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## Social Justice as a Professional Duty: Effectively Meeting Law Student Demand for Social Justice by Teaching Social Justice as a Professional Competency

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SOCIAL JUSTICE AS A PROFESSIONAL DUTY: EFFECTIVELY  
MEETING LAW STUDENT DEMAND FOR SOCIAL JUSTICE BY  
TEACHING SOCIAL JUSTICE AS A PROFESSIONAL  
COMPETENCY

*Spencer Rand\**

Many law students go to law school wanting to affect social change and learn how to use law to improve upon what they see as an unjust world.<sup>1</sup> This number is likely to quickly increase. In what is being called the “Trump Bump,” law school applications are on the rise, increasing more than 11 percent this year after several years of decline.<sup>2</sup> The number of LSAT test takers has also increased, rising by 27.9 percent.<sup>3</sup> Although some increase in applications is common after a recession, a primary reason for this increase may be the desire among new applicants to affect social policy. Further, survey numbers support this hope and expectation;<sup>4</sup> 24 percent of LSAT test takers noted that politics was the main reason they applied to law school.<sup>5</sup> Law school applicants see President Trump issuing executive orders very different from those of previous administrations, lawyers challenging or supporting those orders, and judges examining whether and how those

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\* Clinical Professor of Law, Temple University, Beasley School of Law. This article was workshopped in many forms in several places over a few years, including at the NYU/CLR Clinical Writers Workshop, the Delaware Valley clinicians group, and the NYLS Clinical Theory Workshop. The author is grateful for the support and ideas including Susan Bennett, Louise Trubek, Colleen Shanahan, Mitch, Luz Herrera, and Kate Elengold, who all gave specific comment in my small groups or at or after AALS meetings and many others I am sorry to have left out. A special thanks, too, to Pete Watkins and others at Temple’s Center for the Advancement of Teaching, who taught me about competency training.

1. See Lynn A. Addington & Jessica L. Walters, *Public Interest 101: Using The Law School Curriculum To Quell Public Interest Drift And Expand Students’ Public Interest Commitment*, 21 AM. U.J. GENDER SOC. 79, 83 (2012), discussing studies where between 33 to 37 per cent of students entered law school wanting to serve public interest. They note that many less left law school with that same interest or in that same practice, which could be due to learning about other practice areas or the need to pay off loans but could as likely be because of a lack of guidance in the curriculum, the idea the authors suggest. See also in Jane Aiken & Stephen Wizner, *Law as Social Work*, 11 Wash. U. J.L. & Pol’y 63 (2003), in which they address the phenomenon of the many law students they see going to law school to become Atticus Finch and leaving thinking that they should be corporate lawyers and what might be done to teach students in ways that support and encourage their social justice goals.

2. Ilana Kowarski, *Law School Applications Increased This Year: Experts say Recent Political Polarization has Fueled Interest in the Legal Profession*, U.S.NEWS, EDUCATION, January 29, 2018, <https://www.usnews.com/education/best-graduate-schools/top-law-schools/articles/2018-01-29/law-school-applications-increased-during-president-trumps-first-year>

3. *Id.*

4. 2017 Survey by Blueprint LSAT Preparation, BLUEPRINT, 2017, <http://blueprintlsat.com/2017-survey/>.

5. *Id.*, citing Karen Sloan, *LSAT-Takers Cite Trump Presidency as Reason to Become a Lawyer*, LAW.COM, August 31, 2017, <https://www.law.com/sites/almstaff/2017/08/31/lsat-takers-cite-trump-presidency-as-reason-to-become-a-lawyer/>.

orders can be executed. They see Congress debating, and lawyers challenging or supporting, whether large groups of people can live in this country, and whether others can get government-backed income or subsidized healthcare. They want to understand how law is created and applied by those with power for the benefit of people who can wield power to manipulate it. They know that they themselves have power and privilege and that going to law school will only increase it. They want to learn to employ practice tools to express that power and privilege for change. This interest is certainly welcomed, particularly in those applicants seeking to make the world more socially just by addressing and correcting power imbalances.

This student demand comes at an opportune time because many other law school stakeholders also wish to correct power imbalances now. There is an amazing convergence of thought shared by these incoming law students with social justice theorists, advocates for better educational training of professionalism, and attorneys themselves—all striving toward the same goal. The American Bar Association (“ABA”) and other legal professional organizations are demanding that lawyers take steps to represent and support the powerless, while urging law schools to prepare their students to meet this demand. The ABA’s Model Rules of Professional Conduct and resolutions require lawyers to project the voices of the underrepresented. Among other things, the Rules demand that lawyers devote significant time to represent marginalized people, and its resolutions demand that lawyers do legal work that particularly helps people address basic human needs, like obtaining food and housing and protecting their liberty and civil rights.<sup>6</sup> The same is true for judicial organizations that are tired of trying to somehow bring justice to those who can neither influence the law’s formation nor its application.<sup>7</sup> The legal profession is ready and needs new lawyers to practice with a social justice lens.

Legal theories taught in law schools are beginning to converge around explaining that the law and legal systems are mechanisms for the power to create and maintain their place in the world. They see laws as rules created by those with power to promote their own interests, and see legal systems as providing process primarily to the powerful. These theories note how laws and legal systems unfairly damage many whose power does not give them the same rights or abilities to alter the law or have it applied in their interests.<sup>8</sup> Critical theory scholars discuss rethinking ways the law has developed, exists, and is applied, speculating on whether the law exists to facilitate

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6. See text surrounding notes 39 to 45.

7. See text surrounding notes 46 to 52.

8. See text surrounding notes 21 through 37.

justice or merely as a pretense for it.<sup>9</sup> Additionally, critical theory scholars and others consider how lawyers can change this and address power imbalances, strengthening the voice of the marginalized in law and its application.<sup>10</sup> Other theorists, like new governance scholars, discuss using market incentives and bringing the ideas of the powerless to local policymaking, giving power to those people in policy processes to improve the lives of the marginalized.<sup>11</sup> Professors, including many in the clinical teaching world and in courses focusing on law of the marginalized, have taught these theories as part of their work and have created their own theories that fit among critical theory models.<sup>12</sup> Law schools are ready to teach about social justice using these theories.

Finally, education experts and accreditors are demanding that law

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9. Caroline Bettinger-Lopez, et. al, *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO. J. ON POVERTY L. & POL'Y 337, 349 (2011). The authors generally argue for a human rights overlay in legal decision making so that markets do not allow the powerful to overwhelm the marginalized through law and legal systems. For an idea of incorporating critical theory in business law and practice classes, see Alina S. Ball, *Disruptive Pedagogy: Incorporating Critical Theory in Business Law Clinics*, 22 CLINICAL L. REV. 1 (2015), who notes social justice aspects of critical theory but also the skills that students learn by lawyering critically like contextualizing situations can help students lawyer in non-poverty contexts while allowing them to learn about poverty and power imbalance in ways they would not if they were following a standard business law curriculum. *Id.* at 46-47.

10. This is described well in Caroline Bettinger-Lopez, et. al, *id.* at 399, citing Tor Krever, *Calling Power to Reason*, 65 NEW LEFT R. 141, 143 (2010): "Rather, it acknowledges that a critical approach to general legal principles embedded in human rights law provides an opportunity for 'a shared vision of justice [which] can be forged through dialogue; in which questions of value can be posed, the exercise of power challenged and the cold logic of the market subordinated to broader human needs.'"

11. See David A. Super, *Laboratories of Destitution: Democratic Experimentalism and the Failure of Antipoverty Law*, 157 U. PA. L. REV. 541 (2008), giving a description of "new governance" as market-based incentives to influence change as opposed to outside regulation and having groups of decision-makers create local policy that include the disenfranchised, calling it democratic experimentalism. *Id.* at 17. The article critiques when the failings of democratic experimentalism, considering more central decision making too important for many matters, including crises and some larger economic policies, such as welfare reform. See also Jaime Alison Lee, *Can you Hear Me Now?: Making Participatory governance work for the Poor*, 7 HARV. J.L. & PUB. POL'Y 405, 419-23 (2013), discussing reasons new governance can support the powerless if the powerless are not ignored and there for cosmetic reasons but are both striving toward the same goal and that each party understands the value that the other contributes, and citing Charles F. Sabel and William H. Simon, *Destabilization Rights: How Public Law Litigation Succeeds*, 117 HARV. J.L. & PUB. POL'Y 1015 (2013), discussing new governance democratic experimentalism models as court-imposed strategies for more socially just outcomes. See Lisa T. Alexander, *Stakeholder Participation in New Governance: Lessons From Chicago's Public Housing Reform Experiment*, 16 GEO. J. ON POVERTY L. & POL'Y 117 (2009), discussing new governance models in the Chicago Hope VI litigation and using lawyers to empower the residents and the less powerful to create both new governance and traditional legal remedies and take advantage of them citing *id.* at 179 David M. Trubek & Louise G. Trubek, *Narrowing the Gap? Law and New Approaches to Governance in the European Union: New Governance & Legal Regulation: Complementarity, Rivalry, and Transformation*, 13 COLUM. J. Eur. L. (2007), looking at different ways new governance models can intersect and interact with traditional legal systems.

12. See text surrounding notes 21 through 38 for the author's description of social justice based on many of those theories.

schools teach social justice (and the rest of the curriculum) in a way that proves students are actually learning. Educators studying law school have commented on how law school has strayed from teaching professionalism in the way it should. Particularly, they have noted that 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 to serve and promote social justice.<sup>13</sup> Further, educational experts have found that to teach law school effectively, law schools must determine the competencies<sup>14</sup> each lawyer needs to practice law effectively, and that teaching professionalism is one competency they must include and are not doing well presently.<sup>15</sup> In its role accrediting law schools, the ABA has adopted these ideas and is now insisting that law schools determine these competencies, set learning objectives to meet them, and evaluate whether these learning objectives are met.<sup>16</sup> Inculcating social justice visions is particularly required to be competent lawyers.<sup>17</sup> 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.

With law students, the bar, legal theorists, and accreditors all pushing for social justice teaching, this teaching should be happening at all law schools. With accreditors demanding competency training, this should be done in a way that follows the competency training model.

Law schools can do this, must do this, and should do this without balking. There are some who hesitate because there is not a definition of social justice that all accept, and it is clearly not the mission of law schools to inculcate their professors' values and demand they be accepted.<sup>18</sup> However, teaching social justice can and must happen, and

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13. See text surrounding notes 53 through 59.

14. A "competency" is something that it is necessary for a student to learn before graduating from their school to be able to perform effectively at the things that the student is likely to do when they graduate. For example, a middle school student must read. Therefore, an elementary school student must learn the competency of reading to participate in middle school, the step for which the elementary school is training them. To apply this to law, lawyers need the competency to practice in a socially just way. Therefore, law schools must have learning objectives that will lead to a law student developing the competency of practicing with a social justice lens. For more on what competencies are and the language of competencies, see section III.A. *infra*.

15. See text surrounding notes 111 to 155

16. ABA Standards and Rules of Procedure for Approval of Law Schools 2016-2017, Standard 302.

17. *Id.* The standard notes that the school must develop learning objectives including ones that reflect that attorneys must learn the requirement to "[e]xercise . . . proper professional and ethical responsibilities to clients and the legal system."

18. See Julie D. Lawton, *Teaching Social Justice In Law Schools: Whose Morality Is It?*, 50 IND. L. REV. 813, 836 (2017), discussing whether it is correct to demand that one's own views on social justice

it must be the mission of the law school for law students to develop their own definition and understanding of social justice and learn to apply it when they become lawyers. In non-clinical and clinical classes, through explicit readings, discussions, and activities, faculty can and should teach that law is not value neutral and should not be practiced as if it were. Repeatedly, and in every class, professors can help students discover the ways law describes power structures. Students can learn the role that legislators, judges, administrators, and lawyers play in creating and applying law that shapes society. They can come to understand that after graduation, they will have power imbued by their legal training, including the power to manipulate and change law to reinforce the power of their clients. They can choose to levy that power in many ways. To do so with social justice means sharing power with those who lack it, taking care to hear the voices of those people and to work with them to create a shared understanding of the world. They can learn ways to follow community leads and instructions in developing legal and non-legal strategies and adopt ways to implement them together within the community.

Therefore, this article asks law schools to declare it a practice competency that all lawyers make and apply law justly and do nothing in their practice to make or apply law unjustly, analyzing each act they take to ensure it is consistent with social justice. This article suggests law schools teach this competency by developing a school-wide learning objective of teaching students to practice law through a social justice lens. It suggests one potential method of teaching this objective: having each student write a social justice credo throughout law school from a template the faculty adopts for this use. This helps students define social justice for themselves, describe the ways social justice appears and matters in law, and delineate how they see themselves working toward social justice in their practice. This article suggests making it every teacher's responsibility to teach social justice in their classes, making modifying part of this credo a goal in each course taken. As the credo is modified, it models a type of competency training that experts suggest works. The credo is both a learning and assessment tool, as students learn through the exercise of creating the template, and faculty can assess whether students are learning what social justice is and how they will apply it by reviewing the tool periodically. An example of a credo format that could be used for this purpose and an explanation of its terms are appended to this article.

Part I of this article describes the parameters of definitions of social justice. It looks at what theorists, the bar, and educators have said about

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be adopted by students and the difficulty of teaching about it without doing so.

social justice, and describes a minimum standard that must be included in the definition that students create for themselves. That definition must include the unfairness of power imbalances that marginalized people and communities cannot otherwise fix and the need for those with power to lend their privilege to address it. It recognizes that there are those who will only see a more limited version of this imbalance in the plight of those to whom no blame for the imbalance can be attributed. Others will include in their definition all people and communities who are marginalized, worrying less about the causes than the need to address injustices they face. It suggests that students cannot be expected to come up with this in substantive law, skills, or professionalism courses without faculty intentionally pointing out social justice implications. It asks faculty and others involved with creating learning experiences for students to intentionally teach in a way that allows students to define and understand it.

Part II discusses what it takes to intentionally teach social justice. After looking at how the same traditional legal course material can be taught with or without a social justice lens, it discusses courses that traditionally have a social justice focus and those that do not, as well as ways social justice can be taught in both. Further, Part II suggests that for a law school to fully teach about social justice, it must be taught in all classes. Unless all classes teach social justice, it will not be meaningful. Although other lenses are also relevant to analyze law, teachers cannot ignore the need to include power imbalance as one of the important included lenses.

Part III describes how to teach social justice using competency-based learning. It looks at works that convinced the ABA to require law schools to teach toward competencies, looking at what they say about how to teach people generally and also how to focus discussion on social justice. Among other things, Part III talks about teaching toward a specific competency by setting learning objectives for the school that help define goals and objectives for each course. It suggests having each faculty member assess whether these goals have been taught, in part by having students work on the school-wide credo in their classes, as well as having the law school review and assess their students' credos periodically. It gives suggestions about what particular goals and learning objectives can be in individual course syllabi.

Part IV concludes with a look at the social justice credo as a school-wide document to ensure social justice is taught, describing how it works with educational theory. The credo itself is a description of the learning objective. It is also a tool for teaching that objective. When it is completed, it can be an assessment of whether teaching through a

social justice lens has been, in fact, taught.

In these times, the needs of the poor and legally underserved are being revisited under the law, and people are seeing this and considering practicing law to impact these decisions. The federal government is reconsidering its duties and desires to provide longstanding help to those in need, from its Social Security and SSI program to basic health, food, and income support. States are doing the same. Lawmakers and lawyers are reconsidering their roles in protecting and supporting immigrants, racial, gender, and other social minorities that have little political voice. This includes decisions regarding whether and how to provide services such as adequately funded schools and emergency healthcare.

Law students and lawyers need to consider how to participate in these processes. Now is an opportunity to hear the voices of the less powerful and to help them express justice and gain what they need. This opportunity is one that cannot be missed or lost. Some students are coming to law school demanding it. All students need to leave school using social justice principles.

#### I. THE INTENTION TO TEACH SOCIAL JUSTICE

To practice law with a social justice lens, students must be able to notice when people without power are limited by the law and its application, and when the law could help these people address power imbalance but fails to do so. Students must consider the social justice implications of all the work they do, whether it be drafting laws, handling transactions, or litigating. Future lawyers must learn that law has been unequally applied to people of different races, genders, and economic classes. These marginalized people, who in this article will be called people in “out-groups,” are disempowered by those in power; their interests are not effectively protected in the larger community.<sup>19</sup> Lawyers must know that laws crafted ostensibly to help out-groups (and sometimes to manipulate them) are often written without their

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19. The author has previously referred to out-groups as “minority groups that due to their ethnicity, race, gender, or another factor are oppressed by others not of that group.” Spencer Rand, *Teaching Law Students To Practice Social Justice: An Interdisciplinary Search For Help Through Social Work's Empowerment Approach*, 13 CLINICAL L. REV. 459, 494 (2006) (hereinafter *Empowerment Approach*), citing BRUCE S. JANSSON, *THE RELUCTANT WELFARE STATE: AMERICAN SOCIAL WELFARE POLICIES: PAST, PRESENT, AND FUTURE* (5th ed. 2004), developing and perhaps coining this definition of out-groups. See DAYNA BOWEN MATTHEW, *The Social Psychology of Limiting Healthcare Benefits For Undocumented Immigrants - Moving Beyond Race, Class, and Nativism*, 10 HOUS. J. HEALTH L. & POL'Y 201 (2010), discussing out-group rhetoric used to discuss immigrant access to healthcare; Robert J. Smith, et. al, *Implicit White Favoritism in the Criminal Justice System*, 66 Ala. L. Rev. 871 (2014), discussing how in-group and out-group concepts are widely held in our culture and are used by lawyers to lead to disparate results in the criminal justice system.

input. They must see that those laws often do not give people from out-groups the legal means to access the help provided or to alter the law to truly address their needs. They must recognize that other laws are seemingly neutrally drafted to apply to all but have a disproportionately negative impact on out-groups. They must understand and feel that the legal system has taken over many aspects of living, making it necessary to have a lawyer's help to address them.<sup>20</sup>

Teaching social justice must be done thoughtfully and intentionally. Law professors know they cannot teach law as black letter rules students must know to practice. It is what many students want, but even if law could be practiced in such a manner, learning does not occur that way. To make and apply law, lawyers must be able to analyze why the rules are as they are. This makes it easier to remember the law, research the law, and make arguments or draft documents consistent with the law. Students also need to analyze law to create new law and accomplish their clients' legal and social goals. However, there are many lenses through which students can see what is behind the law—social justice is only one. Students must realize the social justice lens is important, affecting many, if not all, laws. Without intentionally teaching the social justice aspect, students will miss it.

