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A Book Club With No Books: Using Podcasts, Movies, and Documentaries to Increase Transfer of Learning, Incorporate Social Justice Themes, Create Community, and Bolster Traditional and Character-Based Legal Skills During a Pandemic

Marni Goldstein Caputo & Kathleen Luz*

ABSTRACT

In the fall of 2020, students entered law school under extreme circumstances. The COVID-19 pandemic led to isolation, depression, and restrictions on activities. A new hybrid learning environment was created. Social upheaval also caused unease. The 2020 national elections loomed, bringing divisive political discourse. The murder of George Floyd and other BIPOC, at the hands of police, led to a reckoning around the country. Additionally, with the COVID-19 pandemic came a rash of anti-Asian violence.

Faced with these unprecedented realities, we, as legal educators, struggled with how to adapt our curriculum to this new normal. These realities forced us to re-examine how we taught. We considered how to instruct on basic legal skills with the ultimate goal of ensuring that students would be able to transfer these skills to real life practice. Further, we sought to create a community during these isolated times and give students an

* We would like to thank several people, without whom we could not have written this article: Tobi Henzer, our meticulous research assistant; Kate Cochrane, our phenomenal research librarian; Karen Pita Loor, our supportive and inspirational mentor; and Cecily Banks and Kate Devlin Joyce, our invaluable colleagues who provided feedback on multiple drafts of this paper. Additionally, we would like to thank our students, who were first-year law students during the worst of the pandemic, and yet brought great enthusiasm to our Club. Finally, we would like to thank each other for a truly enjoyable partnership that extends throughout our professional lives.

outlet to explore social justice issues in a meaningful way. As a result, the “Book Club with No Books” was formed.

The Club used various forms of media—including a podcast, a documentary, and a movie—to engage students outside of our 1L Lawyering Skills classrooms. Consistent with established learning principles, the Club utilized engaging stories in an effort to deepen, or scaffold, long term memories. It also helped to build community and reduce stress, and injected themes of systemic and racial inequities into the 1L curriculum. We ultimately sought to improve student learning and enhance the “holy grail” of skills teaching—transfer of learning.

We offer this blueprint to other law professors who wish to accomplish similar goals. Part I of the article explores the specifics of the Club, including a description of the different media we used, the issues we explored during our meetings, the structure and logistics of the meetings, and the goals we sought to achieve. Part II discusses established learning principles and how we sought to enhance transfer through our choice of material, creation of a small group setting, and particular discussion questions. Part III discusses how the Club injected social justice themes into the 1L curriculum and why doing so is critical per the ABA’s recent proposal that law schools add training in anti-racism into their curricula,¹ student desires, and the ideal mission of a 1L skills classroom. Part IV reflects on the success of the Club, including student feedback and potential modifications based on that feedback. Finally, the article details our proposal to expand the Club into a pass/fail elective class for all 1L students at Boston University School of Law.

¹ Since the writing of this article, but prior to publication, the ABA has adopted the proposed rules mandating that law schools include training as part of the curriculum on topics such as cross-cultural competency, anti-racism, and bias recognition. When the Club was formed and when this article was initially written, however, those rules were only proposed and had not yet been adopted. Thus, the article refers to it as the ABA proposal.

INTRODUCTION

In the fall of 2020, students entered Boston University School of Law, and every law school, under extreme circumstances. The COVID-19 pandemic led to isolation, depression, restrictions on activities, and a new hybrid learning environment.² Social upheaval also caused unease. The 2020 national elections loomed, bringing with them divisive political discourse. The murder of George Floyd and other Black, Indigenous, and People of Color (“BIPOC”),³ at the hands of police, led to a reckoning around the country.⁴ Additionally, a rash of anti-Asian violence accompanying the COVID-19 pandemic added to the crisis.⁵

² Shelley Awe, *Law Students, It’s Okay to Not Be Okay During the Coronavirus Pandemic*, FIRSTHAND (Apr. 1, 2020), <https://firsthand.co/blogs/vaults-law-blog-legal-careers-and-industry-news/law-students-it-s-okay-to-not-be-okay-during-the-coronavirus-pandemic> [https://perma.cc/4UP9-NV5E] (“This new alternate reality where everything has gone remote, been delayed, or is cancelled altogether was unfathomable not that long ago. But here we are. And as a law student in the time of this pandemic, you’re really going through a lot: the transition to online classes; the lack of daily interaction with your peers and professors; new grading policies; cancelled events from moot court competitions to job fairs to Barrister’s Ball; cancelled graduation ceremonies; uncertainty about summer positions, the bar exam, and post-graduate employment—and oh, not to mention fears about the health and safety of you, your family, and community in a global crisis. Not that being a law student has ever been easy, but now more than ever, it’s an incredibly difficult time to be one.”); Annie Lowrey, *This Summer Will Scar Young Americans for Life*, THE ATLANTIC (May 28, 2020), <https://www.theatlantic.com/ideas/archive/2020/05/cruel-summer-young-americans/612154/> [https://perma.cc/Q3L4-8KXE].

³ We use the term BIPOC throughout our paper to mean Black, Indigenous, and People of Color. The BIPOC Project uses the term BIPOC “to highlight the unique relationship to whiteness that Indigenous and Black (African Americans) people have, which shapes the experiences of and relationship to white supremacy for all people of color within a U.S. context. We unapologetically focus on and center relationships among BIPOC folks.” THE BIPOC PROJECT, <https://www.thebipocproject.org/> [https://perma.cc/J9BT-JPUV].

⁴ Derrick Bryson Taylor, *George Floyd Protests, a Timeline*, N.Y. TIMES (Mar. 28, 2021), <https://www.nytimes.com/article/george-floyd-protests-timeline.html> [https://perma.cc/L2M3-DEVD].

⁵ Josh Campbell, *Anti-Asian Hate Crimes Surged in Early 2021, Study Says*, CNN (May 5, 2021) <https://www.cnn.com/2021/05/05/us/anti-asian-hate-crimes-study/index.html> [https://perma.cc/2LS7-259U].

Faced with this unprecedented situation, we, as legal educators, struggled with how to adapt our curriculum to this new normal. Our primary role is to teach legal skills—analysis, objective and persuasive writing, client interviewing and counseling, and oral advocacy. Our ultimate goal is to enable students to transfer these skills beyond the 1L classroom to upper-level internships and post-graduate jobs.⁶ However, these new realities forced us to re-examine how we taught in order to further prioritize transfer, create community, and provide an outlet to explore social justice issues in a meaningful way. How would we achieve these goals within the confines of our limited 1L Lawyering Skills class time? Our temporary solution was to develop an optional club for our 1L students. Thus, the “Book Club with No Books” was formed.

As described below, the Club used a podcast, a documentary, and a movie to ignite interest in students outside of our Lawyering Skills classrooms. We assigned no extra reading to minimize the workload for overburdened 1L students. Through the choice of material and pre-planned discussion questions, the Club highlighted important character-based skills that complemented the more traditional skills taught in our Lawyering Skills class. It also allowed for small group discussions, specifically related to how the law impacts marginalized communities. Our intimate Club discussions left room for more relaxed sharing of personal feelings and reflections. In addition, it allowed a forum for observations about real legal issues and inequities, which served as a complement to our regular Lawyering Skills class.

⁶ Shaun Archer et al., *Reaching Backward and Stretching Forward: Teaching for Transfer in Law School Clinics*, 64 J. LEGAL EDUC. 258, 269 (2014) (“We aim to teach doctrine, skills, and critical reasoning and expect that students will readily apply them in the workplace.”); Tenielle Fordyce-Ruff, *Research Across the Curriculum: Using Cognitive Science to Answer the Call for Better Legal Research Instruction*, 125 DICK. L. REV. 1, 42 (2020) (explaining that “the goal of legal education” is for students to ultimately transfer the skills they learn during law school to “new contexts and problems”).

Consistent with established learning principles, the Club utilized engaging stories as a means of deepening, or scaffolding, the long-term memories upon which we hoped students would later draw when facing legal challenges outside the classroom.⁷ The Club also helped to reduce stress, critical to improving the learning environment.⁸ Finally, through the selection of materials that involved systemic and racial inequities in the criminal legal system, we provided a needed outlet for students to grapple with important societal issues.⁹ In this way, the Club, or some iteration of it, could also potentially be used to satisfy a proposed new ABA requirement

⁷ Lea B. Vaughn, *Feeling at Home: Law, Cognitive Science, and Narrative*, 43 MCGEORGE L. REV. 999, 1013 (2012) (Material that is taught using stories “is more likely to be encoded and retained into long-term memory” and is more likely to be retrieved later.).

⁸ Kate E. Bloch, *Cognition and Star Trek™: Learning and Legal Education*, 42 J. MARSHALL L. REV. 959, 978 (2009) (“Survey research indicates that fear of public speaking is quite common among the general population of adolescents and adults. College students, in particular, frequently experience communication apprehension in the classroom. Such speech anxiety, however, can be significantly reduced if students are given the opportunity to first express themselves in the more comfortable social context of a small group of peers.”); *id.* at 980 (quoting Lani Guinier et al., *Becoming Gentlemen: Women’s Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 3 (1994) (“[M]any women are alienated by the way the Socratic method is used in large classroom instruction.”)); Tonya Kowalski, *True North: Navigating for the Transfer of Learning in Legal Education*, 34 SEATTLE U. L. REV. 51, 104, 108 (2010) [hereinafter Kowalski, *True North*] (“As a result of the reduced stress . . . students are more likely to ‘encode’ their knowledge for storage and retrieval in terms of transfer.”).

⁹ Sha-Shana Crichton, *Incorporating Social Justice into the 1L Legal Writing Course: A Tool for Empowering Students of Color and of Historically Marginalized Groups and Improving Learning*, 24 MICH. J. RACE & L. 251, 264 (2019) (“Large scale negative race-related societal events are macro-stressors, and exposure to these macro-stressors can cause elevated stress levels.”); *id.* at 265–66 (“Everyday discrimination includes othering and related social exclusion and ‘interpersonal and daily hassles and insults such as receiving inferior service and being unfairly followed in stores.’ The stressors follow the student into the classroom. Discrimination outside of the classroom contributes to the perception of discrimination inside the classroom. A student’s past experiences with discrimination can increase his or her vigilance for incidents of future discrimination. If the evidence of discrimination outside and inside the classroom is ignored, the impact mushrooms, inhibiting the affected student’s ability to learn.”).

that law schools add to their curricula training in cross-cultural competency, anti-racism, and bias recognition.¹⁰

Ultimately, we sought to improve student learning by reinforcing the skills taught in our Lawyering Skills class. Specifically, we aimed to provide students with tools to utilize beyond the classroom. We strove to enhance “far transfer,” meaning the ability to later draw upon these skills in varied contexts.¹¹ We hope we were able to achieve all of our goals—build community, provide an outlet for discussion of important societal issues, and potentially to enhance transfer of learning—through a fun, engaging, optional Club. Our offering, therefore, is a blueprint for other law professors who want to accomplish these same goals.

Part I of the article explores the specifics of the Club, including a description of the different media used and issues we explored, the structure and logistics of each Club meeting, and the goals we sought to achieve. Part II discusses how those goals were achieved—including how our choice of material, use of a small group setting, and particular discussion questions were utilized in an effort to enhance transfer. In Part III, we discuss the need to incorporate social justice issues into the 1L curriculum more broadly, and how doing so will have significant learning benefits for students. Finally, in Part IV we reflect on the success of the Club, including student feedback and potential modifications in the future. In addition, we outline our proposal to expand the Club more broadly, consistent with Harvard Law School’s reading group model.¹² Specifically, we propose a pass/fail elective class for all 1L students, allowing us to heed the call from

¹⁰ *Anti-bias, Professionalism Standards Teed Up for Law Schools*, AM. BAR ASS’N (May 24, 2021), <https://www.americanbar.org/news/abanews/aba-news-archives/2021/05/law-school-standards/> [<https://perma.cc/F3M6-F6PX>].

¹¹ See Archer et al., *supra* note 6, at 259 (“[T]o be valuable, your teaching must be usable by your students outside the classroom.”).

¹² *Students and Faculty Connect in First-Year Reading Groups*, HARV. L. TODAY (Sept. 23, 2004), <https://today.law.harvard.edu/students-and-faculty-connect-in-first-year-reading-groups/> [<https://perma.cc/2XAT-RU3F>].

students and legal scholars, and the ABA’s proposal, for a non-neutral classroom.¹³ Finally, the appendix provides a sample outline for one of our Club meetings, including all substantive introductory points and discussion questions with answers, for those who wish to replicate the Club without reinventing the wheel.

