civil-society organizations face to reinforce (or not challenge) status-quo distributions of wealth and power."[109] I posit that in times of retrenchment, during which solutions seem unworkable, teaching clinic students how to exercise radical imagination is necessary and urgent. In this section, I describe how I introduce clinic students to radical imagining.

A. Practicing Radical Imagining

I employ a radical imagination exercise at the close of orientation to begin to challenge students to think beyond defensive legislative responses and understand the importance of an "offensive" policy strategy, including strategies that extend beyond the limitations of the law.[110] I agree with Asher's assertion of the utility of radical imagination—it's important for students to have a vision for which they are working towards, even if it seems beyond reach. Too often, policy work—particularly in the arena of racial justice during times of retrenchment during which change seems unattainable and racism seems intractable—is couched in defensive terms. However, teaching students to engage in dreaming is vital for encouraging them to proactively work towards shaping the kind of world they want, rather than

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107 Ashar, *supra* note 5, at 879.

108 "Law is an exceptionally fraught terrain for radical political imagination due to its use as an instrument of social control, as well as its use to discipline and domesticate disruptive social movements." *Id.* at 880.

109 *Id.* at 882.

110 Indeed, as Phil Schrag has noted, "One of the hallmarks of an effective lawyer is that he or she can (1) recognize those occasions when doing a task by the book is not likely to achieve satisfactory results, (2) figure out a creative alternative, and (3) find the courage to deviate from the accepted norm of practice." Philip G. Schrag, *Constructing a Clinic*, 3 Clin. L. Rev. 175, 184 (1996).

merely preventing bad things from happening.[111] This also entails affirmatively advancing a vision of justice. As Alexander asserts, "we must focus on what we are fighting for. We invite people to dream of a better future and to work toward it with us."[112]

I adapted this exercise from one developed by the late scholar and former LDF voting rights litigator Lani Guinier who challenged her students to imagine a just world by drawing the kind of world they desired.[113] I give students a large blank sheet of paper and crayons and markers. After recovering from the initial shock of seeing crayons and markers (for some law students, for the first time in decades), students settle in and listen to the directions to draw their vision of a racially just school. "How can you work toward achieving something if you can't imagine it?" I ask them. What does it look like? What does it sound like? Who is in the school? Who are the teachers? Who are the students? Sometimes students are hesitant, complaining that they cannot draw. Then, students begin to draw. Some ask, "Is this right?" Of course, I tell them that there is no "right answer," which is difficult for many of them to grasp.

The ideas that students come up with are innovative. Some of their schools include "cooling off" rooms where children can calm themselves rather than being placed in detention if they are upset. When I started doing this exercise, I initially asked students to individually draw pictures of their visions of racially just schools. However, I recently began having the students draw a picture as a group. This has proven successful, as it inspires students to develop a collective vision as they draw it on the paper. I also find that doing this as a group exercise urges students to collaborate, to discuss their visions, and to practice radical imagining together. This helps them to "recognize the co-constitutive relationship between material reality and ideology."[114] Ashar also encourages the extension of this collaborative dreaming to dialogue with clients and organizational partners.[115] A recent group of students drew a school that was accessible to the local community and that offered GED class and other adult education options. This is the

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111 "We seek a balance of 'defense, offense, and dreaming.' It is not enough to focus on what we are fighting against; we must focus on what we are fighting for. We invite people to dream of a better future and to work toward it with us." Alexander, *supra* note 52, at 128-129.

112 *Id*. at 129.

113 "In one class, she brought huge rolls of paper and challenged students to draw images of better social arrangements—and in so doing, invited students to get out of their comfort zones, to laugh, and to imagine ways that fueled the rest of the course." John F. Manning & Martha Minow, *In Memoriam, Tribute, Professor Lani Guinier*, 136 HARV. L. REV. 743, 748 (2023).

114 Ashar, *supra* note 5, at 894.

115 *Id*.

first exercise for many students in thinking beyond the boundaries of the law. Radical imagining is a competency that we seek to build in the REEL Policy Clinic, because addressing deeply-entrench problems of racial inequality requires creative problem-solving, flexibility, and agility. I hope to apply this idea to create opportunities to engage in creative and collaborative dreaming with clients and partners about innovative ways to advance their goals, unbound by the confines of the law.

I also share a real-life example of exercising imagination with students. I tell the story of being in a meeting as an LDF lawyer with the staff of a conservative lawmaker and several colleagues from other civil rights organizations during the process of developing the legislative language for a federal education law. We were seeking the lawmaker's support of a provision in the law that would require reporting of data vital for civil rights enforcement. The staffer responded, "My boss can't support anything with the words 'civil rights' in it." Many of my civil rights colleagues were astounded, frustrated, and discouraged because the data we hoped to require districts to report included this language. As the meeting neared a close, I thought quickly and suggested merely cross-referencing the statute number containing the data that we wanted to have reported rather than including the actual language containing the words the lawmaker was opposed to. We were able to arrive at a compromise with that lawmaker, securing his support and achieving our legislative goal. I share this not to gloat about that compromise, but to illustrate that creative problem-solving can be vital for lawyers achieving a goal. Maintaining a vision of the end goal (even if it seems far out of reach) is vital for staying the course. At the beginning of this Essay, I mentioned the story I tell my students of the pioneering civil rights advocates who grew up in the Jim Crow south and never interacted with white people in public spaces, yet who advocated for an integrated world that they had never seen.[116] Some didn't survive to witness the reality of integrated public spaces they fought to achieve. I remind my students that we are the beneficiaries of their imaginations.

IV. Dialogical Relationship with Clients

Establishing and maintaining a dialogical relationship with clients, in which clients are collaborators, sources of knowledge, and co-constitutors of legal solutions, is foundational for the kind of practice

[116] As Quigley notes, "Every good law or case you study was dismissed as impossible or impractical for decades before it was enacted . . . it is only in the hearts and dreams of people seeking a better world that true social justice has a chance." Quigley, *supra* note 29, at 28.

the REEL Policy Clinic engages in, which departs from lawyer-client models that may perceive the lawyer as the sole holder of knowledge. For example, we have a seminar focused on coalitions in which we invite our clients to join us at the law school to teach our students how to participate effectively in coalitions. Part of student project work sometimes includes regularly attending coalition meetings with clients and client partners. We first prompt students to reflect upon their own privilege as law students, including how coalition partners may perceive them as very knowledgeable of the law. By the time that we host this seminar, students have completed several self-reflective exercises in which they consider their privilege as law students and how others may perceive (or misperceive them). Even as early as client introduction meetings, I often have to encourage students to reflect on how they present themselves. For example, at an initial meeting about school discipline with youth advocates, a couple of students introduced themselves as "2Ls" or "3Ls." We discussed later how something so innocuous as how law students refer to themselves can be alienating for clients who are not familiar with law school "lingo," but who can understand, "I am a second-year law student" or "I am in my last year of law school." Sometimes, this is how minute the reflection must be for students to unpack how they present themselves and how that presentation, in turn, can either help to build relationships or to alienate clients. These small interactions can impact the process of building trust and understanding in the client relationship.

Another aspect of dialogical relationships is recognizing the expertise and knowledge of clients and clinic partners. When students attend coalition or partner meetings, I regularly tell them to not assume that they are the smartest people in the room. Instead, I urge them to take a learning posture. Too often, students are eager to share their knowledge and legal expertise (however limited it may be), but I urge them to approach these interactions as learning opportunities, not opportunities to show how much they know. We encourage them to learn from coalition members, to listen for their concerns and needs, to ascertain how their client's interest may be consistent with or diverge from the interests of other coalition partners, and–most importantly–to learn from the expertise and institutional knowledge of coalition members.

In the client-led coalitions seminar, students work directly with clients to engage in scenarios that require them to grapple with issues such as the appropriate role of the lawyer in coalitions (particularly when some coalition members may be confused about who the lawyer

represents),[117] resolving intergenerational conflicts, and navigating and resolving differences in coalition strategies. Students learn from and problem-solve alongside clients (including our youth advocates). Thereby, the client also becomes the teacher. This may be contrary to the practice of many clinics, in which the lawyer is usually the sole holder of knowledge, but consistent with the REEL Policy Clinic's Theory of Change, clients are holders of knowledge and students are learners.

We also build this dialogical relationship with clients by ensuring that the clinic is a welcoming space for clients and engaging in mutual aid. For example, because one of our client's is a youth advocacy organization comprised of Black youth, we want to ensure that clients see themselves in the REEL Policy Clinic space. To do that, we have decorated the space with books by Black authors and other authors of color, some posters the youth advocates produced, and other educational resources, such as books on Black history. We also practice mutual aid, or the practice of providing material and immaterial support to partners and neighbors, has its roots in Black communities who historically pooled resources to support each other.[118] I became aware of this during my time at LDF, when I realized how a gesture like covering the cost of lunch or coffee for meetings could make a tremendous impact on the client (particularly clients impacted by income inequality). This is not about depleting the REEL Policy Clinic budget, but using resources (when available) to support clients. When we host youth clients at the law school, we provide lunch and snacks and cover metro fare or other transportation costs. We also have a "hygiene station," a cart in the clinic space that holds travel size products such deodorant, shower gel, hand sanitizer, and other products. Whenever we meet with clients in the Clinic space, we invite them to take products home with them. Often, after client events are held in the REEL Policy Clinic space, the hygiene cart is completely empty. These are the kind of material supports that we can offer clients in addition to our legal services.

Mutual aid also includes immaterial support. For example, a subgoal that I have in bringing Black youth advocates to the law school

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117 Bell, *supra* note 63, at 460.

118 "Black mutual aid societies date back to the 1700s. Free Black Americans pooled resources to buy farms and land, care for widows and children, and bury their dead . . . . One of the most famous examples of mutual aid are the Black Panther Survival Programs from the late 1960s, through which members distributed shoes, transported elders to grocery stores, offered breakfasts and more." Christine Fernando, *Mutual Aid Networks Find Roots in Communities of Color*, ASSOCIATED PRESS (Jan. 21, 2021), https://apnews.com/article/immigration-coronavirus-pandemic-7b1d14f25ab717c2a29ceafd40364b6e.

campus is to expose them to the law school environment, give them opportunities to sit in classrooms, and see themselves in the space. When a couple of youth advocates commented during a meeting at the law school that they wanted to be lawyers, I was thrilled and I hope that their exposure to the law school helps them to visualize themselves achieving this goal. In addition, we often meet clients where they are, at schools or local libraries in their neighborhoods. This provides the opportunity for the law students to get off campus and for those who confine themselves to certain neighborhoods in the District, it gives them an opportunity to visit other communities and to see the places where student clients live and attend school.

I encourage students to engage in dialogical relationship with client partners and those directly impacted by the issues of racial inequality that are the focus of the REEL Policy Clinic's work. I encourage students to consider these stakeholders sources of knowledge. This kind of epistemic shift is vital for developing students' full understanding of the law and its impact on the lived experiences of people of color who are experts of their own experiences. Engaging with stakeholders deepens students' social analysis of the issues that they work on. As students share their plans for advancing client goals for the semester, I discuss the tasks that they will undertake to achieve the client's goals and encourage them to consider interviewing community members or other stakeholders to inform their analysis. A final component of the REEL Policy Clinic's approach to lawyering in a time of retrenchment, as described below, is bravery.

V. Bravery

During the REEL Policy Clinic's orientation at the start of each semester, I ground students in the distinction between a "safe space" and a "brave space."[119] I caution students that I cannot guarantee that the clinic is a "safe space," meaning that I can't guarantee that they won't feel discomfort, pain, or shame when examining issues of racial inequality. However, I assure them that the endeavor to analyze issues of racial equity and to advocate on behalf of our clients to realize it is a brave one. This of course does not refer to the literal meaning of students' physical safety, but to students' comfort levels and the real-

[119] Brian Arao and Kristi Clemens have written about transforming from "safe spaces" to "brave spaces" when framing discussions about diversity and social justice. *See* Brian Arao & Kristi Clemens, *From Safe Spaces to Brave Spaces: A New Way to Frame Dialogue Around Diversity and Social Justice*, The Art of Effective Facilitation, 2013, at 135–50; Glenn Singleton & Cyndie Hays, *Beginning Courageous Conversations About Race*, Everyday Antiracism: Getting Real About Race in School, June 2008, at 18–23.

ity of feelings they will inevitably experience when stepping outside of their comfort zones. The untitled poem below beautifully captures this sentiment:

There is no such things as a 'safe space'—
We exist in the real world.
We all carry scars and have caused wounds.
This space
seeks to turn down the volume of the world outside, and amplify
voices that have to fight to be heard elsewhere.
This space will not be perfect.
It will not always be what we wish it to be
But
It will be our space together,
And we will work on it side by side.[120]

After sharing this poem with students, we explore the definition of "safe" which includes descriptors such as "not exposed to risk" or "protected from danger."[121] I then share the text of some recent anti-CRT laws supported by conservative lawmakers that purport to protect students from feeling "discomfort" or "guilt" during classroom discussions about historic racial inequality.[122] I also ask:[123] What resonates for you when you hear "safe space" versus "brave space"?; "What people/ideas do these spaces seek to protect?; "Where does growth happen?"[124] I also share an assertion from Brian Arao and Kristi Clemens' scholarship on brave spaces, "the language of safety contributes the replication of dominance and subordination, rather than dismantling thereof."[125] Further, I share an insight from Tim Wise: "This country is never safe for people of color. Its schools are not safe; its streets are not safe; its places of employment are not safe; its health care system is not safe." After grounding students in the distinction between a safe space and a brave space, I then guide them

120 Beth Strano, *Untitled Poem*, FACING HISTORY & OURSELVES, https://www.facinghistory.org/resource-library/untitled-poem-beth-strano (last updated April 22, 2022).