Law is about power. No group knows this more than lawyers. Consider family law. Statutes written by those with power define what relationships and family structures are recognized and preferred in society. The law describes when and if relationships can be terminated and whom must support whom during the relationships and on their termination. People petition judges to put the state's power behind applying those laws in individual circumstances. Consider tax law. Statutes define how much it costs individuals to live in society. They incentivize taxpayers to support only certain types of organizations, like charities that are entitled to deductions and political donations which typically are not. Administrative and judicial officers ensure those rules are followed. Consider corporate law. Statutes define everything from the personal responsibility of people who own companies, to the relationships between shareholders and directors and what each can control, to the ways corporations can and cannot interact within the community, and to the rules for relief when stakeholders are

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20. Perhaps the most well accepted by the author and many others is Jane Aiken's description of wanting students to be "justice ready." Teachers are to be "provocateurs," teaching students to learn about justice throughout their lives and careers, name injustice when they see it, note the role they play in perpetuating or resolving injustice, note the regular injustices imposed on the poor through abuse of power, give legal skills to address injustice, and note when law will fail or do so. Jane H. Aiken, *Provocateurs For Justice*, 7 CLINICAL L. REV. 287, 288-89 (2001).

dissatisfied. There is power in making the law. There is power in being able to seek redress. There is power in implementing and establishing new law. Lawyers' actions have major effects on people's lives, and the powerless are affected by what lawyers do, both when lawyers represent the powerless or powerful and when lawyers take action for clients that affects the powerless peripherally.<sup>21</sup> Lawyers should consider whether a legal action fits within their values and consider who they are strengthening with their work before taking legal action.<sup>22</sup>

Because power and law are connected, people who have less power often lose, no matter what is fair or just. They often have law act *on them* instead of *for them*. They often struggle to use law for themselves to address their needs. They need legal help to access the system and to defend against the system when it works against them. This help cannot be provided by deciding what the powerless need. Rather, help can be provided by joining the powerless to hear how they define their problems and using legal skills to solve them.<sup>23</sup>

Some lawyers feel that all power imbalances affecting the powerless must be addressed. They work towards social justice to ensure that those with less power can access and use the legal system to navigate society. The reasons for the power imbalances do not matter as much to these lawyers. It is enough that the imbalances exist and that people who have less power can neither access the system nor fight when the law is used to push them further down.

Others do not grimace at every power imbalance or see the law's or legal systems' duty to equalize or diminish the advantages gained by obtaining more power than others. However, they still sometimes see and must be encouraged to understand that some power imbalances are so unjust that their part in addressing the imbalance is necessary and failing to do so as lawyer is wrong. For example, it is impossible to ignore that many people have immutable traits resulting in loss of power and discrimination. Racial discrimination has led to exploitation in employment. This has been exemplified throughout history; it

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21. Howard Lesnick, *The Integration of Responsibility and Values: Legal Education in an Alternative Consciousness of Lawyering and Law*, 10 NOVA L. REV. 633 (1986).

22. *Id.*

23. See William P. Quigley, *Letter To A Law Student Interested In Social Justice*, 1 DEPAUL J. FOR SOC. JUST. 7 (2007), discussing how law is made by people with power and saying that social justice is hearing the voices of those whose voices are not heard and working with them, *Id.* at 17, and struggling with and not for them to achieve their goals. *Id.* at 21-22. See also CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 9 (Austin Sarat & Stuart Scheingold eds., 1998), in which Sarat and Scheingold write that lawyers need to be "listeners and learners rather than as translators," making the point that one must hear and understand problems of those with less power by hearing the about issues from the less powerful and further accept that the word and definition of the problem comes the less powerful.

occurred during slavery when our country was formed, in sharecropping after the Civil War, and is currently occurring in lower paid jobs. It has meant discrimination in housing, whether it be on plantations or in red-lined districts. It has led to disparate education, in both explicitly segregated schools before and after civil rights actions in the 1950s and in poorly funded schools today. Out-groups with other traits or characteristics have been treated worse for generations, including, but not limited to, discrimination based on gender, income, and physical or mental disability.<sup>24</sup> These struggles can be difficult to navigate alone. They were created by or result from power imbalance and must be recognized as social injustice.<sup>25</sup>

To ignore the power imbalance between these people and the rest of the community as a lawyer means to ignore injustice that we as lawyers have a special ability to address. As Aiken correctly stated, lawyers have privilege<sup>26</sup> that gives them power that they can and must learn to share with the powerless.<sup>27</sup> Lawyers know how to make law, access it, and advocate before decision-makers. They can take their skills and apply them in different manners. Social justice is applying them under the guidance of out-groups, such as the poor and legally underserved, that have less power than others.<sup>28</sup> Often, low-income individuals and

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24. There are many different traits and classifications that could be used to identify who are out-groups. Some lists include “identity categories such as race, gender, sexual orientation, class, and disability”, NANCY LEONG, *Identity Entrepreneurs*, 104 CALIF. L. REV. 1333, 1337 (2016), identifying out-groups for the purpose of discussing when it is appropriate for people to use their identity as an out-group member to be given special treatment as a person of that out-group by an in-group business for personal benefit.

25. For people who need to see a cause outside of the individual to believe it is important to work with that individual, looking at power imbalance is very helpful way for them to understanding that their work is to share their power with their clients and not to “correct them,” as people or groups with abilities from whom they can bring out power or with whom they can share it. See Rand, *Empowerment Approach*, *supra* note 21 at 490.

26. Jane Harris Aiken, *Striving to Teach "Justice, Fairness and Morality,"* 4 CLINICAL L. REV. 1, 12 (1997), defining privilege as “that ‘invisible package of unearned assets that I can count on cashing in each day, but about which I was ‘meant’ to remain oblivious,” citing Peggy McIntosh, *Unpacking the Invisible Knapsack: White Privilege*, *Creation Spirituality* 33 (Jan./Feb. 1992).

27. *Id.* at 11: “One way to approach learning about justice, fairness, and morality is to teach our students the ability to deconstruct power, to identify privilege, and to take responsibility for the ways in which the law confers dominance. [citation omitted] With that understanding, we can also learn to use our power and privilege in socially productive ways.” In another article, Aiken gives the following definition of social justice: The goal of social justice education is full and equal participation of all groups in a society that is mutually shaped to meet their needs. Social justice includes a vision of society in which the distribution of resources is equitable, and all members are physically and psychologically safe and secure. We envision a society in which individuals are both self-determining (able to develop their full capacities) and interdependent (capable of interacting democratically with others.) Social justice involves social actors who have a sense of their own agency as well as a sense of social responsibility toward and with others and the society as a whole. Jane H. Aiken, *Provocateurs*, *supra* note 22 at 296.

28. *Id.* At 11-22 (discussing how lawyers and people with more power gained through privilege can share their power how they choose and should share it with the less powerful to further social justice

people from out-groups need the help of lawyers to create, challenge, or use law in conjunction with their own interests. Without this help, what is “right” becomes what people with more power want to be right, with little or no input from the powerless to influence things that affect them individually or as a community.<sup>29</sup> Lawyers must work to address community needs as defined by communities,<sup>30</sup> as well as the needs of individuals who struggle due to institutional structures.<sup>31</sup> They must realize that out-group communities must fight for power while in-group communities need not. They must see that “race, gender, ethnicity, class and other economic and social constructs matter.”<sup>32</sup> As Wizner wrote about teaching social justice in clinics, law schools must teach students that law is not a value neutral way to protect personal interests. Rather, it is “a political mechanism for the acquisition, exercise, and defense of power” which is not helped by lack of access to legal services or other access to the legal system, and that law often

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ends.

29. See David Luban, *Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers*, 91 Calif. L. Rev. 209 (2003), in which Luban discusses how to have a fair disposition in law at least in the case of the adversary system, legal help must be found for those who cannot get it for themselves, adding that attempts to ensure that those people are not represented are attempts to control law whether those in power are right or not taking away the power of one side to have its side represented.

30. See John O. Calmore, “*Chasing The Wind*”: *Pursuing Social Justice, Overcoming Legal Mis-Education, And Engaging In Professional Re-Socialization*, 37 LOY. L.A. L. REV. 1167, 1204-05 (2004), citing William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1994) for the proposition that social justice lawyering involves subordinating the lawyers’ role and not only working with and not for the community but being certain to not be a leader of the group. See also Claire P. Donohue, *Client, Self, Systems: A Framework for Integrated Skills-Justice Education*, 29 GEO. J. LEGAL ETHICS 439, 449-57 (2016) discussing lawyers as primary decision makers and prime movers of legal actions.

31. There have certainly been disputes about whether such discrimination should be handled by considering whether the effects of longstanding discrimination mean that individuals have been so affected that they need individual help to “fit,” implying lawyers might help with individual representation, or whether societal structures need to change that lead to regular bad outcomes, implying law reform work. This discussion may have been most loud in the non-law forum in discussions of the Moynihan Report, United States Department of Labor, Daniel Patrick Moynihan, *The Negro Family: The Case for National Action* (March, 1965), <https://www.dol.gov/oasam/programs/history/webid-meynihan.htm> and its critique by William Ryan (WILLIAM RYAN, *BLAMING THE VICTIM* (rev. ed. 1976)). The legal aid world has continued the discussion of whether individual or structural help is better in its discussions of whether individual representation or law reform and structural work is more helpful, though not always naming the reasons that low-income people have become members of out-groups. Rebecca Sharpless, *More Than One Lane Wide: Against Hierarchies Of Helping In Progressive Legal Advocacy*, 19 CLINICAL L. REV. 347 (2012), describing the history of both advocacy strategies and arguing that lawyers have their own version of maintaining and damaging out-groups by directing women and other minority group lawyers and staff to the legal aid side of the law. See also Calmore, *supra* note 32 at 1175 citing IRIS MARION YOUNG, *INCLUSION AND DEMOCRACY* 33 (2000).

32. See Pamela Edwards and Sheilah Vance, *Teaching Social Justice Through Legal Writing*, J. LEGAL WRITING INST. 63, 64 (2001), citing JOHN O. CALMORE, *A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 FORDHAM L. REV. 1927, 1937 (1999).

perpetuates social inequality.<sup>33</sup> They must ensure that students “question the machinery of society, [must] instill[] socially responsible values, and teach[] students to address social inequities.”<sup>34</sup>

We need some lawyers to focus their careers on promoting social justice, but we need all lawyers to practice through a social justice lens,<sup>35</sup> considering the societal implications of the work they do and using at least some of their time and skills to fight for social justice. Addressing power imbalance is addressing social injustice.<sup>36</sup>

The above conception of asking lawyers to practice with social justice in mind, and therefore teaching students the competency to do so, may seem to be the vision of left leaning lawyers. Arguably, it is

33. Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 *Fordham L. Rev.* 1929, 1935 (2002). See also Fran Quigley, *Seizing The Disorienting Moment: Adult Learning Theory And The Teaching Of Social Justice In Law School Clinics*, 2 *CLINICAL L. REV.* 37, (1995), writing students cannot understand the adoption or application of law without seeing it through a social justice lens or work effectively on their issues without this knowledge. *Id.* at 38. He suggests law school teaches that law is applied value neutrally and ignores that lawyers are responsible for helping enact laws that are value laden. Without this understanding, lawyers cannot represent clients of oppressed groups or work effectively on public policy issues. *Id.* at 41.

34. Stephen Wizner, *Is Social Justice Still Relevant?*, 32 *B.C. J.L. & SOC. JUST.* 345, 351-52 (2012). See also Antoinette Sedillo Lopez, *Learning Through Service In A Clinical Setting: The Effect Of Specialization On Social Justice And Skills Training*, 7 *CLINICAL L. REV.* 307, 317-18 (2001), saying that teaching social justice “means opening students’ eyes to the inequities in society and challenging them to do something about the system” and having them see “systemic inequities.” *Id.* at 319.

35. This article does not take a stand on exactly what type of lawyering a full-time social justice lawyer does or which model of providing service is best. See Carrie Menkel-Meadow, *The Causes of Cause Lawyering: Toward an Understanding of the Motivation and Commitment of Social Justice Lawyers*, in Sarat and Sheingold 33, 37 (1998), equating the value of cause lawyering to types of social justice practice and calling social justice work “any activity that seeks to use law-related means or seeks to change law or regulations to achieve greater social justice—both for particular individuals (drawing on individualistic “helping” orientations”) and for disadvantaged groups.”

36. The above definition of social justice which is based largely on power imbalance is one which some would say is too limited. One more complete description given by Claire Donohue adds the concepts of marginalization of communities and adds that being a social justice advocate means challenging systems, addressing power imbalance, and promoting “full participation in economic, social and legal realms of society.” Education should therefore teach students to recognize oppression and their own socialization to accept it and that advocacy is changing oppressive patterns, including those they themselves follow. Donohue, *supra* note 32 at 447-48. See also Anna E. Carpenter, *The Project Model Of Clinical Education: Eight Principles To Maximize Student Learning And Social Justice Impact*, 20 *CLINICAL L. REV.* 39, 56 (2013), in which she describes and combines several definitions of social justice to “progressive” politics, law reform movements, substantive equality and equality of opportunity, overcoming legal, social and political oppression and its impact, procedural and substantive fairness, and democratic participation; and see Lauren Carasik, *Justice in the Balance: An Evaluation of One Clinic’s Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism with A Social Justice Mission*, 16 *S. CAL. REV. L. & SOCIAL JUSTICE* 23, 25 (2006), defining social justice as “a transformative agenda aimed at identifying and implementing advocacy strategies that provide enduring, meaningful and systemic relief for marginalized communities.” See also L. Darnell Weeden, *In Response to the Call for Social Justice, Historically Black Law Schools Represent the New Mission of Educational Diversity in the Legal Profession*, 14 *J. GENDER RACE & JUST.* 747 (2011), discussing social justice as securing social and economic justice under the Constitution’s promise to protect the Blessings of Liberty and finding a due process interest in basic human needs. He describes this as the mission of historically black law schools.

not. Mainstream organizations have described social responsibility for the less powerful as part of lawyers' roles. Although these organizations may not use the language of social justice to define lawyers' duties to address power imbalances, the bar recognizes the issue and that the help of lawyers is necessary to address it. The ABA has taken several steps to work towards making it part of the legal culture to consider it part of every lawyer's duty to meet these needs.<sup>37</sup> In its Model Rules of Professional Conduct Preamble, the ABA asks lawyers to remember that they are "public citizens."<sup>38</sup> 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.<sup>39</sup> It asks all lawyers to "devote time and resources and use civic influence to ensure access." Extending the hope of the Preamble, Rule 6.1 was adopted and later amended to make explicit the desire that lawyers do such work.<sup>40</sup> That work includes providing at least 50 hours of *pro bono* work to poor people and organizations that work to serve them,<sup>41</sup> as well as other work addressing civil rights issues that stem from power imbalance.<sup>42</sup> The ABA has not stopped there, making it a priority to address access to legal representation for the legally underserved. Its work has included a resolution asking federal and state governments to fund lawyers to improve access to the judicial system and other institutions that address legal issues affecting basic human needs.<sup>43</sup>

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37. See Robert R. Kuehn, *Access to Justice: The Social Responsibility Of Lawyers: Denying Access to Legal Representation: The Attack on the Tulane Environmental Law Clinic*, 4 WASH. U. J.L. & POL'Y 33, 126 (2000) (interpreting the Model Rules of Professional Conduct as demanding access to justice initiatives including law school clinics and citing Justice Powell as writing that "it is fundamental that justice should be the same, in substance and availability, without regard to economic status." M. CATHERINE RICHARDSON, *Legal Services for the Poor Should Be Maintained*, N.Y.L.J., May 1, 1997, at S1 & n.3 (reprinting quote by Justice Powell in FRANCIS J. LARKIN, *The Legal Services Corporation Must Be Saved*, JUDGES J., Winter 1995, at 1). [LARKIN NOT SEEN]

38. ABA Model Rules of Professional Conduct, Preamble: A Lawyer's Responsibilities, Number 6 (2016).

39. *Id.*

40. ABA Model Rules of Professional Conduct, Rule 6.1 (2016). In Comment 2 to Rule 6.1, it is also made explicit that the reason for the Rule stems from "critical need for legal services that exists among persons of limited means." ABA Model Rules of Professional Conduct, Rule 6.1, Comment 2 (2016).

41. *Id.* at Rule 6.1(a).

42. *Id.* at Rule 6.1(b)(1).

43. ABA Res. 112A (2006), proposed and adopted on a resolution drafted by the Task Force on Access to Civil Justice. For a further description of this, see Spencer Rand, *A Poverty of Representation: The Attorney's Role to Advocate for the Powerless*, 13 TEX. WESLEYAN L. REV. 745, 752-53 (2007) (hereinafter "*Poverty of Representation*"). There are those who would see other ABA resolutions that have been passed as statements in support of social justice and serving the needs of individuals and communities whose lack of power does not allow them to protect their needs without legal help. See ABA Res. 120A (2007) supporting medical legal partnerships as a model of supporting the ill who cannot get

Other mainstream organizations have also asked attorneys to work toward addressing these needs. The Conference of Chief Justices and Conference of State Court Administrators adopted a resolution finding that no one should be denied access to the courts based solely on financial resources, calling for 100 percent access to courts when basic human needs are implicated.<sup>44</sup> Beyond resolutions, many states' bars have been working on these issues, including 39 state Access to Justice commissions.<sup>45</sup>

Although this author and others have railed against lawyers and how little they actually do in response to the bars' entreaties,<sup>46</sup> this is part of the point. The ABA, other bar associations and institutions have accepted that giving a legal voice to those who would not have one otherwise is part of a lawyer's duty. Some of those calls have not been that successful, as attorneys do not always answer. To combat this issue, law schools need to teach new attorneys to be more responsive.<sup>47</sup>

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their own legal support that could help them through their medical crises. *See also* ABA Res. 105 (*revised and amended*, 2016) suggesting regulations for non-lawyer legal services and recognizing the need of those without access to those services to express their needs to help.

44. Conference Of Chief Justices/ Conference Of State Court Administrators Access Fairness And Public Trust Committee, *Reaffirming the Commitment to Meaningful Access to Justice for All*, RESOLUTION 5 (2015).