I. THE CLUB: THE IMPETUS FOR FORMING IT AND HOW IT WORKED

A. Impetus for the Club

We created the Club with three primary goals: (1) bolstering transfer of learning of both traditional and character-based legal skills; (2) incorporating social justice themes as part of the 1L curriculum; and (3) responding to the circumstantial realities specific to the summer of 2020, primarily by building community during isolating times. As described more fully below, the Club hopefully achieved those goals.

1. Transfer and Social Justice Goals

The primary impetus for creating the Club, and choosing the content we did, was to complement our traditional Lawyering Skills class. We both teach a full-year 1L Lawyering Skills class, for which students earn 2.5 credits in the fall and 2.5 credits in the spring. Our course focuses on traditional legal skills, including legal writing, research, analysis, and

¹³ Crichton, *supra* note 9, at 257–58 (contending that “law schools should introduce issues of social justice” into the curriculum); Spencer Rand, *Social Justice as a Professional Duty: Effectively Meeting Student Demand for Social Justice by Teaching Social Justice Professional Competency*, 87 U. CIN. L. REV. 77, 80–81 (2018) (arguing that law schools must teach social justice, and faculty “should teach that law is not value neutral and should not be practiced as if it were.”); Memorandum from the Am. Bar Ass’n Standards Comm. to the Council of the Section of Legal Education and Admissions to the Bar (May 7, 2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/may21/21-may-standards-committee-memo-proposed-changes-with-appendix.pdf [<https://perma.cc/3R2U-WRW5>] [hereinafter Memorandum from the Am. Bar Ass’n Standards Comm.].

citation. The course also incorporates interactive skills like client interviews, client counseling, and collaboration with peers. Our primary goal as professors is transfer of learning. For each skill we teach, we attempt to provide the proper scaffolding to achieve far transfer—the ability to use skills in different, future contexts—with the hope that students leave our course with the nimble ability to use core lawyering skills in their 1L summer jobs, 2L clinics, and beyond.¹⁴

While transfer of learning is a critical goal,¹⁵ we were also committed to incorporating themes of social justice into our curriculum, which had proven difficult. This difficulty was partially related to lack of confidence: were we properly trained to lead our students through emotionally challenging discussions of racial inequities and overall unfairness in the law? In addition, our department was initially charged with mimicking the 1L curriculum in our assignments, leading to myriad contract and tort problems in the fall semester which typically did not allow us to raise the type of social justice issues in which we were interested. Further, our department collaborates on assignments, leading to necessary, and often beneficial, compromise with respect to assignment subject matter. For a variety of reasons, therefore, we felt the level to which we incorporated social justice into our classes was lacking.

Additionally, our classes only meet for fifty-five minutes, twice per week. While we believe we have been able to effectively teach and scaffold

¹⁴ Archer et al., *supra* note 6, at 265–66; see also Cara Cunningham Warren, *Achieving the American Bar Association’s Pedagogy Mandate: Empowerment in the Midst of A “Perfect Storm”*, 14 CONN. PUB. INT. L.J. 67, 87 (2014) (“Professors deliver material to the learner with the aim of the material being ‘encoded’ in the learner’s long-term memory and later retrieved and applied to future situations.”).

¹⁵ See David A. Binder & Paul Bergman, *Taking Lawyering Skills Seriously*, 10 CLINICAL L. REV. 191, 198 (2003) (noting that transfer is crucial to effective skills learning: experiential “courses effectively provide skills training to the extent that they enable students to transfer the concepts, strategies and techniques they begin to use while in clinical courses to the many and varied practice settings they are almost certain to encounter after graduation.”).

traditional skills like writing and research in that time frame, the brevity often forced us to gloss over critical character-based lawyering skills. For example, excellent lawyering involves attention to detail, relentlessness, hope, empathy, a long view, creativity, and passion. Between the subject matter of most of our assignments and the time crunch, we were barely able to touch on these critical skills. In addition to increasing interest and fueling already existent passions for the law,¹⁶ incorporating social justice themes and stories would also provide a vehicle for discussing these character-based skills. Out of these goals and concerns, our idea for an optional Club was born. This Club would meet outside of class and focus on inequities in the criminal legal system.

As the substantive idea for the Club began to take shape, determining the format presented its own hurdles. The Harvard Law School “reading group” model inspired our initial Club format. Harvard Law School’s 1L elective reading groups were initially formed to serve two purposes: (1) allow for greater interaction between students and faculty; and (2) provide students an opportunity to explore topics outside the traditional 1L curriculum.¹⁷ The Harvard reading group model allows faculty broad discretion to choose topics of interest to them. At the time of the writing of this article, current topics, which are not all necessarily taught to only 1Ls, include: Advanced Topics in Jewish Law and Legal Theory, Applying Adaptive Leadership to Thrive and Lead Change in Uncertain Times, Community Lawyering, How to Become a Law Professor, and Be Careful What You Wish For.¹⁸ This model inspired us to choose the particular format and subject matter of our

¹⁶ Crichton, *supra* note 9, at 288 (incorporating social justice into curriculum “helps spark student interest”); Pamela Edwards & Sheilah Vance, *Teaching Social Justice Through Legal Writing*, 7 LEGAL WRITING: J. LEGAL WRITING INST. 63, 84 (2001) (introducing social justice issues in the classroom helps students who entered law school with an interest in public interest achieve their goals.).

¹⁷ *Students and Faculty Connect in First-Year Reading Groups*, *supra* note 12.

¹⁸ *Courses and Reading Groups*, HARV. L. SCH. (Aug. 9, 2021), <https://hls.harvard.edu/dept/ils/faculty-and-courses/courses-and-reading-groups/> [<https://perma.cc/DY9Y-J9ZY>].

Club. In addition, while our Club was an optional, extra-curricular offering, we were already forming the idea for converting it into an actual elective course for 1Ls, as discussed in Section IV.

2. The Summer of 2020

The circumstances in which our 1L law students began in fall 2020 also influenced our formation of the Club. In the fall of 2020, first-year law students embarked on their legal education amidst an unprecedented storm. Among many other crises that would create instability among young lawyers-in-training, these particular 1Ls arrived with the following additional hurdles: (1) the COVID-19 pandemic was raging; (2) law school instruction would be delivered in remote and hybrid formats; (3) anti-Asian violence was increasing during the pandemic; (4) the Black Lives Matter movement led to widespread social upheaval in response to the state murders of George Floyd, Breonna Taylor, and countless other BIPOC; and (5) the polarizing 2020 national elections were nearing. It was certainly not a normal time to start law school.

Like so many other professors, we shared multiple concerns beyond typical curriculum delivery and legal skill development. Would our students feel disconnected from faculty and their peers because our community, typically centered around in-person learning and being in the building together, would be unachievable? Would our students, focused so intently on current events and the need, more than ever, for lawyers to challenge the *status quo*, be frustrated with a curriculum that did not address those issues? Given the condition of the country and world, would students have the opportunity in our class to explore issues of social justice in a way that also bolstered their legal skills? In addition to the pedagogical goals discussed above, the Club was also a response to these broader concerns. It was certainly not a panacea, but we tried to create a forum in which the law could be freely discussed while also functionally bringing students together to create community, tackle difficult issues of race and the criminal legal

system, and use outside media sources that did not add to the students' already heavy reading load.

B. Description of the Club

To achieve these numerous goals described above, we created the “Book Club with No Books.” The Club was optional and publicized to the approximately seventy-six students in only our four Lawyering Skills sections. We specifically chose not to assign reading in order to make involvement less daunting and reduce stress.¹⁹

We personally love legal podcasts and documentaries, and we both use them as a complementary way to learn and be engaged when our eyes are exhausted from reading cases and papers.²⁰ We thought our students might feel the same way during their 1L year, particularly during a Zoom-heavy pandemic. In addition, we are both particularly interested in criminal cases, prosecutorial ethics, and racial inequities in the criminal legal system. Finally, we are also human beings who were aware and engaged in the wake of George Floyd's murder. In some ways, starting the Club was part of our continued development as antiracist professors and was our own way to cope with the realities of starting the Fall 2020 semester under such harrowing conditions.

1. Logistics

All Club meetings were held over Zoom and were scheduled at times during the semester when students were not actively working on Lawyering Skills assignments. Each meeting followed a similar format in an effort to bolster transfer, incorporate social justice themes regarding race and systemic inequities, and focus on character-based lawyering skills.

¹⁹ Kowalski, *True North*, *supra* note 8, at 108.

²⁰ See Zahr Said & Jessica Silbey, *Narrative Topoi in the Digital Age*, 68 J. LEGAL EDUC. 103, 104 (2018) (Modern forms of storytelling, such as podcasts and television series, present “law professors with opportunities for critical inquiry into legal doctrines, practice, and ethics.”).

- First, we began with brief introductory instruction about the key legal principles necessary for first-year law students to fully appreciate the material.
- Second, we provided a list of pre-planned questions to guide our discussion of the material for that session. One question always asked students to consider inequitable impacts of the law on certain marginalized communities, and one question covered both the traditional and character-based legal skills utilized by lawyers in these stories.
- Finally, depending on attendance, we discussed those pre-planned questions either as a group or in breakout rooms.

Each meeting was limited to one hour to ensure that we did not encroach on students' already limited time.²¹

2. Content

We asked students to independently watch or listen to three different outside media sources throughout the year—one documentary, one podcast series, and one movie. The material included: (1) Netflix's "How to Fix a Drug Scandal," a documentary which discusses the Massachusetts drug lab scandals; (2) the "In the Dark: Season 2" podcast, which details extreme prosecutorial misconduct in the six death penalty trials of Curtis Flowers in Mississippi; and (3) the movie, "Just Mercy," relating to Bryan Stevenson's representation of death row inmates in Alabama.

The Club met four times during the course of the year—twice during the fall semester, and twice during the spring semester. The first and last Club

²¹ Our first meeting lasted ninety minutes and, upon reflection, we realized that meeting was too long under the circumstances of that particular school year. Although students were sufficiently engaged in the material to talk for over one hour, they appeared to be Zoom-fatigued by that point in the evening. In addition, because we met on Thursday nights, students suffered from the cumulative effect of Zoom over the course of the week. Therefore, we strictly limited the next three Club meetings to one hour, and we made that promise to students when advertising the future meetings.

meetings covered “How to Fix a Drug Scandal” and “Just Mercy,” respectively. Due to the length of the “In the Dark” podcast, those episodes were split over two meetings (the second meeting in the fall semester, and the first meeting in the spring semester). Students could attend any one or all of the meetings.

In order to stay true to our goals, we committed to a rigid structure for the discussion questions at each meeting and thus rendered consistent the through-lines of transfer and social justice. During the discussion portion of all four meetings, we asked approximately three questions. At all meetings, at least one question focused on race and inequity in relationship to the specific material. Here are those four questions:

- How to Fix a Drug Scandal: What are the systemic issues you noticed here in both the depiction of the crime labs and the criminal legal system in general?
- In the Dark, Season 2:
 - Episodes 1–6: Beyond the litigation phases and the legal concepts, how did Doug Evans’ decision to push this bad case through six trials impact the people involved? Was there a noticeable difference in perspective based on race?
 - Episodes 7–20: Is it possible to have a trial that is not unfairly impacted by race in a small southern town, or any town really? How do the realities of a small town, especially surrounding race, weave their way into the criminal legal system?
- Just Mercy: On the approach to Holman prison, Stevenson sees inmates, all Black, working in the fields (they are not death row inmates, who cannot work, but still, it is a stark reality). All but one death row client met by Stevenson is Black. What does this movie show us

about the relationship between race, imprisonment generally, and the death penalty specifically?

In addition, we always closed with a question about character-based, and sometimes traditional, legal skills that related to the material. Our purpose here was to link the Club to our course and to keep reminding students of the connections between lawyering skills taught in school and real-life lawyering stories. Here are those four questions:

- How to Fix a Drug Scandal: In bringing this scandal to light, what skills did these defense attorneys display in advocating for their clients? What traditional legal skills were on display? What character-based skills were on display?
- In the Dark, Season 2:
 - Episodes 1–6: Whether from the prosecutor’s perspective or the efforts to start digging into the trials and the evidence, what traditional and character-based legal skills did you see on display here? In addition, were some of those skills displayed by journalists instead of lawyers?
 - Episodes 7–20: What qualities does a person need to be a criminal defense attorney generally, or a death penalty lawyer specifically? What skills are critical?
- Just Mercy: To be this kind of lawyer—a death penalty defense attorney, a civil rights lawyer, an antiracist lawyer—takes equal parts empathy (care about every human being) and strength (you lose A LOT, get blamed/judged A LOT, but must persist anyway). Where did you see instances of character-based legal skills, like empathy and strength? What other legal skills did you see?