121 MERRIAM-WEBSTER ONLINE DICTIONARY, safety: (1) the condition of being safe from undergoing or causing hurt, injury, or loss. https://www.merriam-webster.com/dictionary/safety (last visited Sept. 5, 2023).

122 For example, many of the state and local laws and restrictions seeking to deny discussions of race or racism in schools replicate the language of Executive Order 13950, issued by former President Trump, which excluded from federal contracts any trainings deemed to be "divisive" or that included "divisive concepts." The Order vaguely defined "divisive" as virtually anything related to racial equality, diversity, or inclusion. *See* Combatting Race and Sex Stereotyping," Exec. Order No. 13950, 3 C.F.R. 433 (2020) [rescinded].

123 The inaugural teaching fellow of the REEL Policy Clinic, Nikola Nable-Juris, developed the original lesson plan for this session, some elements of which I share here.

124 *See* Arao, *supra* note 119; *see also* Singleton, *supra* note 119.

125 *See* Arao, *supra* note 119, at 140.

as they formulate their own "community norms" to govern how they will engage in conversations, interactions with clients and partners, and otherwise show up in the work to advance racial justice in education. This gives them a sense of ownership—and accountability. They have a stake in the environment that they create and how they show up for their clients and partners. It also manages their expectations—they learn that racial justice lawyering work is impossible without experiencing discomfort, lack of closure, confusion, and even shame or emotional pain. Yet, every semester, after engaging this in this exercise, students always choose to proceed with the work—with bravery.

Conclusion

> *"Hope is justified. Time and again, Americans of all races, colors, and creeds have shown themselves to be willing to fight for equality in the schoolhouse, at the lunch counter, and on the public bus. They are proof positive that while the movement toward justice and equality is slow, it is also inexorable."*[126]

We are facing new battles against racial injustice in our nation today that require new tools to address them. Preparing clinic students to engage in social analysis, dialogical relationships with clients, radical imagining, and bravery can equip them to advance racial justice in moments of racial retrenchment. Charles Hamilton Houston, the founder of LDF and former vice-dean of Howard Law remarked that the lawyer can be either a parasite or a social engineer.[127] The work of a social engineer is long and difficult. Educating social engineers is also difficult work. It is also a brave endeavor. What fuels this commitment is hope. I believe that hope and bravery operate in concert. Somedays, I am short on both, but I agree with William Quigley's observation of hope and social justice lawyering:

> Hope is also crucial to this work. Those who want to continue the unjust status quo spend lots of time trying to convince the rest of us that change is impossible. Challenging injustice is hopeless they say. Because the merchants of the status quo are constantly selling us hopelessness and diversions, we must actively seek out hope. When we find the hope, we must drink deeply of its energy and stay connected to that source. When hope is alive, change is possible.[128]

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[126] Rucker C. Johnson, Children of the Dream: Why School Integration Works 1, 255 (2019).

[127] *See* Roger A. Fairfax Jr., *Wielding the Double-Edge Sword: Charles Hamilton Houston and Judicial Activism in the Age of Legal Realism*, 14 Harv. Blackletter L. J. 17, 26 (1998). Further noting that "a lawyer as a social engineer is the 'mouthpiece of the weak and a sentinel guarding against wrong' . . . a social engineer 'ought to use the law as an instrument to achieve social justice and full, equal civil rights for all Americans.'" *Id*.

[128] Quigley, *supra* note 29, at 27.

I am not sure what the outcome of this work will be. I'm not sure what the history books will say about how racial justice advocates met this moment of retrenchment. I do hold the hope that we who believe in racial justice will win. I know that the clinicians who preceded me believed in the potential of the law to advance justice and they helped to make my work possible by imaging the world I now inhabit. Therefore, holding onto this hope, let us all proceed with the bravery of lions.

TEAMWORK MAKES THE DREAM WORK: IMPROVING COMMUNITY LAWYERING THROUGH A POLICY AND TRANSACTIONAL LAW CLINIC PARTNERSHIP

JENNIFER LI*

As cross-clinic partnerships become more common in law schools, the synergies between policy and transactional law clinics merit increased consideration as a collaborative model that can provide holistic legal support to underserved communities. This Essay uses the illustration of one such partnership at Georgetown University Law Center to demonstrate a model of inter-clinic collaboration that advances racial equity, helps communities of color shift power back to their residents, and provides an interdisciplinary approach to meet more legal needs across a longer timeline. Critically, this integrated, community-centered approach can also enhance the students' learning outcomes in clinics by exposing them to different types of lawyering and collaboration. The examples of cross-clinic partnership discussed in this Essay reinforce the need for comprehensive legal services in communities of color and other historically underrepresented communities, where there may be a need for legal and policy support beyond the resources of a single clinical program.

INTRODUCTION

Two years ago, students enrolled in my Policy Clinic reached out to a local civic association to better understand how negotiations for community benefits agreements ("CBAs") could be made more equitable in Washington, D.C.[1] In the city's rapidly gentrifying majority-

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[1] Community benefits agreements ("CBA") are contracts negotiated between private developers and residents impacted by a development project. In a CBA, developers agree to provide amenities and resources to the community above and beyond what is legally required. In exchange, local organizations, which negotiate on behalf of impacted residents, agree to provide community support for the development project. *See generally*

Black neighborhoods located east of the Anacostia River, residents at risk of physical and economic displacement must compete in time, energy, and other resources with deep-pocketed private developers.[2] In exchange for an interview with my students to discuss the civic association's experience negotiating CBAs, a representative asked that we first agree to provide them with a litany of pro bono legal services – much of it outside the scope of our policy clinic's expertise. As I explained, asking a policy lawyer to review and revise their organizational bylaws was much like asking a cardiologist to conduct brain surgery, or your plumber to be your electrician. The civic association needed a transactional lawyer with experience in nonprofit entity formation. As it happened, I had a referral in mind.

Like so many great partnerships – peanut butter and jelly, Sherlock and Watson – cross-clinic partnerships between transactional and policy clinics seem intuitive in hindsight, particularly given the increase in models of cross-clinic collaborations.[3] However, while inter and intra-clinic partnerships have existed both in practice and in the literature, collaborations between policy and transactional law clinics have not been extensively explored. As our example at Georgetown University Law Center illustrates, there are inherent similarities and common objectives between many transactional and policy clinics that, when paired, become mutually reinforcing, not merely complementary.

Specifically, I reflect on my experience teaching in the Harrison Institute for Public Law's Policy Clinic (the "Policy Clinic"); our growing collaboration with a sister clinic, the Social Enterprise & Nonprofit Law Clinic (the "SENLC"); and our joint efforts to support local communities that are battling environmental injustice, redlining, and the legacy of generations of systemic racism. Part I describes our

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Patricia E. Salkin & Amy Lavine, *Community Benefits Agreements and Comprehensive Planning: Balancing Community Empowerment and the Police Power*, 18 J.L. & POL'Y 157 (2009).

[2] Katherine Shaver, *D.C. Has the Highest 'Intensity' of Gentrification of any U.S. City, Study Says*, WASH. POST, Mar. 19, 2019, https://www.washingtonpost.com/transportation/2019/03/19/study-dc-has-had-highest-intensity-gentrification-any-us-city/.

[3] One recent example of cross-clinic collaboration is the Transactional Law Clinic Collaborative, which formed during the COVID-19 pandemic and provides legal assistance to small business and nonprofit clients in the D.C., Maryland, and Virginia area. TRANSACTIONAL LAW CLINIC COLLABORATIVE, https://www.wcl.american.edu/academics/experientialedu/clinical/theclinics/elc/tlcc/ (last visited Aug. 23, 2023). In another example, the Education Defense and Justice for Youth program at the University of California, Berkeley School of Law combines the resources of two clinics (Youth Defender Clinic and Education Justice Clinic) to provide holistic support and representation to clients at the intersection of the juvenile justice and education systems. EDUCATION DEFENSE & JUSTICE FOR YOUTH, https://ebclc.org/about/the-work/education-defense-justice-for-youth/ (last visited Aug. 23, 2023).

collaboration as one example of how a policy clinic and a transactional law clinic can ally to support a common community client. Part II elaborates on the positive impacts of a transactional law and policy clinic partnership for clients and communities, particularly as they explore opportunities to reclaim their political and economic power. Similarly, Part III explores the benefits of such partnerships for clinic students. And, as we frequently remind our students, no honest self-reflection would be complete without constructive feedback. Therefore, in Part IV, I identify and address some challenges and lessons learned from our collaboration thus far, concluding with some personal learning goals I have developed for our supervision going forward.

I. An Example of Cross-Clinic Collaboration in Community Lawyering

Our experience with the civic association was the first, albeit brief, example of coordinating on projects or clients between the SENLC and the Policy Clinic. In that first instance, our cross-pollination of resources was limited to a relatively straightforward client referral. Later, we organized a joint meeting of our students, who together reviewed the basics of affordable housing and community development. This conversation increased their collective understanding of the policy contexts that our respective clients were grappling with. The next semester, however, provided our two clinics with an opportunity to work in tandem with a client – the Resilience Hub Community Coalition ("RHCC") – that required both long-term policy support as well as short-term guidance in transactional law. The RHCC was particularly well-suited for an inter-clinic collaboration between the policy and transactional law clinics. It benefited from a preexisting, longstanding relationship with clinic staff; required the disparate skill sets of our two clinics; and was structurally organized to maximize community ownership.

The RHCC is comprised of a group of residents who live in Ward 7, a predominantly Black neighborhood situated east of the Anacostia River in D.C.[4] As is the case with so many of our policy projects in the Policy Clinic, where relationships with clients and collaborators can develop and mature over the span of years rather than semesters, I had been working with members of the community coalition for over five years. The RHCC formed in 2017 to provide recommendations to

[4] Dep't of Energy & Env't, Climate Ready DC: The District of Columbia's Plan to Adapt to a Changing Environment (2016), https://doee.dc.gov/sites/default/files/dc/sites/ddoe/service_content/attachments/CRDC-Report-FINAL-Web.pdf.

D.C. government agencies on implementing the city's climate plans.[5] In the ensuing years, the RHCC's membership rotated as its focus shifted from climate resilience to creating a neighborhood "resilience hub," or a community space that can provide year-round, wrap-around resources to the community. Resilience hubs can deploy emergency operations and resources during disruptive states, such as a heat wave, flood, or public safety incident.[6] Most importantly, the pillars of a resilience hub center the principle of community ownership.[7] Resilience hubs are tailored to the individual needs of each community, with its services and other resources determined by local residents who are the most attuned to neighborhood priorities.[8]

Five years after the start of a convening process facilitated by the D.C.'s environmental agency and the Policy Clinic, the members of the RHCC wanted to formalize their coalition through the formation of a nonprofit that would be able to operate independently of its institutional conveners. Given the emphasis on community ownership, this was a natural next step. The Policy Clinic had provided research support and guidance on strategies for accruing political buy-in and bringing the Ward 7 resilience hub to scale across the city. However, to secure funding and recruit new members, the RHCC needed a cohesive legal identity.

The SENLC, which focuses on social enterprise and nonprofit formation, governance, and ongoing legal support, helped fill a critical gap in the Policy Clinic's expertise. The members of the RHCC submitted an intake form in the summer. By the fall, the SENLC had assembled a team of students – supervised by a clinical teaching fellow – who met periodically with the members of the RHCC to understand the coalition's goals in entity formation and to provide research updates to help the group determine the type of entity they wanted to form. The roles of the respective clinics were memorialized in separate written agreements. The SENLC provided the RHCC with a letter of

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[5] The RHCC emerged from an initial D.C. government community engagement process called the Equity Advisory Group, which was tasked with proposing recommendations to help advance D.C.'s climate solutions. SKEO SOLUTIONS & GEO. CLIMATE CTR., RECOMMENDATIONS FROM THE EQUITY ADVISORY GROUP IN FAR NE WARD 7 (2018), https://www.georgetownclimate.org/files/report/eag_recommendations_web_8.20.18.pdf.

[6] RESILIENCE HUB CMTY. COMM., WARD 7 RESILIENCE HUB PROPOSAL (2020), https://faunteroycenter.org/wp-content/uploads/2021/02/RHCC-Report-Year-1.pdf; *Resilience Hub Implementation*, FAUNTEROY CMTY. ENRICHMENT CTR., https://faunteroycenter.org/resilience-hub-implementation/ (last visited Aug. 23, 2023); URB. SUSTAINABILITY DIRECTOR'S NETWORK, RESILIENCE INCUBATOR@FH FAUNTEROY: RESILIENCE HUB PROGRESS REPORT (2022), http://resilience-hub.org/wp-content/uploads/2022/11/USDN_Progress-_Faunteroy_November22-3.pdf

[7] *Five Foundational Areas*, RESILIENCE HUBS, http://resilience-hub.org/core-components/ (last visited Aug. 23, 2023).

[8] *Id*.

engagement that clarified the clinic's mission and the unique nature of the students' role in providing legal counsel to the client, in addition to including routine provisions around confidentiality and termination of the relationship. Similarly, the role of the the Policy Clinic was captured in a Memorandum of Understanding (an "MOU") with the RHCC. The MOU clarified roles, timelines, and general deliverables that would help further the RHCC's mission.

By the end of the semester, students in the SENLC had provided the RHCC with a recommendation for forming a nonprofit corporation that qualified for tax-exemption under 501(c)(3) of the Internal Revenue Code, drafted sample language for bylaws, and itemized the steps to file Articles of Incorporation in the District of Columbia.

II. Positive Impacts of Collaboration for Clients and Communities

In the examples above, the SENLC and Policy Clinic benefited from sharing a common client base in the D.C. community: residents who share not only geographic proximity, but, for many, a common mission to pursue housing, environment, and economic justice. Like many grassroots organizations, our D.C. client required an interdisciplinary focus that exceeded the expertise of the SENLC or Policy Clinic alone.