Reaffirming the Commitment to Meaningful Access to Justice for All [http://www.ncsc.org/~media/microsites/files/access/5%20meaningful%20access%20to%20justice%20for%20all\\_final.ashx](http://www.ncsc.org/~media/microsites/files/access/5%20meaningful%20access%20to%20justice%20for%20all_final.ashx).

45. ABA Resource Center for Access to Justice Initiatives, *State Access to Justice Commissions: Creation, Composition, and Further Details* (March 2017), [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ATJReport\\_s/atjcommissions\\_structure2017.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReport_s/atjcommissions_structure2017.authcheckdam.pdf)

46. Rand, *A Poverty of Representation*, *supra* note 45, arguing that ABA Model Rules of Professional Conduct, Rule 6.1 (2016) is so permissive and is adopted by state bars in ways that it does not lead attorneys to do much *pro bono* and that the work done is often not addressed to those in need. The article traces the history of Rule 6.1 and of statements made in support of *pro bono* work and looks at statistics to suggest that such support has not been successful. Among other things, states adopt different versions of Rule 6.1 and although things like asking attorneys to report hours has encouraged this work, states do not generally ask for it. Pennsylvania, for example, still follows a previous version of Model Rule 6.1 that encourages an attorney to provide "public interest legal service" but allows attorneys to do it in several ways, from representing underserved people to working on "activities to improve the law," which could mean most anything. 20 PA. Code §81.4 Rule 6.1. As to reporting hours, presently nine states require reporting whether one is doing *pro bono* work and 13 have voluntary reporting. *See* Chart prepared by the American Bar Association, Standing Committee on Pro Bono and Public Service, [http://www.americanbar.org/groups/probono\\_public\\_service/ts/pbreporting.html](http://www.americanbar.org/groups/probono_public_service/ts/pbreporting.html). Rule 6.1 also asks attorneys to spend at least 50 hours on work for those that cannot afford legal services, but reviewing a 2012 chart of the ABA, the author interprets that 27 of 51 jurisdictions ask for no number of hours or for less than 50 hours to be dedicated to serving the legally underserved. AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON PRO BONO AND PUBLIC SERVICE STATE-BY-STATE PRO BONO SERVICE RULES, [https://www.americanbar.org/groups/probono\\_public\\_service/policy/state\\_ethics\\_rules.html](https://www.americanbar.org/groups/probono_public_service/policy/state_ethics_rules.html).

47. There are those who would interpret the bar's work to be more trying to spread ideas of public interest law that mean more working in the public good and not working on issues of oppression. If that were true, the call is somewhat different, as public interest law is not the same as social justice and recognition of marginalized and subordinated people in communities and goals of changing the system

Although the resolutions and commission work look mostly like a call for access to individual representation, that call can most easily be answered and interpreted as a larger call for a broader conception of social responsibility. As described above, there is a lot more to social justice than an individual's access to an attorney.<sup>48</sup> The reasoning behind the bars' access to justice statements highlights why the application of social justice must be broader. The discussion in the Preamble to the Model Rules, regarding "economic and social barriers" to obtaining counsel,<sup>49</sup> recognizes that economic and social barriers exist that cause problems. Although it does not explicitly say that lawyers should work to change those barriers, it is implied in the statement that those barriers are impairing access to even basic human needs and must be addressed. Lawyers meeting the needs of out-groups by representing them to fight individual expressions of those economic and social barriers is a step in the right direction. Addressing the barriers structurally is also helpful. Attorneys should expect requests to address those barriers from out-groups. They should recognize that accepting the requests should lower the need and demand for services if they successfully address the barriers causing the legal issues or the laws that are impeding people from expressing their voice. Additionally, Rule 6.1(b) adds that attorneys should not only provide *pro bono* services but also legal services at low or no cost to "secure or protect civil rights, civil liberties or public rights."<sup>50</sup> The Rule calls for the bar to address power imbalances.

Law school is not currently teaching the need for societal engagement well. In one of the more comprehensive reviews of legal education done by the Carnegie Foundation (discussed in detail below), the Foundation expressed that law schools have a secondary "shadow" pedagogy separate from teaching substance and skills. The shadow pedagogy suggests that formalistic "right" answers to legal issues exist but they fail to consider ethical implications, meaning, or adverse effects the answers can have.<sup>51</sup> Students conclude that they should become legal technicians instead of thoughtful community

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and those people's lives. See Calmore, *supra* note 32 at 1167, citing MARTHA R. MAHONEY, JOHN O. CALMORE, & STEPHANIE M. WILDMAN, *SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES, AND LAW* 5 (2003).

48. See text surrounding notes 25 to 38.

49. ABA Model Rules of Professional Conduct, Preamble: A Lawyer's Responsibilities, Number 6 (2016).

50. *Id.* at Rule 6.1(b)(1).

51. WILLIAM M. SULLIVAN, ET. AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 57 (2007) [hereinafter *Legal Carnegie Report*]. See also Jane H. Aiken, *Striving to Teach "Justice, Fairness and Morality,"* 4 CLIN L. REV. 1, 1-10 (1997), in which she argues the wrongness of teaching law as a mechanical implementation of rules without the understanding that lawyers and judges exercise power that implicate justice.

leaders.<sup>52</sup> 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.<sup>53</sup> They might also believe that the law is not to be thought out and challenged and that their mission is to preserve the status quo.<sup>54</sup> Noting that attorneys more than other professionals become a type of “social regulators”<sup>55</sup> due to the nature of what lawyers do, the Foundation’s report argues that law schools must teach about justice. It suggests doing so in part through faculty acting as role models<sup>56</sup> and largely through integrating moral learning throughout the curriculum, including non-clinical classes,<sup>57</sup> clinics, internships, clubs, and other extracurricular activities.<sup>58</sup> They conclude that social justice teaching is largely missing.

Law schools need to change their approach to teaching social justice. Because a social justice lens describes how law and power work and because students will gain power as attorneys and will be able to help others apply it, it is imperative that students learn what social justice is and how they must practice to support it. Law schools must make a conscious and concerted effort to teach social justice throughout their curriculum. Schools must help students practice what lawyering will be like with a social justice lens, both to make it possible to do so when they graduate but also so they learn how to balance working to achieve social justice with other lawyering competencies, such as not placing lawyers own values before their clients’ and not compromising zealous advocacy for social justice without clients’ permission.<sup>59</sup> Law schools making social justice

52. *Id.*, at 57-59. I use the term “leaders” loosely. Part of social justice lawyering is letting the client and community lead and providing support. See William P. Quigley, *supra* note 25, and Sarat and Sheingold, *supra* note 25. A lawyer who is a thoughtful leader is leading the way in providing legal services on social justice issues.

53. Some have added that students also do not learn that law is not administered objectively and is often mal-administered. See Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327, 331, 332 (2001), citing William Pincus, *Concepts of Justice and of Legal Education Today*, in COUNCIL ON LEGAL EDUCATION FOR PROFESSIONAL RESPONSIBILITY, CLINICAL EDUCATION FOR LAW STUDENTS: ESSAYS BY WILLIAM PINCUS 125, 131 (1980) (speech delivered at Order of the Coif Dinner, Villanova Law School, January 15, 1971).

54. See Barbara L. Bezdek, *Alinsky's Prescription: Democracy Alongside Law*, 42 J. MARSHALL L. REV. 723, 731(2009), citing DAVID KAIRYS, THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE 3-6 (David Kairys ed., 1982) for the idea that traditional law practice can be seen as a means for preserving the status quo.

55. *Id.*, at 82

56. *Id.*, at 156

57. *Id.*, at 151.

58. *Id.*, at 140.

59. See Katherine R. Kruse, *Lawyers Should Be Lawyers, But What Does That Mean?: A Response to Aiken & Wizner and Smith*, 14 WASH. U. J.L. & POL'Y 49 (2004), in which Kruse works to balance practice ideas emphasizing social justice values and a holistic approach as described by in Aiken & Wizner, *supra* note 2, with practice ideas of zealous advocacy in Abbe Smith, *The Difference in Criminal*

teaching part of their mission and tracking how learning objectives are teaching competencies will cause this to happen.

## II. TEACHING SOCIAL JUSTICE AS A LENS TO ANALYZE LAW

Social justice can be taught, ignored, or intentionally not taught when teaching law. This is true when teaching fields of law that are derived from or intended to address power imbalances. It is also true when teaching about law that affects all people but disparately impacts people with less power. Professors using teaching modalities from clinics to skills classes to substantive knowledge classes can focus on social justice as one of the lenses through which to analyze law and describe lawyers' duties to the legally underserved, or they can ignore it entirely.

For example, consider a Professional Responsibility teacher teaching Access to Justice, a class and subject that could easily be taught through a social justice lens. The ABA Standards and Rules of Procedure for Approval of Law Schools require that Professional Responsibility classes cover the history and responsibilities of the bar,<sup>60</sup> which almost necessarily means that teachers must teach the ABA's Model Rules of Professional Conduct. This makes it easy to teach this class with a social justice focus, as it often is.<sup>61</sup> As described above, the Rules touch on social justice reasons for Access to Justice, including the Preamble's description of a lawyer as a public citizen and Model Rule 6.1 on duties to consider helping ensure such

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*Defense and the Difference It Makes*, 11 WASH. U. J.L. & POL'Y 83 (2003), in which Smith argues that zealous advocacy is paramount to obtaining any justice for clients. Kruse concludes that balancing the two matters, writing that "[h]umility dictates that twin dangers - misguided altruism and masked malevolence - will inevitably haunt the implementation of any social justice mission. The promise of adversarial advocacy is that no one's social justice mission will go unchallenged by those who bear the consequences of its reforms." *Id.* at 90.

60. Standard 303. CURRICULUM

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

(1) one course of at least two credit hours in professional responsibility that includes substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession and its members;

ABA Standards and Rules of Procedure for Approval of Law Schools 2016-2017, Standard 303.

61. Although the author wrote in text surrounding notes 39 through 47, *supra*, that the ABA Model Rules for Professional Conduct can be seen as support and inspiration for social justice lawyering, there are those who argue that between teaching students to actually follow those rules along with teaching them to apply the law without considering consequences on the disempowered can cause students to ignore social justice. See Calmore, *supra* note 14, arguing for re-socializing students after learning these things so they do not inhibit social justice work. See also Sarat and Scheingold, *supra* note 25 at 3-4, discussing whether cause lawyering for social justice requires attorneys to go against the Model Rules, particularly about zealous advocacy, to support the cause of the greater good.

representation occurs out of public need. Class discussion and other work can consider: (1) how difficult it is for some people to get attorneys; (2) the societal and individual problems that people face and cannot address without accessing the legal system and help from lawyers; and (3) the reasons the bar thinks lawyers are necessary to contribute to changing that. Better yet, the teacher can use the term “social justice” in describing the issue and talk about power imbalances and examples of attorneys helping balance the inequity. Dissenters in class discussion might argue that attorneys should not have to give up their time because it is not fair to ask or that doing so is not the appropriate solution.<sup>62</sup> Even if there are dissenters, the discussion would make social justice a primary concern and point out the power imbalance faced by unrepresented parties.

However, there are many other lenses through which a Professional Responsibility teacher can teach the same content that would limit students’ understanding of social justice. For example, teachers can describe the bar’s Access to Justice rules by focusing on protecting lawyers’ monopoly on legal practice. It would be much harder to justify unauthorized practice of law actions if they did not also give at least minimal help to the legally underserved.<sup>63</sup> Without some access

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62. Some find *pro bono* work to be an unconstitutional taking. See *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998), finding 524 U.S. 156 (1998), finding IOLTA Accounts an unconstitutional taking, though the accounts could stand as the accounts were found cheaper than individual trust accounts on remand. Some may argue it violates free speech; JOHN C. SCULLY, MANDATORY Pro Bono: An Attack on The Constitution., 19 Hofstra L. Rev. 1229, 1245-49 (1991) (suggesting *pro bono* forces attorneys to use speech in a way they do not want to, violating the First Amendment). Others may find it an unworkable solution. See Benjamin H. Barton, *Against Civil Gideon (And For Pro Se Court Reform)*, 62 FLA. L. REV. 1227 (2010), in which Barton argues that giving lawyers to criminal defendants through criminal Gideon has proven in many cases to provide bad lawyers to clients among other things. He has suggested that giving lawyers in the civil context is an unworkable solution, though he argues for the need to help the underrepresented represent themselves through court reform and making the legal process *pro se* friendly; See also Russell G. Pearce, *Redressing Inequality in the Market for Justice: Why Access To Lawyers Will Never Solve the Problem and Why Rethinking the Role of Judges Will Help*, 73 FORDHAM L. REV. 969, 970, 975-980(2004), suggesting that the *pro bono* process will never provide enough help and asking judges to at least be responsible for fair procedure..) Still others might find it a useless effort that does nothing to change the status quo and makes it just as likely that people are still situated in poverty but with just the right to be heard.

63. For an argument that the monopoly is necessary to protect clients and demanding mandatory *pro bono* to balance that, see LISA H. NICHOLSON *Access To Justice Requires Access To Attorneys: Restrictions On The Practice Of Law Serve A Societal Purpose*, 82 FORDHAM L. REV. 2761, 2786-87 (2014). Deborah Rhode has been more direct in her suggestion that lawyers may be protecting a monopoly to protect their market. See DEBORAH L. RHODE, *PRO BONO IN PRINCIPLE AND IN PRACTICE: PUBLIC SERVICE AND THE PROFESSIONS* (2005), and a review or this and other of her work at TOM LININGER, *From Park Place To Community Chest: Rethinking Lawyers' Monopoly+*, *Pro Bono In Principle And In Practice: Public Service And The Professions* By Deborah L. Rhode, 101 NW. U. L. REV. 1343 (2007). See also Deborah L. Rhode and Lucy Buford Ricca, *The Legal Profession's Monopoly on the Practice of Law: Protecting the Profession or the Public? Rethinking Unauthorized-Practice Enforcement*, 82 FORDHAM L. REV. 2587 (2014); Steven Lubet & Cathryn Stewart, *A "Public Assets" Theory of Lawyers' Pro Bono Obligations*, 145 U. PA. L. REV. 1245 (1997), describing lawyers “exclusive access” to the legal

to the legal system through lawyers, it is unlikely the monopoly can be sustained. Another teacher might choose to focus on these rules just as the rules students need to know for their legal practice. The teacher can note that the Rules are on the Multistate Professional Responsibility Exam (MPRE) that lawyers must pass in many states to practice,<sup>64</sup> and that it is practical to know the Rules because states have adopted a version of the Model Rules that must be followed at the risk of disbarment.<sup>65</sup> At that point, the reason for the Rules are irrelevant. Without a social justice focus in a Professional Responsibility discussion of Access to Justice and other social justice issues, little is learned about power imbalances and attorneys' role in addressing it.

Just as Professional Responsibility can be taught with or without a focus on social justice, all law courses can be taught with more or less of this focus. A simple but unsatisfying answer to promote social justice teaching that will fail is to ask teachers of clinical classes and "out-group" classes<sup>66</sup> that already focus on the needs of the legally disenfranchised to be certain to teach with a significant social justice lens. Clinics and out-group classes are a necessary part of the curriculum and add a large amount to students' learning about social justice. In fact, for some students who come from lives where they have not experienced social injustice, a clinic or out-group class may be one of the classes that is very important for them to take to begin to understand it.<sup>67</sup>

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field as being at the price of needing to do some *pro bono* work.

64. The MPRE must be passed in 45 states the District of Columbia, and some U.S. territories to practice. <http://www.ncbex.org/exams/mpre/>.

65. AMERICAN BAR ASSOCIATION, CPR POLICY IMPLEMENTATION COMMITTEE, STATE ADOPTION OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT AND COMMENTS (March 2017), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/adoption\\_mprc\\_comments\\_authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/adoption_mprc_comments_authcheckdam.pdf). California has not adopted the Model Rules. The rest have done so, some with their own comments and some without the Comments.

66. See the description of out-groups, *supra* note 21.

67. Fran Quigley writes that a clinic experience may be necessary because many of our students come from non-poor backgrounds and it would benefit them to see things like evicted clients dealing with difficulties finding housing and clients losing welfare benefits entering a bad low-income housing market. Students may have to see this. "The learner's clinical experience of representing victims of injustice often includes a "disorienting moment" for the learner, in which her prior conceptions of social reality and justice are unable to explain the clients' situations, thus providing what adult learning theory holds is the beginning stage of real perspective transformation." Quigley, *supra* note 35 at 45-6. He considers the experience "unmatched" in other classes. *Id.* at 54. See also Donohue, *supra* note 32 at 467-72, in which she suggests her version of disorienting moments through clinics to have students learn about power and privilege through watching clients interact within the legal system and other systems and the indignities they face. Some of these moments include learning that clients must reveal private facts to get help, have to wait until the court or other systems makes time to hear cases and are forced to reframe their personal narrative to fit within the ideas of what a decision-maker more likely values in hopes that their position will be more respected and their cases decided in their favor.

However, limiting 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,<sup>68</sup> 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.

It is also short-sighted because even for students who take a clinic and out-group law class, there is a great danger that students would not learn that a social justice focus is necessary and relevant to every aspect of lawyering unless it is taught as relevant in multiple aspects of their legal education.<sup>69</sup> Otherwise, it is more likely that social justice teaching will be compartmentalized by students as only relevant when considering some issues, such as when doing *pro bono* work or otherwise working with out-groups. Further, by taking a host of other classes in which they learn to analyze law through other lenses, it is likely that students will consider those lenses to be the important ones, making social justice teaching quite secondary to other "real" legal work.