As described below, by repeating social justice themes in each meeting and connecting our Club discussions to traditional and character-based skills, we hoped to create scaffolding and increase transfer of all legal skills delivered during 1L year. We also wanted to remind students of the social justice commitments that brought them to law school, engage them in the real-life stories of people entangled with the law, and inspire the belief that they too can be changemakers like the heroes in the material we discussed. In so doing, we also created community—a safe enclave in which to discuss difficult topics in a small group, be known, be heard, and make a connection to the school and to peers. As a final note in Section I, the attached appendix lays out the specific content covered and questions asked during one of our Club’s meetings with the idea that our legal skills colleagues, far and wide, can simply recreate the Club or model the Club to their own preferences.

II. ACHIEVING OUR GOALS: UTILIZING THE CLUB TO BUILD COMMUNITY AND HOPEFULLY IMPROVE TRANSFER OF LEARNING

Transfer is the “holy grail” of law school education generally, and skills teaching specifically. As 1L skills professors, our traditional classes focus on practical skills, including objective legal analysis, writing memoranda and e-mails, drafting persuasive documents such as motions and appellate briefs, and performing client-centered skills like interviews and counseling sessions. Our expectation, and our hope, is that students will then take those skills and utilize them outside of the 1L classroom.

However, as professors, we cannot teach every skill in law school or anticipate every situation students will encounter in the workplace.²² Rather, students must be able to access the skills they have learned and adapt those skills to different contexts.²³ To be successful lawyers, students

²² Mary Nicol Bowman & Lisa Brodoff, *Cracking Student Silos: Linking Legal Writing and Clinical Learning Through Transference*, 25 *CLINICAL L. REV.* 269, 272 (2019).

²³ Fordyce-Ruff, *supra* note 6, at 42.

must take these learned skills and apply them to a variety of different scenarios—from 1L and 2L summer internships, to 2L and 3L clinic and externship settings, and then to post-law school employment.²⁴

Yet, students often struggle with utilizing the tools they have learned in law school beyond the classroom.²⁵ That struggle occurs even from the 1L classroom setting to the 2L clinical setting; clinical professors have observed that despite legal training in the first year, students are often unable to apply that learning to clinical work.²⁶ Thus, as educators, the challenge we face is giving students the tools necessary to recognize that the skills we are teaching them in law school, particularly in the 1L skills class, can be utilized in many different settings outside of the classroom.

To design the Club, we utilized the science of learning and transfer (and the factors that help facilitate transfer) in an effort to enhance students' abilities to apply the skills we teach beyond the classroom.²⁷ Below we will discuss the science of learning and transfer generally, and how, through the Club, we sought to use these learning principles to enhance the transfer of skills taught in our classrooms.

A. Transfer Generally and Achieving “Far Transfer”

When learning new information or a new skill, students encode information for recall in schematics, or memories, which are tied to the

²⁴ Archer et al., *supra* note 6, at 269 (“We aim to teach doctrine, skills, and critical reasoning and expect that students will readily apply them in the workplace.”); Bowman & Brodoff, *supra* note 22, at 271–72 (“The ability to transfer learning is essential to practicing law; for example, lawyers use transfer when doing formal legal analysis by applying rules and analogies from precedent cases to new legal problems.”).

²⁵ David Perkins & Gavriel Salomon, *Teaching for Transfer*, 46 EDUC. LEADERSHIP 22, 25 (1988) (“[D]iverse empirical research on transfer has shown that transfer often does not occur.”); Tonya Kowalski, *Toward a Pedagogy for Teaching Legal Writing*, 17 CLINICAL L. REV. 285, 289 (2010) [hereinafter Kowalski, *Teaching Legal Writing*].

²⁶ Archer et al., *supra* note 6, at 269.

²⁷ See Perkins & Salomon, *supra* note 25, at 28 (“[B]y designing instruction to meet the conditions needed to foster transfer, perhaps we can achieve it.”).

particular learning situation.²⁸ Because information is stored in schematics, students recall that information in terms of those schematics, meaning recall is highest when students are faced with an identical or similar factual situation.²⁹ This storage on the basis of schematics, however, can lead to cue-dependent forgetting, meaning “the inability to recall information not because a memory has been lost, but rather because of missing cues, contexts, or stimuli that were present when the memory was encoded.”³⁰

As educators, we seek to maximize transfer, meaning the student’s ability to employ the skills learned in one context in another context.³¹ Scholars who focus on the science of learning have identified two different types of transfer—near transfer and far transfer.³² Near transfer allows students to apply the skills learned in one context to tasks that are similar in nature. For example, if a student writes a memorandum about negligence liability, only near transfer is needed to later write a similar document related to the same topic.³³ Because the context is similar, deep problem solving is not required, which allows for easier transfer of skills to a new context.³⁴

With far transfer, however, students must take skills and transfer them to a wholly different context, requiring students to adapt the skills to a unique situation.³⁵ Far transfer requires students to “recogniz[e] that existing skills apply in a new situation, recall[] those skills, and then judge[e] how to use them appropriately for the change in circumstances.”³⁶ Thus, far transfer is the ultimate goal; students should be able to take generalized knowledge

²⁸ Kowalski, *True North*, *supra* note 8, at 54.

²⁹ *See id.* at 54, 62.

³⁰ Bowman & Brodoff, *supra* note 22, at 278, 293.

³¹ Binder & Bergman, *supra* note 15, at 197–98.

³² *Id.*

³³ *Id.* at 198.

³⁴ *Id.*

³⁵ *Id.* (“Far transfer situations require the ability to adapt general principles to the unique needs of specific problems.”).

³⁶ Kowalski, *Teaching Legal Writing*, *supra* note 25, at 291.

learned during the 1L year and apply it outside of the classroom setting.³⁷ The key to achieving far transfer is to deepen the scaffolding of those memories—meaning building “stronger and more inclusive” schema to encourage “easy retrieval”³⁸—to allow for better recall in future applications of skills learned in law school. Through the Club, we attempted to improve far transfer—meaning the ability to nimbly retrieve and apply memories later—by “scaffolding” those memories as they were encoded.³⁹

B. Encoding of Memories Generally

The ability to transfer information learned in one setting to another begins with the encoding of memories while learning skills in the classroom. That learning process requires three cognitive steps: encoding, storage, and retrieval.⁴⁰

Encoding is essentially a learner’s first encounter with new information and the effectiveness of the encoding controls the future impact that information will have on the learner. As “the first stage of learning and memory,” encoding is particularly crucial.⁴¹ Encoding begins with attaching meaning “to information from incoming stimuli . . . based on our prior knowledge, experience, and associations.”⁴² The brain cortex then analyzes the information and determines how to store it.⁴³ Thus, encoding is “the process of relating incoming information to concepts and ideas already in

³⁷ See Bowman & Brodoff, *supra* note 22, at 271–72; Archer et al., *supra* note 6, 272.

³⁸ Archer et al., *supra* note 6, at 274 (explaining that helping students to build “stronger and more inclusive” schema encourages “easy retrieval.”).

³⁹ Archer et al., *supra* note 6, at 265–66 (noting that scaffolding, or the integration of “new information into existing frameworks of knowledge,” may provide “clear benefits to both near and far positive transfer.”).

⁴⁰ Vaughn, *supra* note 7, at 1010.

⁴¹ Crichton, *supra* note 9, at 271.

⁴² *Id.* at 271–72.

⁴³ *Id.* at 272.

memory” so that “the new material is more memorable.”⁴⁴ Three factors influence that process: attention, prior knowledge, and active learning.

First, the learner’s attention during encoding affects how the brain stores information and how readily the brain can later retrieve it.⁴⁵ If the learner is consciously attentive at the encoding stage, the brain encodes the information in short-term memory.⁴⁶ If the learner also pays close attention during encoding, the brain then transfers the information from short-term into long-term memory.⁴⁷ The creation of those long-term memories is an essential element of effective education.⁴⁸

Significantly, emotions can detract from or enhance attention during the encoding process.⁴⁹ Learners pay more attention to information when emotionally engaged.⁵⁰ For example, research suggests that interest boosts attention.⁵¹ Increased attention makes it more likely that information will be encoded and retained, hence making it available for recall.⁵² Negative emotions, such as stress, interfere with attention.⁵³ Faced with fear and

⁴⁴ Binder & Bergman, *supra* note 15, at 199 n.31 (quoting Marcy Driscoll, *PSYCHOLOGY OF LEARNING FOR INSTRUCTION* 84 (1994)).

⁴⁵ Crichton, *supra* note 9, at 273 (“Attention at encoding . . . influences what information moves into short-term or long-term memory, how long the information is stored, and how easily that information can be retrieved and recalled.”).

⁴⁶ *Id.*

⁴⁷ *Id.*; see also Scott DeVito, *The Power of Stories and Images in Law School*, 53 *WASHBURN L. J.* 51, 58 (2013) (“To be learned, something must first be passed from sensory memory to short-term memory and then from short-term memory to long-term memory.”).

⁴⁸ Archer et al., *supra* note 6, at 262 (“the ability to create long-term memories is practically the definition of effective instruction”); Bowman & Brodoff, *supra* note 22, at 276 (“true learning first requires the creation of long-term memories.”); Crichton, *supra* note 9, at 272 (“Learning is impossible without memory.”).

⁴⁹ Crichton, *supra* note 9, at 274 (“Emotions are also critical to learning because emotions influence attention.”).

⁵⁰ Vaughn, *supra* note 7, at 1008.

⁵¹ Bloch, *supra* note 8, at 962, 992

⁵² Vaughn, *supra* note 7, at 1008; Crichton, *supra* note 9, at 275.

⁵³ Crichton, *supra* note 9, at 281 (Explaining that stress negatively affects “cognitive processes such as attention.”).

anxiety, the amygdala prioritizes the body's stress response over paying attention to other inputs.⁵⁴

Second, prior knowledge affects encoding. Because students filter information “through their existing knowledge and understanding of the world,” they learn by incorporating newly learned information into their “pre-existing mental models.”⁵⁵ To transfer information from short-term to long-term memory, it must be meaningfully “integrated with prior knowledge.”⁵⁶ Thus, the integration of “new information into existing frameworks of knowledge” can promote the “encoding of information into long-term memory.”⁵⁷

Finally, active learning promotes encoding.⁵⁸ “Learning is not a spectator sport . . . [students] must talk about what they are learning, write about it, relate it to past experiences, apply it to their daily lives.”⁵⁹

Thus, when designing the Club, we utilized these encoding principles to guide us, creating an environment in which students were engaged and active, with a focus on skills previously learning in the classroom. We also utilized general transfer principles to shape the Club in an effort to “scaffold” these memories and allow for more effective retrieval outside of the classroom.

⁵⁴ *Id.* at 272.

⁵⁵ Bloch, *supra* note 8, at 966.

⁵⁶ Fordyce-Ruff, *supra* note 6, at 40; *see also* Cristina D. Lockwood, *Improving Learning in the Law School Classroom by Encouraging Students to Form Communities of Practice*, 20 CLINICAL L. REV. 95, 106 (2013) (“individuals store information in long-term memory in a meaningful way based on existing cognitive structures or schema.”).

⁵⁷ Archer et al., *supra* note 6, at 265.

⁵⁸ Warren, *supra* note 14, at 87 (“Having learners work actively with the material promotes encoding.”).

⁵⁹ Bloch, *supra* note 8, at 968 (quoting CHARLES C. BONWELL & JAMES A. EISON, *ACTIVE LEARNING: CREATING EXCITEMENT IN THE CLASSROOM* 3 (Bryan Hollister ed. 1991)).

C. The Club as an Effort to Scaffold Memories and Increase Transfer: Using Stories, Creating Communities of Practice, and Reducing Stress

Through the Club, we sought to use principles of transfer to enhance students' ability to remember and apply these skills outside of the classroom. By introducing skills learned in the classroom in a wholly separate context, we attempted to facilitate a deepening of those memories, to increase the likelihood students would be able to recall them in the future. In particular, the Club employed three strategies to help promote transfer—use of stories, formation of communities of practice, and reduction of stress.