Collaboration between law school clinics can bring a multi-pronged approach to supporting community clients. An interdisciplinary legal team can be particularly useful for building capacity to address systemic inequality by shifting power back to disenfranchised residents and helping organizations reclaim self-determination in how public policies are adopted and implemented in their communities.[9] Indeed, the concept of community lawyering is inherently a collaborative exercise: practitioners who incorporate a community lawyering approach frequently bring a range of subject matter expertise (e.g., environment, workers' rights, community economic development, administrative law) and draw on different practice areas and skills sets (e.g., litigation, legislative advocacy).[10] Accordingly, community cli-

[9] Alexi Nunn Freeman & Jim Freeman, *It's About Power, Not Policy: Movement Lawyering for Large-Scale Social Change*, 23 Clin. L. Rev. 147, 150 (2016) (recognizing that those who self-identify as movement lawyers or community lawyers can play an important role in helping grassroots and community organizers shift power, "exercise self-determination and ensure that all public policies reflect their particular needs and concerns").

[10] Marcy L. Karin & Robin R. Runge, *Toward Integrated Law Clinics that Train Social Change Advocates*, 17 Clin. L. Rev. 563, 567 (2011) (discussing how community lawyering frequently employs multiple legal strategies simultaneously). *See generally* Susan R. Jones, *Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law*, 14 Wash. U. J.L. & Pol'y 249 (2004) (describing examples of interdisciplinary col-

ents receive more holistic representation when clinics are able to cross-pollinate resources and bring together diverse skill sets. In our case, the Policy Clinic and the SENLC were able to harness our familiarity with organizational clients; technical expertise in different areas of law and policy; and prioritization of institutional continuity.

A. Experience with Organizational Clients

By association, policy and transactional law clinics that represent organizational clients – many of them nonprofit organizations or aspiring nonprofits – also help further the missions and values of those organizations, which can focus on issues as varied (and interdisciplinary) as housing, environment, and public health.[11] In doing so, the clinics can contribute to the advancement of racial and social justice movements that form the foundation of their clients' organizational mission and values.[12] While transactional law clinics have historically been perceived as lying at the margins of community lawyering, they are in fact rooted in community economic development and can be well-aligned to represent under-resourced and under-represented individuals and organizations.[13] For example, the SENLC at Georgetown Law represents organizational clients that pursue social justice goals. Many of SENLC's clients are social entrepreneurs or nonprofits (or groups seeking nonprofit status), based in communities of color in Washington, D.C., and have a race and economic justice-focused mission. Similarly, a vast number of the Policy Clinic's organizational clients are local and share the common objective of shaping municipal or state-level policy to benefit people living on the frontlines of economic and housing displacement, climate change, and

laboration by small business clinical programs); Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLIN. L. REV. 307 (2001) (providing examples of how community lawyering in underrepresented communities can include providing community education materials and resources, not just legal representation).

11 Hina Shah, *Notes from the Field, the Role of the Lawyer in Grassroots Policy Advocacy*, 21 CLIN. L. REV. 393, 412-421 (2015) (describing the role of lawyers representing organizational clients in grassroots movements).

12 *See generally* Susan Carle & Scott L. Cummings, *A Reflection on the Ethics of Movement Lawyering*, 31 GEO. J. LEGAL ETHICS 447 (2018).

13 Alina Ball, *Transactional Community Lawyering*, 94 TEMP. L. REV. 397, 401 (2022) ("Progressive legal scholarship rarely acknowledges transactional lawyers, and instead focuses on litigators and policy advocates addressing acute racial and social injustices . . . . Transactional lawyers utilizing their expertise to structure transactions and draft deal documents to facilitate economic activity could have a significant positive impact on low-income communities because transactional lawyers possess the technical skills to leverage consolidated capital resources and support microbusinesses owned by underrepresented entrepreneurs."). *See also* Patience Crowder, *Design Principles of Transactional Law Clinics*, 19 LEWIS & CLARK L. REV. 413, 419 (2016).

public health crises. Through representing movement-oriented organizational clients, policy and transactional law clinics working in tandem can also jointly support their social justice movements.

Typical of many policy clinics that represent clients who seek to shape some aspect of public policy, Georgetown Law's Policy Clinic almost exclusively represents organizational rather than individual clients. Increasingly, the Policy Clinic has represented not only an individual organization, but also multiple organizations united by a common mission and policy goal. Among its clients, the Policy Clinic has represented coalitions of human rights organizations advocating for improving labor standards in cities that host the FIFA World Cup, as well as a consortium of universities that seek to harness their collective purchasing power to promote better conditions for meatpacking workers.[14]

Representing organizational clients is also typical of transactional law clinics. Such clinics provide technical expertise to help manage business entities, such as drafting deal documents or structuring transactions.[15] Many clients seek transactional expertise not only to improve their organizational outcomes, but also to further a social justice mission that improves the quality of life for an entire community.[16] In both examples, the clients look to the clinic for strategic direction to help them reach a particular goal, such as entity formation or pursuing a policy objective.

B. Diverse Legal Skills for Holistic Client Representation

Our collaboration at Georgetown Law to support the RHCC also provides an example of how clinics working in collaboration can holistically support the client by providing expertise at different but key stages of the life cycle of the client's legal needs. Policy and transactional law clinics can work in coordination – telescoping in and out – by first identifying prospective clients, then providing technical guidance to help the organization form a legal entity, and ultimately enabling the organization to more efficiently advance its policy strategy.

Policy clinics that focus on community development often have broad, if not also deep, networks of organizational contacts within

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[14] *Our Work*, HARRISON INST., https://www.law.georgetown.edu/experiential-learning/clinics/our-clinics/the-policy-clinic-climate-health-food-human-rights-and-trade-harrison-institute/climate/ (last visited August 28, 2023).

[15] *See* Ball, *supra* note 13, at 432-433 (discussing how social enterprise lawyering is a particularly well-suited model for community lawyering, given the mission-oriented focus of many social enterprises, such as supporting the solidarity economy movement or sustainable development goals).

[16] Alicia E. Plerhoples & Amanda M. Spratley, *Engaging Outside Counsel in Transactional Law Clinics*, 20 CLIN. L. REV. 379, 383-388 (2014).

communities.[17] In the process of helping to strengthen community or issue-based coalitions, policy clinics interact with organizations situated across the full landscape of a political power map. For a policy clinic, the cultivation of this network can be significant for building relationships and strengthening the political power of the coalition while helping to identify prospective clients who seek not only policy guidance, but also expertise in transactional law. In turn, transactional law clinics can provide the organizational client with guidance on entity formation and governance. Having achieved legal status, organizations can adopt a more proactive role in pursuing their theories of change for policy advocacy. These include applying for funding and harnessing other critical resources – objectives that a policy clinic can then help the client to advance.[18] The Policy Clinic spent five years building a relationship with the residents of Ward 7 and members of the RHCC, who then sought the counsel of the SENLC for forming a 501(c)(3) tax-exempt nonprofit. As the RHCC continues to work with the Policy Clinic and D.C. government to operationalize resilience hubs in the city, it does so as a cohesive unit with a clear governance structure and identity, rather than as a disparate group of individual residents.

To put it another way, a policy-transactional partnership allows clients to provide assistance holistically and at different scales: transactional law clinics can provide expertise on discrete legal issues, while policy clinics can provide analyses on longer-term legislative and advocacy strategies to move a particular policy objective. In particular, transactional law clinics that focus on building social enterprise are able to help groups of community members develop a cohesive legal identity, which in turn provides the entity with the legal status required to further organize, advocate, and critically fundraise.[19] Policy clinics can then harness this self-determination and help community clients refine their legal strategy to achieve policy outcomes, such as advocating for legislation in city council. In cementing the organization's ownership of its own brand and legal identity, policy and transactional law clinics help pave the way for communities of color and historically underrepresented groups to realize the core values of strengthening community power and self-determination.

C. Institutional Continuity

Relatedly, cross-clinic collaborations with the same law school

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[17] *See* Shah, *supra* note 11, at 414.

[18] Carle & Cummings, *supra* note 12.

[19] Alicia E. Plerhoples, *Representing Social Enterprise*, 20 CLIN. L. REV. 215, 218-223 (2013).

can also bring much needed institutional continuity to both the client and the wider community. In policy lawyering, especially at the local level, a common focal point is relationship-building with a variety of stakeholders, the most important of which are the residents and the organizations that have been designated to represent their interests.[20] The exercise of trust-building with community stakeholders is time-consuming and may be fraught with personal and coalition politics. In addition, in communities of color and other historically disinvested neighborhoods, mistrust in government policy and the institutions that appear to perpetuate them – including academic institutions – are common.

In Washington, D.C., the residents of Ward 7 have a cautious and brittle relationship with their local government. For effective legal representation, it is critical for our clinics to bridge the trust deficit with community stakeholders and to demonstrate solidarity with their core values and mission. As with most individuals not affiliated with the university, Ward 7 residents and other stakeholders do not always differentiate between different clinics within the same law school. Inter-clinic collaboration is therefore an opportunity to provide a united front to meet multiple needs of the same client, advancing the goal of building trust and credibility in the community, and demonstrating steadfastness and constancy to the long-term goal of reversing harmful impacts of systemic racism. Indeed, the Policy Clinic's collaboration with the SENLC to represent the residents of Ward 7 was seen by community members not as individual efforts by two separate clinics, but rather as a streamlined collaboration by the same institution. They saw their lawyers as part of a single public interest law firm.

III. Positive Impacts of Collaboration for Students

The features of a policy-transactional clinic collaboration that can strengthen the attorney-client relationship can also improve learning outcomes for clinic students. Our cross-clinic collaboration at Georgetown Law not only helped to meet the diverse legal needs of our community clients, but also provided opportunities to maximize the students' exposure to an array of legal skills, clients, and practice environments. Community lawyering is a deliberative approach that takes time: time to develop and maintain relationships with clients, and time to collectively reach intermediary stages of goals, objectives, and other milestones.[21] While an academic semester or even two may not pro-

[20] *See generally* Shah, *supra* note 11; Carle & Cummings, *supra* note 12. *See also* Chai Feldblum, *The Art of Legislative Lawyering and the Six Circles Theory of Advocacy*, 34 McGeorge L. Rev. 785, 793 (2003).

[21] Karen Tokarz, Nancy Cook, Susan Brooks & Brenda Bratton Blom, *Conversations*

vide students with enough exposure to appreciate the full complexity of community lawyering, clinical partnerships can double those opportunities and broaden the quality of the students' interactions with clients in formative ways. Through cross-clinic collaborations, students have the benefit of being exposed to concurrent and parallel stages of the attorney-client relationship. For example, our students helped drive the process of helping a nascent organization create a legal entity, while also witnessing that same organization hone a long-term policy strategy to bring their resilience hub to scale across the city. Through a combination of observation and applied, hands-on training, students in cross-clinic partnerships are able to see a fuller picture of community lawyering and the many different faces of attorney-client interactions.

A. Create Opportunities for Multicultural Learning

Law schools are not diverse institutions. Enrollment data and student experiences continue to indicate that law schools are more likely to be centers of homogeneity rather than hubs of diversity.[22] Further, despite our efforts to broaden the diversity of our students in our clinical programs, clinics remain part of the "white space" of law school.[23] When the clients and collaborators that we work with come from more diverse spaces, it is all the more imperative that our students appreciate and understand the community contexts in which they work.

One of the benefits of experiential learning in clinics is the opportunity for students to hone their cultural competency skills and to reflect on the ways that individual experiences play a role in the attorney-client relationship.[24] Students traditionally spend the first year of law school in doctrinal courses that are case law-intensive, with comparatively less scrutiny on cultural or identity-based characteristics like race or gender that shape personal experiences with the law.[25] As cultural competency is increasingly recognized as a core fea-

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on "Community Lawyering": The Newest (Oldest) Wave in Clinical Legal Education, 28 WASH. U. J.L. & POL'Y. 359, 364 (2008) (reflecting that "community lawyering is an approach to the practice of law and to clinical legal education that centers on building and sustaining relationships with clients, over time, in context, as part of and in conjunction with communities. It incorporates respect for clients that empowers them and assists them in the larger economic, political, and social contexts of their lives, beyond their immediate legal problems.").

[22] Anne D. Gordon, *Cleaning Up Our Own Houses: Creating Anti-Racist Clinical Programs*, 29 CLIN. L. REV. 49, 53-71 (2022).

[23] *Id*.

[24] *See generally* Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33 (2001).

[25] *See generally* Vernellia R. Randall, *Teaching Diversity Skills in Law School*, 54 ST.

ture of legal practice, clinic environments – particularly those that emphasize interdisciplinary teaching – can be an opportunity for students to grow cross-cultural knowledge, challenge existing assumptions about the role of race and the law, and exercise problem-solving skills in an applied, rather than theoretical, setting.[26]

Cross-clinic partnerships can also take students out of the silos of individual clinics and place them in different environments, forcing them to interact with their clients in varying roles. For example, when presenting tradeoffs in forming one type of nonprofit organization over another, students might play a more directive role and call upon their subject matter expertise. In a separate meeting with the same organizational or coalition client, students might be asked to facilitate discussions among a group of individuals as they deliberate an advocacy strategy. In playing both advisory and facilitation roles to their clients' legal needs, students have the opportunity to observe the complexity of interests and expertise of their clients, potentially helping to disabuse them of the savior mentality in their pro-bono work.[27] In these varied settings, students also have the opportunity to confront and displace certain assumptions about their clients, such as assumptions about what type of person typically becomes an entrepreneur, or beliefs that communities that share similarities in race or other identities are monolithic and act with consensus. Importantly, in these different spaces, students will also have the opportunity to think critically about and reconcile their own lived experiences with those of their clients, particularly if the student does not share a similar cultural or racial background as their client. These varied experiences may invite opportunities for important conversations – if not also some discomfort – about their lawyering role, such as how to demonstrate their legal skills while also communicating effectively and respectfully, or how to make mistakes and recover and learn from them.