Besides being short-sighted, it is arrogant to believe that social justice training is solely the bailiwick of clinical and out-group classes. Teachers of non-out-group classes where social justice is not traditionally taught or necessarily a focus of inquiry often can and do teach about social justice concepts. They are also likely better at doing it in their own focus areas than clinical and out-group class teachers. Faculty members know the context of the law and what the law is trying to accomplish outside of social justice goals. They can better see how power is used by parties to subvert justice or to take advantage of an edge that could be considered unjust within the law they know. Although out-group class teachers could attempt to reteach the same

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68. Requiring Poverty Law or social justice courses is done at a few schools. For one example, see Loyola New Orleans' requirement that a student take Poverty Law or a class with similar sensitivities. <http://2016bulletin.loyno.edu/law/academic-regulations-overview#law-poverty-requirement>

69. A critique that is common among education specialists is that if something is to be learned that is thought to be universally critical to many aspects of a discipline that it be taught in many different places in the curriculum. Otherwise, perhaps graduates will not apply lessons learned that they compartmentalize as only being relevant in the areas in which they learned it. See SHERID D. SHEPPARD, ET AL., EDUCATING ENGINEERS: DESIGNING FOR THE FUTURE OF THE FIELD ix (2009) [hereinafter *Engineering Carnegie Report*](in a forward by Lee S. Shulman), discussing this concept in engineering undergraduate training.

content in out-group classes from a different lens, they are not as well equipped. They can try things like re-teaching landlord/tenant law after property teachers have taught it, but they cannot devote the same amount of time to infusing a social justice focus into all Property matters or compare landlord/tenant social justice issues to other types of Property social justice issues.<sup>70</sup>

A. *Teaching Intentionally About Social Justice in a Clinical or Out-group Class*

To teach social justice, teachers of clinical or out-group classes must make a conscious effort to focus on social justice, consider appropriate definitions for it, and make sure that discussions and work are injected with it. When teaching some topics in these classes, social justice issues are obvious. Whether it be studying criminalization of poverty and race in an out-group class or representing indigent defendants through a clinic, it cannot be missed that the majority of defendants are people of color and of lower income classes, leading to mass incarcerations of poor minority people.<sup>71</sup> Whether it be studying leaseholds in Poverty Law class or representing tenants in a clinical class, it cannot be missed that tenants are regularly unrepresented or underrepresented and that tenancy rights are regularly lost in summary proceedings.<sup>72</sup>

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70. The author would suggest that his two-hour single class period on housing in the midst of his Poverty Law class is not likely to make as much of an impact as a 3 credit Property class on which students cut their teeth learning in the first year. Perhaps it is necessary to focus in Poverty Law on landlord/tenant issues, public housing, FHA housing, racial and income segregation in housing, and enforcement of livable housing conditions. It would be much better studied within a property course in context, comparing leaseholds to freehold estates, private mortgages to government subsidized ones, and Code manipulations by contractors and landlords together.

71. See MICHELLE ALEXANDER, *THE NEW JIM CROW* (2012), in which she argues that the criminal system and mass incarceration is being used as an instrument of social control based on race where blacks are incarcerated disproportionately and that when they complete their sentences, the collateral consequences are so severe that they lose any power they had to survive in the system, including often losing their right to express their voice by voting and losing rights to many government benefits that might help them out of poverty.

72. For a case study and a summary of some of the writing on landlord/tenant inequities from landlords having representation when tenants often do not, processes made unclear for tenants to bring actions against landlords while processes for landlords bringing summary actions to evict being relatively easy, see Michele Cotton, *A Case Study On Access To Justice And How To Improve It*, 16 J.L. SOC'Y 61 (2014), citing at footnote 5 among other works Barbara Bezdek, *Silence in The Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533 (1992), in which Bezdek points out the relative powerlessness of most tenants who are often members of out-group classes like racial minorities and women, *id.* at 540-41, with only 2.8% getting even advice from an attorney, *id.*, at 556, only .015% of cases having tenants as plaintiffs, *id.*, at 555, and with landlords winning cases outright 67% of the time while tenants did 3.5 % of the time, *id.*, at 554; and Carroll Seron et al., *The Impact of Legal Counsel on Outcomes for Poor Tenants in New York City's Housing Court: Results of a Randomized Experiment*, 35 LAW & SOC'Y REV. 419 (2001), in which it is pointed out that at the time of

These issues may be even clearer in clinics and out-group classes when the law being studied is designed specifically to help or manipulate out-groups or where the people being represented come from out-groups that need power to address issues. For example, a Women and the Law course considers laws affecting women solely or disproportionately. It can attempt to organize strategies to change those laws in the courts or otherwise, to include the most marginalized in the process and legal protections.<sup>73</sup> Poverty Law can look at welfare laws designed to support the poor or less kindly to regulate their relationship to the non-poor, as well as the role power plays in determining who gets what help and whether that law alleviates poverty or maintains class structure.<sup>74</sup> Health Law classes can consider how well health needs are met.<sup>75</sup> Health Law classes can also consider whether employers and others who sponsor benefits have ulterior motives or have better representation of their needs than their employees.<sup>76</sup>

Employment Discrimination classes can look at laws designed to

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the study, 21% of tenants and 78% of landlords had representation. *Id.* at 421, and that with representation, about 22% of tenants had judgments against them compared to 51% when they did not have representation, *id.* at 428, table 4;

73. See Kristin Kalsem and Verna L. Williams, *Social Justice Feminism*, 18 UCLA WOMEN'S L.J. 131, 137-38 (2010). These women seek a movement that will represent their interests, one that organizes from the "bottom up," and builds leadership from those among the least empowered and most marginalized. As we will discuss, the social justice feminism paradigm holds promise in addressing these issues. Indeed, in calling for social justice feminism, the NWMI participants appear to be taking steps very reminiscent of those that the Houston delegates attempted to pursue thirty years ago.

74. See Sheryll D. Cashin, *Federalism, Welfare Reform, And The Minority Poor: Accounting For The Tyranny Of State Majorities*, 99 COLUM. L. REV. 552 (1999) for a discussion of the extent the poor do not have their voices heard in welfare regulation and political choices that might make it more likely that they are; and Frank Munger, *Beyond Welfare Reform: Can We Build A Local Welfare State?*, 44 SANTA CLARA L. REV. 999, 1010-11, 1017 (2004), describing initiatives to bring the poor's voice into welfare decisions and a project organizing women to take political stands locally.

75. For example, students might study the Affordable Care Act and its requirement that tax-exempt hospitals survey the health care needs in their community due to the disparities in health care outcomes correlated with racial disparities. See Mary Crossley, *Black Health Matters: Disparities, Community Health, and Interest Convergence*, 22 MICH. J. RACE & L. 53 (2016), considering this issue and Derrick Bell's interest convergence theory to discuss how a law like this can benefit both hospitals and racial minorities and synergistically provide for better health care for patients with better bottom lines for hospitals. Students might also look at access to health care is a social justice matter in and of itself and the role that law can play in helping obtain healthcare for marginalized groups. See Lindsay F. Wiley, *Health Law as Social Justice*, 24 CORNELL J. L. & PUB. POL'Y 47 (2014).

76. For example, one might consider whether HIPAA laws designed to protect those with preexisting conditions to change jobs more freely are really designed to avoid the issue of whether employers must provide particular health care packages in their insurance and put off calls for more universal health insurance by satisfying some people who already have it that may lose it. See Mary Crossley, *Discrimination Against the Unhealthy in Health Insurance*, 54 KAN. L. REV. 73, 113-17 (2005). One might also wonder if it benefits employers under conservative economic theories to consider employees a commodity and how employers benefit from a mobile workforce. Both employers and insurers certainly would have been heard in creating this law

protect low wage workers or perhaps to mute their complaints and discuss the role of middle-class unions and whether they represent the interest of the unemployed effectively. Domestic Violence classes can look at laws designed to protect women who have been abused and whether the laws are designed in a way that low-income women can take advantage of their protection.

Clinical classes not only focus on the issues but can go further to teach skills that could be helpful in identifying needs with out-groups broadly. This would help students representing those groups to see clients holistically and as members of communities that may have different values from those of the students,<sup>77</sup> to work with clients to identify problems, and to learn to adjust their own lawyering skills to meet the needs of out-groups.<sup>78</sup> In these classes, teachers applying a social justice lens give students a way to learn about social justice and think about change. It allows the students to consider whether the law and its application are just, and what role lawyers have addressing them.

Often, applying a social justice lens in these classes is the most appropriate way to explain law in these areas. However, a social justice lens will not be applied by students unless they are encouraged to apply it. For example, clinical class teachers who focus on how the work is analyzed have the opportunity to help students look at their clients' cases and see social and political issues.<sup>79</sup> Teachers may choose to leave out

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77. Clinicians can use many methods to do this, but many suggest a broad-based intake that is set within the community or otherwise ensures that the out-group is a large voice that can be heard. See Juliet M. Brodie, *Little Cases On The Middle Ground: Teaching Social Justice Lawyering In Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333, 344(2009), discussing social justice in a community lawyering context by saying that "community lawyering clinicians teach their students to recognize their clients not only as individuals deserving of complete professional loyalty and respect, but also as joined to one another as poor people in a particular economic and social community setting, and in a way that necessarily affects the lawyering." She adds that students decide to focus on some issues like housing by seeing what is happening in economically in the neighborhood by interacting with activists and other in the community.

78. See Antoinette Sedillo Lopez, *supra* note 36 at 310, in which Sedillo-Lopez argues for opening the eyes of students to different sorts of problems and needs requiring training lawyers for solutions like "political activism, legislative reform, funding, economic development, community empowerment, collaborating with community social services, and work for adequate daycare," suggesting that a diverse clinic is one way to learn to listen to the needs of the less powerful instead of just seeking out facts that are needed to resolve certain types of cases.

79. Clinical classes have traditionally had a social justice focus. The history of clinical classes is well described in other articles. Many start with a history in the 1960s and 1970s. According to Jon Dubin, the explicit call for social justice teaching in clinics came in the McCrate Report (American Bar Association Section of Legal Education and Admissions to the Bar, Legal Education and Professional Development-An Educational Continuum, Report of The Task Force on Law Schools and the Profession: Narrowing the Gap (July 1992) [hereinafter McCrate Report]: "Indeed, the McCrate Report offers suggestions for promoting the fundamental value of justice, fairness, and morality. Suggestions include (1) refraining from "any form of discrimination on the basis of gender, race, religion, ethnic origin, sexual orientation, age, or disability in one's professional interactions with clients, witnesses, support staff, and other individuals;" [citation omitted] (2) contributing to the profession's responsibility to 'ensure adequate

teaching about social justice by running clinics that do social justice work but do not involve students in social justice decisions. For example, consider teaching Access to Justice but this time in a clinical class. Even if students represent people who are often from underrepresented groups, students may miss Access to Justice issues unless it is an intentional and explicitly discussed focus.

Teachers must talk about why the out-groups are out-groups, what recurring issues they see among those in the out-groups brought on by power imbalances, and how their clinics came to focus on them, hopefully including out-group voices in the discussion. They might allow students to help the clinic director pick the out-groups on which the clinical class focuses and to see or help with triage decisions, forcing them to reflect on what happens to the people not selected for help.<sup>80</sup> But without this conscious choice to discuss Access to Justice in this class, it may not be learned.

A teacher who just gives students clients with legal problems on which to work without discussing why and avoiding the out-group triage discussion has lost an opportunity. A conversation about public interest lawyers' duties to address real problems of legally underserved people, of how non-public interest lawyers might make similar decisions in their *pro bono* or other work, and of ways in which Rule 6.1 might help give guidance in this area may be omitted. It is up to the clinical class teacher to make certain the social justice lens is applied to the class. Although there are certain things common for clinical teachers to have in their curriculum that would be hard to teach without a social justice focus, like cultural competency, social justice could be limited to parts of the class where they seem relevant, instead of teaching that social justice is always relevant.<sup>81</sup>

Clinical teachers may also not teach about social justice because it is not their priority.<sup>82</sup> In fact, many clinics now focus on needs of people who are not from out-groups or traditionally thought of as so, including some transactional and small business clinics. They see clinical classes as a great way to teach many legal skills and do not

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legal services are provided to those who cannot afford to pay for them;' and (3) enhancing 'the capacity of law and legal institutions to do justice.'" Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1471 (1998), citing Aiken, *supra* note 21 at 30-46 (1997).

80. See Brodie, *supra* note 78, at 359, discussing how each individual's case is seen through these lenses and how they exist within neighborhoods. See also Rand, Empowerment Approach, *supra* note 21, for a description of how he tries to involve students in social justice decisions.

81. See Edwards and Vance, *supra* note 34 at 65-66 for a discussion of social justice and cultural competency in a legal writing context.

82. See Wallace J. Mlyniec, *Where To Begin? Training New Teachers In The Art Of Clinical Pedagogy*, 18 CLINICAL L. REV. 505, 543 (at which Mlyniec explores and instructs clinicians on ways to teach and accepts that it is an active choice of a clinician to determine if teaching about social justice is a goal of their project.)

believe that clinical teachers should be constrained to teaching social justice issues.<sup>83</sup> This could be because the social justice implications do not seem relevant to the topic or because the clinical teacher is more concerned about satisfying the very real pressure to teach marketable skills than social justice.<sup>84</sup> Although it is possible to teach marketable skills like business and transactional methods in clinics and out-group classes while teaching with a social justice lens,<sup>85</sup> it must be desired and intentionally done for it to happen.

*B. Intentionally Teaching About Social Justice in Classes that do not Address Out-groups Specifically.*

Teachers of classes that traditionally do not focus on out-group issues also have choices to make when considering how to frame the law and discuss the legal system in the subjects they are teaching. Teachers can teach a skill or a concept by using material that raises social justice questions even if does not have to do so. For example, a legal writing teacher could use a problem that raises social justice issues.<sup>86</sup>

This is also true for classes where teachers value other lenses through which to see the content of their classes. A social justice lens

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83. See Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, 32 B.C. J. L. & Soc. Just. 331, 339 (2012), in which Kosuri argues that there are needs to teach clinical classes for other purposes than social justice, including skills that will allow students to learn marketable business skills to use in their business practice. However, some might see it as an unnecessary compromise. See Patience A. Crowder, *Designing a Transactional Law Clinic for Life-Long Learning*, 19 LEWIS & CLARK L. REV. 413, 416-17 (2015), discussing how transactional clinics can serve social justice needs, among other things citing Susan R. Jones, *Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law*, 14 WASH U. J.L. & POL'Y 249-55 (2004) for the proposition that transactional clinics can and often do represent out-groups who based on factors such as race or gender have difficulties in the business world.

84. See Lauren Carasik, *Justice in Ice Balance: An Evaluation of One Clinic's Ability to Harmonize Teaching Practical Skills, Ethics and Professionalism With a Social Justice Mission*, 16 S. CAL. REV. L. & SOCIAL JUSTICE 23 (2006), in which Carasik discusses balancing teaching skills with social justice and deciding that a clinic might be discontinued if the skills agenda was dominating or making the social justice framework impossible. *Id.* at 84.

85. See Lynnise E. Phillips Pantin, *The Economic Justice Imperative For Transactional Law Clinics*, 62 VILL. L. REV. 175 (2017). Pantin cites others who she says promote that transactional law pedagogy should focus primarily on skills development or that clinical techniques would be just as effective without a social justice goal, citing among others Robert R. Statchen, *Clinicians, Practitioners, and Scribes: Drafting Client Work Product in a Small Business Clinic*, 56 N.Y.L. SCH. L. REV. 233, 234-35 (2012) for the proposition that legal skills taught in clinics are effective whether or not social justice is a concern of a clinic. Pantin at 176. She continues by arguing that social justice should be part of a transactional clinic's teaching agenda, discussing the economic impact of discrimination and access to justice for lower income entrepreneurs as social justice areas to include. Pantin at 196-205.

86. See Edwards and Vance, *supra* note 34, discussing using fact patterns that demonstrate social injustice, like blacks trying to work and live in a white neighborhood, or law that specifically requires students to learn and grapple with social justice issues, like voting rights or race discrimination law.

could be added to their teaching in addition to the other lens. For example, contracts teachers might frame contracts as an attempt to formulate business agreements and to set dispute resolution arbiters. However, they can also consider the implicit or explicit societal impact of contract law. Criminal Law teachers could describe the law as setting up rules for coexistence and a way to enforce those rules while discussing the disparate effects of criminal law and processes on the less powerful. By adding or adopting a social justice lens to the other lenses to help explain how power of in-groups can explain the way that law is drafted, interpreted, and enforced, teachers can broaden student understanding for the topic. A student's understanding can be broadened in a way that better explains the law and the need for attorneys to step in to help create and enforce laws on behalf of the legally underserved.

To use the Contracts example above, when teaching about creating and enforcing contracts, teachers can discuss opportunities lawyers have to affect how a contract is drafted when parties have unequal power. For example, they can have students consider the justice of the less powerful being potentially bound to contracts with unconscionable terms that are often contained within unfathomable contracts that they cannot easily interpret. More pointedly, the teacher can also help students explore how a lawyer directly supports and extends the system when drafting and enforcing contracts.

When speaking of the power imbalance between the entity writing the contract and the person signing the contract (who likely is not really given the opportunity to read and certainly is unlikely to understand its terms), students could discuss whether attorneys have responsibilities to people of less power. Students could also consider whether they can ethically write or enforce certain contract terms when they practice. Similarly, teachers can have students ponder from where the less powerful get representation when they may not have resources.<sup>87</sup> They might continue the discussion by asking whether

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87. One way contracts teachers have described using a social justice framework is by teaching the unconscionability case *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965). One professor's use of this case as a tool for discussing different levels of education and experience leading to unjust results and power imbalance is described in Alexi Freeman and Katherine Steefel, *The Pledge for the Public Good: A Student-Led Initiative to Incorporate Morality & Justice in Every Classroom*, 22 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 49, 85-86 (2016). For a less traditional view that could be taught on the same issue, see MARK KLOCK, *Unconscionability and Price Discrimination*, 69 TENN. L. REV. 317 (2002), arguing that price discrimination is a social justice issue and unconscionable in ways that it affects the poor and less sophisticated consumers (as well as the rich and better educated). In this article, Klock cites Eric A. Posner, *Contract Law in the Welfare State: A Defense of the Unconscionability Doctrine, Usury Laws, and Related Limitations on the Freedom to Contract*, 24 J. LEGAL STUD. 283, 285 (1995) for the proposition that the cost of the welfare state is higher without provisions that protect the poor from unconscionable contracts. *Klock* at 318.

social justice is relevant to other Contracts concepts or to contracts generally, such as the ability to allow parties to agree to default judgments for failure to fulfill terms or to limit damages. They might teach about the rights of other stakeholders who are not parties to contracts when a contract results in environmental damage that neither of the parties care about, affecting neighborhoods that are unaware of the damage or unable to take action against it. They might teach about enforcement of contracts, and how some parties cannot afford to enforce contracts even if the other side has clearly defaulted.<sup>88</sup>

Using social justice terms might even be an easier way to have these discussions as it gives common language to talk about power imbalances, allowing students to make connections within and between several areas of law. In Contracts, the language of unconscionability may be very different from the language used in discussing the rights of stakeholders, while each could be talked about as the rights of the less powerful against a powerful entity. If the Contracts teacher talks about power imbalance and unconscionability, after the student has heard in Property about implied warranties of habitability in terms of helping less powerful tenants, students can easily see the relevance of power imbalance and social justice issues in both areas. They may take this information and look for power imbalance in other areas, like Civil Procedure, where removal procedures are used by big companies with more power to take advantage of less powerful plaintiffs by finding more favorable juries and a more difficult process for plaintiffs.