1. Storytelling as a Means of Increasing Transfer

Scholars have long recognized the use of stories, or examples, to enhance learning. Using stories is a foundation of legal education; indeed, cases used in all 1L doctrinal classes contain stories. But stories serve a more important purpose in skills teaching, as they can be used to deepen students' understanding of skills and enhance learning.⁶⁰ Specifically, showing how a skill is used in different contexts allows students to recognize that skills are applicable to varied situations.⁶¹ In doing so, the “schema” where the memory is encoded is strengthened; students can then recognize the diverse applicability of the same skill in different contexts.⁶² The more

⁶⁰ Vaughn, *supra* note 7, at 1028 (noting that “pedagogy must incorporate storytelling” to teach lawyering skills.); *see also* Ted Becker, *Transferability: Helping Students and Attorneys Apply What They Already Know to New Situations (Part 1)*, 98 MICH. BAR J. 50, 51 (2019) (“[E]xplicitly showing where and how a skill learned today may be useful tomorrow” has been shown to enhance transfer).

⁶¹ Archer et al., *supra* note 6, at 273 (“[W]ithout continued challenges to match that learning to increasingly varied contexts, it will tend to be ignored as germane only to its original, limited context. When the mind searches for relevant knowledge and skills to apply in a new situation, it will pass over the contextually limited knowledge unless the schema is broad enough and strong enough to signal that the information is relevant.”).

⁶² Binder & Bergman, *supra* note 15, at 201 (“[C]linical instructors can promote the likelihood of transfer by incorporating the features set forth below into their courses Research demonstrates that students accumulate knowledge through ‘many opportunities

opportunities the students have to observe any skill in different contexts, the better able students will be to recall that information later on in a totally unrelated context.⁶³ Thus, providing numerous examples for students can actually improve student learning.

Using interesting, engaging examples of how skills are used in other contexts further enhances encoding of information. Stories provide a recognizable structure for students—a beginning, middle, and end—with easily digestible chunks by which students can encode information.⁶⁴

for observing similarities and differences across diverse events”); Derrick Howard, *Phantom Thread: Restoring Live-Client Interactions to the First-Year Educational Continuum in This Age of Information and Beyond*, 81 U. PITT. L. REV. 597, 644 (2020) (“Student exposure to issues that arise in diverse practice areas creates opportunities for the student to develop near and far transfer skills by testing new ideas in novel and unexpected situations.”); ROBERT E. HASKELL, *TRANSFER OF LEARNING: COGNITION, INSTRUCTION AND REASONING* 26–27 (Academic Press 2001) (“The research on teaching for transfer clearly shows that for transfer to occur, the original learning must be repeatedly reinforced with multiple examples or similar concepts in multiple contexts, and . . . on different levels and orders of magnitude.”).

⁶³ Binder & Bergman, *supra* note 15, at 200–01 (suggesting that clinical instructors can increase the likelihood of transfer by allowing students to “encounter the same type of problem in different contexts.”); Howard, *supra* note 62, at 644 (“Student exposure to issues that arise in diverse practice areas creates opportunities for the student to develop near and far transfer skills by testing new ideas in novel and unexpected situations.”); Becker, *supra* note 60, at 52 (“From a transfer perspective, providing multiple opportunities to apply knowledge and develop a particular skill helps students build stronger mental scaffolding to aid recall months and years into the future.”); Bowman & Brodoff, *supra* note 22, at 280 (“The educational literature provides several different strategies that can help students more effectively overcome these challenges and transfer their learning from one context to another. One key strategy involves providing repeated opportunities for practice over the longer term, with variation in contexts and circumstances.”); Christine N. Coughlin et al., *See One, Do One, Teach One: Dissecting the Use of Medical Education’s Signature Pedagogy in the Law School Curriculum*, 26 GA. ST. U. L. REV. 361, 385 (2010) (“Seeing varied samples to teach legal concepts, however, is an ‘active learning’ device that, if used intentionally and deliberately, will allow students to engage with and internalize the material . . . Scholars in other fields have noted that students may better understand concepts underlying tasks they must perform when they first see examples of how experts have performed the same tasks.”).

⁶⁴ DeVito, *supra* note 47, at 53 (“The value of stories for first-year law students is consistent with the recognition that people learn better and can absorb more when the material can be put into a recognizable structure. Stories provide that structure for first-year law students.”); Vaughn, *supra* note 7, at 1013 (hypothesizing that “the use of

Stories are also engaging, and students more readily absorb information when interested and thus engaged.⁶⁵ Because stories are memorable, students are likely to draw upon them and analogize them to other contexts in the future—the basis of transfer.⁶⁶ Finally, stories, particularly those used to complement skills taught in class, allow for reflection; that reflection in turn helps encode the information.⁶⁷ Beyond assisting encoding and recall, stories provide a crucial benefit: stories create empathy, develop professional identity, and teach narrative as a lawyering skill.⁶⁸

stories enables the law student to develop bigger “chunks” of memory during the typical class.”); Bloch, *supra* note 8, at 983 (“[P]eople are good at remembering stories and may be better at remembering stories than expository text generally.”).

⁶⁵ See Bloch, *supra* note 8, at 984–85 (Stories are “a common means of engaging students in understanding concepts, principles, or theories.”).

⁶⁶ *Id.* (Stories are memorable and remain with students, allowing learners to “draw upon their experience with the story to remember how their pre-existing knowledge was modified or solidified by application to a new context.”); see also Vaughn, *supra* note 7, at 1003 (“Emotionally charged events are more likely to capture our attention and be remembered. A beneficial consequence of this emotional fixation is that it focuses attention on the content, context, and meaning of a story. This context is the platform that allows later and successive integration of the details. Thus, stories work because they focus attention and provide a context for learning the details, that is, the law.”).

⁶⁷ Lockwood, *supra* note 56, at 108 (“Further, students can use story-telling as a method of reflection. Crafting and telling stories, along with listening to relevant stories, can ‘ignite reflection,’ ‘stimulate critical thinking,’ and facilitate encoding of information.”).

⁶⁸ DeVito, *supra* note 47, at 54–55 (Stories can be “used to broaden students’ understanding of the world and themselves by developing student empathy and compassion, to build student insight into the oppressive nature of ‘the received wisdom’ or current system, to empower students who are members of out-groups, while helping students who are members of in-groups see what they cannot see because of their ‘in’ status, and to expose students to the idea that the world is socially created.”); Bloch, *supra* note 8, at 986 (discussing the power of Stories to “connect us across cultures and differences . . . prepare students for clients from diverse backgrounds . . . [and] help students understand how culture and difference may contribute to perspective.”); DeVito, *supra* note 47, at 55–56 (noting a study finding that “the formation of student professional identity was linked to the storytelling.”); Bloch, *supra* note 8, at 985 (discussing using narratives as a lawyering skill: “Good lawyering also commonly involves telling stories. As a former trial lawyer, I recall the (sometimes panicked) search for a story to scaffold a closing argument. Furnishing examples of narratives can thus also help students focus on narrative as a lawyering skill.”).

Ultimately, we hoped that the use of these stories in the Club would help scaffold long-term memories, which would ultimately promote transfer. All three of the media used in the Club—“How to Fix a Drug Scandal,” “In the Dark” (Season Two), and “Just Mercy”—involved compelling stories related to the criminal legal system and raised important social issues. The stories were told in digestible pieces. Specifically, we divided the “In the Dark” podcast into two separate Club meetings, to ensure that we kept students’ attention. Moreover, during each meeting, we discussed racial disparities while also highlighting the skills that these attorneys used. Demonstrating legal skills in different contexts helps scaffold and permits students to recognize how those skills are used in different contexts.⁶⁹ We aimed to improve the learning environment while scaffolding the memories—meaning the skills taught in our Lawyering Skills class—to allow for better recall outside the classroom.

2. Utilizing Cooperative Learning, or Communities of Practice, to Increase Transfer

By using a small group setting, the Club may have facilitated learning as well as community building. Utilizing smaller groups can provide a setting in which most students thrive, including those who struggle in the larger doctrinal classroom setting.⁷⁰ Communities of practice, or cooperative learning groups, involve smaller environments where students learn together by sharing experiences and building relationships.⁷¹ These learning

⁶⁹ Becker, *supra* note 60, at 52; Howard, *supra* note 62, at 644.

⁷⁰ See Bloch, *supra* note 8, at 978 (noting fear of public speaking is common amongst college students and especially common in students with English as a second language); see Bloch, *supra* note 8, at 980 (observing that women struggle in traditional Socratic method).

⁷¹ Lockwood, *supra* note 56, at 111–12 (quoting ETIENNE WENGER, RICHARD MCDERMOTT & WILLIAM M. SNYDER, *CULTIVATING COMMUNITIES OF PRACTICE: A GUIDE TO MANAGING KNOWLEDGE* 34 (2002)) (describing community as “‘a group of people who interact, learn together, build relationships . . . in the process of develop a sense of belonging and mutual commitment.’ This interaction generates knowledge . . .”).

environments provide immeasurable benefits for students that increase learning. These benefits include deepening relationships with classmates,⁷² teaching students to work with diverse colleagues, allowing free and more robust discussion with peers,⁷³ promoting identity development,⁷⁴ and reducing anxiety,⁷⁵ all of which increase transfer.⁷⁶ Smaller groups allow for more active learning, with every member as part of the dialogue.⁷⁷

The Club utilized this small group structure to improve transfer and build community during a particularly difficult time. While the number of students in each session varied, the groups were relatively small; when the group was too large for one discussion group, we used Zoom breakout rooms to facilitate small group discussion. We provided questions for students to encourage thoughtful discussion and sharing. If we were gathered in a large group, we both shared our opinions and reactions equally with the students. If we divided the class into breakout rooms due to

⁷² *Id.* at 127 (“Recognizing the power of narrative, the professor can encourage the students to tell stories about themselves as a means of learning about each other.”).

⁷³ *Id.*

⁷⁴ *Id.* at 114–15 (discussing communities of practice assisting with identity development).

⁷⁵ Bloch, *supra* note 8, at 999 (“[T]he somewhat more relaxed (or perhaps less intimidating) environment that small group cooperative learning enhances may also serve to reduce students’ stress in the classroom.”).

⁷⁶ Lockwood, *supra* note 56, at 123 (“[S]tudies demonstrate that student learning is enhanced when students learn in groups.”); see also Bloch, *supra* note 8, at 977 (quoting Vernellia R. Randall, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T.M. COOLEY L. REV. 201, 204 (1991)) (“Cooperative learning can help the professor teach a diverse student group. Most importantly, Cooperative Learning contributes to the ability of a lawyer to work with a diverse group of people . . . Cooperative Learning environments improve gender and racial interactions. Cooperative Learning teaches tolerance based on respect. Research shows that Cooperative Learning results in students liking each other more “regardless of individual differences in ability level, sex, disabling conditions, ethnic [and racial] membership, social class differences or task orientation.”).

⁷⁷ Bloch, *supra* note 8, at 979–81 (Communities of practice generate knowledge more broadly than other instructional approaches—the Socratic method is a version of active learning, but more so for those students in the actual dialogue than for those just listening to the dialogue).

numbers, we visited the breakout rooms to interact with each smaller group. In this format, students were able to deepen their relationships with peers and with us, outside of the classroom. This format also allowed for an exchange of ideas and thoughts, and the opportunity to hear diverse perspectives—all of which, we hope, promoted learning and created community despite the extra hurdles in place as a result of the pandemic.⁷⁸

3. Reducing Stress to Increase Transfer

Finally, the Club served to reduce stress during an unprecedented time, which in turn may have improved learning. Reduction of stress is significant because law students are notoriously among the most stressed of all graduate students.⁷⁹ BIPOC students, in particular, face heightened anxiety as a result of the stressors associated with being part of a marginalized group, which can have residual impacts on learning.⁸⁰ In recent years, with a confluence of social factors, students have faced numerous stressors that impact the classroom. Thus, reducing those stressors is critical to maximizing the learning environment. Researchers have found that “positive, happy moods boost the cognitive processes that enhance transfer, while negative, sad moods deteriorate them.”⁸¹ As educators, we must strive to develop ways to reduce our students’ stress levels to optimize learning, and ultimately transfer.

⁷⁸ See Lockwood, *supra* note 56, at 112.

⁷⁹ Crichton, *supra* note 9, at 259 (“Law students are the most anxious and stressed of all graduate students.”); Lawrence S. Krieger, *Institutional Denial About the Dark Side of Law School, and Fresh Empirical Guidance for Constructively Breaking the Silence*, 52 J. LEGAL EDUC. 112, 113–14 (2002) (describing research finding high prevalence of anxiety among law students).