B. Increase Student Exposure to Different Types of Lawyering and Collaboration

Whether drawing on policy or transactional legal skills, students in a cross-clinic collaboration will be exposed to not only a range of client interactions, but also professionals from a range of backgrounds. For one, students will have the opportunity to work with and

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Louis U. L.J. 795 (2010).

[26] ABA Section on Legal Education and Admissions to the Bar, ABA Standards and Rules of Procedure for Approval of Law Schools, Standard 303(c) (2022) (stating that law schools "shall provide education to law students on bias, cross-cultural competency, and racism").

[27] Gordon, *supra* note 22, at 70.

observe supervisors from other clinics. In our clinic partnership, students worked with attorney supervisors who represented a diversity of professional experiences and research interests: careers working in law firms and nonprofits; experiences ranging from international human rights to political campaigns, environmental law to nonprofit housing finance; and skills from community organizing to launching private equity funds. Drawing on and reflecting each of these unique experiences, our joint supervision team inevitably modeled different types of lawyering and professional skills to the students. Equally important, students were able to observe supervisors draw on their own personal experiences – including racial and cultural identities – in client interactions.

Additionally, students who work in a cross-clinic partnership, particularly those focused on community lawyering, also have the opportunity to observe professionals working across a spectrum of disciplines.[28] In conducting legal analysis on an array of community development matters, our students regularly collaborate with urban planners, government employees, elected officials, community organizers, labor unions, and even scientists. Through this interdisciplinary approach, students are exposed to a wider array of strategies to serve community clients. This approach reinforces the idea that, in order for frontline and historically resourced communities to be made whole, its members benefit most from holistic support that encompasses both discrete technical assistance as well as long-term policy advocacy.

C. Interact with Each Other and Recognize Common Challenges

Compared to other classes in law school, clinics can be a unique experience for students due to the collaborative nature of the work. United by a common client and purpose, students can cultivate their teamwork and lateral management skills in clinic, which frequently requires them to work together in nearly every aspect of lawyering, from client management to developing work products. Joining student teams from multiple clinics only enhances the already collaborative nature of clinic work, offering students a window to how other students, not just supervisors, approach the same client from different perspectives and skillsets.

Working with students in other clinics can help build community among the students, who might find solidarity in grappling with common challenges in the attorney-client relationship. Cross-clinic collab-

[28] Tokarz et al., *supra* note 21, at 379-380 (noting the frequency of interdisciplinary collaborations in community lawyering clinics).

oration enables the students to reflect more holistically about values-based questions such as whether they are working for a single organizational client or, as part of a broader social justice mission, whether they are also accountable to a larger community. The collaborative nature of client representation can also invite students to relate to and learn from each another in areas of client management, such as addressing interpersonal conflicts among clients or translating vague client goals into a coherent legal strategy. Finally, when students work across clinics, they have the opportunity to learn from peers who they may not otherwise interact with in law school. Without the pressure of competing on the same grading curve, students from different clinics may also be more open to sharing their insecurities and learning from one another in case rounds.

IV. Lessons Learned

Whether helping clients to form a social enterprise or hone a legislative strategy, community lawyers may often find themselves alternating between various roles or partnering with a deep roster of subject matter experts. Community lawyering is a collaborative approach, where lawyers can play an important but oftentimes secondary role in helping community stakeholders to shift power and realize greater self-determination in the outcome of public policies.[29] Accordingly, community lawyers may often be required to share, if not cede, influence over legal strategy to community clients. Further, the emphasis on collaboration in community lawyering applies not only to the attorney-client relationship, but also to the broader legal team as well. Community lawyering requires different types of skill-sets and a collective fluency in a range of practice areas, including transactional work, policy, litigation, and community economic development.[30] Finally, the interdisciplinary nature of community goals means that community lawyers may themselves share the table with professionals from other disciplines as varied as public health to real estate development.[31]

Within this context, it is imperative that students in a cross-clinic partnership that supports community clients have clarity on the full scope of their role as student attorneys. However, the risk of role am-

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[29] Freeman & Freeman, *supra* note 9, at 150-151 (discussing how the focus on helping clients achieve self-determination is one way to build power in low-income, communities of color, and can address the levers of deeply entrenched systemic injustice and promote racial equity).

[30] Jones, *supra* note 10, at 313.

[31] *Id. See also* Dina Schlossberg, *An Examination of Transactional Law Clinics and Interdisciplinary Education*, 11 Wash. U. J.L. & Pol'y 195, 201 (2003) (describing the interdisciplinary nature of transactional legal practice).

biguity for students is high. Some of the role confusion is universal and a function of working in a hybrid academic and law firm setting. However, some of the confusion may also be amplified by the unique nature of policy and transactional law. It is therefore particularly imperative that students have multiple opportunities to orient their relationship with the client to alleviate any role conflicts and effectively represent their clients.

A. Challenges

1. Universal Confusion about Role as Clinic Students

For clinic students, some of steepest points along the learning curve have to do with reconciling their expectations for what it means to work in a law school clinic and the reality of working for clients in a real-world setting.[32] At the start of the semester, students may expect to receive directive supervision, work within a closed universe of facts, and be able to accurately predict the stages and timeline of their work. In reality, students may be asked to adjust to non-directive supervision, conduct their own fact-finding research to fill in information gaps, and work with highly unpredictable clients where strategies and even decisions may be fluid and evolving.

At the center of this conflict is the challenge of distinguishing between the roles of a student and student attorney. In the former role, students are primarily in learning mode and receive – rather than seek out – information that informs their legal analysis.[33] For example, whether for an exam or a journal writing competition, students are accustomed to being provided a fact pattern, or a defined list of laws and court opinions, to inform their analysis. Additionally, for many students, the clearest and most tangible indicator of success are their grades, which frequently reflect legal writing and analysis that follow a prescribed formula taught in a first-year legal writing course. The practice of working within a contained system of facts that leads to a discrete grade at the end of the learning process can encourage students to think of their work in purely binary terms, that their legal analysis is either correct or incorrect. Importantly, the expectation of being either right or wrong invites dependence on the instructor to be the sole arbiter of the quality of student performance, leading to the expectation of an ask-and-answer, directive style of supervision.[34]

By comparison, when representing real-world clients, clinic students are no longer constrained to a closed universe of facts that one

[32] *See generally* Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLIN. L. REV. 505 (2012).

[33] *Id*.

[34] *Id*.

might see on an exam or essay prompt. Instead, clinic students may be required to hone an unfamiliar skillset, such as conducting fact-finding interviews, or adopting an interdisciplinary approach to learning new issues or areas of law (e.g., understanding basic principles of urban planning for a community development project). Complicating matters, clients are also operating in a fluid environment, making decisions based on evolving current events, resources, and stakeholder influence. The confluence of these factors means that not only can clinic work be unpredictable (unlike a course syllabus), but also that supervisors may need to adopt non-directive approaches to supervision that emphasize self-reflection and independently arriving at one's own answers and conclusions.[35]

2. Unique Features of Policy and Transactional Law Clinics that Can Exacerbate Role Confusion

The relatively nebulous nature of policy and transactional law can exacerbate latent role confusion in clinic students. Whether conducting a legislative campaign or advocating with grassroots organizations, policy lawyers wear many hats. As Professor Chai Feldblum once dissected, policy lawyers play at least six different roles: strategist, lobbyist, legislative lawyer, policy researcher, outreach strategist, and communications director.[36] Each of these roles, in turn, requires unique skill sets and rules of conduct; there is no equivalent of a Federal Rules of Evidence to help guide or define expectations. Accordingly, for many students new to the concept of policy lawyering, working in a clinic that advises clients on policy can feel intangible and lack clear rules of engagement.

As noted above, policy clients also tend to be groups or coalitions rather than a single individual, which can introduce multiple decisionmakers as clients who, collectively, may have a common, overarching goal but often without alignment on strategy or focus.[37] Adding to the complexity, policy work is notoriously slow and nonlinear, and progress is frequently dictated by external forces, such as legislative calendars and budget cycles. Students rarely feel a sense of closure in policy projects unless their supervisor can successfully manage expectations and carve out a discrete scope of work that is feasible for a semester or year-long clinic.

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[35] Nina W. Tarr, *The Skill of Evaluation as an Explicit Goal of Clinical Training*, 21 PAC. L.J. 967, 971-72 (1990).

[36] Feldblum, *supra* note 20, at 792-803.

[37] *Id*. *See also* Shah, *supra* note 11, at 415-416; Carle & Cummings, *supra* note 12, at 459-465 (discussing the challenges that lawyers face when groups within a social movement have internal conflicts over goals and strategies).

Transactional law can also run counter to the popular image of traditional lawyering, which in many a student's mind unfolds like an episode of *Law & Order*, with a clear legal dispute and a winner or loser at the conclusion of an adversarial process. By comparison, transactional lawyering, practiced effectively, minimizes litigation and places emphasis on risk mitigation. As with policy lawyers, transactional lawyers also frequently represent groups of individuals, requiring an ability to synthesize collective goals from entropy.[38]

Each of the above elements that are inherent in policy and transactional lawyering can enhance a student's role confusion in clinic. In policy and transactional law collaborations, protracted timelines, nonlinear work, unclear rules of engagement, and clients that do not speak with one voice can each test a student's professional judgment and further confuse their ability to distinguish between roles. For example, in the context of community lawyering, students may experience role confusion if a nonprofit client's political strategy is perceived to be in tension with the goals and needs of the impacted community, and in turn the underlying values and movement-oriented purpose of the students' own interest in practicing public interest law. Role confusion can not only undermine the student's own clinic performance and the effective representation of their clients, but also impede their sense of professional growth and their ability to hone a professional identity.

B. Potential Solutions

Clinical supervisors working in policy and transactional law partnerships can take advantage of the unique features of their practice areas to illustrate important lessons about honing professional judgment and alleviating role confusion. As I reflect on the past two years of the Policy Clinic's collaboration with the SENLC, I have identified strategies to help add clarity and structure to the students' clinic partnership experience:

- **Emphasize race as a common, underlying impetus for community lawyering.** My projects in the Policy Clinic focus exclusively on equitable development in communities of color. I also encourage my students to aspire to be movement lawyers who support grassroots advocacy and social justice not as quarterbacks, but as part of a supporting cast that defers to the expertise of community members.[39] However, clinics, even those with an explicit social justice mission, are not anti-racist by default, and require intentionality

[38] Crowder, *supra* note 13, at 434.
[39] *See generally* Shah, *supra* note 11.

across all aspects of clinic operations.[40] Professor Norrinda Brown Hayat has offered a prescription for centering race more intentionally in clinical pedagogy. Among her recommendations, Professor Hayat encourages the integration of critical race theory (CRT) to identify and acknowledge the impact of race on how clients experience law and policy.[41] To perhaps the detriment of both my students and our clients, I have not been intentional in these efforts, relying on an assumption that the students who apply to join the clinic already have a foundational appreciation for the impact of racism on the law and the community clients they work with. In fact, clinics may be one of the last opportunities for students to have intentional discussions about CRT and our failures to address structural racism at both the individual and policy level. Reflections on the role of race could be featured in standalone seminars, as well as integrated into the existing curriculum and clinic structure, such as in supervision meetings or during orientations and mock interview exercises. Wherever the opportunity, these conversations must be intentional and the issues made explicit.

- **Create opportunities for more meetings between students.** To date, students in the Policy Clinic and the SENLC have met in person only on an ad hoc basis, such as when observing each other in client meetings, or participating in a joint, hour-long session for a primer on the basics of affordable housing. Naively, as supervisors, my colleagues and I assumed that, after we introduced the students to one another in these settings, they would then take the initiative to continue the interaction and rely on each other to exchange ideas, cross-pollinate resources, and learn from one another. In fact, the opposite was true. There may be several reasons for a reticence to break down the clinic silos, including a lack of clarity around the rules of confidentiality, the novelty of working as collaborators rather than as competitors on a grading curve, and unclear expectations from their supervisors. Creating opportunities for more intentional and structured interactions with students can help clarify expectations for their roles as student attorneys, as well as help normalize their collaboration.

- **Collaborate on seminars.** A specific example of creating more opportunities for the students to meet in person is by collaborating on relevant seminars over the course of the semester. Seminars are

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[40] *See generally* Norrinda Brown Hayat, *Freedom Pedagogy: Toward Teaching Antiracist Clinic*s, 28 CLIN. L. REV. 149 (2021).

[41] *Id*. at 158.

an opportunity to introduce common skill sets, such as identifying their client's goal and, relatedly, developing the cultural competency to facilitate conversations with different stakeholders. By sharing time in the classroom, students also have enhanced opportunity for peer learning on more specialized areas of knowledge. For example, students in the SENLC could conduct a primer on nonprofit formation and governance for students in the Policy Clinic, who could in turn lead a discussion on using various theories of change to help clients clarify a policy strategy. Seminars are also an opportunity for students to interact and learn from one another in case rounds, which can help normalize their discomfort around role confusion or when there is a perceived lack of alignment between the interests of their clients and those of the impacted community.

Conclusion

The collaborations between the Policy Clinic and the SENLC is just one example of how cross-clinic collaboration can improve outcomes for clients and students, particularly from a community lawyering approach that seeks to address systemic social injustices. Yet policy and transactional clinics are not a monolith, and our partnership model may not be applicable to all law schools. In our example, however, the collaboration has proven to be highly complementary, and our clients, in particular, have expressed great enthusiasm about the ability to benefit from the legal services of both clinics. As the Policy Clinic continues to work with organizational clients seeking greater self-determination in historically disinvested communities, I am looking forward to continued collaboration and growth with our sister clinic.