Although social justice might be taught without requiring new content by ensuring it is viewed with social justice in mind, some classes may need to add different content. Property classes may spend very limited time on leases, even though out-groups may rent more often than they own,<sup>89</sup> leaving students with little knowledge of how to work in this area or thinking about the needs of tenants. If leaseholds are covered, more time may be spent on the intricacies of privity of

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88. For a popular example, see Steve Reilly, *Hundreds Allege Donald Trump Doesn't Pay His Bills: Among Those Who Say Billionaire Didn't Pay: Dishwashers, Painters, Waiters*, USA Today (June 9, 2016), <https://www.usatoday.com/story/news/politics/elections/2016/06/09/donald-trump-unpaid-bills-republican-president-laswuits/85297274/> (in which contractors, workers, realtors, and others are left unpaid, some of whom are able to find a way to sue but some of whom do not). A less controversial description can be found in GERRY SPENCE, *WITH JUSTICE FOR NONE*, 115 (1990), in which he describes contractors refusing to pay their subcontractors solely because they know that the subcontractors cannot afford to sue them.

89. Although 72 percent of white households are homeowners, just 45 percent of Latinos and 43 percent of blacks own their homes, making a lack of focus on leaseholds less valuable for people who will represent blacks and Latinos. See *Demographic trends and economic well-being*, Pew Research Center, Social and Demographic Trends (June 27, 2016, <http://www.pewsocialtrends.org/2016/06/27/1-demographic-trends-and-economic-well-being/>).

contract, instead of the ramifications of residential tenant courts summary proceedings that limit tenants' rights to discovery and speed evictions.<sup>90</sup> Property classes would benefit from adding other issues important to marginalized classes, too, like rent control and other tenant rights movements. Without an intentional focus on social justice, those issues are overlooked.

Similarly, Civil Procedure students can learn about jurisdictional arguments as intricacies of practice, or a social justice lens can reveal a consideration of which litigants are most likely to lose the right to express their case.<sup>91</sup> Class action limitations can be seen as a law based only on the practicality of expressing somewhat different claims or, instead, can be explored through a social justice lens as denying the less powerful the ability to unite their claims for adequate or any representation.<sup>92</sup> Criminal Law students can talk about effective defenses to crimes or consider who makes and enforces laws, and who is the voice of the legally underserved by including teachings on: (1) disparate sentencing for different types of crimes committed by minorities;<sup>93</sup> (2) the death penalty in the context of racial minorities being arrested and charged more frequently than others;<sup>94</sup> (3) jailing

90. See David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CALIF. L. REV. 389, 402-03 (2011) (describing concerted action by tenant advocates to push for the warranty of habitability as wealth transfer and potentially leading to landowner money being spent on tenant needs and perhaps leading to rent control and other such measures).

91. See Helen Hershkoff, *Poverty Law and Civil Procedure: Rethinking the First-Year Course*, 34 FORDHAM URB. L.J. 1325, 1339-53 (2007) (discussing how poverty means makes it so that people lose out on personal and subject matter jurisdiction, and how poverty affects pleadings including early dismissal of cases, jury trials, *res judicata* and collateral estoppel, and alternative dispute resolution); Jason Parkin, *Due Process Disaggregation*, 90 NOTRE DAME L. REV. 283 (2014) (discussing how due process rights could be assessed based in subgroup's ability to make certain that people can access the legal system effectively); and *Rand*, *supra* note 2 at 497-501 (discussing how landlord/tenant cases provide less ability for tenants to use process to save their homes by have court procedure rules that make them summary proceedings).

92. See Michele Gilman, *A Court for the One Percent: How the Supreme Court Contributes to Economic Inequality*, 2014 UTAH L. REV. 389, 415-17 (2014), which describes ways that class actions allow people of lower classes to seek redress in cases where they would be unable to bring an action without banding together, including a class of over one million female Wal-Mart employees who could not sue despite clear statistical common cause, *Wal-Mart Stores Inc. v. Dukes*, 564 U.S. 338 (2011), and case where many people were charged \$30 dollar fees due to one of those non-negotiated and non-negotiable agreements in never read contract terms preventing court action and therefore class action in favor of arbitration that the Court was happy to protect corporations from the fear of being taken to court and faced with potentially large judgments, *AT&T Mobility v. Concepcion*, 563 U.S. 333 (2011).

93. See Darren Lenard Hutchinson, *"Continually Reminded of Their Inferior Position": Social Dominance, Implicit Bias, Criminality, and Race*, 46 WASH. U. J.L. & POL'Y 23 (2014) (discussing implicit bias and social dominance theory to explain disparate potential sentences in criminal sentencing codes for different crimes due to whether white people or people of color more often commit them and how people of color get harsher sentences generally).

94. See Seth Kotch & Robert P. Mosteller, *The Racial Justice Act and the Long Struggle With Race and the Death Penalty in North Carolina*, 88 N.C.L. REV. 2031, (2010) (describing both race and the death penalty historically and a state's attempt to recognize the problem officially and change how the

people who cannot pay minor fines while people with more money do not lose their liberty;<sup>95</sup> and (4) *Gideon v. Wainwright*,<sup>96</sup> including the right to counsel and counsel's duty to represent criminal defendants when appointed to do so.<sup>97</sup>

Students can also look at how to apply a social justice perspective when alleged victims and alleged perpetrators have social justice claims.<sup>98</sup> Again, the language of Civil Procedure and Criminal Law might demand that teachers use different language, such as due process. However, by adding social justice language to this and many, if not all, areas of law, these classes can include teaching social justice implications of what lawyers do and make social justice relevant to their students. Teachers can focus on social justice in classes as varied as labor law,<sup>99</sup> copyright,<sup>100</sup> and many others.

Put in the language of our Model Rules, lawyers continue to be public citizens<sup>101</sup> when they are handling contracts, addressing tort claims, or doing any other legal work. Lawyers must be trained to notice if the law or its application disparately impacts those who have no voice in creating or implementing it. They must recognize if the powerful are winning and running roughshod over the less powerful or if the impact of the law or legal process is benefiting some and not others, and they must want to do something about it and know how.

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law is administered for social justice reasons); David C. Baldus, et al., *Racial Discrimination and the Death Penalty in the Post-Furman Era: An Empirical and Legal Overview, With Recent Findings From Philadelphia*, 83 CORNELL L. REV. 1638 (1998).

95. See Tamar R. Birckhead, *The New Peonage*, 72 WASH & LEE L. REV. 1595 (2015) (suggesting that we have not abolished debtor's prisons by allowing this to continue).

96. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

97. Clearly, access to an attorney in criminal cases and the successes and failures of appointment of counsel for indigent defenders in criminal cases must happen through a review of the quality of representation of appointed counsel, such as in Barton, *supra* note 64, at 1250-69.

98. Abbe Smith and Ilene Seidman, *Lawyers for the Abused and Lawyers for the Accused: An Interfaith Marriage*, 47 LOY. L. REV. 415 (2001). See also Issa Kohler-Hausmann, *Managerial Justice and Mass Misdemeanors*, 66 STAN. L. REV. 611 (2015); William M. Carter, Jr., *Whren's Flawed Assumptions Regarding Race, History, and Unconscious Bias*, 66 CWRU L. REV. 947 (2016).

99. See, e.g. Marion Crain & Ken Matheny, *Labor's Identity Crisis*, 89 CALIF. L. REV. 1767. (2001) (suggesting that unions to not always represent the class interests of their members other than economic class interests and suggesting laws demanding that they also address discrimination in other areas, like race and gender).

100. See Lateef Mtima, *Copyright Social Utility and Social Justice Interdependence: A Paradigm for Intellectual Property Empowerment and Digital Entrepreneurship*, 112 W. VA. L. REV. 97 (2009) (looking at how copyright mechanisms exclude marginalized communities and how the law could be adjusted to allow for grassroots participation).

101. Although the "public citizen" language of the Preamble to the Model Rules is cited for Access to Justice concepts often, it is a general call to actively work toward "improvement" in the law.: "[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession." ABA Model Rules of Professional Conduct, Preamble, Comment 6 (2016).

### III. USING THE RECENT TREND OF COMPETENCIES TO PUSH TEACHING THROUGH A SOCIAL JUSTICE LENS

#### A. *Social Justice is a Competency*

Competencies are “in.”<sup>102</sup> At the behest of educational experts and the governing entities that monitor professional and non-professional schools, schools are designing their curricula by determining the specific competencies students need to graduate from their schools and become competent professionals. Schools must ensure that their curriculum covers the designated competencies they consider important to becoming a good lawyer. They must then design learning outcomes to achieve those competencies and measure whether their students have achieved them. Teachers must therefore design individual class syllabi with goals and objectives that are designed to teach students specific competencies and schools must teach all required competencies. Only then can the school be certain it is effectively teaching students, whether it is teaching them knowledge, a skill, or a professional value.<sup>103</sup>

Law schools are accepting and adopting this strategy.<sup>104</sup> After an exploration by the ABA’s Section on Legal Education and Admissions to the Bar’s Outcome Measures Committee,<sup>105</sup> the ABA’s Standards

102. However, teaching by focusing on competencies is not new. Many in education have suggested teaching to ensure that students in all schools leave with specific competencies and that law students do so in particular. For a look at law schools working toward this at the University of Montana Law School since at least the 1980’s, see John O. Mudd and John W. LaTrielle, *Professional Competence: A Study Of New Lawyers*, 49 MONT. L. REV. 11, (1988).

103. It should be noted that teaching toward competencies is not the universal theory of teaching today or in fact believed by all to be the best way to teach. For example, in the well-regarded book Michael Hunter Schwartz, Gerald F. Hess, and Sophie M. Sparrow, *What the Best Law Teachers Do* (2013), although the skills and knowledge base that students should learn to support legal practice from legal knowledge and practice skills to professionalism are talked about greatly, the word “competency” is not used once, despite its publication 6 years after the Carnegie Foundation’s report on law school teaching. There is a list of things that students should learn, *Hess et al.* at 24, and of what constitutes good learning: “‘Exceptional learning is somewhat amorphous, but...we know there has been exceptional learning when the students comes back for more’ (Anonymous)” and “‘Exceptional learning, much like Potter Stewart’s definition of obscenity, is something you know when you see it. The most important characteristic of exceptional learning is that it is motivated from within’ (Kyle Woods)”. *Hess et al.* at 25.

104. It is not just law schools and its accreditors that are demanding competency definitions and assessments to determine if their graduates are learning. For example, in medicine the Accreditation Council for Graduate Medical Education (ACGME) began earlier than law schools demanding their schools teach to competencies. They demand now require all residency programs teach to 6 competencies, ranging from competencies in patient care and procedural skills to professionalism to working within system-based practice. MARY COOKE, DAVID M. IRBY, & BRIDGET C. O’BRIEN, *EDUCATING PHYSICIANS: A CALL FOR REFORM OF MEDICAL SCHOOL AND RESIDENCY* (2010) [hereinafter *Medical Carnegie Report*] 17, 117; Accreditation Council for Graduate Medical Education, *Common Program Requirements* 9-12 (2017).

105. CATHERINE CARPENTER, ET. AL., *AMERICAN BAR ASSOCIATION SECTION ON LEGAL*

and Rules of Procedure for Approval of Law Schools were amended to specifically set out competencies that schools must aim to teach students.<sup>106</sup> The guidelines give some leeway to law schools to individually decide other competencies particularly important to their schools.<sup>107</sup> Law schools are publishing lists of learning objectives they will teach through their curriculum<sup>108</sup> and teachers are designing class goals to teach these learning objectives to their students.<sup>109</sup>

Perhaps the most comprehensive look<sup>110</sup> at professional schools

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EDUCATION AND ADMISSIONS TO THE BAR REPORT OF THE OUTCOME MEASURES COMMITTEE 57 (2008) [hereinafter “*ABA Outcome Measures Report*”]. Among other things, the report argued for changing Standard 301 and 302 that specifically say that measure substantive law knowledge, professional skills, and professional values and in Standard 303 to include assessments that could be used to measure outcomes accomplished. *Id.* at 57.

106. Standard 302. LEARNING OUTCOMES

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- (a) Knowledge and understanding of substantive and procedural law;
- (b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- (c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- (d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

ABA Standards and Rules of Procedure for Approval of Law Schools 2016-2017, Standard 302.

107. ABA Standards and Rules of Procedure for Approval of Law Schools 2016-2017, Standard 302. Interpretation 302-2 “A law school may also identify any additional learning outcomes pertinent to its program of legal education.”

108. The requirement is codified at ABA Standards and Rules of Procedure for Approval of Law Schools 2016-2017, Standard 301(b).

109. There is amazing work being done on competency training throughout several levels of training in many disciplines. For an incredible look at psychological counseling training, see Nadya A. Fouad, ET AL., *Competency Benchmarks: A Model for Understanding and Measuring Competence in Professional Psychology Across the Curriculum*, 3 TRAINING AND EDUCATION IN PROFESSIONAL PSYCHOLOGY S5, S7 (no 4, 2009) for what might be considered competencies on steroids, with a 3 by 3 cube of competencies measuring on the x-axis foundational competencies necessary to practice, like scientific knowledge, relationship, ethics, and reflection; the y-axis the functional competencies required to practice, such as assessment, intervention, research, teaching, and management; and the z-axis, the levels one should get to at each stage of training. The paper includes 16 pages of competency benchmarks described explicitly for each level of training.

110. Although the Carnegie Foundation’s reports figure prominently in this paper in large part because they are dominant among law school administrations and law school accreditors, there are many other institutions working on outcomes strategies. See ROY STUCKEY, ET AL., BEST PRACTICES FOR LEGAL EDUCATION (2007) [hereinafter “Best Practices”], in which it is argued that law schools should have specific goals for teaching substance, skills, and professionalism and suggests teaching strategies to obtain those goals; see also DEBORAH MARANVILLE, ET AL., BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD (2015), which looks explicitly at goals for teaching in different contexts. Some would argue that competencies were described much earlier in an earlier look at law teaching commonly known as the McCrate Report. LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT-AN EDUCATIONAL CONTINUUM, REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, (July 1992). For example, goals were set up for clinical programs that were to lead students to learn many things including practice skills, the inaptness of law to address certain

about this form of teaching has been performed by the Carnegie Foundation,<sup>111</sup> which examined engineering,<sup>112</sup> medicine,<sup>113</sup> nursing,<sup>114</sup> pastoral,<sup>115</sup> and law schools.<sup>116</sup> In each of these disciplines, the Foundation's authors found school training lacking in different ways. For example, the Foundation found law and pastoral education to be lacking in teaching practical skills versus theoretical ones.<sup>117</sup> For engineers, they found that practical and theoretical courses are divorced from each other, finding that theory is put before practice and that their separation makes it harder for students to learn either.<sup>118</sup> For doctors, the Carnegie Foundation found that medical training fails to teach how doctors function humanistically, calling this process "professional formation, that is, the discussion of becoming a physician that has less to do with fund of knowledge and technical skills and more to do with the character, disposition, and automatic

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problems, analyzing a case to determine which substantive law mattered, professional roles and ethics, collaborative skills, and the way that the law impacts and lawyers must serve the low-income community. See WILLIAM P. QUIGLEY, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 471 (1995).

111. The Carnegie Foundation for the Advancement of Teaching has been looking at teaching methods for over 100 years. They are responsible for The Flexner Report in 1910, which was a formative report for medical school education, Abraham Flexner, *Medical Education in the United States and Canada: A Report to the Carnegie Foundation for the Advancement of Teaching*, Bulletin Number 4 (1910) (reprinted 1960, 1978), [http://archive.carnegiefoundation.org/pdfs/elibrary/Carnegie\\_Flexner\\_Report.pdf](http://archive.carnegiefoundation.org/pdfs/elibrary/Carnegie_Flexner_Report.pdf), and social work's version of the Flexner Report, Abraham Flexner, *Is Social Work a Profession?* (1915), <http://socialwelfare.library.vcu.edu/social-work/is-social-work-a-profession-1915/>, which altered the social work profession significantly by having it consider the skills and norms it needed to develop to help differentiate it from other people working in the community. The Foundation also develops teaching strategy ideas for non-professional schools and on teaching in general. Although it may seem to educators today that teaching strategies and lately pushing competency-based teaching is the only thing they do, the Foundation has addressed other issues to support teachers, perhaps best known for its work helping create the Teachers Insurance and Annuity Association (TIAA). <https://www.carnegiefoundation.org/who-we-are/foundation-history/>.

112. Sheppard, *Engineering Carnegie Report*, *supra* note 71.

113. *Medical Carnegie Report*, *supra* note 105.

114. PATRICIA BENNER, ET AL., *EDUCATING NURSES: A CALL FOR RADICAL TRANSFORMATION* (2009).

115. CHARLES R. FOSTER, ET AL., *EDUCATING CLERGY: TEACHING PRACTICES AND PASTORAL IMAGINATION* (2005).

116. Sullivan, *Legal Carnegie Report*, *supra* note 53. For a brief history of work that the Carnegie foundation has done since 1913 in this area, *see id.*, at 18-19; *see also* Mark F. Kightlinger, *Two and a Half Ethical Theories: Re-examining the Foundations of the Carnegie Report*, 39 OHIO N.U.L. REV. 113, 121-23 (2012).

117. Sheppard, *Engineering Carnegie Report*, *supra* note 71 at x (in a forward by Lee S. Shulman summarizing many of the reports).

118. Sheppard, *Engineering Carnegie Report*, *supra* note 71 argues that laboratory classes do not connect to knowledge courses, practice project teachers do not discuss ethical concerns, and professionalism is outsourced to non-engineering teachers, with outsourcing teaching about professionalism. *Id.* at xxii.

choices, the moral compass, of the trainee.”<sup>119</sup> Each school is left with a prescription for how to teach professional competencies better.