⁸⁰ Crichton, *supra* note 9, at 254 (“Even more so than their White colleagues, law students of color and of historically marginalized groups are at even greater risk for StressPlus: elevated stress levels caused by feelings of fear and anxiety because of additional psychosocial stressors associated with belonging to a marginalized group.”).

⁸¹ Kowalski, *True North*, *supra* note 8, at 104.

The Club seemed to serve this purpose. When we launched it, students were faced with pandemic restrictions—including social distancing and mask requirements—which made making organic connections with peers extremely difficult. The Club allowed for the type of socializing outside of the classroom that was sorely lacking during the 2020–2021 school year. In addition, the Club provided an outlet for students to discuss racial inequities in the law, a topic which was also lacking from most of their 1L courses but was ever present in their everyday lives.

This low stakes, optional Club provided students an opportunity to make these connections while learning and discussing important issues—all of which we hoped would help reduce their stress levels and help solidify their skills. As professors, we were also grappling with feelings of isolation and fear during the pandemic; it is not an understatement to say that the Club also helped us stay energized, deepen our relationship as colleagues, and make new connections with students during a difficult time.

III. INJECTING SOCIAL JUSTICE INTO THE 1L CURRICULUM ENHANCES TRANSFER OF LEARNING, FULFILLS A CRITICAL EDUCATIONAL PURPOSE, AND RESPONDS TO THE ABA’S MANDATE AND PROPOSAL

In this Section, we strive to connect the ideas of general cognition and transfer of learning discussed in Section II to the need for incorporating themes of social justice into the 1L curriculum. One of the goals of the Club was to inject social justice themes that we felt were lacking in our Lawyering Skills course and potentially in the 1L curriculum more broadly. Planting social justice seeds into the professional identities of all lawyers, regardless of their eventual practice area, is critically important for professional development.

In addition, this strategy serves several practical, pedagogical purposes. With transfer as the primary goal, as discussed above, it is critical to capture students’ passion and interest when teaching skills. Thus, while we formed

the Club with the idea that incorporating social justice themes into the law school curriculum was a choice we wanted to make, along the way we discovered that it is, indeed, a mandate.⁸² Law professors should no longer have the option to teach law under the façade of a neutral vacuum. In particular, the 1L skills classroom should, at least in part, teach students to see the law through a social justice lens. Additionally, injecting real life social justice stories into the 1L skills curriculum serves the added benefit of increasing transfer of learning.

A. What Does the Term “Social Justice” Mean?

“Social justice” is a seemingly broad term. Law students, and even law professors, often use it as a general complement to for-profit legal work or to loosely encompass any type of impact lawyering. However, a more specific definition is needed to adequately incorporate these concepts into the classroom:

Professors Pamela Edwards and Sheila Vance define social justice as ‘the process of remedying oppression, which includes exploitation, marginalization, powerlessness, cultural imperialism, and violence.’ Further, they define issues of social justice to include problems involving race, ethnicity, and interracial conflict, ‘class conflict, gender distinctions, . . . , religious differences,’ and sexual orientation conflicts. Social justice is at the core of real-world issues that directly or indirectly affect law students of color and of historically marginalized groups, their families, and members of their communities.⁸³

⁸² Binder & Bergman, *supra* note 15, at 194 (quoting William Pincus, *Educational Values in Clinical Experience for Law Students*, CLEPR NEWSLETTER, Vol. II, No. 1, Sept. 1969, *reprinted in* CLINICAL EDUCATION FOR LAW STUDENTS 78 (Council on Legal Educ. for Prof. Resp. ed., 1980)) (“Clinical legal education should help to make the future lawyer sensitive to the broad issues going beyond the immediate cause. It should give [them] practice in how to act as a lawyer in making constructive change in justice in the course of [their] professional work.”).

⁸³ Crichton, *supra* note 9, at 287 (quoting Edwards & Vance, *supra* note 16, at 64).

Thus, the term “social justice” is not just a general concept or a foil for profit-generating legal work; rather, it is a detailed, focused term that requires professors to make equally detailed, focused efforts to incorporate these critical concepts into the curriculum.⁸⁴

B. Social Justice Should Be Incorporated into the Law School Curriculum Generally and the 1L Skills Curriculum Specifically

1. Law School Curriculum Generally

We believed, and intrinsically knew, that incorporating themes of social justice into the law school curriculum was critical for all students, especially for those from marginalized communities.⁸⁵ When professors explore social justice themes through class discussion and assignments, it can alleviate the burden on marginalized students, who are often required to provide that context themselves.⁸⁶ In addition, it has the more cumulative impact of creating lawyers, regardless of identity and community, who identify and work to eliminate bias in the law.⁸⁷

The COVID-19 pandemic and the Black Lives Matter movement in the summer of 2020, followed by a sharp rise in anti-Asian hate crimes, magnified the need to highlight issues of social justice in the classroom.

⁸⁴ *See id.*

⁸⁵ Edwards & Vance, *supra* note 16, at 64–70 (listing several reasons to incorporate social justice into curriculum: (1) encourages a diverse student body; (2) maintains student interest; (3) raises and addresses issues of race, ethnicity, class, and gender in society; (4) supports the creation of more sensitive and understanding attorneys; (5) broadens students’ exposure; and (6) provides an outlet for students’ voices); *see also* Crichton, *supra* note 9, at 257 (suggesting that “[i]ncorporating issues of social justice into the law school curriculum” is particularly important because doing so “empowers and motivates law students of color and of historically marginalized groups to learn.”).

⁸⁶ Edwards & Vance, *supra* note 16, at 64 (“Addressing social justice issues in legal writing would expose ingroup students to alternative perspectives while alleviating some of the burden outsider students bear to provide this perspective.”).

⁸⁷ *Id.* (“Scholars have argued that by hearing outsider stories, members of the ingroup develop the ability to understand the different perspectives and experiences of outsider groups. These different perspectives and experiences will help to identify and eventually to eliminate biases in the law.”).

Lindsay Till Hoyt provides a snapshot of this importance for BIPOC students:

. . . Black and multiracial students had the highest scores on . . . measures [of stress] in July [of 2020]. These trends are likely linked to both the disproportionate health and economic effects of the pandemic on people of color, as well as the simultaneous stressors related to structural racism, specifically with increased national attention on police violence in summer 2020. While Black American college students' activism has been previously linked to positive mental health, it may be that the activism spurred by the newest wave of national protests present unique stressors in terms of the COVID-19 context as well as the increased backlash to the Black Lives Matter movement. Meanwhile, multiracial youth may be experiencing heightened, stress-inducing questions about ethnic-racial belonging amidst the national conversation about anti-Black racism.⁸⁸

As previously mentioned, law students experience a great deal of stress.⁸⁹ BIPOC students experience even more stress when “othering” seeps into the classroom, accompanied by a sense of powerlessness.⁹⁰ Having

⁸⁸ Lindsay Till Hoyt, “*Constant Stress Has Become the New Normal*”: *Stress and Anxiety Inequalities Among U.S. College Students in the Time of COVID-19*, 68 J. ADOLESCENT HEALTH 274 (2021); *see also* Crichton, *supra* note 9, at 255 (“Law students are usually tethered to their computers and mobile devices and are plugged into social media, which make them a captive audience to a constant source of news that reminds law students of color and of historically marginalized groups of their vulnerability. This reminder makes them even more prone to conscious and subconscious feelings of fear and anxiety.”).

⁸⁹ Crichton, *supra* note 9, at 259 (“Law students are the most anxious and stressed of all graduate students.”).

⁹⁰ *See id.* at 264 (“Large scale negative race-related societal events are macro-stressors, and exposure to these macro-stressors can cause elevated stress levels.”); *id.* at 265–66 (“Everyday discrimination includes othering and related social exclusion and ‘interpersonal and daily hassles and insults such as receiving inferior service and being unfairly followed in stores.’ The stressors follow the student into the classroom. Discrimination outside of the classroom contributes to the perception of discrimination inside the classroom. A student’s past experiences with discrimination can increase his or her vigilance for incidents of future discrimination. If the evidence of discrimination

professors shoulder more of this burden wherever possible would help alleviate the strain on BIPOC students.⁹¹ Increased awareness and acknowledgment of the biases and imperfections of the law would help create a better, more productive environment for students and professors alike. Incorporating issues of social justice into teaching, as early in the law curriculum as possible, empowers students to see their education as a tool to better the problematic world currently causing them stress.⁹²

outside and inside the classroom is ignored, the impact mushrooms, inhibiting the affected student's ability to learn.”).

⁹¹ See Edwards & Vance, *supra* note 16, at 64.

⁹² Crichton, *supra* note 9, at 257–58 (“The ongoing reports of heightened racial and ethnic conflicts and attacks on diversity, in addition to the surveys indicating that first-year law students experience extraordinarily high stress levels, suggest the first-year law students of color and of historically marginalized groups are at an increased risk for StressPlus. This is an important reason why law schools should introduce issues of social justice early—ideally, in the first-year curriculum. The first-year legal writing course is an excellent place to start because teaching law students legal research, reasoning, and writing skills and teaching them how to use those skills to work on issues of social justice empowers students by imbuing them with the confidence that they can influence legal and social change to help real people . . . Additionally, working on issues of social justice helps law students re-evaluate situations and familiar experiences that are psychosocial stressors, driving them to alter their perception of control over those stressors. An enhanced perception of control makes the students less likely to internalize the stressors and become stressed.”); *id.* at 253 (noting that students of color have anxiety about the events in the world: “These reports of police shootings cause fear and anxiety in communities of color and frustrate other concerned citizens. Law students of color are also fearful and anxious . . . Law students of color are aware that because of an immutable trait—their race—they are not immune or insulated from such tragedy.”); *id.* at 286 (“Law schools may not have the power to eliminate the stressors that cause law students of color and of historically marginalizes groups to experience StressPlus, but they can create learning environments to help this cohort of students prevent or reduce the stress impact that is known to hinder effective learning. Incorporating social justice issues into the first-year law school curriculum and especially into the first-year legal writing course, will contribute to such a learning environment.”).

2. 1L Skills Curriculum Specifically

Specifically, themes of social justice should be a critical component of the 1L legal skills curriculum.⁹³ “Social justice can be taught, ignored, or intentionally not taught when teaching law.”⁹⁴ Some, but not all, 1L doctrinal professors incorporate themes of equity, justice, and the law’s impact on marginalized communities into their courses.⁹⁵ However, others teach those same classes through a seemingly neutral lens. Fostering a non-neutral classroom and teaching students to recognize inequities within the law and to understand that every legal story involves systemic problems better prepares them to do the same in practice.⁹⁶ If professors do not provide this context, it is unlikely students can, or will, do it on their own.⁹⁷

Skills classes, which by their nature focus student attention on varied legal scenarios, are the ideal vehicle through which to guarantee 1L exposure to social justice themes.⁹⁸ Through the legal issues explored in

⁹³ *Id.* at 257 (“Drawing from the works of neuroscientists and educators, this Article extends the call to incorporate issues of social justice as a mandatory component of the first-year law school curriculum, starting with the first-year legal writing course.”).

⁹⁴ Rand, *supra* note 13, at 93; see also Christian Sundquist, *The Future of Law Schools: Covid-19, Technology, and Social Justice*, 53 CONN. L. REV. ONLINE 1, 14 (2020) (“The failure to address bias in the classroom tends to reproduce hierarchies in legal education by presenting the ‘law’ as equal and neutral without taking into account the many ways in which ‘law’ has and can be used to support racial and social inequality and subordination.”); HOW TO BE AN ANTIRACIST, IBRAM X. KENDI 18 (2019) (“There is no such thing as a nonracist or race-neutral policy. Every policy in every institution in every community in every nation is producing or sustaining either racial inequity or equity between racial groups.”).

⁹⁵ See Rand, *supra* note 13, at 80 (“Particularly, . . . law schools teach doctrine and ways to think like a lawyer well but struggle in many other areas, including teaching the shared professional duty to care for the public and serve and promote social justice.”).

⁹⁶ Sundquist, *supra* note 94, at 14; Kendi, *supra* note 94, at 18.

⁹⁷ Rand, *supra* note 13, at 82 (Students “cannot be expected to come up with this in substantive law, skills, or professionalism courses without faculty intentionally pointing out social justice implications. [This article] asks faculty and others involved with creating learning experiences for students to intentionally teach in a way that allows students to define and understand [social justice].”).

