

REFLECTIONS ON THE LAUNCH OF A RACIAL JUSTICE CLINIC AND THE BRAVERY OF LIONS

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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 lawyering⁴ 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

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 concept¹⁰—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

(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’;
- (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
- (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-

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." *Combating 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

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 is 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 in 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 a tool to 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

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

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-

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 at 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 redlining⁴⁹—perpetuated segre-

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 Wilson⁵⁴ changed the trajec-

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-

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

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

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 Change⁷⁴ 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 impacted⁷⁵ 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

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

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-

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.

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

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

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 indigent 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.

people. The idea here is to trust oppressed people to prescribe their own emancipation, read what they have written 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

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

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-entrenched 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 as 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 sub-goal that I have in bringing Black youth advocates to the law school

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

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.