Tech Support: Wiring Technology Law Clinics To Serve Racial Justice

Laura Moy*

This essay explores the intersection between technology law, clinical pedagogy, and racial justice. Drawing from existing literature on clinics, social justice, racial justice, and technology, as well as from interviews and conversations with other technology law clinicians, the essay: 1) explains the racial and social justice dimensions of technology law, 2) argues that clinics focused on technology law should strive to incorporate racial justice into their clinics, and 3) offers suggestions on how to wire technology law clinics for racial justice.

Introduction

Issues of social and racial justice intersect with technology in a multitude of ways. Many lawyers and law students may not notice this connection without reflection. This essay argues law school clinical programs should strive to train students to connect technology law and racial justice. This essay presents a humble exploration on this topic, a call to action, and an invitation to continued evolution and dialogue at the intersection of technology law, clinical pedagogy, and racial justice.

The essay draws from two sources of information. The piece reviews some of the existing literature on clinics, social justice, racial justice, and technology. In addition, it summarizes and synthesizes my thoughts and those of fellow technology law clinicians, gleaned from individual conversations and interviews, as well as from conversations at a retreat of technology law clinicians that took place in 2023 at Georgetown Law. Researching and drafting this piece has been a deeply valuable reflective practice for me. I hope reading and discussing the essay will be helpful for at least three types of audiences: 1) fellow tech law clinicians who are already committed to racial justice work and will welcome ongoing dialogue on the topic; 2) new and future tech law clinicians who are interested in integrating racial justice into

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their clinics and looking for ideas and suggestions on the topic; and 3) clinicians in other practice areas and law school administrators who seek more information about how technology-oriented law relates to the social justice mission of clinical pedagogy generally and to racial justice specifically.

The essay proceeds in three main parts. The first part explains the racial and social justice dimensions of technology law. Next, the essay argues that clinics focused on technology law (e.g. privacy, surveillance, intellectual property, communications law, artificial intelligence, and so on) should incorporate racial justice into the structure, pedagogy, and work of their clinics. Finally, the essay offers suggestions on how to wire technology law clinics for racial justice.

I. The Racial Justice Dimension of Technology Law

Throughout history, technology has played an important role in advancing or failing to advance racial equity, as well as directly supporting both the advancement and suppression of justice movements. A great deal has been written on this topic—far more than can reasonably be summarized in the context of this brief essay—but I name a handful of illustrative examples here for readers not familiar with the field.

For some readers, this section of this essay admittedly will be preaching to the choir. This includes the majority of technology law clinicians with whom I have spoken on this topic—most are already thinking about and engaged in racial justice work to a lesser or greater extent. Yet for other readers, the connection between technology law and racial justice may not be obvious.

A. Technology's Role in Advancing Racial Equity or Aggravating Inequity

Technological innovation has long played a critical support role in the struggle for racial equity. Without technologies to communicate and organize, many of the events in history that we think of as key moments in the fight for racial justice would not have occurred or would not have had the same impact. For example, in the past decade, ubiquitous camera-equipped smartphones have played an instrumental role in documenting police violence against and killings of Black people and sharing information with the public both about police violence and about the many responsive protests.[1] The role of modern

[1] *See* Nicol Turner Lee, *Commentary: Where Would Racial Progress in Policing Be Without Camera Phones?*, Brookings Inst. (June 5, 2020), https://www.brookings.edu/articles/where-would-racial-progress-in-policing-be-without-camera-phones/ ("The combination of smart phones, video recording apps, and social media platforms have generated a

communications technology in the current racial justice movement echoes the role played by television decades ago in the Civil Rights Movement. There were only a few thousand television sets in use in the U.S. in 1946, but by 1955, half of all U.S. homes had one,[2] and by 1957, 80% of homes had one.[3] Televisions enabled people all over the country to view pivotal moments such as Martin Luther King, Jr.'s "I Have A Dream" speech in 1963,[4] as well as to gain insight into some of the injustices that Black people faced, such as police use of violent instruments like attack dogs and beatings to suppress peaceful demonstrations in Birmingham.[5]

And for as long as technology has played a role in racial justice, so too has the law, with its capacity to alter the availability—or lack thereof—of technology. During the Civil Rights Era, as civil rights leaders used television as a tool to support their work, they also leveraged the law to attempt to increase televised coverage of Black people's struggles, perspectives, and interests.[6] In the late 1950s and 1960s, a group of activists led by the Reverend C. Everett Parker of the United Church of Christ began a sixteen-year legal challenge to the broadcast license of a Jackson, Mississippi television station over its failure to serve the interests and perspectives of Black people and its refusal to fairly cover the Civil Rights Movement.[7]

New technologies, if not carefully and thoughtfully deployed with an intentional orientation toward justice, can also aggravate existing and historical racial inequity. In a previous article about technology and racial equity in the context of policing, I defined and explained five different ways that technology may aggravate existing and historical racial inequity.[8] First, existing or historical inequity may be embedded into a technology such that when it is used, its use causes the replication and reinforcement of that inequity.[9] For example, an artificial intelligence or predictive tool may be trained on historical data tainted by past incidences of deep inequity, and when that tool is then

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revolution in public empowerment. Rather than having to take the word of African Americans over the police, people can see the violence for themselves and demand justice.").

[2] Michell Stevens, *History of Television*, https://stephens.hosting.nyu.edu/History%20of%20Television%20page.html (last visited Sept. 11, 2023).

[3] *See* Michael Bowman, *TV, Cell Phones and Social Justice*, 24 RACE, GENDER & CLASS 16, 17 (2017).

[4] *The 1963 March on Washington*, NAACP: HISTORY EXPLAINED, https://naacp.org/find-resources/history-explained/1963-march-washington (last visited Sept. 11, 2023)

[5] Bowman, *supra* note 3, at 17.

[6] KAY MILLS, CHANGING CHANNELS: THE CIVIL RIGHTS CASE THAT TRANSFORMED TELEVISION 3–5 (2004).

[7] *Id.*

[8] Laura Moy, *A Taxonomy of Police Technology's Racial Inequity Problems*, 2021 U. ILL. L. REV. 139 (2021).

[9] *Id.* at 154–59.

used to make suggestions or predictions, it replicates the inequitable patterns that were present in its training data.[10]

Second, when a relatively non-transparent technology supplants some aspect of human decision-making that is known to be inequitable, it may mask the underlying inequity from outside observers.[11] For example, a technology that is used to help screen resumes may be racially biased, but if outsiders view the tool as unlikely to exhibit bias relative to human decisionmakers, its adoption may obscure racial inequity in hiring.[12]

Third, technology can spread racial inequity from one context to another when a tool embeds racial inequity derived from one context, and then is adopted for use in another context.[13] For example, racial bias in the development process of a third-party vendor could result in development of a biased tool that, when adopted by another party, spreads the developer's bias to the user.[14]

Fourth, technology can provide powerful tools to augment the harm of racially unjust parties or activities.[15] For example, consider powerful police surveillance tools such as "cell-site simulators"—fake cell phone towers. When wielded by law enforcement agencies that tend to deploy resources in a racially inequitable way, these tools can exacerbate the inequitable harms caused by racially disparate policing.[16]

Finally, technology can compromise existing institutional checks we may have on racial inequity by frustrating the ability of legislative bodies, courts, and the public to effectively understand and exercise oversight over complex technologies.[17]

B. Concrete Examples of Technology's Interplay with Racial Justice

To further illustrate the interplay between technology, technology law and policy, and racial justice in concrete terms, I offer a handful of specific examples here.

1. Internet access and affordability.

Reliable high-speed internet access is not available and affordable to everyone and is disproportionately unavailable to communities

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[10] *See id.* at 155–57.
[11] *Id.* at 159–62.
[12] *See id.* at 187.
[13] *Id.* at 162–66.
[14] *See id.* at 162–65.
[15] *Id.* at 166–72.
[16] *See id.*
[17] *Id.* at 172–75.

of color.[18] But internet access is increasingly recognized as essential,[19] with some even arguing that it should be regulated as a utility.[20] Indeed, internet access is necessary for students to complete their homework and succeed in school,[21] as well as for workers to be eligible for and do a large number of jobs[22]—even more so in the past few years as a result of the Covid-19 pandemic.[23] Health experts have recently argued that internet access is also emerging as a social determinant of health, adding that this "appears to be particularly true for underresourced racial and ethnic minority communities and aging populations."[24]

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[18] Olivia Wein & Cheryl Leanza, *Affordable Broadband Service Is a Racial Equity and Public Health Priority During COVID-19*, LEADERSHIP CONF. CIV. & HUM. RTS., June 29, 2020, https://civilrights.org/blog/affordable-broadband-service-is-a-racial-equity-and-public-health-priority-during-covid-19/ ("According to census data, about 10 percent each of Black and Hispanic Americans and 13 percent of American Indians and Alaska Natives have no internet subscription compared to 6 percent of White households. And not all broadband access is equal: a disproportionate number of Black and Latino households rely on a smartphone (small screen) for their broadband connectivity."); *see* Sara Atske & Andrew Perrin, *Home Broadband Adoption, Computer Ownership Vary by Race, Ethnicity in U.S.*, PEW RESEARCH CTR., July 16, 2021, https://www.pewresearch.org/short-reads/2021/07/16/home-broadband-adoption-computer-ownership-vary-by-race-ethnicity-in-the-u-s/.

[19] *See generally* Human Rights Council Res. 47/16, The Promotion, Protection and Enjoyment of Human Rights on the Internet, A/HRC/RES/47/16 (July 13, 2021); *see also* U.N. Human Rights Council, *Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue*, ¶ 2, U.N. Doc. A/HRC/17/27 (May 16, 2011) (stating that "[t]he Special Rapporteur believes that the Internet is one of the most powerful instruments of the 21st century for increasing transparency in the conduct of the powerful, access to information, and for facilitating active citizen participation in building democratic societies," and asserting that "facilitating access to the Internet for all individuals, with as little restriction to online content as possible, should be a priority for all States."); Catherine Howell & Darrell M. West, *Commentary: The Internet as a Human Right*, BROOKINGS INST. (Nov. 7, 2016), https://www.brookings.edu/blog/techtank/2016/11/07/the-internet-as-a-human-right/.

[20] *See, e.g.*, Susan Crawford, *Why Broadband Should Be a Utility*, BROADBAND COMMUNITIES, Mar.–Apr. 2019, at 50, https://www.bbcmag.com/law-and-policy/why-broadband-should-be-a-utility.

[21] *Get ON the Internet and Do Your Homework!*, U.S. GOV'T. ACCOUNTABILITY OFF.: WATCHBLOG (Aug. 8, 2019), https://www.gao.gov/blog/2019/08/08/get-on-the-internet-and-do-your-homework.

[22] Joe Supan, *70% of Americans Say: We Can't Do Our Jobs Without an Internet Connection*, ALLCONNECT (Sept. 15, 2020), https://www.allconnect.com/blog/70-percent-of-americans-cant-do-their-jobs-without-home-internet-connection ("Most employed Americans (over 71.5%) say they could not perform their jobs without a home internet connection."); Aaron Smith, *Lack of Broadband Can Be a Key Obstacle, Especially for Job Seekers*, PEW RESEARCH CTR. (Dec. 28, 2015), https://www.pewresearch.org/short-reads/2015/12/28/lack-of-broadband-can-be-a-key-obstacle-especially-for-job-seekers/.

[23] Kim Parker, Juliana Menasce Horowitz, & Rachel Minkin, *How the Coronavirus Outbreak Has – and Hasn't – Changed the Way Americans Work*, PEW RESEARCH CTR. (Dec. 9, 2020), https://www.pewresearch.org/social-trends/2020/12/09/how-the-coronavirus-outbreak-has-and-hasnt-changed-the-way-americans-work/.

[24] Tamra Burns Loeb, AJ Adkins-Jackson, & Arleen F. Brown, *No Internet, No Vaccine: How Lack of Internet Access Has Limited Vaccine Availability for Racial and Ethnic*

Thus, to advance racial equity in multiple areas, including education, economic opportunity, and healthcare, it is important to increase the availability of affordable internet access to underserved people and communities.[25] Law and policy can help with this, for example, by making resources available to increase internet connectivity,[26] by supporting affordable internet access programs,[27] and by supporting local efforts to fund and build community broadband networks.[28]

2. Tools for racial justice organizing.

For racial justice to advance, movement participants and leaders must have the tools to share information, to organize and coordinate, and to be able to do so in a way that is both reliable and trustworthy. Movement participants often rely on social media and messaging platforms for a large part of their collective work.[29] To ensure that platforms are fully available for this purpose, they must be made truly welcoming and not hostile to participants,[30] and platform communications and activities must be protected from surveillance by potentially hostile parties.[31] Law and policy can help by supporting the existence

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Minorities, THE CONVERSATION (Feb. 8, 2021), https://theconversation.com/no-internet-no-vaccine-how-lack-of-internet-access-has-limited-vaccine-availability-for-racial-and-ethnic-minorities-154063.

[25] *See* COLOR OF CHANGE, THE BLACK TECH AGENDA: TECH POLICY + RACIAL JUSTICE 10 (2022), https://colorofchange.org/wp-content/uploads/2022/09/22-09_BLACK TECHAGENDA.pdf ("Giving Black communities broadband access will ensure they can keep pace with economic opportunities, education and communications as they move online.").

[26] *Fact Sheet: Biden-?Harris Administration Announces Over $40 Billion to Connect Everyone in America to Affordable, Reliable, High-Speed Internet*, WHITE HOUSE (June 26, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/06/26/fact-sheet-biden-harris-administration-announces-over-40-billion-to-connect-everyone-in-america-to-affordable-reliable-high-speed-internet/.