⁹⁸ Crichton, *supra* note 9, at 258 (“The first-year legal writing course is an excellent place to start because teaching law students legal research, reasoning, and writing skills

writing assignments and the characters that populate them, students can learn traditional legal skills, like research and writing, for the first time within the social justice context.⁹⁹ For example, in a civil case involving a potential forced sale of an elderly woman's home to a seasoned real estate developer, students might both learn about the statute of frauds and the dangers of gentrification and quick, electronic dealings between parties with different levels of sophistication. Incorporating social justice maintains student interest during the slog of 1L year and stokes the original fire that caused many students to choose law in the first place.¹⁰⁰

Additionally, most law school students take a smaller, skills-driven 1L writing course. Therefore, injecting social justice themes at that stage guarantees broad coverage across the class.¹⁰¹ Further, 1L skills classes almost uniformly focus on writing, the most critical tool used by lawyers fighting for social change. Thus, making that connection earlier, rather than later, is useful.¹⁰² Writing can also be a tedious task for those to whom it does not come naturally. Injecting themes of social justice "helps spark student interest and motivation."¹⁰³

and teaching them how to use those skills to work on issues of social justice empowers students by imbuing them with the confidence that they can influence legal and social change to help real people.").

⁹⁹ Choosing issues and characters for assignments that reflect people from marginalized communities and the issues they face in legal systems allows students from those same communities to recognize their lived experiences in examples and generally increases learning. See Edwards & Vance, *supra* note 16, at 65 ("... law students who come from backgrounds other than white, middle class backgrounds may find little in law school that bears out their life experiences.").

¹⁰⁰ *Id.* ("By introducing issues of social justice early in law school, professors introduce students who entered law school with an interest in practicing public interest law to situations they will face as attorneys . . .").

¹⁰¹ Crichton, *supra* note 9, at 293 ("Incorporating issues of social justice into a mandatory first-year course ensures that all students are directly exposed to real-world issues that affect real people of diverse backgrounds.").

¹⁰² *Id.* at 290 ("[L]egal writing has a long and proven history of creating social change.").

¹⁰³ *Id.* at 288–89 ("In a survey of legal writing programs and professors, 'survey responders commonly reported that incorporating social justice into the legal writing classroom or curriculum, even on a small scale, helps spark student interest and

Moreover, timing is crucial, as “[w]aiting beyond the first year may be too late.”¹⁰⁴ It is insufficient to leave social justice teaching to the 2Ls and 3Ls who specifically choose those paths:

. . . [L]imiting social justice education to clinical and out-group classes will not work and is both short-sighted and arrogant. In part, it is short-sighted because clinical and out-group classes are only a small part of many law school’s curricula and fail to reach the majority of students. Except for a few law schools that require all students to take some form of poverty law course, many law students have no out-group class requirements and will not take many (or any) social justice focused courses. Limiting teaching of social justice to clinical and out-group classes leaves many students with little to no social justice instruction and in turn, little opportunity to learn about social justice in law school.¹⁰⁵

Earlier is better because many students initially come to law school to be impact or public interest lawyers. Whether due to organically changing interests or practical realities, they often change course during their 1L year.¹⁰⁶ Before 1Ls make that change and divert their attention toward more specific learning tracks, the 1L curriculum and the 1L legal skills class, in particular, provide the best opportunity for the law school to show all students that social justice can, and should, play a role in their lawyering regardless of their chosen path.¹⁰⁷ “Teaching law students the skills to address social justice empowers them to view the law as a vehicle for change and shows them that they have a role in effecting both legal and

motivation.’ This is especially true for law students of color and of historically marginalized groups. Interest affects motivation (sic). Motivation builds emotional resilience and enables learning and cognition.”).

¹⁰⁴ *Id.* at 290.

¹⁰⁵ Rand, *supra* note 13, at 96.

¹⁰⁶ *See id.* at 91–92 (“Students conclude that they should become legal technicians instead of thoughtful community leaders. They can easily think that their role is to act as passive practitioners who apply and create law in a moral and ethical vacuum to the advantage of their clients.”).

¹⁰⁷ *See id.* at 77.

social change.”¹⁰⁸ All lawyers, regardless of practice type, should see and tackle social justice issues and systemic inequities wherever they arise.¹⁰⁹

Further, perhaps most importantly and for all of the same reasons outlined above in Section II, injecting social justice into the skills curriculum increases transfer of learning.¹¹⁰ For example, “by incorporating social justice issues into the first-year legal writing course, students learn that their legal writing skills are transferable” for the purpose of effecting change.¹¹¹ Further, grappling with writing assignments that evoke positive emotions and show students that mastering the skills is directly connected to effecting important change, increases motivation, positivity, and interest, and thus transfer.¹¹² Simply put, “[s]tudents are more motivated on

¹⁰⁸ Crichton, *supra* note 9, at 288.

¹⁰⁹ Rand, *supra* note 13, at 88 (It is important that all students view the law through a social justice lens: “We need some lawyers to focus their careers on promoting social justice, but we need all lawyers to practice through a social justice lens”).

¹¹⁰ Crichton, *supra* note 9, at 292–93 (“A first-year legal writing course that includes legal problems based on social justice issues and transfer-friendly teaching techniques can enable effective transfers. The ability to transfer newly acquired legal writing skills to different situations helps to build positive emotions, increases confidence, and facilitates learning.”).

¹¹¹ *Id.* at 292 (“While the students hone their legal writing skills, they also learn that they are able to transfer these skills to address new situations. For example, a law student who learns to write a memorandum assessing whether a person’s Fourth Amendment rights were violated has the skills to write a letter challenging an unfair lease.”); Kirsten Clement & Stephanie R. Hartung, *Social Justice and Legal Writing Collaborations: Promoting Student Engagement and Faculty Fulfillment*, 10 DEPAUL J. FOR SOC. JUST. 1, 17 (2017) (“[I]ncluding social justice examples in a thoughtful and deliberate manner supports more “real world, and better, teaching . . . Incorporating social justice issues or themes into the legal writing classroom helps students understand the importance of what they are learning in context, which has a greater impact on learning and retention. Students can more easily learn and appreciate what it means to practice law within the constraints that many practitioners experience—contradictory client stories; incomplete factual information; time and resource limitations; ethical considerations; and many more.”).

¹¹² Crichton, *supra* note 9, at 289 n.247 (quoting Darling-Hammond et al., HOW PEOPLE LEARN: INTRODUCTION TO LEARNING THEORIES, IN THE LEARNING CLASSROOM: THEORY INTO PRACTICE, A TELECOURSE FOR TEACHER EDUCATION AND PROFESSIONAL DEVELOPMENT 12 (2001)) (“[p]ositive emotions—feelings of confidence

assignments with a social justice component” and internal motivation specifically increases transfer of learning.¹¹³ Our goal as skills professors is to equip students with tools they can bring on the road, well beyond our classroom, and use in any context that arises. If incorporating social justice increases transfer, then it should be required.

C. The ABA Has Proposed That Social Justice Themes, Along with Instruction Related to Anti-Racism, Cultural Competence, and Anti-Bias, be Incorporated into Legal Education.

We did not have the American Bar Association’s (ABA’s) requirements and newest proposal in mind when we formed the Club. However, our Club is a starting point for checking several of the ABA’s existent and aspirational boxes. For example, the ABA has long required lawyers to devote at least part of their practice to helping those in need.¹¹⁴ In the Preamble to the Model Rules of Professional Responsibility, the ABA makes it clear that a lawyer is “a public citizen” who should seek to improve the law and the profession:

A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford

and willingness to exert effort—help students to think, perform a learning task, and process new knowledge”).

¹¹³ Crichton, *supra* note 9, at 258 n.34 (“[S]tudents are more motivated on assignments with a social justice component”); Kowalski, *True North*, *supra* note 8, at 102 (“psychological research shows that strong internal motivation is one of the key factors in successful transfer of learning. It is known to enhance the ability to retain, access, and adapt information for later use within different contexts.”); HASKELL, *supra* note 62, at 46 (Motivation “is a primary prerequisite for transfer to occur.”); Crichton, *supra* note 9, at 257 (“Incorporating social justice into the law school curriculum contributes to a learning environment that builds positive emotions and empowers and motivates law students of color and of historically marginalized groups to learn.”).

¹¹⁴ Rand, *supra* note 13, at 78.

or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.¹¹⁵

Where do lawyers learn how to do that? Teaching students about power imbalances and inequities in the law, and creating lawyers who practice with these realities in mind, must begin in law school.¹¹⁶

Helpfully, the ABA also sets standards for legal education, pushing law schools to create lawyers who are capable of heeding the call of the Preamble. For example, ABA’s Standard 302, which relates to learning outcomes, requires law schools to teach, among others, the following two competencies: “(c) [e]xercise of proper professional and ethical responsibilities to clients and the legal system; and (d) [o]ther professional skills needed for competent and ethical participation as a member of the legal profession.”¹¹⁷ The ABA specifically interprets Standard 302 to include “cultural competency” as one of the potential “other professional skills” referenced in requirement (d).¹¹⁸

¹¹⁵ *Id.* at 89 (“In its Model Rules of Professional Conduct Preamble, the ABA asks lawyers to remember that they are ‘public citizens.’ The Preamble explains that this includes ensuring access to the legal system, explicitly recognizing that poverty and ‘other social barriers’ can make ‘adequate’ counsel unaffordable. It asks all lawyers to ‘devote time and resources to use civic influence to ensure access.’”).

¹¹⁶ *Id.* at 80 (“To remain accredited, law schools must teach ways to address power imbalances by doing public service, and schools must show that they have inculcated in students the desire to do so when they graduate.”).

¹¹⁷ Am. Bar Ass’n, *Standards and Rules of Procedure for Approval of Law Schools 2021–2022*, 17 (2021) [hereinafter *Standards and Rules of Procedure for Approval of Law Schools 2021–2022*], https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2021-2022/2021-2022-aba-standards-and-rules-of-procedure.pdf [https://perma.cc/273G-VGSH]. The ABA also requires that law schools provide students with opportunities to do pro bono work. *See id.* at 18–19 (Interpretation 303-3 states that “[i]n meeting the requirement of Standard 303(b)(2), law schools are encouraged to promote opportunities for law student pro bono service that incorporate the priorities established in Model Rule 6.1. In addition, law schools are encouraged to promote opportunities for law students to provide over their law school career at least 50 hours of pro bono service that complies with Standard 303(b)(2).”).

¹¹⁸ *Id.* at 18.

In addition, ABA Standard 303 currently requires law schools to provide “(1) law clinics or field placement(s); and (2) student participation in pro bono legal services, including law-related public service activities.”¹¹⁹ In the wake of George Floyd’s murder in the spring of 2020, 150 law school deans, including our own Dean Angela Onwuachi-Willig, wrote a letter urging the ABA to require all law schools to train students with respect to bias, cultural competence, and racism.¹²⁰

In response, the ABA Standards Committee released a proposal in May of 2021 with two notable components.¹²¹ First, it proposed the expansion of Standard 303(b) to require law schools to add “development of professional identity” to the curriculum.¹²² “Professional identity” is explained by the ABA as follows:

Professional identity focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society. The development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice. Because developing a professional identity requires reflection and growth over time, students should have frequent

¹¹⁹ *Id.* at 18.

¹²⁰ Letter from Alicia Ouellette et al., to Members of the Council of ABA Section of Legal Educ., and Admissions to the Bar (July 29, 2020), <https://taxprof.typepad.com/files/aba-bias-cultural-awareness-and-anti-racist-practices-education-and-training-letter-7.30.20-final.pdf> [https://perma.cc/84LP-ZYVK] (Specifically, they wrote, “[p]reparing law students to be lawyers requires that they should be educated with respect to bias, cultural awareness, and anti-racism. Such skills are essential parts of professional competence, legal practice, and being a lawyer.”). As noted above, since the writing of this article, the ABA has approved the resolutions to amend Standards 205, 303, 507 and 508 of the ABA Standards and Rules of Procedure for Approval of Law Schools. *See* Memo from Select Committee of the ABA House of Delegates to the Members of the House of Delegates, Report on ABA Mid-Year Meeting (March 8, 2022), https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/select-committee-reports/2022-midyear-select-committee-report.pdf [https://perma.cc/488R-6CVN].

¹²¹ Memorandum from the Am. Bar Ass’n Standards Comm., *supra* note 13.