However, each of the Foundation’s reports contain some similar prescriptions, the following five of which are relevant to teaching social justice. First, professional school is not just about teaching substance and practice skills, but also about professionalism and incorporating all three together. The Foundation calls them three distinct apprenticeships. Professional school should teach (1) “habits of the mind” including substantive knowledge and the way that professionals in a profession think;<sup>120</sup> (2) “habits of practice” including skills; and (3) professionalism, defined as “internaliz[ing] the values, ethical commitments, and sense of personal responsibility.”<sup>121</sup> Each of the three apprenticeships are distinct from the others, and teaching is incomplete without making sure all three are taught.<sup>122</sup>

Second, if teachers and schools want to know if their students have what it takes to perform at the next level, they have to measure whether the teaching activities designed to give students specific competencies are in fact teaching those competencies.<sup>123</sup> It is easy to assume that

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119. Cooke, et al., *Medical Carnegie Report*, *supra* note 105 at 139, wishing they trained people “specifically [in] the critical importance of inculcating a desire to be more compassionate, more altruistic, and more humane.” *Id.* at 30.

120. Sullivan, *Legal Carnegie Report* at 28, giving special attention to law schools working on having its students think like lawyers.

121. Sheppard, *Engineering Carnegie Report*, *supra* note 71 at ix (in a forward by Lee S. Shulman).

122. *Id.* See also Sullivan, *Legal Carnegie Report*, *supra* note 53 at 12-14. 27-29.

123. There is a lot written about teaching toward competencies. One of the most popular versions of this is GRANT WIGGINS & JAY MCTIGHE, UNDERSTANDING BY DESIGN 29 (2005), in which they teach their backward by design model. They describe explicitly set out goals, methods of teaching toward those goals, and clear ways to assess whether those goals are being met. Students are to not only master content but learn how to work with that content. A good description of how to do this used by the author is promoted by L. Dee Fink, *A Self-Directed Guide to Designing Courses for Significant Learning* (2003) (hereinafter “*Guide to Designing Courses*”). <https://www.deefinkandassociates.com/GuidetoCourseDesignAug05.pdf>. In it, he breaks down teaching toward competencies into several parts, the most important ones described and worked on in his section on the Initial Design Phase for the class. They include 1) looking at situational factors of the class, like required formats and the academic ability of students, *id.* at 6-7; 2) setting out explicit learning goals that could be teaching foundational knowledge, applying knowledge (critical thinking, practical thinking), integrating knowledge (connecting it to other things they know), human goals of understanding themselves and others better through their connection to the material, caring about what they learn (how students feel about or takes in the information and makes it part of themselves), and learning how to learn goals (teaching how to be reflective learners who can teach themselves new things) *id.* at 8-12; 3) giving effective feedback and assessment, including both formative and summative assessment from the beginning of the class of four types that is forward looking assessment of how students will be able to apply knowledge to future tasks, that leaves students with tools for self-assessment, and which is given by teachers frequently enough to matter, quickly, as objectively as possible and caringly, *id.* at 13-15; 4) designing learning activities to meet goals set in the second step that are active learning activities when possible, *id.* at 16-21; and 5) making sure all the four steps above mesh, *id.* at 21-23. See also L. DEE FINK, *CREATING SIGNIFICANT LEARNING EXPERIENCES: AN INTEGRATED APPROACH TO DESIGNING COLLEGE COURSES* (rev. & updated ed. 2013).

social justice or any other competency has been learned by students because they have done activities that they think teach that competency. By passing a certain number and type of substantive law classes, performing practice skills in certain settings like moot court, or handling cases in a clinic, one might assume that they are mastered. However, success in these areas is not always well measured and when it is, the measures can be inappropriate proxies for demonstrating that students are ready to practice.

The ABA's Outcome Measures Committee found that law schools are not bad at measuring some things that they particularly value, like acquiring substantive knowledge.<sup>124</sup> Law schools look at whether students pass the bar exam as a prime measure, which measures a certain knowledge base, although it can leave out some skills and professional assessment.<sup>125</sup> Law schools also look at how many students obtain jobs, with and without further training. But generally, the Committee found schools were bad at measuring whether skills and professionalism have been learned. In many cases, they found that law schools were assuming law students were developing competencies based on time spent in class learning about professionalism without assessing whether students had learned them. This is similar to a problem the *Medical Carnegie Report* found with medical schools. That report found it wrong for medical schools to assume that doctors are competent by using the outcome measure that they have been practicing medicine in residency for three years, without some way of assessing the knowledge, skills, and professionalism they have developed.<sup>126</sup>

Law schools continue to have credit requirements with some mandatory topic distribution as a guide for graduating law students, which is basically a time spent requirement.<sup>127</sup> If law schools think

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124. *ABAOCM* at 8.

125. The Outcome Measures of the ABA agreed with this assessment in Sullivan, *Legal Carnegie Report*, *supra* note 53, arguing that passing the bar is not a bad measure for whether lawyers have gained substantive knowledge but does not cover the skills and professionalism that a lawyer needs to practice. *Id.* at 61.

126. Cooke, et al., *Medical Carnegie Report*, *supra* note 105 at 27-28. *Id.* at xxii. See also Eric S. Holmboe, et al., A call to action: The controversy of and rationale for competency-based medical education, 39 (issue 6) *Medical Teacher* (July 2017) available at <http://www.tandfonline.com/doi/full/10.1080/0142159X.2017.1315067?scroll=top&needAccess=true>. For a similar complaint about psychology training, see Fouad, *supra* note 110 (“Entry level to practice generally has been defined by documentation of completion of required coursework, including a requisite number of hours of supervised training. These criteria are likely a poor proxy for actual evaluation of competence, and the relationship between these criteria and actual competence as a professional psychologist is tenuous at best.”)

127. ABA Standards And Rules Of Procedure For Approval Of Law Schools 2016-2017, Standards 303, 310, and 311.

there is more to being a lawyer than book knowledge and want to be sure that skills and values have been instilled in students, schools must do something to describe the competencies they want to teach.<sup>128</sup> Additionally, they must find an appropriate way to demonstrate that those competencies have been achieved.<sup>129</sup>

Third, professionalism can be focused on directly as a competency that needs to be taught. This is a bold concept. It implies (1) that there are collective mores of a profession that can be identified; (2) that it is right and possible to protect those mores by teaching and instilling them into students; and (3) that if there is a desire to change the mores of a profession, the members of the profession can instill them in new generations in a way that substitutes new mores for existing ones. All these statements ring true. As described above, the ABA and other organizations have collective statements of mores that are generally accepted, including working toward social justice. Teaching these mores as professionalism is possible, as this article describes. Further, if the bar or others think law students should learn certain mores that exist or are aspirational, it can see that they are adopted by law schools.<sup>130</sup>

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128. *Id.* at 10.

129. One way to assess an understanding of social justice might be to assess student's ideas about how legal and societal problems can be interpreted and whether they interpret it in a way that includes social justice concepts. In social work, where social justice includes looking at structural challenges in society, an interesting assessment of social work students' learning about social justice was done in a way that could be done in a classroom or by law schools in Katharine M. Hill, et al., *Assessing Clinical MSW Students' Attitudes, Attributions, and Responses to Poverty*, 20 J OF POVERTY 396, 411 (2016): "These students, as future social workers, illustrated and affirm a commitment to social justice, which was evident through an emphasis on structural responses to poverty."

130. One example of a profession identifying mores and trying to instill them is the medical profession through medical training. Doctors have defined collective mores for the profession through The AMA Code of Ethics. Doctors are to provide "competent medical care [] with compassion and respect for human dignity and rights." American Medical Association, AMA Code of Ethics, Principal I (revised 2001, ©2016). Although rules are clear that doctors can serve whatever population base they want in whatever setting they enjoy, *Id.*, Principal VI, doctors "shall recognize a responsibility to participate in activities contributing to the improvement of the community and betterment of public health." *Id.*, Principal VII. Along with other things doctors do to promote these values among their current doctors, medical educators require part of medical training to teach their new professionals to follow these mores by requiring medical trainers to include teaching toward these new norms in their curriculum. As set out by the ACGME that accredits medical residency training, resident education programs are required to teach toward compassionate care and community public health goals. Along with competencies about practicing appropriate patient care and having base medical knowledge but must learn to be professionals like their peers. This includes teaching doctors to be compassionate and responsive to patients but also to be accountable to "patients, society and the profession" and be sensitive and responsive to diverse population bases. See ACCREDITATION COUNCIL FOR GRADUATE MEDICAL EDUCATION, ACGME COMMON CORE REQUIREMENTS 11-12 (last revision date July 1, 2016). Medical trainers must then come up with ways to teach this to their students. See Susan R. Swing, *The ACGME Outcome Project: Retrospective and Prospective*, 29 *Medical Teacher* 648 (2007), describing Institute of Medicine: *Crossing the Quality Chasm: A New Health System for the 21st Century* (2001) which in part gives aspirational goals similar to the AMA Code of Ethics and which Swing discusses ways schools are teaching toward

While these things are possible, the Legal Carnegie Report is particularly harsh on law schools failing to teach the social justice part of professionalism now.<sup>131</sup> It describes that to teach professionalism well, schools must teach “individual and social justice” and that law schools fail when they do not teach “a commitment to the public good as central goals of their teaching.”<sup>132</sup> It notes that law schools do this poorly and, by leaving out a social justice component as part of professionalism, they imply social justice is not important.<sup>133</sup>

Fourth, professionalism cannot be taught in isolation but must be incorporated into substantive and skills-based classes. One of the clearest places the Foundation describes this is in engineering education, where engineering educators seek to add a moral dimension to engineering teaching by outsourcing the work to classes taught by non-science teachers on non-science subjects including ethics.<sup>134</sup> Engineering classes do not incorporate the learning taught in those other classes.<sup>135</sup> To the Foundation, this practice, along with a disconnect between knowledge-based and practice classes, results in the need for a total reform of the curriculum to connect theory to practice and to ensure that all classes include discussions of professionalism.<sup>136</sup> This is clearly applicable to law schools.<sup>137</sup>

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those goals.

131. This is not entirely fair. Law schools have out-group classes that consider issues of social justice, from Access to Justice classes to Employment Discrimination. Professional Responsibility often covers these issues. Beyond classes, many schools have pro bono opportunities described to students as having students begin to provide access to legal help that clients would not get otherwise. Because of state clinical practice rules demand serving indigent people and therefore push students and law schools into providing legal services to the underserved, students learn about social justice in many clinics and those clinics end up implanting teachers in clinics who are adept and working with the underserved and teach about how law can be used to serve social justice. All of these have been done by law schools to support social justice learning.

132. *Id.*, at 132

133. See shadow pedagogy discussion, *supra* at text surrounding note 53.

134. Sheppard, *Engineering Carnegie Report*, *supra* note 71 at 14.

135. *Id.* at xxii. The *Report* goes as far to include a graphical description of this by connecting many goals of teaching substantive knowledge and skills (analysis, lab, and design) in one multidimensional box with a little box off in the corner separated from the rest consisting of the minimal, unattached ethics teaching. *Id.* at 15. See also Cooke, et al., *Medical Carnegie Report*, *supra* note 105 at 6, in which The Foundation critiques the separation of clinical teaching and scientific knowledge teaching in medicine, believing that some competencies are not incorporated by students because they are taught in just one or the other type of course. They argue that unless they taught in both, teachers risk students minimizing competencies to only being important in one part of their work.

136. *Id.*

137. The outsourcing argument might at times be made about Professional Responsibility for some law schools, but the outsourcing complaint is more often made about separating out other sorts of classes, particularly ones that focus on practical training. One could imagine that some of these teachers might not be on the same page and teach a coordinated curriculum designed to develop any of the law school’s competencies. See Brent E. Newton, *Preaching What They Don’t Practice: Why Law Faculties’ Preoccupation with Impractical Scholarship and Devaluation of Practical Competencies Obstruct Reform*

Although not outsourced, law schools put most professionalism teaching into Professional Responsibility classes that can be, but may not be, spoken of in the rest of the curriculum, and put most social justice teaching into clinical and out-group courses. This practice marginalizes professionalism concepts and obscures how to apply professionalism lessons in actual practice.<sup>138</sup>

Others looking to teach social justice with substantive and skills-based classes note that by not incorporating social justice in all classes, it is possible schools are failing to teach the substance and skills students need to do social justice work. Substantive law teachers might not teach law that is helpful to addressing power imbalances if they do not consider social justice ramifications with their students.<sup>139</sup> Skills teachers might teach the wrong skills because it is not their goal to teach skills needed to give voice to those with less voice and advocacy techniques used to empower the disempowered.<sup>140</sup> Skills and clinical

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*in the Legal Academy*, 62 S.C. L. REV. 105, 107-08 (2010), in which he argues practical law training is outsourced to legal writing and clinical teachers other than substantive law teachers, hiring most faculty as substantive teachers to write law review articles who are unequipped to give such training. In part, article is about hiring practices and how those mess with teaching competencies. He writes that the average ranges from 1.4 to 7 years of legal work before school, depending on cited surveys and his own look at some recent numbers. *Id.* at 127-30.

138. For example, consider cause lawyering clinics, where teachers and students select cases that help clients work toward a goal of changing a system that the lawyer and students think need change. Without a professionalism discussion of hearing the voices of out-groups and ensuring that the out-groups voice is heard, the lawyer and students could be addressing how they think the world should be and not how the out-group thinks it should be. See Sarat and Sheingold, *supra* note 35 at 3, citing DAVID LUBAN, LAWYERS AND JUSTICE: AN ETHICAL STUDY xvii (1988), demanding that an attorney “shares and aims to share with her client responsibility for the ends she is promoting in her representation,” presumably deferring to the client group the definition of the problem addressed, even if the attorney may have to stop representing clients if their definition of the problem differs from the out-groups.

139. See Julie D. Lawton, *supra* note 20, 836 (2017), discussing how without discussing social constructs through social justice, students will be unprepared to represent the powerless.

140. See Bezdek, *supra* note 56 at 733-37, in which Bezdek suggests that part of social justice lawyering is learning to work with instead of on behalf of clients and that this requires a different skillset that lawyers often have, citing Gerald Lopez, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305, 356 (1989) attorneys are learning new organizing skills including “negotiated relationships,” “power-sharing,” and “new experimentalist approaches to public problem solving,” citing Julissa Reynoso, *The Impact of Identity Politics and Public Sector Reform on Organizing and the Practice of Democracy*, 37 COLUM. HUM. RTS. L. REV. 149, 164-66 (2005) and otherwise adopting new governance strategies, and citing Ascanio Piomelli, *The Challenge of Democratic Lawyering*, 77 Fordham L. Rev. 1383, 1386 (2009) for skills including coordinating efforts with many others who are working to accomplish similar goals in other forums as well as “litigation, legislative change, lobbying, community and popular education, media campaigns, political mobilization, and organizing as a range of options to assess and deploy in such combinations as each context warrants”; See Artika R. Tyner, *Planting People, Growing Justice: The Three Pillars of New Social Justice Lawyering*, 10 HASTINGS RACE & POVERTY L.J. 219, 262 (2016), discussing social justice requiring new lawyering skills toward the promotion of a community-based, assets-based approach that emphasizes empowerment. See also Rand, *supra* note 26 at 484-487, citing JUDITH A.B. LEE, *THE EMPOWERMENT APPROACH TO SOCIAL WORK PRACTICE* (2nd ed. 2001) for the added skill of helping the less powerful identify for themselves the “word”, and by not accepting

class teachers might not teach strategies of litigation important to social justice lawyering. This includes skills like writing “thick complaints” describing social justice goals which are unnecessary for a successful complaint, but could help as an organizing strategy for the community or as a litigating strategy if the intent of the suit is only partially about winning the case.<sup>141</sup> Incorporating social justice into course curricula corrects this problem and helps students think about the law on which they want to focus and the skills they want to develop to do social justice work.<sup>142</sup>

Among other things, incorporating social justice in the entire curriculum allows for social justice to permeate the law school and allows for projects like a social justice credo. Although a credo could be used in other ways, like having a class that focuses on social justice use a credo to make social justice relevant to that class, this puts the credo back into a likely marginalized course taken by few. It does not allow for students to see how social justice applies in the substantive, skills, professionalism, and other classes they take.<sup>143</sup> It does not incorporate a social justice credo into a critical part of the law school curriculum that students constantly see.

Fifth, professionalism includes learning about commitment to the public and understanding that one must be the public’s champion. No

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oppression or that anyone wants to be oppressed, finding power within people and the community to apply their own and attorneys work toward social justice.

141. See Calmore, *supra* note 32 at 1198-99. There, Calmore analyzes Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699 to describing three different strategies that lawyers may use in pursuit of social justice that other lawyers might not choose between. Social justice lawyers might litigate within the system to try to win cases like any other lawyer, assuming that working within the system might work to resolve problems. Alternatively, they might litigate or take other action where winning would be good, but the point is to bring about true discourse (not discussion) about social justice issues with the audience of the subordinated group or the public in mind, hoping to pressure powerful people and mobilize around an issue. Finally, a social justice lawyer might work with subordinated groups to recognize that moments of domination are opportunities for resistance and take resistance strategies. For an insightful analysis of White's article and critiques of it, see Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427 (2000).

142. Although beyond the scope of this paper, perhaps the one skill that is not taught as fully social justice lawyering may require is leadership and leadership styles. Tyner, *id.* at 240-52, has a good discussion of different leadership styles and which might work best for helping lawyers give clients voice. Tyner describes necessary leadership lawyer leadership styles to promote social justice as servant and transformational. Servant is serving the needs of other and the common good through, among other things, seeing that the needs of marginalized people are advocated for. Transformational leaders lead by being moral and visionary leader who understand what followers want and what strengths they have, helping transform them by developing shared values, encouraging strategic thought, self-actualization, and possibly leadership strengths in their followers. Leaders and followers learn to empower and learn from each other, increasing the motivation and morality of both, and working on projects together. *Id.* at 240-252, citing among others Peter G. Northouse, *Introduction to Leadership Concepts and Practice* 137 (2d ed. 2001); James MacGregor Burns, *Leadership*, 4 (1978), and Bernard M. Bass, *Leadership and Performance Beyond Expectations* (1985).