[27] *Homework Gap and Connectivity Divide*, U.S. FED. COMMC'NS COMM'N, https://www.fcc.gov/about-fcc/fcc-initiatives/homework-gap-and-connectivity-divide (last visited Sept. 11, 2023).

[28] *See Our Vision*, INST. FOR LOC. SELF-RELIANCE CMTY. NETWORKS, https://communitynets.org/content/our-vision (last visited Sept. 11, 2023).

[29] *See* Bijan Stephen, *Social Media Helps Black Lives Matter Fight the Power*, WIRED, Nov. 2015, https://www.wired.com/2015/10/how-black-lives-matter-uses-social-media-to-fight-the-power/.

[30] *See id.* (stating that "social media itself has become another arena where black people are abused").

[31] *See id.* (discussing the fact that "many leaders of Black Lives Matter have been monitored by federal law enforcement agencies"); MOVEMENT FOR BLACK LIVES & CREATING LAW ENFORCEMENT ACCOUNTABILITY & RESPONSIBILITY CLINIC, STRUGGLE FOR POWER: THE ONGOING PERSECUTION OF BLACK MOVEMENT BY THE U.S. GOVERNMENT 9 (2021), https://m4bl.org/wp-content/uploads/2021/08/Struggle-For-Power-The-Ongoing-Persecution-of-Black-Movement-by-the-U.S.-Government.pdf (describing government "interference with organizing and movement building through a range of tactics, including increased social media monitoring, surveillance at protests, interrogations of those per-

of strong encryption and other security measures,[32] by creating legal pressure to rein in hostile behavior among platform users such as harassment and doxing,[33] and by reining in law enforcement surveillance of private communications and activities.[34]

3. Automated eligibility determinations.

Data-driven technologies now help automate advertising and decision-making in areas such as housing, employment, credit, education, and healthcare. The fairness and transparency—or lack thereof—of such technologies will play a major role in determining whether the future will bring more or less racial equity in these and other areas. As many experts have explained, these new tools sometimes are embedded with the very biases they were deployed to help address.[35] Law and policy can help, for example, by establishing clarity around the impermissibility of discrimination in automated decision-making,[36] by creating a legal framework for proactive antidiscrimination audits of such systems to take place,[37] and by ensuring that government regulators and enforcers are equipped with the necessary tools and expertise to exercise proper oversight over

ceived to be leaders or otherwise associated with activism, and the use of informants").

[32] *See* Amelia Nierenberg, *Signal Downloads Are Way Up Since the Protests Began*, N.Y. TIMES, June 11, 2020, https://www.nytimes.com/2020/06/11/style/signal-messaging-app-encryption-protests.html (explaining the role of encrypted messaging tools such as Signal in organizing protests); Brandon E. Patterson, *"Black People Need Encryption," No Matter What Happens in the Apple-FBI Feud*, MOTHER JONES, Mar. 22, 2016, https://www.motherjones.com/politics/2016/03/black-lives-matter-apple-fbi-encryption/ (quoting multiple civil rights activists stating that they rely on trusted encrypted communications tools); ENCRYPT Act of 2023, H.R. 5311, 118th Cong. (2023) (a proposed piece of legislation that would establish certain legal protections for encrypted technologies).

[33] To "dox" is "[t]o document or expose (a person's identity); spec. to search for and publish private or identifying information about (an individual) on the internet, typically with malicious intent." *Dox*, OXFORD ENG. DICTIONARY, https://www.oed.com/dictionary/dox_v?tab=meaning_and_use. Users of various internet platforms sometimes dox other users for the purpose of punishing or harassing them, and various legislative efforts have aimed to rein in this behavior. *See* Rob Harrington, *Online Harassment and Doxing on Social Media*, MICH. TECH. L.R. BLOG (Apr. 12, 2022), https://mttlr.org/2022/04/online-harassment-and-doxing-on-social-media/ (describing anti-doxing legislative efforts).

[34] *See, e.g.*, Rachel Levinson-Waldman & Ángel Díaz, *How to Reform Police Monitoring of Social Media*, BROOKINGS INST.: TECHSTREAM (July 9, 2020), https://www.brookings.edu/articles/how-to-reform-police-monitoring-of-social-media/.

[35] *See Fact Sheet: Biden-?Harris Administration Announces Key Actions to Advance Tech Accountability and Protect the Rights of the American Public*, WHITE HOUSE (Oct. 4, 2022), https://www.whitehouse.gov/ostp/news-updates/2022/10/04/fact-sheet-biden-harris-administration-announces-key-actions-to-advance-tech-accountability-and-protect-the-rights-of-the-american-public/.

[36] *See AG Racine Introduces Legislation to Stop Discrimination in Automated Decision-Making Tools that Impact Individuals' Daily Lives*, OFF. ATT'Y GEN. FOR D.C. (Dec. 9, 2021), https://oag.dc.gov/release/ag-racine-introduces-legislation-stop.

[37] *Id.*

such tools.[38]

4. Workplace automation and surveillance.

Automation and worker surveillance in workplaces are both displacing workers and leading to the deterioration of working conditions across multiple industries.[39] These challenges disproportionately impact low-income workers of color.[40] Law and policy can respond, for example, by giving workers rights with respect to their data, ensuring that employers can be and are held responsible for harms caused by automated systems, establishing guardrails for employers' use of automation and surveillance, protecting workers' organizing rights, and prohibiting discrimination.[41]

5. Automated facial analysis technology.

Automated facial analysis technology, including facial recognition, is used in a multitude of applications that may be critical for people's lives, such as by police to identify crime suspects and by financial institutions to authenticate users. Research has indicated that this technology often does not perform equally well across demographic groups, a problem that could lead to disproportionate harms for people of color if, for example, it leads to higher rates of misidentification or authentication failure in contexts such as criminal investigations or banking authorizations.[42] And even if the demographic performance

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[38] *See* LAURA MOY & GABRIELLE REJOUIS, DAY ONE PROJECT: ADDRESSING CHALLENGES AT THE INTERSECTION OF CIVIL RIGHTS AND TECHNOLOGY (2020), https://uploads.dayoneproject.org/2020/12/14123102/Addressing-Challenges-at-the-Intersection-of-Civil-Rights-and-Technology.pdf.

[39] *See generally* ANNETTE BERNHARDT, LISA KRESGE, & REEM SULEIMAN, DATA AND ALGORITHMS AT WORK: THE CASE FOR WORKER TECHNOLOGY RIGHTS (2021), https://laborcenter.berkeley.edu/wp-content/uploads/2021/11/Data-and-Algorithms-at-Work.pdf; Brishen Rogers, *Workplace Data and Workplace Democracy*, 6 GEO. L. TECH. REV. 454 (2022); JESSIE HF HAMMERLING, TECHNOLOGICAL CHANGE IN FIVE INDUSTRIES: THREATS TO JOBS, WAGES, AND WORKING CONDITIONS (2022), https://laborcenter.berkeley.edu/wp-content/uploads/2022/09/Technological-change-in-five-industries-Threats-to-jobs-wages-and-working-conditions.pdf.

[40] BERNHARDT ET AL., *supra* note 39, at 2 (explaining that "workers of color, women, and immigrants can face direct discrimination via systemic biases embedded in these technologies, and are also most likely to work in occupations at the front lines of experimentation with artificial intelligence"); HAMMERLING, *supra* note 39, at 5 (explaining that "women and people of color . . . are overrepresented in the many front-line occupations that are most likely to be changed by technology.").

[41] BERNHARDT ET AL., *supra* note 39, at 19 (offering "policy principles that can help build a robust regulation regime" for data-driven workplaces).

[42] *See, e.g.*, Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, 81 PROC. MACHINE LEARNING RES. 1, 11 (2018); Inioluwa Deborah Raji & Joy Buolamwini, *Actionable Auditing: Investigating the Impact of Publicly Naming Biased Performance Results of Commercial AI Products, in* AIES: PROC. 2019 AAAI/ACM CONF. ON AI, ETHICS, & SOC. 429 (Jan. 2019), https://

gap of facial recognition is eventually eliminated, the adoption of this technology by police may increase the likelihood of police misidentifications and, ultimately, wrongful convictions—a severe harm that will fall disproportionately on heavily policed communities of color.[43] Law and policy can help address this problem through legislation or at least department policies that restrict or prohibit particular uses of automated facial analysis technology or that at a minimum establish high standards of quality and oversight for its use.[44]

In these and countless other areas, specialized expertise is needed at the intersection of technology and many areas of law. Technology law clinics can and must assist with that legal work, as well as with training the next generation of lawyers who will do that work.

II. The Racial Justice Dimension of Technology Law Clinics

Law school clinics should explore the interplay between technology and racial justice in depth and provide students with the opportunity to reflect and learn about these areas together in a practical environment. There are at least four reasons for technology law clinics to intentionally advance racial justice. I have already discussed the first: technology—and the law that shapes its availability and use—is

www.aies-conference.com/2019/wp-content/uploads/2019/01/AIES-19_paper_223.pdf; Clare Garvie, Alvaro M. Bedoya, & Jonathan Frankle, The Perpetual Line-Up: Unregulated Police Face Recognition in America (2016), https://www.perpetuallineup.org/; Brendan F. Klare, Mark J. Burge, Joshua C. Klontz, Richard W. Vorder Bruegge, & Anil K. Jain, *Face Recognition Performance: Role of Demographic Information*, 7 IEEE Transactions on Info. Forensics & Sec. 1789, 1796–97 (2012).

[43] Laura Moy, *Facing Injustice: How Face Recognition Technology May Increase the Incidence of Misidentifications and Wrongful Convictions*, 30 Wm. & Mary Bill Rts. J. 337 (2021).

[44] *See, e.g.*, Garvie et al., *supra* note 42 at 62–71 (law and policy recommendations for adoption of face recognition technology by police agencies); Moy, *supra* note 43, at 367–72 (law and policy recommendations for police use of face recognition technology, including policies that ought to apply to eyewitness identification procedures to help); Tate Ryan-Mosley, *The Movement to Limit Face Recognition Tech Might Finally Get a Win*, MIT Tech. Rev., July 20, 2023, https://www.technologyreview.com/2023/07/20/1076539/face-recognition-massachusetts-test-police/ (describing various legislative efforts to regulate the use of face recognition technology). In recent years there have been numerous federal legislative proposals to ban or regulate face recognition technology in certain contexts, though none have passed yet. *See, e.g.*, Facial Recognition and Biometric Technology Moratorium Act of 2023, S. 681, H.R. 1404, 118th Cong. (2023)(the most recent version of a largely identical bill that was introduced under the same name in both the 116th and 117th Congresses); FACE IT Act, S. 5334, 117th Cong. (2022); Ethical Use of Facial Recognition Act, S. 5289, 117th Cong. (2022); Facial Recognition Act of 2022, H.R. 9061, 117th Cong. (2022); Facial Recognition Ban on Body Cameras Act, H.R. 8154, 117th Cong. (2022); Facial Recognition Technology Warrant Act of 2019, S. 2878, 116th Cong. (2019); FACE Protection Act of 2019, H.R. 4021, 116th Cong. (2019); Commercial Facial Recognition Privacy Act of 2019, S. 847, 116th Cong. (2019).

inextricably tied to issues of racial justice.[45] Second, a central goal of legal education in general, and of law school clinics in particular, is to provide law students with justice training.[46] Third, the tremendous size and power of tech companies underscores the importance of ensuring new lawyers destined to represent those companies have received training on the broader justice implications of those companies' actions.[47] And finally, it is important for the field of technology law to be inviting for students of color and students interested in racial justice.[48]

A. Law Schools Are Obligated to Provide Students with Bias and Justice Training

Law schools have an obligation to provide students with bias and justice training. This obligation has been affirmed by the American Bar Association, which last year adopted a revised Standard 303(c) for legal education on this very point.[49] Under the revised standard, law schools must "provide education to law students on bias, cross-cultural competency, and racism."[50]

The revised ABA standard follows a rich and many decades-old body of literature arguing that law schools—and especially clinics—must train students in justice. Advocates for the clinical education model have been arguing for nearly a century that the classroom does not and cannot provide sufficient training for a student to become a lawyer.[51] In 1969, Chief Justice Warren Burger opined that "[t]he modern law school is not fulfilling its basic duty to provide society with people-oriented counselors and advocates to meet the expanding needs of our changing world."[52] That same year, William Pincus, widely recognized as one of the founders of clinical education, and Peter deLancey Swords defined social justice as one of the core educational values of the clinical model. They argued that a student in the clinical environment "needs to learn to recognize what is wrong with

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[45] *See* discussion *supra* Section I.

[46] *See* discussion *infra* Section II.A.

[47] *See* discussion *infra* Section II.B.

[48] *See* discussion *infra* Section II.C.

[49] *ABA Standards and Rules of Procedure for Approval of Law Schools (2021-2022)*, A.B.A. SEC. ON LEGAL EDUC. & ADMISSIONS TO THE BAR, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2021-2022/21-22-standards-book-revisions-since-printed.pdf.

[50] *Id.*

[51] *See* Judge Jerome Frank, *Why Not a Clinical-Lawyer School?*, 81 U. PA. L. REV. 907 (1933).