¹²² *Id.* at 8.

opportunities during each year of law school and in a variety of courses and co-curricular and professional development activities.¹²³

The proposal also pushes for further expansion of Standard 303 to include: “(c) A law school shall provide training and 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.”¹²⁴ Further interpretation explains that “the importance of cross-cultural competency to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law should be among the values and responsibilities of the legal profession to which students are introduced.”¹²⁵

The proposal also makes some specific suggestions for how law schools can add these new lessons, including:

(3) [c]ourses on racism and bias in the law; or (4) [o]ther educational experiences that train students in cross-cultural competency. While law schools need not add a required upper-division course to satisfy this requirement, law schools must demonstrate that all students are required to participate in a substantial activity designed to reinforce the skill of cultural competency and their obligation as future lawyers to work to eliminate racism in the legal profession.¹²⁶

Essentially, the ABA has always required lawyers to spend a portion of their career doing social justice work. Law schools have also been required to start students down that path. Now, however, the ABA is on the cusp of requiring law schools to do more to weave the concept of social justice and social justice lawyering into the development of professional identity.¹²⁷

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.* at 9.

¹²⁷ *Id.*

Considering issues of bias, cultural competency, and systemic racism—while also forging a professional identity—will only make it more natural for lawyers to honor the call of the Preamble when they leave school to begin their practice. While, admittedly, the way in which our Club dovetails with the ABA’s proposal was an after-the-fact realization, it bolsters our commitment to either continue the Club or push for it to take a new, more formal shape.

IV. STUDENTS’ REACTIONS TO THE CLUB AND A PROPOSAL TO EXPAND IT TO CREATE A 1L ELECTIVE COURSE

While we certainly enjoyed creating and stewarding our Club, it was important to seek feedback from students on whether they enjoyed it and how it impacted them. Student feedback, coupled with our own goals and realizations, spurred us to propose expanding the Club into a 1L elective course.

A. Student Surveys: Reaction to the Club

At the conclusion of the school year, we sent a survey to all twenty-eight students who participated in at least one session of the Club. Based on the survey results, the Club was successful in meeting its goals. Of the eighteen students who took our survey:

- All 18 students said they enjoyed the Club.
- All 18 students said it was worth the extra time in their 1L year to participate in the Club.
- 11 students said there were “too few” meetings, meaning they wanted to meet more times per semester.
- 17 students said that the stories of real-life lawyers presented in the material increased their desire to be a lawyer.
- All 18 students said they appreciated the themes of race, equity, and ethics presented in the material.

These results highlight only a few areas of interest to us and represent feedback from only a portion of the students who attended our sessions. The results, however, provide support for our hypothesis that students are interested in supplementing the traditional 1L curriculum with smaller classes focused on topics of interest. In addition, students wrote personal comments in our survey that showed that at least some were positively impacted by the Club.

Specifically, students commented on the community building aspect of the Club. Here are some select comments on this topic:

- “I loved connecting with students in a different section and also being able to meet people within my section that I’d only spoken to about coursework.”
- “I liked meeting people from other sections and talking about something other than law school.”
- “I enjoyed being able to connect and discuss worldly topics with professors . . . It made me feel much more connected to the school and faculty in this trying year and I think it would be beneficial even without COVID restrictions. Additionally, it was great to get some more overlap and meet students from other sections since we were so isolated.”
- “[M]eeting people in other sections . . . was my favorite aspect of the club.”
- “I thought it was really great to meet people in other cohorts/sections and to talk about something exciting in the legal field without the heaviness of doctrinal classes.”
- “Lovely space to connect w/ profs & peers alike, and hear more of their personal perspectives on the criminal legal system.”
- “I enjoyed the series, podcast, and movie and the opportunity to connect with peers in the breakout sessions, particularly as I was fully remote this year.”

Students also specifically commented on the way in which the Club differed from, or dovetailed with, their other 1L courses. They mentioned craving the addition of social justice themes and the opportunity to explore them during 1L year:

- “. . . during typical class there isn’t a ton of time to talk about those issues. It’s refreshing to discuss the empathetic, ethical, and moral situations associated with the law.”
- “I thought it was important to address these themes, as we don’t often have the chance to do it in the classroom.”
- “I felt it filled a gap that a lot of the 1L classes left in these areas, especially in the fall semester.”
- “. . . it gave me an opportunity to start thinking and discussing morality and ethics in law in a way that I think is sorely lacking from 1L curriculum.”
- “1L curriculum is interesting but can feel very stodgy and amoral (which I find drifts more easily into immorality than morality) and these stories gave an opportunity to see real work (or fictionalized real work) which was impactful and where the consequences of different trends or habits are laid bare, which I think is useful and empowering in 1L.”
- “If anything, a lot of the content made me excited to be done with 1L - there is a world of lawyering outside of casebooks, it seems!”
- “This was the only source of meaningful space for discussion about these topics in any professor-delivered ‘course’ content all year.”
- “I so enjoyed the club and having the chance to dig into some of the topics and ideas that touch all areas of our legal education yet never seem to get enough airtime in our 1L doctrinals.”

- “1L is crazy that so much of the material directly or indirectly deals with race or other marginalized groups but so little class time is given to discussing that in any meaningful way. Podcast Club was a nice, low-stress way to meet that need.”

Students also commented on how the Club impacted their desired career trajectory, clinic selection, and 1L summer job goals, showing that exposure to real-life lawyering stories helped students visualize their own legal careers and how they wanted them to unfold. Participating in the Club during 1L year, in particular, allowed students room to make adjustments and choices based on their newly discovered or reaffirmed interests:

- “It influenced me to definitely want to work on the defense side of the Criminal Law Clinic!”
- “It reaffirmed my interest in criminal justice reform.”
- “Podcast Club (combined with everything else we do and experience over 1L year) completely changed my mind on what I thought I wanted to practice. I came in dead set on civil litigation and now I’m spending the summer working for public defenders and I joined the criminal law clinic.”

And, of course, our Club involved typically bright, observant law students. Thus, they offered helpful and constructive criticism on how to make improvements and changes to the Club in the future, all of which we will consider in the Club’s next iteration, whatever that may be:

- “I would maybe try to diversify the kind of law represented outside of criminal law and criminal defense advocacy[.]”
- “. . . I was getting zoom fatigue and didn’t feel like logging in more than I needed during the day. It’s also way harder and more awkward to socialize on zoom.”

- “. . . I would also be interested in adding content that showed other axes of discrimination like sex, sexual orientation, socioeconomic background, and gender[.]”
- “I think it was easier to fit in the preparation when the material was a documentary or movie rather than a multi-part podcast, but the overall balance was good (it was nice to get the depth of the podcast but also have some lower barrier-to-entry sessions).”
- “I think meeting frequency is the only main area for improvement . . . If it were more like once a month or once every two weeks then it would feel more like a regular activity rather than an event that you might or might not remember to go to. . . And, the material would be fresher and by necessity would be in more easily digestible bites that we could more realistically cover in the hour.”

The survey was sent at the end of a long year for our students. It was yet another electronic obligation that arrived after both finals and the journal write-on competition. We wish we had more responses and, in retrospect, we could have asked more specific questions about the material and the way in which the course added to the 1L experience. We plan to run the Club again, in some form, and ask more thorough questions, potentially after each Club meeting. In the end, the feedback we received was overwhelmingly positive, gave us confidence that we met our initial goals, and caused us to consider expanding the Club, as discussed below.

B. An Idea for the Future: An Elective Class for All 1L Students

When we began the Club, but even more so after it was up and running, a more formative idea took shape. We began to see the Club as a catalyst to a formal, 1L elective course. In addition, when asked in the above-referenced survey if students would participate if the Club were instead a one-credit, pass/fail, 1L course, six students said yes, eleven students said maybe, and one student said no. Hence, we believe that a pass/fail class, similar to

Harvard's reading group elective, would not significantly burden students and would allow for critical engagement during 1L year.

Further, we believe that an elective would serve the added benefit of complementing our existing Lawyering Skills class. Like the Club, our hope for an eventual elective would be to: (1) decrease student stress; (2) increase student interest; (3) foster a collaborative learning environment; (4) create scaffolding for traditional and character-based legal skills introduced in our Lawyering Skills classes; (5) facilitate the introduction of real-life examples of racism, inequity, and unethical behavior into the 1L curriculum; and (6) enhance overall learning for students. Because change in law schools takes time, we first proposed a pilot program in order to gather even more information prior to proposing any systemic change to the curriculum. As of the date of publication of this article, our proposal is still pending.

The ultimate goal is to create a diverse set of one-credit, pass/fail, elective courses available to all 1Ls and taught by many faculty members, similar to the Harvard model. At the outset, however, we proposed piloting the class to a smaller group of 1L students. Piloting the class in this manner would provide a bit more formality and accountability than the Club, while still keeping the reading load light or nonexistent, the group small, and the focus on potentially increasing transfer, incorporating social justice themes, and building community outside of the traditional 1L classroom. If students respond positively to the piloted elective course, we hope to expand the option to all 1Ls and to ask other faculty members to offer similar, interesting 1L electives that derive from their own interests.

Specifically, we proposed an elective 1L class that would meet for two hours, every other week of the semester, in the evenings. Meeting more often than the Club did would allow us to break up the material into smaller pieces, consistent with student feedback. Moreover, meeting for two hours instead of one would allow us to expand the discussion and to potentially look at some additional outside materials related to the cases during class.

In addition, an every-other-week model would make it less onerous for students, and we would try to schedule the class meetings to avoid overlap with other critical 1L due dates and deadlines.

The above proposed hours and schedule appear to satisfy the ABA requirements for one credit of legal education. ABA Standard 310 describes a law school credit accordingly: “(b) A ‘credit hour’ is an amount of work that reasonably approximates: (1) not less than one hour of classroom or direct faculty instruction and two hours of out-of-class student work per week for fifteen weeks, or the equivalent amount of work over a different amount of time.”¹²⁸ The material we would ask students to absorb—podcasts, documentaries, and movies—would require more than two hours of out-of-class work per week, meaning more than four hours of work every two weeks, and our proposed class length of two hours every other week would satisfy the one-credit requirement. In addition, making the class pass/fail would alleviate most of the stress for students and would allow them to focus on what interests, perplexes, excites, or upsets them about the material.

By adding a 1L elective that focuses on some of the character-based legal skills needed by effective lawyers—including, but not limited to, empathy, resilience, hope, self-care, creativity, meticulousness, and perseverance—we would start tackling the outcomes already required by the ABA, and the new proposed outcomes, even earlier.¹²⁹ In addition, ethical lawyering requires an understanding of the impacts of the law on marginalized

¹²⁸ *Standards and Rules of Procedure for Approval of Law Schools 2021–2022*, *supra* note 117, at 22.

¹²⁹ *See id.* at 18 (ABA Standard 302(d) mandates that law schools will teach professional skills needed for “competent and ethical” lawyering, such as “collaboration, cultural competency, and self-evaluation.”); *see also* Memorandum from the Am. Bar Ass’n Standards Comm., *supra* note 13, at 8 (Stating that law schools shall provide opportunities for the “development of a professional identity” and provide training on “bias, cross-cultural competency, and racism.”).

communities.¹³⁰ As law professors, we strive to instill in our students a desire to utilize the law as a mechanism for change.

CONCLUSION

We enjoyed forming and executing our “Book Club With No Books” and look forward to continuing it in the future. As discussed above, we feel it provided benefits to our students in a time when stress was high and the collective outlook was bleak. More personally, we enjoyed both challenging ourselves to create an entirely new curriculum and growing an already wonderful teaching partnership. In addition, as lawyers and law professors grappling with our role in teaching a system that has become increasingly hard to trust, we too needed a place to reflect, to unwind, and to be inspired by our legal heroes and promising students. The Club served as a positive direction for our energy—it was equal parts meaningful and fun, healing and energizing, planned and organic. It was a bright spot in a global pandemic, and we look forward to seeing how it evolves. As noted above, we feel that the students benefitted from the Club in many ways and that some of the threads pulled by the Club could be woven into larger curricular changes. We encourage others who are interested in incorporating social justice issues, while hopefully enhancing transfer of learning and building community, to use this model to help better achieve those goals.

¹³⁰Rand, *supra* note 13, at 105 (“Lawyers must be trained to notice if the law or its application disparately impacts those who have no voice in creating or implementing it.”).