143. See text *infra*, surrounding notes 70-71.

matter the professional school, competencies cannot only be about what makes graduates adept at what they do but should be about promoting an understanding that they must accept personal responsibility for the work they do. Professionals, including lawyers, must learn to use the power that their new knowledge and skills gives them both ethically and morally.<sup>144</sup> Further, they must stand up for the public, developing a “professional spine.”<sup>145</sup> In the Carnegie Foundation’s words, professionals must be socialized: “In every field we studied [law, engineering, divinity, nursing, and medicine], we concluded that the most overlooked aspect of professional preparation was the formation of the professional identity with a moral and ethical core of service and responsibility around which the habits of mind and of practice could be organized.”<sup>146</sup>

The *Legal Carnegie Report* goes into more definition of what professional formation should look like for lawyers as it pertains to serving the public and social justice.<sup>147</sup> Teaching professional formation means teaching about lawyers’ “identity and purpose, introduc[ing] students to the purposes and attitudes that are guided by the values for which the professional community is responsible.”<sup>148</sup> Developing a professional identity includes not only behavior toward clients but also recognizing a public mission.<sup>149</sup> Students must learn how to practice and “serve responsibly.”<sup>150</sup> Teachers are charged with “[f]orming students able and willing to join an enterprise of public service,”<sup>151</sup> by giving students the “preparation for accomplished and responsible practice in the service of others.”<sup>152</sup> Teachers must also ensure that students leave school understanding that serving the community is one of their “core commitments”<sup>153</sup> as a lawyer. Many law school teachers have accepted this, describing social justice work

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144. See Sheppard, *Engineering Carnegie Report*, *supra* note 71 at ix (2009) (in a forward by Lee S. Shulman). In describing how students in engineering school had internalized the Carnegie Foundation’s metric, he wrote that they had understood “all three kinds of learning that we at Carnegie use to describe professional formation: The cognitive apprenticeship or development of habits of mind; the practical apprenticeship or development of habits of practice; and the moral apprenticeship wherein the professional develops and internalizes the values, ethical commitments, and sense of personal responsibility that is entailed in the formation of a professional.”

145. *Id.* at 14.

146. Cooke, et al., *Medical Carnegie Report*, *supra* note 105 at ix.

147. Sullivan, *Legal Carnegie Report*, *supra* note 53 at 12-14.

148. *Id.*, at 28.

149. *Id.*, at 19.

150. *Id.*, at 23.

151. *Id.*, at 22.

152. *Id.*, at 23.

153. *Id.*, at 31.

as part of the moral responsibility of attorneys,<sup>154</sup> calling it part of attorneys' "moral obligation to advance the law's justice mission to alleviate the effects of oppressive legal and socio-political power structures in society."<sup>155</sup>

In sum, the competencies law schools have a duty to ensure their graduates achieve include (1) the competency to see law through a social justice lens and (2) the ability to take active steps to work toward social justice. The public's needs must be understood and students must be equipped to address them. Social justice teaching can and must be done throughout the entire curriculum to have a real impact on students and their work.<sup>156</sup>

There may be some who question whether ABA and the Carnegie Foundation mean social justice when they talk about public service or if they are referring to a more amorphous statement that protecting the public matters and attorneys should figure out how to do it. However, law schools and the bar have a duty to define how lawyers should aim to perform meaningful public service. "Doing" social justice is impossible without defining it, as students cannot be prepared to practice any competency that is too fuzzy, like "doing good" or "helping the community." For the reasons described in Part I of this paper, social justice is a definable concept involving power imbalances

154. Stephen Wizner, *Beyond Skills Training*, 7 CLINICAL L. REV. 327, 331 (2001). *citing* Aiken, *supra* note 29, 6 n.10 (1997): "If all I can do in law school is to teach students skills ungrounded in a sense of justice then at best there is no meaning to my work, and at worst, I am contributing to the distress in the world. I am sending more people into the community armed with legal training but without a sense of responsibility for others or for the delivery of justice in our society."

155. Edwards and Vance, *supra* note 87 at 70, *citing* Brook K. Baker, *Transcending Legacies of Literacy and Transforming the Traditional Repertoire: Critical Discourse Strategies for Practice*, 23 WM. MITCHELL L. REV. 491 (1997); and Glenn Omatsu, *Teaching for Social Change: Learning How to Afflict the Comfortable and Comfort the Afflicted*, 32 LOY. L.A. L. REV. 791, 792, 797 (1999).

156. Although beyond the scope of this article, other professions are similarly looking at insuring that social justice is taught in their curriculum. For a look at doing so in psychology, *see* Sue L. Motulsky, et al., *Teaching Social Justice in Counseling Psychology*, 42(8) THE COUNSELING PSYCHOLOGIST 1058 (2014) (in the "Non-Traditional Teaching Special Issue."). The article discusses an APA 2012 described as having "individual and cultural diversity awareness" and social justice competencies, including "awareness of social, political, economic and cultural factors that impact individuals, institutions and systems" and understanding "the differences between individual an institutional level interventions and system level change" *citing* Fouad, *supra* note 110. *Id.* at 1059. Like advocates for law school training students to change society, they add that psychologists cannot just be sensitive but must be "change agents." *Id.* Social justice includes "treating individuals equitably and fostering fairness and equality" (citation omitted), and they suggest a set of guidelines that she says are widely used found in GOODMAN, L. A., ET. AL., *Training Counseling Psychologists as social justice agents: Feminist and multicultural principles in action*, 32 THE COUNSELING PSYCHOLOGIST 793 (2004) including "ongoing self-examination, sharing power, giving voice, facilitating consciousness raising, building on strengths, and leaving clients (or students) with the tools for social change," *Id.* at 1062, suggesting that social justice can and should be incorporated in all the curriculum, suggesting it in orientation, clinical classes, research skills classes, career counseling, courses on the creation and use of psychological evaluation tools, and a neuropsychology course. *Id.* at 1066-75.

that must be addressed. In a world where law schools are being asked to define competencies and learning objectives based on them, law schools are in a great position to promote social justice as a competency lawyers need. Lawyers need to teach and practice knowledge, skills, and professionalism which are incomplete without the ethics and moral relevancy that a social justice lens provides.

### B. *Teaching a Social Justice Competency.*

Teaching to competencies is not new in all areas of law school teaching. For many years, clinical teachers and some skills teachers have set explicit goals toward developing practice competence. This is clear in the textbooks that clinicians use and assign to their students<sup>157</sup> and the pedagogical articles clinicians and skills teachers write.<sup>158</sup> Many of those works focus on teaching goals of developing effective practice skills, like interviewing, counseling, investigating, and advocating. They describe practice models supporting social justice goals. Other texts and articles give tools for understanding out-groups from different cultures that often have less power than others<sup>159</sup> and ways to transfer to and share lawyers' power with clients who have struggled with power imbalance in their communities as well as power imbalances between them and their lawyers. Some of these promote representation styles designed to make sure that social justice values predominate, including teaching students to give the power to define problems and choose legal options to clients, and to suggest putting clients on the front lines of legal struggles to empower them.<sup>160</sup>

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157. For examples, see DAVID CHAVKIN, *CLINICAL LEGAL EDUCATION: A TEXTBOOK FOR LAW SCHOOL CLINICAL PROGRAMS* (2002), DEBORAH EPSTEIN, JANE H. AIKEN, AND WALLACE J. MLYNIEC, *THE CLINIC SEMINAR* (2014).

158. It would be impossible to list all of the pedagogical articles. Suffice it to say, along with articles published in law reviews around the country, the clinical teaching community developed the *Clinical Law Review*, sponsored by the AALS (American Association of Law Schools), CLEA (the Clinical Legal Education Association) and NYU Law School that focuses on lawyering theory and clinical teaching. A *Journal of Lawyering and Legal Education*, NEW YORK UNIVERSITY LAW SCHOOL, <http://www.law.nyu.edu/journals/clinicallawreview>. The legal writing community also publishes in many law reviews but has also developed its own journal through the Legal Writing Institute that "has encouraged and communicated scholarly research devoted to the theory, substance, and pedagogy of legal writing." *Publications*, LEGAL WRITING INSTITUTE, <https://www.lwionline.org/publications>.

159. Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 *CLINICAL L. REV.* 33 (2001)

160. To a clinical teacher familiar with this pedagogy, this will seem like a great oversimplification that tries to combine some relatively standard client centered lawyering with some more radical lawyering styles. To differentiate between these above described style, see Ascanio Piomelli, *Rebellious Heroes*, 23 *CLINICAL L. REV.* 283 (2016), in which he describes how the concept of client centered lawyering is used to describe commonly adhered to ideas of giving some level of power to clients in how their case is handled and compares it with Gerald Lopez's ideas in GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992) including strategies for partnering with

Competency based teaching has also been used in non-clinical classes. It is common in non-law school curriculums at many levels, from kindergarten through grade schools<sup>161</sup> to college and graduate school<sup>162</sup> to continuing professional education classes.<sup>163</sup> Although it may seem easier to describe goals and objectives in clinical and skills classes, the same methods are used and described for substantive knowledge topics. By determining what a student must be able to do upon graduation, a substantive knowledge course can look at what knowledge it should impart; design activities that are likely to impart that knowledge, which could be lectures, discussions, or activities; and measure what knowledge the students have at the end of the semester, perhaps by a test.<sup>164</sup> Although some substantive knowledge teachers and others balk at teaching to competencies this way, they must do so no matter what they believe, as ABA requirements demand it.<sup>165</sup>

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communities to effectuate change.

161. One might look at the whole “No Child Left Behind” and “Every Student Succeeds Act” as a major example of competency training thought testing assessments. State Plans must have academic standards that meet lead to competencies that will lend itself to success at the next level, requiring that the k-12 curriculum give students the competence to success at the state college of vocational training that may follow. 20 USC Section 6311(b)(1)(D)(i). An example of the testing done to accomplish this from Massachusetts shows test questions and results, as well as other interpretive data. See Grant Wiggins, *How Good is Good Enough*. 71 EDUCATIONAL LEADERSHIP 10, (no. 4, 2013), published ACSD at <http://www.ascd.org/publications/educational-leadership/dec13/vol71/num04/How-Good-Is-Good-Enough%C2%A2.aspx>, and citing *Massachusetts Comprehensive Assessment System*, MASSACHUSETTS DEPARTMENT OF ELEMENTARY AND SECONDARY EDUCATION, <http://www.doe.mass.edu/mcas/testitems.html>. The Massachusetts cite also describes the competencies required to graduate in Massachusetts. <http://www.doe.mass.edu/mcas/graduation.html>.

162. Some evidence of this is the prevalence of university teaching and learning centers of promoting competency based teaching and backward design for many different types of courses. See *Backward Design*, YALE CENTER FOR TEACHING AND LEARNING, <http://ctl.yale.edu/BackwardDesign>; *Writing Intended Learning Outcomes*, *Id.*, <http://ctl.yale.edu/IntendedLearningOutcomes>; *Course and Syllabus Design*, University of Washington Teaching and Learning Center, <http://www.washington.edu/teaching/teaching-resources/preparing-to-teach/designing-your-course-and-syllabus/> (using backward design models without actually describing them as backward design models).

163. For example, lawyers who would like to learn about social justice can go to a training sponsored by the Clearinghouse Community of the Sergeant Shriver National Center on Poverty Law to learn “the skills and competencies needed to advance a social change agendas.” *Leadership for Justice*, Clearinghouse Community: Part of the Sergeant Shriver National Center on Poverty Law (2017), <http://povertylaw.org/clearinghouse/courses/leadership>

164. See Fink, *Guide to Designing Courses*, *supra* note 124. At page 9, Fink notes that foundational knowledge is one of the things that students must learn. It is likely that some of the other goals, including ability to apply that knowledge, learning how to learn similar knowledge, and integrating the knowledge into other settings would be part of the substantive knowledge teachers’ goals.

165. See Carolyn Grose, *Outcomes-Based Education One Course at a Time: My Experiment with Estates and Trusts*, 62 J. OF LEGAL ED. 336 (2012), in which she defines outcomes teaching by looking at the ABA *Outcomes Committee Report*, *supra* note 106, the Sullivan, *Legal Carnegie Report*, *supra* note 53, and *Best Practices*, *supra* note 111, *Id.* at 337, and then describes how she taught an Estates and Trusts course using this method. She defined the goals of what she wanted the students to know and be able to do with the knowledge they learned and then used a variety of assessment tools to see if it worked, both

To teach social justice as a learning objective to give students proficiency in the competency, students must be able to identify the issue when they see it. This involves knowing what social justice is, seeing the issue in the world and in the law, and framing what they are studying or doing through a social justice lens. In other words, they must be able to manipulate the concept of social justice to what they are learning and later doing. Just like law school teachers want their students to use analysis and content from their classes on other cases in the future and skills teachers want their students to transfer those skills to their career,<sup>166</sup> teaching social justice means teaching students to manipulate social justice concepts in class so they can apply them in the future. To use the language of competencies, students are developing foundational knowledge of what social justice is and critical thinking tools to evaluate what they are learning so they can integrate what they learn into their work.<sup>167</sup>

Therefore, classes designed to teach social justice could have the following goals and objectives:

Goal 1: Students will develop a working definition of social justice.

Teachers cannot teach to an amorphous goal and assess whether they have taught it well. It is easy to have students talk about social justice as a feeling that they know it when they see it. Such discussion is not helpful. Teachers must help students define social justice for themselves.

There are teachers who shy away from teaching a definition of social justice because they fear inadvertent or advertent indoctrination of students or that students will just mimic their values while taking the class, not learning anything. For that reason, educators hesitate to give a strong definition of social justice. As was well put by Julie Lawton, “there is a danger in *imparting* morality, instead of teaching students to contemplate and analyze morality—unlike substantive areas of law, there is less objectivity or settled precedent from which to teach.”<sup>168</sup>

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during the semester to know if there was anything crucial that her students were missing and at the end of the semester for more summative assessment. *Explained at id.* at 340 and continued throughout the article.

166. See Fink, *Guide to Designing Courses*, *supra* note 124 at 8, describing how teachers and students learning goals often have “understand and remember” what has been studied as a learning goal, sometimes emphasizing “often they emphasize such things as critical thinking, learning how to creatively use knowledge from the course, learning to solve real-world problems, changing the way students think about themselves and others, realizing the importance of life-long learning, etc.”

167. *Id.* at 8-10. In fact, she critiques the author’s description of social justice in a previous paper, perhaps trying to impart the author’s morality on his students. *Id.* at critiquing Rand, *Empowerment Approach*, *supra* note 21.

168. Lawton, *supra* note 20 at 840 (2017). See also Kosuri, *supra* note 84, where he suggests fears that by teaching too uniform a picture of social justice, we will create a more “factionalized” and partisan

However, the goal is not indoctrinating students but getting students to develop their own sense of social justice within a broad range of parameters that includes addressing power imbalance. Part of this includes having teachers express their own views about social justice. This allows students to see that teachers have allowed social justice to color their practice and it gives students permission to do the same. Teachers should take steps to ensure that students do not think they have to accept their teachers' views. This can be done by valuing the students' definitions and discussion in class. Further, effective social justice teachers will be sure to teach many sides of issues, including views held by people who see the world differently than the teacher.<sup>169</sup>

Objectives to accomplish that goal follow:

***Students will critique definitions of social justice.*** In doing so, they will deploy critical reasoning skills by analyzing different ways social justice has been described and determine for themselves which versions address power imbalances that must be addressed. They will also determine which of them are usable, meaning they will determine if the definitions lead to considered actions in a way that is effective in practice.

***Students will express their own definition of social justice.*** This could be a private expression on paper to a teacher or a public one they share and have critiqued by others in class.

***Students will revisit their credo<sup>170</sup> and modify it appropriately.*** The credo will consist of their edited definition of social justice that they will apply after law school.

Goal 2: Students will apply social justice concepts to law they are interpreting or applying.

Teachers must make clear that social justice does not sit in the background, but that students must apply social justice principles to the work they do. This means that students must not only read statutes and cases for their plain meaning, but should evaluate them. They must express what is right or wrong about how laws are written or applied. For example, if one is learning about an unconscionable contract, it is

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world, *id.* at 343 and allow teachers to spread their own values and views instead of teaching students how to develop their own. *Id.* at 340-41.

169. Fran Quigley, a strong believer in teaching social justice, wrote that it would be ineffective to teach social justice without giving both sides of the story. *See* F. Quigley, *supra* note 69 at 65.

170. The process of each student developing a manifesto is described below in Section IV.

not enough to learn that if you can prove a fact about how a contract was formed, the contract is invalid. Students should also be thinking about social justice aspects—should parties with less power be protected? Why? Is it a common issue? Are low-income individuals, minorities, women, or some other groups usually on the wrong end of these contracts? How can this be addressed?

These objectives can follow:

***Students will express how the law they are addressing is just within their concept of social justice and how power imbalance could affect its application.*** This could be done as part of class discussion or in writing.

***Students will provide alternate ways a law could be written or applied to comport with social justice.*** This could be done as part of class discussion or in writing.

Goal 3: Students will learn ways that lawyers act as agents of change in their area of law and how students themselves can do the same.

The point here is not to make lawyers into heroes. There are plenty of definitions of social justice that describe having clients and communities be the decision makers, some of which make them the primary actors as well.<sup>171</sup> However, social justice is important to lawyers no matter the role—whether it includes helping non-lawyers advocate for things or whether it is more active. Law students need to know that they can and must act to help the less powerful.

Objectives to accomplish that follow:

**A. *Students will identify the role the law plays in people's lives in connection with learning or applying that law.*** It is not enough to teach the problems that people are facing due to power imbalance. Students must identify whether (1) the law codifies that imbalance, (2) its application brings on that imbalance, (3) if law is absent in addressing the imbalance, or (4) what could be used to help address it. They may decide that lawyers need the help of organizers or that the problems really must be addressed in a way that does not involve the law that much. Students may even decide that they want to use the tools of organizers to help their clients. However, if the law must or can

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171. See Tyner, *supra* note 141, at 262, discussing a community based empowerment model of lawyering; Donohue, *supra* note 32 at 449-57, discussing a model which includes clients as primary decision makers and takes steps to empower them as prime movers in legal action.

be used, they must identify how the law fits into the problem or solution. This could be assessed in discussion or a written analysis of what is being learned in the class.

- B. *Students will identify the role lawyers play in addressing social justice issues within the law learned or in the application of that law.*** Unless students learn that there is action they can take as lawyers, including in which stages of the problem and in what ways they can be effective, they will do nothing more than identify problems. They must learn when and how to act. In classes where students apply law, they can learn by doing and reflecting on how what they did applies in other contexts. Although it would be more difficult in a skills class without a real problem, compared to a clinic where students see the effects of the law they are applying, both provide an opportunity to address the situation and people affected or likely to be affected, and how their actions can help in the future.<sup>172</sup>

In classes where substantive law is taught, when and how to act could be taught in discussions on legislative or case common law history in the area. This could include looking at points where law allows for lawyers to intercede on an issue, and ways laws could be revised to consider the needs of those with less power, perhaps through court, administrative, or legislative advocacy.