[52] Chief Justice Warren Burger, *Address Before the ABA Convention Prayer Breakfast* (Aug. 10, 1969), quoted in Dominick R. Vetri, *Educating the Lawyer: Clinical Experience as an Integral Part of Legal Education*, 50 OR. L. REV. 51, 59–60 (1970).

the society around [them]—particularly what is wrong with the machinery of justice in which [they are] participating and for which [they have] a special responsibility."[53] In 1980, upon becoming dean-elect of the University of Oregon School of Law, Derrick Bell called for "humanity in legal education," asserting that "[l]awyers need conscience as well as craft," and arguing that "law school faculty and administrators cannot be exempted from their most vital obligation, to instill ethical values in students, through coursework and by example."[54]

Calls for law schools to train students in humanity and values were echoed, amplified, and focused on clinics in the 1980s and 1990s. In 1986, Gary Palm, then-chair of the Association of American Law Schools (AALS) Section on Clinical Legal Education, urged clinics to focus on instructing students on things they would not learn elsewhere, including about poverty, stating that students "should confront the failure of our government to provide equal justice and fair legal procedures for the poor."[55] In 1990, a special AALS committee identified, as one of the nine teaching goals present in most clinics, "imparting the obligation for service to indigent clients, information about how to engage in such representation, and knowledge concerning the impact of the legal system on poor people."[56] In 1992, Robert Dinerstein, who had chaired the AALS special committee, wrote that "to many people the relationship between clinical programs and the justice mission of American law schools is so clear as to be self-evident. . . . [T]he law clinic may be the *only* place in which concerns about justice are discussed and, at least sometimes, acted upon."[57] And a landmark report that same year generated by an American Bar Association task force concluded that training for lawyers in professional responsibility "should encompass the values of the profession," among them "striving to promote justice, fairness, and morality."[58]

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53 William Pincus & Peter deLancey Swords, *Educational Values in Clinical Experience for Law Students*, COUNCIL ON LEGAL EDUC. PRO. RESP., (New York, N.Y.), Sept. 1969, at 4.

54 Derrick A. Bell Jr., *Humanity in Legal Education*, 59 OR. L. REV. 243, 244 (1980).

55 Gary H. Palm, *Message from the Chair*, AALS SECTION ON CLINICAL LEGAL EDUCATION NEWSLETTER, Nov. 1986, at 2.

56 *Report of the Committee on the Future of the In-House Clinic*, 42 J. LEGAL EDUC. 508, 515 (1992).

57 Robert D. Dinerstein, *Clinical Scholarship and the Justice Mission*, 40 CLEV. ST. L. REV. 469, 469 (1992).

58 *Legal Education and Professional Development – An Educational Continuum (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap)*, A.B.A. SEC. ON LEGAL EDUC. & ADMISSIONS TO THE BAR, July 1992, at 135–36 (often referred to as the "MacCrate Report" after Robert MacCrate, who chaired the task force) [hereinafter *MacCrate Report*].

B. Technology Law Clinics Cannot Opt Out of the Obligation to Train Students on Bias and Justice

Despite the rich history involving law school clinics and social and racial justice—a context into which technology law clinics were born—technology law clinics typically retain the discretion to decide which cases to accept. As a result, tech law clinicians may find that they do not have to directly address racial justice in their clinics: they can select cases in which neither their client, the decision-making venue, nor any other party will bring up race.

But for all the reasons that legal professionals and scholars have called for law school clinics to play a central role in training law students in social justice, technology law clinics should embrace this call. If law students take any clinical course at all, many, and perhaps a majority, take only one.[59] And a student's clinical work may be the only part of the law school experience that can directly train them on the values of the profession and on what Jane Aiken refers to as "justice readiness."[60] This applies to technology law clinics as well as to any other kind of clinic.

Conversely, technology law clinics should eschew work that is silent on justice, that lacks consideration of non-majority perspectives,[61] or that reinforces the message that the law is or ever can be neutral with respect to justice. In the words of Aiken,

> If all I can do in law school is to teach students skills ungrounded in a sense of justice then at best there is no meaning to my work, and at worst, I am contributing to the distress in the world. I am sending more people into the community armed with legal training but without a sense of responsibility for others or for the delivery of justice in our society.[62]

By embracing racial justice in the context of our clinics, technology law clinicians can help students learn how to pierce the veneer of neutrality that often obscures the justice implications of technology law and to analyze the law through a justice lens. And as discussed in

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[59] Robert Kuehn, *Implementation of the ABA's New Experiential Training Requirement: More Whimper than Bang*, Best Pracs. Legal Educ. Blog (Apr. 28, 2021), https://bestpracticeslegaled.com/2021/04/28/implementation-of-the-abas-new-experiential-training-requirement-more-whimper-than-bang/ (noting that in 2020, across U.S. law schools, the number of seats available per J.D. student in clinics was only 0.28).

[60] *See generally* Jane H. Aiken, *The Clinical Mission of Justice Readiness*, 32 B.C. J.L. & Soc. Just. 231-246 (2012).

[61] *See* Kimberlé Williams Crenshaw, Forward: Toward a Race-Conscious Pedagogy in Legal Education 2–3 (1988); *see also* further elaboration on Crenshaw's description and discussion of "perspectivelessness" *infra* notes 72–73 and accompanying text.

[62] Jane Harris Aiken, *Striving to Teach Justice, Fairness, and Morality*, 4 Clin. L. Rev. 1 (1997).

greater depth below, squarely addressing racial justice in our clinics can also help our students learn many important related professional skills that extend beyond the substantive ability to analyze the law through a justice lens. By encouraging students to be self-critical and honest about their approach to racial justice, we create opportunities for them to develop the important skill of reflection.[63] By facilitating discussions of race in our clinical seminar and rounds practices, we teach students to embrace the type of difficult dialogue that will offer the greatest opportunities for professional growth throughout their careers.[64] And by including students in conversations and deliberations about the role of race and racial justice in areas such as case selection and client counseling, seminar structure, clinic operations, and our broader institutions, we enrich students' understanding of how to apply a justice lens to all aspects of the practice of law.[65]

C. Lawyers Going to Work for Powerful Tech Companies Should Be Trained in the Justice Implications of Their Work

Tech law clinicians must address racial justice in our clinics because many of our students are destined to practice law in the interest of powerful and well-resourced technology companies. In that role, they may have the opportunity to help their employers or clients better understand the racial justice implications of their products and practices. The law student of today may be the in-house counsel of tomorrow, in a position either to support or combat decisions about technology for reasons related to racial justice.

In many ways, tech companies represent the emerging "corridors of power." Tech sector revenue accounts for about a tenth of the U.S. gross domestic product.[66] In particular, the "Big Five" tech giants, Alphabet (Google's parent company), Amazon, Meta, Apple, and Microsoft are tremendously powerful, with a combined annual revenue that in recent years has often topped $1 trillion, or more than the gross domestic product of Switzerland.[67] The sheer size of these companies makes it difficult to effectively regulate them. Indeed, when the

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[63] *See* discussion *infra* Section III.A.

[64] *See* discussion *infra* Section III.B.

[65] *See* discussion *infra* Section III.C.

[66] Tina Highfill & Christopher Surfield, U.S. Dep't Com. Bureau Econ. Analysis, New and Revised Statistics of the U.S. Digital Economy, 2005–2020 at 1 (2022), https://www.bea.gov/system/files/2022-05/New%20and%20Revised%20Statistics%20of%20the%20U.S.%20Digital%20Economy%202005-2020.pdf (stating that "in 2020, the U.S. digital economy accounted for $3.31 trillion of gross output, $2.14 trillion of value added (translating to 10.2 percent of U.S. gross domestic product (GDP)).").

[67] *GDP (current US$)*, World Bank, https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?most_recent_value_desc=true (last visited Sept. 8, 2023) (showing the GDP of Switzerland to be approximately $807.7 billion).

Federal Trade Commission announced its record-breaking $5 billion fine of Facebook a few years ago, Facebook's stock price actually rose in response.[68] Yet tech giants regularly take actions and make decisions about things that have major implications for our lives and futures.[69]

When students in our clinics graduate from law school and end up at tech companies, they will become forces helping to direct the power of their employers, for better or worse, toward greater or lesser justice. If we want our students to become lawyers who can influence the tremendously powerful systems in which they work for good, we must prepare them for that role. They will need the skills not only to evaluate how their employers' actions may affect racial justice but also to lead conversations and advocate for actions and policies that will advance it.

D. The Technology Law Field Should Be Inviting to Students of Color and Students Interested in Racial Justice

Law clinics must address racial justice to help make the technology law field more inviting for people of color and people interested in racial justice.

The technology sector is even more disproportionately white and male than many other fields.[70] The whiteness of technology is not limited to the private sector; civil society organizations are also disproportionately white. In 2019, Alisa Valentin wrote a blog post about #TechPolicySoWhite (a hashtag inspired by the #OscarsSoWhite hashtag created by April Reign). Valentin recounted:

> my experiences in various meetings and events related to digital inclusion, artificial intelligence, content moderation, privacy, and intellectual property. I often think to myself, "#TechPolicySoWhite." . . . In many of these spaces there is almost always someone from a non-marginalized background who speaks with authority about how a certain policy has or will impact communities of color. At this point, this has become normalized behavior within the Beltway.[71]

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[68] Charlotte Jee, *Facebook Is Actually Worth More Thanks to News of the FTC's $5 Billion Fine*, MIT TECH. REV., July 15, 2019, https://www.technologyreview.com/2019/07/15/134196/facebook-is-actually-richer-thanks-to-news-of-the-ftcs-5-billion-fine/; *see* Siva Vaidhyanathan, *Billion-Dollar Fines Can't Stop Google and Facebook. That's Peanuts for Them*, THE GUARDIAN, July 26, 2019, https://www.theguardian.com/commentisfree/2019/jul/26/google-facebook-regulation-ftc-settlement.

[69] *See* Lina M. Khan, *Sources of Tech Platform Power*, 2 GEO. L. TECH. REV. 325 (2018).

[70] U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, *Diversity in High Tech*, https://www.eeoc.gov/special-report/diversity-high-tech (last visited Sept. 8, 2023).

[71] Alisa Valentin, *#TechPolicySoWhite*, PUBLIC KNOWLEDGE BLOG (Feb. 1, 2019), https://publicknowledge.org/techpolicysowhite/.

This problem extends to technology law clinics. At several points during a recent retreat of around twenty technology law clinicians from around the country, folks in the room looked around and observed how very white the gathering was.

When we operate clinics as white-dominated spaces without directly acknowledging and addressing issues of race, we risk perpetuating whiteness by fostering environments that are hostile to people of color. Kimberlé Williams Crenshaw explored the law school tendency to promote "perspectivelessness," in which faculty attempting to teach legal analysis would "discount[] the relevance of any particular perspective in legal analysis and . . . posit[] an analytical stance that has no specific cultural, political, or class characteristics."[72] Perspectivelessness is particularly burdensome to students of color, who are often forced to suppress their identities and experiences and "participate in the discussion as though they were . . . colorless legal analysts."[73] Margaret Montoya explained that mimicking the characteristics of the dominant class for the purpose of participating in the classroom or another context "is comparable to being 'on stage.' Being 'on stage' is frequently experienced as being acutely aware of one's words, affect, tone of voice, movements and gestures because they seem out of sync with what one is feeling and thinking."[74] More recently, Bennett Capers observed that "[n]on-white students, particularly Black and Brown students, often find that they must unrace themselves, and become white."[75] When students of color then choose to or must ground a particular argument in their own racial experience, they often then feel put on the spot or dismissed.[76]

Failing to directly address race in the practice of technology law further perpetuates whiteness. When we avoid addressing race in clinic, we fail to equip newly minted lawyers with the skills and habits necessary to confront racial equity in their own future workplaces.[77] Jean Koh Peters and Susan Bryant warn that as a result of this failure, "[s]tudents who experience race-based microaggressions towards themselves and their clients may have no framework to talk about these acts and how to respond."[78]

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[72] Crenshaw, *supra* note 61, at 2.

[73] *Id.* at 3.

[74] Margaret E. Montoya, *Máscaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories with Legal Discourse*, 17 Harv. J. L. & Gender 185, 196 (1994).

[75] I. Bennett Capers, *The Law School as a White Space*, 106 Minn. L. Rev. 7, 41 (2021).

[76] Crenshaw, *supra* note 61, at 3.

[77] *See* Jean Koh Peters & Susan Bryant, *Talking About Race*, *in* Transforming the Education of Lawyers: The Theory and Practice of Clinical Pedagogy 375, 376 (Susan Bryant, Elliott S. Milstein, Ann C. Shalleck, eds., 2014).

[78] *Id.*

Perpetuating the whiteness of the tech sector generally and of technology law specifically does further harm in at least two ways. First, it reduces the opportunities available to individual students of color who may be deterred by certain career paths they perceive to be surrounded by toxicity or hostility. Second, it reduces the entire field's ability to fully understand and address the racial justice implications of real-world applications of technology law.[79]

III. How to Wire Technology Law Clinics for Racial Justice: A Starting Point

I offer three suggestions for technology law clinicians interested in integrating racial justice into their clinics. These suggestions are largely informed by various helpful conversations with generous colleagues.[80] I offer these suggestions with humility, as a possible starting point. I invite my fellow technology law clinicians to continue to maintain an open dialogue about different approaches we try, mistakes we make, and what we learn about how to do this well.

First, technology law clinicians should approach racial justice with reflectiveness and a growth mindset. Second, we should establish student expectations regarding racial justice in our clinics and invite and embrace difficult dialogue about race. And finally, we should apply a racial justice lens to client and case selection, client counseling, seminar, clinic operations, and the structure of our institutions.

A. Approach Racial Justice with Reflectiveness and a Growth Mindset

Clinical colleagues I spoke with welcomed the discussion and readily offered reflections both on ways they were effectively advancing racial justice through their clinical work, as well as on challenges they struggle with and have not yet figured out how best to approach. All seemed to exhibit a growth mindset and to illustrate that racial

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[79] *See* Valentin, *supra* note 71 ("[N]o matter how much James Baldwin one has read or how many times they visited the Blacksonian (National Museum of African American History and Culture), if someone is not a person of color, they are likely to lack the experience to find policy solutions that positively impact communities of color.").