APPENDIX A

“Book Club with No Books” Meeting #1: Outline

I. Topic: How to Fix a Drug Scandal (“HTFADS”)

1. Netflix true crime documentary
2. Netflix description: “Two drug lab chemists’ shocking crimes cripple a state’s judicial system and blur the lines of justice for lawyers, officials and thousands of inmates.”
3. Released: April 1, 2020
4. Filmmaker: Erin Lee Carr

II. Introductory Information by Professors Before We Begin

1. *How the Club Works:*
 1. Structure of Club Meetings:
 - a. We will provide some general background to help understand the legal issues and criminal process.
 - b. Discussion Questions: We will provide discussion questions. Those questions will be discussed either as a large group or in Zoom breakout rooms, depending on the size of the group.
 - c. If we have enough students to do breakout rooms, we will come together at the end and discuss highlights and/or answer any follow-up questions.
 - d. Reach out if you think of questions and comments after the meeting - we would love to hear from you.
 2. Timing: One Hour
 3. Vehicle: Zoom due to pandemic and school rules
 4. Framing: Everything we watch or listen to during the year will raise layers and layers of issues. There is no way to

cover them all in this one meeting, but the layers may reveal themselves as you continue to think about the material and connect it to future law school classes or projects. We will always start by mentioning the layers we see, and please share any you think we are missing.

2. *The Many Layers of this Documentary, “HTFADS”*
 1. Systemic Issues
 - a. Prosecutorial misconduct
 - b. Addiction and mental illness
 - c. State budgeting and priorities, or lack thereof
 - d. “War on drugs” and its impact on the federal and state justice systems
 - e. Disproportionate victimization of BIPOC and marginalized communities by governmental misconduct
 - f. Journalists who play a role in forcing change
 2. Lawyering Skills-Related
 - a. Junior attorneys failing to develop their own high standards even though they are new in the profession
 - b. Attorneys with extraordinary resilience and ingenuity
 - c. Candor before the court as a primary principle in lawyering
 - d. Standards of the legal profession more broadly and what we can all expect and demand of our colleagues

III. General Introductory Legal Issues (Before We Discuss HTFADS Specifically)

1. **Overview of the criminal legal process generally**
 1. *How does the criminal process begin, particularly in a drug case?*
 - a. Arrest and investigation by police

- b. Defendant arrested by police
 - c. Police can search anything that is on their person
 - d. Could find a bag/container of substance—but police do not know what that is, so they need someone to confirm that it is an illegal substance and how much of that substance is there
 - e. Once police have collected evidence, they decide whether to refer the case to the District Attorney, who will determine whether to prosecute
2. *What is the process after a case is referred to the prosecutor?*
- a. Prosecutor at first decides whether to proceed with the cases based on the evidence presented
 - b. If the prosecutor decides to proceed, they present case to grand jury: one sided process with no defense
 - c. Indictment: formal charge that the defendant has committed a crime (if the grand jury agrees with the prosecutor; almost always does = “ham sandwich”)
 - d. Pre-trial motions including motions to suppress (this stage is especially relevant if drugs/evidence are illegally obtained)
 - e. Trial or guilty plea
 - f. Sentencing (if convicted or plead guilty)
 - g. Appeal (appellate court reviews errors made by the lower court)

2. Other than the defendant, who are the “players” involved in a criminal proceeding, and what are their roles?

- 1. Prosecutor/District Attorney:
 - Job: Receive evidence from police and forensic labs; communicate with victims; assess all evidence and overall strength of case and decide how and if to progress;

represent government's interest in preventing crime and creating a safe society; ensure due process

- Specific Obligation: prove every element of a crime beyond a reasonable doubt
 - In a drug case, that includes the fact that the substance is, in fact, an illegal narcotic; and the amount of the substance to substantiate a charge beyond mere possession
- Broad Duties: Honesty, integrity, fairness, no abuse of power/discretion; represent the community

2. Defense Attorneys:

- Job: Independently research the facts and law of the case; counsel client; represent all interests of the accused
 - Specific Obligation: defend client against specific charges; navigate the complex system for client
 - Broad Duties: Hold government to its obligation to make the required case; zealous representation despite personal feelings; look at the case fresh rather than as it is pre-packaged by the government; poke holes, ask questions, demand systemic accountability

3. Crime Lab:

- Job: Public entity that conducts scientific analysis on evidence collected in criminal matters
 - Specific Obligation: Follows scientific principles to analyze samples collected; run lab in a way that facilitates accurate scientific results; supervise employees

- Broad Duties: Independent entity not working for the prosecutor.
4. Criminal Defendants
- Disproportionately BIPOC
 - People with families and lives, who have potentially (but not definitely) made mistakes
 - Addiction plays a major role in drug crimes, especially with respect to possession charges
 - Reference: Luke Ryan, the primary criminal defense attorney featured in HTFADS, shared his empathetic view on the narrowness of criminal cases and how important it is to zoom out and look at the lives and situations of criminal defendants that get them to that place where they are now awash in the system

3. Any questions about the criminal litigation progression or the roles of the primary players in the system before we move on?

IV. Discussion Questions Without Answers

1. Discussion Question 1: Something went wrong here. Who is to blame for what happened? Consider the individual culpability of the crime lab, the prosecutors, and the defense attorneys.

- Put them in order of culpability—why is one group more to blame (or conversely, why is one group less to blame)?
- Are there any mitigating circumstances that make each group less culpable?

2. Discussion Question 2: What are the systemic issues you noticed here in both the depiction of the crime labs and the criminal legal system in general?

- Some general ideas could include race, finances, addiction, hierarchy, relationships between different players, etc.

3. Discussion Question 3: In bringing this scandal to light, what skills did these defense attorneys display in advocating for their clients?

- What traditional legal skills were on display?
- What character-based skills were on display?

V. Discussion Questions with Some Ideas for Answers (to chime in and be part of student discussion as it unfolds)

1. Discussion Question 1: Something went wrong here. Who is to blame for what happened? Consider the individual culpability of the crime lab, the prosecutors, and the defense attorneys. Put them in order of culpability—why is one group more to blame (or conversely, why is one group less to blame)? Are there any mitigating circumstances that make each group less culpable?

1. Prosecutors:

a. DUTY TO PROVE ELEMENTS OF CRIME:

Prosecutors have an obligation to prove all the elements of crime beyond a reasonable doubt which, in a drug case, includes the fact that the substance is, in fact, an illegal narcotic.

i. How did these two different drug scandals (one involving Annie Dookhan and one involving Sonja Farak) impact the prosecutor's ability to prove a case?

1. Dookhan:

a. Did not test whether the substance was, in fact, an illegal narcotic (“dry testing” is not scientific testing and so she was making up the results)

- b. Did not test the volume of drugs—weight has massive consequences on charge and sentence.

2. Farak:

- a. Under the influence of drugs—affects credibility and actual testing
- b. Removed drugs from case files, sloppy evidence in her car: chain of command issues, reliability as a witness against criminal defendants at trial, etc.

ii. Extra questions:

- 1. In practice, do you think prosecutors ever challenge the results of a crime lab analysis?
- 2. Do they have a duty to do so?
- 3. Is it practical for us to expect overworked prosecutors to do so?

b. DUTY TO DISCLOSE EXCULPATORY EVIDENCE:

- i. Under *Brady v. Maryland*, a prosecutor has a duty to disclose exculpatory evidence; failure to do so is a violation of

due process, and result is suppression of that evidence. *Brady v. Maryland* 373 U.S. 83 (1963)

ii. PRACTICAL REALITIES OF BEING a “LINE DA:”

1. Farak Case: Should line DAs, especially those that put Farak on the stand while she was under the influence or who noticed disorderly evidence/files, have realized anything going on with Farak?
2. Dookhan Case: Should the line DA’s have known that the output was too high, and that no scientist could have accomplished that much work in that period?

iii. VANTAGE POINT OF THE AG’S OFFICE:

1. Failed to adequately investigate after judge ordered them to do so
2. Failed to disclose the evidence found in Farak’s car showing that Farak’s drug problems were long-standing (affected her credibility)
3. Ultimately, the court found failure of two prosecutors (Kris Foster and Anne Kaczmarek) to

turn over evidence of Farak’s drug use was “intentional, repeated, prolonged and deceptive.” Court found that there was a “fraud on the court.”

2. Crime Lab

a. Chemists:

i. Dookhan:

1. Falsified records about testing (did not actually complete tests)
2. Probably testified falsely in court
3. Mitigating circumstances: Mental health issues? Pressure to perform from supervisors and prosecutors? Regular human pressures like family expectations and potential love interest?

ii. Farak:

1. Impaired while performing job duties
2. Stole drugs (standards and actual seized narcotics) from the lab
3. Mitigating circumstances: Mental health issues? Addiction issues? Pressure to perform with unending amounts of work.

b. Supervisors at the lab:

- i. Dookhan (Boston lab): allowed chemists to be pressured by prosecutors to move quickly and get helpful results, ignored reports that her output was too high, did not properly investigate the first time she was flagged
 - ii. Farak (Amherst lab): Inadequate controls on drug samples allowed for drug abuse; improper assignment procedures allowed her to choose which cases to test; disorganized lab
 - iii. How can the crime lab system be reformed to provide proper protections for criminal defendants?
 1. Less interaction with the prosecutor?
 2. Mental health and drug testing for chemists?
 3. Proper oversight by supervisors over volume and testing?
 4. Ensure clean and tidy lab space?
 5. Controlled assignment system to avoid Farak issue?
 6. Tight controls over samples?
3. Defense
- a. Duty to challenge the findings of the crime lab?
 - b. Note—as a line DA and a white collar criminal defense lawyer, and as a law clerk, we rarely saw this done in practice, although sometimes we saw challenges to the weight.

2. What are the systemic issues you noticed here in both the depiction of the crime labs and the criminal legal system in general? Some general ideas could include race, finances, addiction, hierarchy, relationships between different players, etc.

1. The depiction of the crime labs and the criminal legal system in general?

- a. We discussed the criminal process generally earlier. Are there parts of this process that disadvantage defendants? Why or why not?
- Limited discovery?
 - Grand Jury Process with no opportunity to present a defense?
 - Limited resources of defendants at trial v. unlimited resources of the government?

2. Is it a random coincidence that most of the people being shuffled into and out of jail as the extent of Farak's drug use was litigated, were BIPOC?

- a. In comparison, the judges, lawyers, police, and chemists in this story were mostly white.
- b. How must it feel to be a defendant of color surrounded by deciders and power brokers who are all white?
- c. What did Ryan say about how the lack of opportunity (education, immigration status) and the ongoing stigma of a prior conviction (hard to get a job, get rehabilitation for drug addiction) impact who is funneled through the criminal legal system, especially when it comes to the "war on drugs?"

3. What role does addiction play in the criminal legal system?

4. Isn't it interesting the role that the press played in blowing up what the entire justice system wanted minimized? Is it of critical importance that courtrooms are open to the public?

3. Discussion Question 3: In bringing this scandal to light, what skills did these defense attorneys display in advocating for their clients? What traditional legal skills were on display? What character-based skills were on display?

1. Traditional Legal Skills:

- a. Attention to detail
- b. Document review
- c. Arguing in court
- d. Writing effective legal documents
- e. Creative legal analysis
- f. Connecting related legal issues (specific cases v. arguments about how to deal with the collective cases)

2. Character-based Skills:

- a. Following the trail, even if you don't know where it will lead you
- b. Grit and determination (Ryan)
- c. Thick skin (Ryan discovering that no one in the AG's office liked him as a person)
- d. Empathy and compassion (Ryan even has empathy for Farak)
- e. Collaborating with teams of lawyers

VI. EXTRA: Finally, what happened here to the prosecutors?

1. Superior Court found failure of two prosecutors' (Kris Foster and Anne Kaczmarek) to turn over evidence of Farak's drug use was "intentional, repeated, prolonged and deceptive."
2. Court found that there was a "fraud on the court."
3. BBO filed a petition of discipline against three lawyers in AG's—Foster and Kaczmarek, as well as their supervisor, John Verner.
4. Culpability of each?

- a. Foster: Superior Court found that she had repeatedly lied to the court. But she had only been on the job less than 6 months and claimed she relied on supervisors' representations.
 - b. Kaczmarek: Superior Court found that she had lied to the court. Made similar arguments to Foster, arguing she is a low-level supervisor not responsible for the dissemination of exculpatory evidence; argued that supervisors played that role.
 - c. Verner: Not part of the original superior court findings but added to the BBO proceeding. Chief of the Criminal Bureau. As the ultimate supervisor, does the buck stop with him, or should he rely upon representations by subordinates?
5. What skills should they have displayed that they did not?
- a. Better oversight by the superiors?
 - b. Asking more questions?
 - c. Courage by the junior attorney to push back?
 - d. Others?