[80] I conducted interviews with faculty from other technology law clinics in May. In June, I facilitated a discussion session on racial and social justice at a retreat of approximately twenty tech law clinicians, during which participants engaged in small group discussions focusing on the contexts of casework, institutions, and pedagogy, then reported back to the large group. Some of the goals of these interviews and discussions were to hear tech law clinicians' thoughts on why tech law clinics should incorporate racial justice into clinical practice and pedagogy; how they do or could do this; what questions and concerns they have at the intersection of technology law clinics and racial justice; and what support(s) they would like to see from peers, within the broader technology law clinic community, or from their institutions. Notes on file with author.

justice can and should be taught along with an openness to vulnerability, mistakes, and growth. We can and should approach conversations about race honestly, with acknowledgement of our own imperfections and room for growth and with an openness to reflect and learn.

Many of us find it challenging to be fully vulnerable when it comes to race-related discussions. One common barrier for clinicians interested in more fully integrating considerations of racial justice and equity into our clinics is that we feel we lack expertise and/or fear that we will get it wrong. Deborah Epstein documented this several years ago when she reported that in the context of clinical supervision rounds, clinicians "gained insight into their own tendency to avoid focused discussion about issues involving race. Whether conscious or unconscious, this tendency resulted in supervision conversations that started out including race as a factor, but quickly shifted to less politically charged ground."[81]

We must not shy away from inviting explicit and sometimes difficult discussions of race in our clinics out of fear of imperfection; rather, we should remind ourselves and our students that we are works-in-progress.[82] Learning is a lifelong journey, making mistakes is an unavoidable part of this process, and reflection and growth are an integral part of the clinic experience.

We can start by openly acknowledging to ourselves and our students that we are not perfect. Writing about how to facilitate difficult race discussions, Derald Wing Sue, a professor of psychology and education at Columbia, states that "instructors must be able and willing to acknowledge and accept the fact that they are products of the cultural conditioning in this society, having inherited the biases, fears, and stereotypes of the society."[83]

Facilitating and teaching reflectiveness—cultivating what Donald Schön referred to as the "reflective practitioner"—is already a central part of what we do as clinicians.[84] Indeed, the clinical model is

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[81] Deborah Epstein, *Beyond the Classroom: Applying the Stages of Rounds Structure to Analysis of Clinical Supervision*, *in* Transforming the Education of Lawyers: The Theory and Practice of Clinical Pedagogy 162, 166 (Susan Bryant, Elliott S. Milstein, Ann C. Shalleck, eds., 2014).

[82] *See* Dolly Chugh, The Person You Mean to Be: How Good People Fight Bias (2018).

[83] Derald Wing Sue, Facilitating Difficult Race Discussions: Five Ineffective Strategies and Five Successful Strategies 4, https://www.colorado.edu/center/teaching-learning/sites/default/files/attached-files/facilitating_difficult_race_discussions.pdf.

[84] *See* Richard K. Neumann, Jr., *Donald Schön, the Reflective Practitioner, and the Comparative Failures of Legal Education*, 6 Clin L. Rev. 401 (2000); David F. Chavkin, Clinical Legal Education: A Textbook for Law School Clinical Programs 9 (2002) ("we hope to help you develop into a practitioner who has a reason for every choice s/he makes and a process for making and implementing those choices that includes critical

founded on the belief that it is important for one to engage in a practice before they feel like they know everything in order to generate opportunities to try various approaches, to make mistakes, and to learn through reflection.[85]

As teachers and scholars with packed schedules, we are not always as generous in carving out the time and space for ourselves to conduct and grow from self-reflection as we are for our students.[86] But we can best tackle challenging practice and pedagogy issues, such as those at the intersection of racial justice and technology law, with an intentional practice of reflectiveness, which we have an important opportunity to model for our students.[87] As studied by Schön, most professional work starts in a state of confusion and indeterminacy, and it is through "reflective conversation with the situation" taking place "in the midst of action" that professional problems are solved, and learning and growth happen.[88]

B. Establish Student Expectations and Invite and Embrace Difficult Dialogue

Many technology law clinicians asserted the importance of telling students upfront that clinic would address race explicitly and directly, as well as of establishing ground rules to facilitate difficult dialogue in seminar, casework, and supervision.

Much has already been written both about the value of establishing expectations and ground rules regarding difficult dialogue and about how to do it. Indeed, Jean Koh Peters and Susan Bryant have an entire chapter on the topic of "talking about race" in TRANSFORMING THE EDUCATION OF LAWYERS.[89] I will not recapitulate here that entire chapter, which is full of rich insights and advice, but will say only that Peters and Bryant break conversations about race into "a four-part process: (1) inviting the conversation early, (2) normalizing conversations about race, (3) introducing key critical race theory con-

reflection through every step of your professional career.").

[85] Susan Bryant & Elliott Milstein, *Chapter Six – Rounds: Constructing Learning from the Experience of Peers*, *in* TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 113, 120 (Susan Bryant, Elliott S. Milstein, Ann C. Shalleck, eds., 2014).

[86] *See* Epstein, *supra* note 81, at 166 ("We routinely ask our students to make themselves vulnerable; we require them to perform simulated lawyering tasks in front of their colleagues, to request and absorb critique, or to share their reflections on what they might have done differently after a lawyering "performance." But as teachers, we ourselves are rarely called upon to do the same.").

[87] I discuss some of the specific tactics that can be adopted to this end *infra* in Section III.C.

[88] Neumann, *supra* note 84, at 405–407.

[89] Peters & Bryant, *supra* note 77, at 377.

cepts, and (4) including updated information about the historical and current role of race in the field."[90]

Racial equity expert and strategist Glenn Singleton refers to candid dialogue about race as "courageous conversations," and has written multiple books on the practice of courageous conversation.[91] In 2006, Singleton and Cyndie Hays articulated four guidelines for educators to facilitate courageous conversation: "They must stay engaged, expect to experience discomfort, speak their truth, and expect and accept a lack of closure."[92]

Beyond attempting to abide by these general guidelines, many of us find it fruitful to establish more specific rules for students to follow in in-class discussion. A simple online search generates many examples of ground rules for difficult dialogue that clinicians can adapt and add to for their own purposes. In my own clinic, I use discussion ground rules that I initially compiled in this manner and that I modify slightly each semester based on feedback from students and teaching fellows. A few examples of rules on the list:

- The purpose of in-class discussion is to share and understand perspectives, not to win arguments.
- We will trust each other to engage in this conversation in good faith and with respect for one another.
- You are not being evaluated for the correctness of your in-class opinions.
- You are not required to speak during in-class discussion about topics that are emotionally challenging. Please do not feel pressured to speak and do not pressure others to speak.
- Only one person should speak at a time. When someone is speaking, everyone else should focus on listening to them.

One technology law clinician I spoke with asks students to use the Oops!/Ouch! framework in discussions.[93] Students are encouraged to communicate when something someone else says harms them (the

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[90] *Id.*

[91] *See* Glenn E. Singleton & Curtis W. Linton, Courageous Conversations About Race: A Field Guide for Achieving Equity in Schools (2005); Glenn E. Singleton, More Courageous Conversations About Race (2012).

[92] Glenn E. Singleton & Cyndie Hayes, Beginning Courageous Conversations About Race at 19 (2006).

[93] There are numerous resources readily available explaining the Oops!/Ouch! framework. *See, e.g.*, Jesús Treviño, Diversity and Inclusiveness in the Classroom 7 (last visited Sept. 11, 2023); Kristina Ruiz-Mesa & Karla M. Hunter, *Best Practices for Facilitating Difficult Dialogues in the Basic Communication Course*, 2 J. Commc'n Pedagogy 134, 137–38 (2019); Annaliese Griffin, *Three Words You Need for Your Next Hard Conversation: Oops. Ouch. Whoa.*, Medium (Aug. 10, 2020), https://forge.medium.com/three-words-you-need-for-your-next-hard-conversation-a3e2090d043d.

"ouch"). In response, students who have harmed someone else through something that they have said are encouraged to acknowledge the harm that they have done (the "oops"). Under this framework, students have the opportunity to grow their communication and empathy skills and are invited to embrace and learn from missteps.

C. Incorporate a Racial Justice Lens into Cases, Operations, Seminar, and Institutional Structure

On the specific mechanics of addressing racial justice in technology law clinics, colleagues I spoke with described practices falling into five areas of clinic activity: client and case selection; client counseling; seminar; clinic operations; and the broader institution.

Applying a racial justice lens to client and case selection and planning. Many technology law clinicians I spoke with intentionally select clients and cases that have a clear connection to racial justice. One colleague pointed out that the ability to exercise discretion in selecting clients and cases—something many technology law clinics can do—is a privilege that many clinics do not have. As a result, there is a risk that some technology law clinicians could become disconnected from the social justice roots of clinical legal education unless they make an intentional effort to take on cases that, in the words of William Pincus and Peter deLancey Swords, help students "learn to recognize . . . what is wrong with the machinery of justice in which [they are] participating and for which [they have] a special responsibility."[94]

There are different ways to do this. Technology law clinicians can seek out clients with a racial justice mission. They can build racial equity analysis into the legal, factual, and policy analysis that they conduct on cases. And even when they take on a case with unclear racial justice implications for a client with no particular racial justice mission, they can include questions about racial justice in their client vetting process and language about racial justice counseling in their engagement letters.

Applying a racial justice lens to client counseling. Many technology law clinicians I spoke with also talked about the importance of cultivating students' racial justice awareness and facility in client interactions, especially those across racial and cultural differences. One colleague opined that technology law clinicians do not talk enough about power dynamics in the context of lawyering their cases.

Technology law clinicians may consider applying and/or assigning helpful pieces on lawyering across differences, such as *People from The Footnotes: The Missing Element in Client-Centered Counseling* by

[94] Pincus & Swords, *supra* note 53.

Michelle Jacobs,[95] *The Five Habits: Building Cross-Cultural Competence in Lawyers* by Susan Bryant,[96] or *Client as Subject: Humanizing the Legal Curriculum* by Eduardo R.C. Capulong.[97]

Applying a racial justice lens to seminar. Technology law clinicians emphasized the importance of using seminar time to help students gain insight into racial justice lawyering in the technology context. Colleagues specifically mentioned holding seminar sessions on—among other things—differences and cross-cultural competency, abolitionism vs. reformism, and racism in the legal profession. One colleague recommended making an effort to weave racial justice into every seminar session in one way or another, stating that even though this may feel like overdoing it, it is important for concepts to be repeated over and over for students to internalize them. This colleague pointed out that racial justice does not have to be the explicit focus of seminar every time but could sometimes merely feature in related readings.

Technology law clinicians also should interrogate assigned reading and resource lists to ensure that seminar materials include the perspectives of people of color and people hailing from other historically marginalized communities. This will sometimes require effort to accomplish—as discussed above, the tech sector is disproportionately white and male, and white male voices often dominate media coverage and public discourse about technology.

Applying a racial justice lens to clinic operations. One colleague stressed the importance of ensuring that clinic faculty, staff, and students do not actively perpetuate harm by their interpersonal interactions. Several colleagues observed that our clinics tend to skew even more disproportionately white than law school clinics in general, and one expressed concern that people who notice this about our clinics may erroneously conclude that the issues addressed by technology law clinics belong only to certain groups or certain types of people. Those I spoke with universally asserted that we can and should do more to ensure technology law clinics are not hostile places for people of color.

Technology law clinicians advocated several approaches to support this goal. Many said that we can make a greater effort to attract and retain staff and faculty of color for our clinics. Technology law

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[95] Michelle Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997).

[96] Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 CLIN. L. REV. 33 (2001).

[97] Eduardo R.C. Capulong, *Client as Subject: Humanizing the Legal Curriculum*, 24 CLIN. L. REV. 37 (2016).

clinics also should ensure that faculty and staff are trained to recognize and avoid common features of harmful interpersonal interactions, such as microaggressions,[98] white saviorism,[99] and racist conceptions of "professionalism."[100]

Applying a racial justice lens to institutional structure. Several colleagues also pointed out that there is also a role for law schools to play at the institutional level to support the racial justice work of technology law clinics. Some law schools offer a cross-clinical critical theory course co-taught by multiple clinical faculty and available only to students enrolled in clinics. Some law schools have training sessions and/or supervision rounds for clinicians to discuss and reflect on their practices and learn from one another. Some law schools intentionally recruit non-tenure-track instructors to direct and staff clinics, in part so that clinical teaching is more accessible to practitioners from diverse backgrounds. Other law schools maintain hard-won unified tenure standards for clinicians, in part so that tenured clinical faculty have the support and security to take risks with their pedagogy and practice.

Conclusion

Technology and technology law are inextricably linked to social and racial justice. As clinical legal educators, we have a responsibility to ensure that we are helping our students to understand this link and to develop the legal and professional tools to evaluate and advance justice in the course of their careers. We can fulfill this responsibility by embracing an approach to racial justice with reflectiveness and a growth mindset, by inviting and embracing difficult dialogue about race, and by applying a racial justice lens to client and case selection, client counseling, seminar, clinic operations, and the structure of our institutions. I am grateful to my fellow technology law clinicians for sharing thoughts on this topic with me, and I call on us all to continue to maintain a candid and fruitful dialogue about what we are learning along this journey.

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[98] *See* Derald Wing Sue, Christina M. Capodilupo, Gina C. Torino, Jennifer M. Bucceri, Aisha M. B. Holder, Kevin L. Nadal, & Marta Esquilin, *Racial Microaggressions in Everyday Life: Implications for Clinical Practice*, 62 Amer. Psych. 271 (2007).

[99] *See* Janice Gassam Asare, *What Is White Saviorism and How Does It Show Up in Your Workplace?*, Forbes, Sept. 30, 2022, https://www.forbes.com/sites/janicegassam/2022/09/30/what-is-white-saviorism-and-how-does-it-show-up-in-your-workplace/.

[100] *See* Kendra Albert, *Care, Not Respect: Teaching Professionalism* (July 15, 2021), https://kendraalbert.com/2021/07/15/care-not-respect-teaching-professionalism.html.