### *C. Why Schools Will Teach a Social Justice Competency.*

Some schools have written social justice competencies already.<sup>173</sup>

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172. Some believe that learning about social justice can only be done effectively in clinics, particularly for students who do not have experience or understanding about what it is like to be in a situation where being of a class with less power can affect life. See F. Quigley, *supra* note 69 at 45-46, argues clinics may be necessary for law students, who often come from rich backgrounds, to understand low-income clients. He gives the example of not understanding the impact of landlord/tenant law without seeing the social injustice of eviction on a tenant entering a horrible low-income housing market or a welfare cutoff on one who needs that money to survive. He argues that seeing this through clients' eyes is an experience that cannot be matched in other classes. Although this may be true, it is too severe and unsatisfying an outcome to allow students who don't get the clinical experience to lose out on social justice learning.

173. An example of a school that has written social justice into its competencies, goals, and objectives wrote the following:

Goal III. Loyola University Chicago School of Law seeks to produce graduates who are inspired by the Jesuit tradition of academic excellence, intellectual openness, and service to others.

EDUCATIONAL OBJECTIVES AND LEARNING OUTCOMES FOR GOAL III

1. Graduates should be knowledgeable about the Jesuit tradition of academic excellence and intellectual openness in the context of a commitment to social justice.

More law schools can. A social justice credo is one way to evidence that competencies, like the three described above, can be written into law schools' descriptions of the learning outcomes and the competencies at which they aim.

One problem of getting law schools and law teachers to teach these competencies, goals, and objectives is that there must be buy in from faculty. This may be more likely at schools where teachers want it to happen or where teachers are given incentive from the school or other stakeholders to make it happen.

One way to do that is to hire teachers interested in social justice and make social justice teaching explicit in the school's mission. Although many have not, many have. Loyola Law School, Los Angeles' mission declares that it will train lawyers who will demonstrate, through their practice and public service, the deep concern for social justice.<sup>174</sup> They go farther to say that social justice also means admitting students who are often disempowered, so they can be a part of the bar furthering social justice.<sup>175</sup> Santa Clara Law School has an intellectual property focus but demands that its students learn that they must be excellent lawyers who are ethical and committed to social justice.<sup>176</sup> The

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a. They place their learning in a social justice context.

LEARNING OUTCOMES AND COMPETENCIES, LOYOLA LAW SCHOOL, LOS ANGELES,  
<http://www.luc.edu/law/about/learningoutcomesandcompetencies/>.

174. Mission & Values: The mission of Loyola Law School is legal education within the context of Loyola Marymount University and its goals as a Catholic Institution in the Jesuit and Marymount traditions. In carrying out this mission, it is the particular responsibility of Loyola Law School to:

...

Seek to educate men and women who will be leaders of both the legal profession and society, demonstrating in their practice of law and public service the highest standards of personal integrity, professional ethics and a deep concern for social justice; Act at all times as an institution in a manner consistent with those values; [and]

The Law School should be distinguished by its concern for social justice. It should continue its efforts to provide opportunities for legal education to the poor, the underprivileged, women and minorities. Loyola Law School has a long-standing commitment to diversity and adheres to and supports all legal requirements for non-discrimination and equal opportunity in all of its programs. As a Jesuit-related institution, the Law School recognizes its moral and ethical obligation to provide opportunities for a quality legal education to qualified applicants of diverse backgrounds, interests and professional objectives.

*Mission and Values*, LOYOLA LAW SCHOOL, LOS ANGELES,  
<http://www.lls.edu/thellsdifference/accoladesfacts/missionvalues/>

175. *Id.*

176. "Santa Clara University School of Law, founded in 1911 on the site of California's oldest operating higher-education institution, is dedicated to educating lawyers who lead with a commitment to excellence, ethics, and social justice." <http://law.scu.edu/about/mission-statement/> (cite down when tried to check)

University of Notre Dame Law School,<sup>177</sup> Catholic University School of Law,<sup>178</sup> Northeastern University School of Law,<sup>179</sup> and Thomas Jefferson School of Law<sup>180</sup> all discuss social justice in their mission statements. CUNY Law School's Philosophy and Mission statement<sup>181</sup> and the UDC David A. Clarke School of Law's description of its school<sup>182</sup> make a social justice mission implicitly clear. When a school's mission promotes social justice, it likely hires teachers to teach toward social justice, attracts students who want to incorporate social justice, and has a curriculum incorporating it. Although some of the schools mentioned above do not do so, one would expect that these schools could be encouraged to write school wide learning objectives that demand that students learn to apply social justice lenses and ask its teachers, through establishing class goals, to do the same.

Another way to promote social justice teaching is to incentivize it by having the ABA require social justice teachings in its accreditation standards. ABA regulators that review law schools every seven years<sup>183</sup> could make clear that one of the things they assess when they review law schools is the teaching of social justice. This could be done through an interpretation or a rewriting of their Standards. Right now, Standard 303(a)(1) requires that law school teachers teach "the values and responsibilities of the legal profession."<sup>184</sup> As discussed *infra*, the bar has made several statements that access to justice is important, implying that social justice is one of the bar's values and goals.<sup>185</sup> Standard 303(b)(2) says that schools should provide substantial opportunities to do *pro bono* and other public service activities.<sup>186</sup> If

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177. *Mission*, UNIVERSITY OF NOTRE DAME: THE LAW SCHOOL, <http://law.nd.edu/about/mission-history/>.

178. *Mission Statement Law*, THE CATHOLIC UNIVERSITY OF AMERICA: COLUMBUS SCHOOL OF LAW, <http://www.law.edu/missionstatement.cfm>.

179. *History and Mission*, NORTHEASTERN UNIVERSITY SCHOOL OF LAW, <http://www.northeastern.edu/law/about/history.html>.

180. *Mission*, THOMAS JEFFERSON SCHOOL OF LAW, <http://www.tjssl.edu/about-tjssl/mission>.

181. *Philosophy and Mission*, CUNY School of Law, <http://www.law.cuny.edu/about/philosophy.html>.

182. *Facts About the School*, UNIVERSITY OF THE DISTRICT OF COLUMBIA DAVID A. CLARKE SCHOOL OF LAW, <http://www.law.udc.edu/?page=FACTS>.

183. The rules for procedure describe the in-depth report done by the ABA's Section on Legal Education and Admission to the Bar, 2017-18 AMERICAN BAR ASSOCIATION SECTION ON LEGAL EDUCATION AND ADMISSIONS TO THE BAR 2017-2018 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, [https://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017\\_2018\\_rules\\_of\\_procedure.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2017-2018ABASStandardsforApprovalofLawSchools/2017_2018_rules_of_procedure.authcheckdam.pdf).

184. ABA Standards And Rules Of Procedure For Approval Of Law Schools 2016-2017, Standard 303(a)(1).

185. *See test infra* surrounding notes 39-52.

186. ABA Standards And Rules Of Procedure For Approval Of Law Schools 2016-2017, Standard

the ABA's Section on Legal Education and Admission to the Bar informed law schools that it was looking more into social justice learning or were to amend their Standards to make social justice teaching a requirement, it would be taught. Social justice would be considered a primary competency which law schools would derive learning objectives around. Schools would assess the way teachers teach in tenure, contract, and other employment decisions by having them prove they are teaching to this competency, making it likely teachers would do so.

#### IV. A SOCIAL JUSTICE CREDO

As discussed above, the idea of a social justice credo is to ensure a social justice learning objective is met so that lawyers will develop a social justice competency. To use competency teaching terms, it is a several years long learning activity to teach social justice by doing the following:

1. It defines the competency of practicing through a social justice lens by laying out for the faculty and the students what it means to practice this way. It is a compilation of what many legal writers and bar associations have described as social justice and the action steps a lawyer needs to take to practice with a social justice lens.
2. It defines the learning objective of teaching students to create their own vision of social justice within the framework of helping address power imbalances for the school. It allows students to leave with a statement of how they will do so after graduation.
3. It is a learning activity that can be used to accomplish the learning objective. By editing the document throughout law school, students will process ways social justice matters and how to practice.
4. It is an assessment tool. The school will have a copy of the document to assess if students are learning social justice. If they review the document periodically throughout students' law school careers, they can assess if there is more that teachers need to do for students to ensure they are learning

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303(b)(2).

the competency. If students are assigned counselors or faculty members to give individual feedback on their general work at law school, they could give students formative assessments on how well they are learning these competencies and then summative assessments of how well they have been learned with suggestions for their practice.<sup>187</sup>

5. It gives teachers of individual courses and of other organized law school activities guidance on which to base their learning goals and objectives about social justice. One teacher will not teach everything on the credo in each class. Every teacher could be asked to teach some part of it in every class and use it to design class goals and objectives like the ones in Part III(B) *infra*, including classroom teachers and other law school staff and administrators that do activities with students designed in part to teach social justice.<sup>188</sup>

In short, the credo is designed to teach social justice as a learning objective to address a practice competency, assess if it has been done, and make it more likely the competency is remembered on graduation. This author envisions the credo being described by the law school's dean at orientation<sup>189</sup> and followed up on by the dean at relevant points

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187. Many learning theories, including teaching toward competencies, suggest that teachers should give formative assessment of what students are learning to figure out what students really understand so that the teachers both know how to adjust their teaching to help the students and to help students know what they are getting right or may misunderstand is right. See Wiggins and McTighe, *supra* note 120 at 247. Summative or evaluative assessments are more end of the process looks at whether goals have been met. See *Id.* at 6. Formative and summative assessments are also required by ABA standards. ABA Standards And Rules Of Procedure For Approval Of Law Schools 2016-2017, Standard 314.

188. See Freeman and Steefel, *supra* note 88, for a description of a law school faculty taking on teaching social justice in each of its classes.

189. It is truly a vision. The Dean might say as follows:  
Social justice matters. You have privilege for many reasons. You have brains. It got you into our school. Some of you have money and all of you have earning potential. You will leave here with a degree that you can use to make a higher salary than most people in this country. More than 50 percent of households in 2014 had less than \$40,000 in gross income. [Matthew Frankel, The Motley Fool, Here's the average American household income: How do you compare?, USA TODAY, Feb. 24, 2016, (citing IRS Statistics of Income 2014) <https://www.usatoday.com/story/money/personalfinance/2016/11/24/average-american-household-income/93002252/>]. The median lawyer salary in 2016 in the Greater Philadelphia Area (for example) is between \$115,000 and \$140,000. [Salary: Discover Your Earning Potential, LINKEDIN, <https://www.linkedin.com/salary/>, (submitting "lawyer" and "attorney at law" into salary calculator.)] Think of to what that difference in income translates: Using your law degree to your potential and earning those earnings, you can buy a home and raise a family comfortably, which many cannot. You have the power that money provides.

Further, you will know the law and learn how to manipulate it. If you or your client want to change a law or want to sue or defend a claim, you can do it. That is power. That is power that non-attorneys do not have unless you share it with them. Your power can be wielded in many ways. You can help yourself, help your client who can pay you, or help those that cannot get legal help by buying it because they are

throughout law school, including all class meetings if they exist and at graduation. The contents of a potential credo are appended, followed by notes that summarize how the credo was developed.

## V. CONCLUSION

The convergence of the push to teach professional students via competencies with the call to teach social justice is an opportunity. Law schools should take it. A credo like the one described in the appendix can be a major and important part of law students' experiences in law school, particularly if it becomes an organizing focus for members of each law school class from orientation to graduation. The experience will be enhanced if teachers take the opportunity to draft and teach goals and objectives to match the school-wide learning objective of teaching social justice. With the powerless currently under siege politically, this is an opportunity that cannot be missed.

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too poor, or the problem is too massive or engrained in society to be addressed on by them alone. Further, in law school, you will see many of the reasons that people have little power to accomplish what they must to live comfortably. In your substantive law classes, you will learn about discrimination based on race, gender, sexual orientation, age, disabilities, and many other things. You will see authorities misusing power. You will see people being charged with crimes more often due to either race. You will see people not getting hired on equal terms or not getting business loans due to their gender, race, or disability. You will see how property laws for renters are more difficult for renters than landlords to manipulate. And you will know that each of these things and others are wrong.

Many non-lawyers find their own ways to work on these issues and many of you have before law school. As a lawyer, you have a duty to help others work on these issues who need your help to do so. We pledge with attorneys of our bar associations to ensure that all legal rights are not decided solely by whether people can afford an attorney. In our ethical rules, we promise to be public citizens and make sure that there is representation available to all "who because of economic or social barriers cannot afford or secure adequate legal counsel." This does not mean that some lawyers must do this. All lawyers must do this.

Our goals for you are to learn throughout your time here to see legal problems through a social justice lens. When you see in your clinical classes or learn in other classes about people who cannot access law, you must feel this is wrong. When you see or learn about laws that are designed to disempower those with less power or laws that affect people with less power negatively either by enriching those who have no power at the expense of those with less or by enriching them without thinking of adverse consequences, you must feel this is wrong. When you see laws created for the disempowered by those with power without trying to consult or include the disempowered in its development or implementation or truly understanding their needs, you must think this is wrong....

## APPENDIX A

*My Practice Credo (or Manifesto)*

I will be a lawyer soon, joining a profession that can and will make the world a more socially just place. The law is not to be mechanically applied. I must consider how my legal actions and inactions affect my clients and others in the community. As a lawyer, I will have power to wield, more than some and less than others, and I can share my power with those that have less than I have. When I do, I will remember and consider the following:

- a. In law school, I have seen the following examples in my practice experiences and in non-clinical and skills classes of people with less power getting less than they would have if they had more power:
- b. I define power and privilege this way:
- c. I have developed privilege in law school and have privilege beyond what many people have. It looks like this:
- d. I have power that I can use as a lawyer. Some things I can do to help the less powerful are as follows:
- e. The procedural process problems that affect the powerless I have seen are as follows:
- f. The substantive law that adversely affects the powerless, even though it may have been crafted with or without their input to advance them in society are as follows:
- g. Some causes of oppression through abuse of power that are important to me include the following:
- h. Legal institutions can both support those with less power and oppress them. Legal and political power structures designed by those with power for those in power may oppress (and negatively affect) those with less power. I will help alter those structures or help those with less power navigate these systems in the following ways:
- i. Without representation or other access to the court and legal

system, clients do not have a voice and cannot exercise power. I will make sure that these clients who do not have access to representation can access the legal system in the following ways:

- j. The less powerful are better than I am at defining how powerlessness is affecting them. I will listen to the powerless in the following ways:
- k. I understand that my life experience may be different from my clients' experience and that their values and expectations may be different from mine, particularly if I have been privileged by my race, gender, or other traits that my clients do not share. When I see laws and legal situations affecting my clients negatively or interpreted differently by them, I will take these steps to think about why my clients and I are affected differently:
- l. I can empower and bring forth the voice of those less powerful and work on behalf of and with clients instead of imposing my ideas of what they need on them in the following ways:
- m. Legal ideas and strategies that I learned in law school that could be used to help address social justice failures are as follows:
- n. Some non-traditional lawyering skills I have learned and other privilege and skills I have that will help me advocate for and with people with less power than me are as follows:
- o. I feel more comfortable working within the system to bring change and spread the voice of those less powerful than me, or outside the system helping express resistance:
- p. Other people have different skill sets than I have who also work to promote social justice, including other professionals. I can collaborate with them in the following ways:
- q. Allies of which I know that want to do work similar to the work I want to do are as follows:

- r. I will look for both legal and non-legal solutions to problems, though I will not compromise my clients' rights within the legal system without my clients' permission and understanding. I will help clients understand what legal steps I can take with their consent in the following ways:
- s. I will spend this percentage of my time working to sharing power to those people:
- t. In my practice that is not focused on sharing my power with those less powerful than me or my clients, I will not abuse my power to the disadvantage of the less powerful. I will make sure that I am not doing this in the following ways:
- u. In all of my work I will think when I apply law about the effect that my work has on my client and others in the following ways:
- v. When I work as a lawyer on political projects or act politically, I will know about ways that my vote and other political actions could work to give power to those with less power than me in the following ways:
- w. My teachers and colleagues have different ideas about social justice than I do. I like the following things that I learned from my teachers and colleagues about social justice that I will incorporate into my practice:
- x. I will continue to reflect on and learn about social justice throughout my career and with the following lawyers and non-lawyers:
- y. As an alumnus of my law school, I will advocate for students at my school and attorneys in the community to learn about the following ways they can and should interact with and help those with less power:
- z. If people that have less power than me had more access to power or had things that those with power have, it would otherwise look like this:

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- aa. The world can be socially just! Here is why and how I will help:

## APPENDIX B

*The Title and the Preamble: A Summary of Social Justice*<sup>190</sup>

The title of “My Practice Credo” and not “My Social Justice Practice Credo” was chosen to ensure that students realize that social justice permeates practice. This emphasizes that there is not a time when they are to practice social justice on “social justice cases” and that the rest of their practice is devoid of the need to consider it. Others might believe that social justice should be more front and center as a reminder that this is what the document is about and might choose to modify the document that way.

A law school using this document might also choose to use the word “manifesto” instead of “credo.” However, the term manifesto has some complicated connotations around communism that might lend to a less than supportive belief in doing the exercise, particularly for those who do not yet understand their duties to social justice before entering law school. Using the word manifesto instead of credo would be considered a friendly amendment to any school that felt it would inspire more participation and belief in the process.

The preamble reflects that being a lawyer requires standing up for social justice. It does not mean looking for right answers by applying law mechanically. Instead, lawyers should apply law by considering social justice in every legal step they take and in the consequences of its application. The credo goes on to define social justice as addressing power imbalance and suggests that lawyers support social justice by addressing this power imbalance by sharing their own power.

*Statements a through d: Students Giving Their Own Description of Power Imbalance and Privilege.*<sup>191</sup>

As with the rest of the credo, students are asked to complete this

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190. My Practice Credo (or Manifesto)

I will be a lawyer soon, joining a profession that can and will make the world a more socially just place. The law is not to be mechanically applied but I must consider how my legal actions and inactions affect my clients and others. As a lawyer, I will have power to wield, more than some and less than others, but power I can share with those that have less than I have.

191. When I do, I will use my power in the following ways:

a. In law school, I have seen the following examples in my practice experiences and in non-clinical and skills classes of people with less power getting less who might not have been in that position if they had access to more power:

form as a law school long guided reflection. Staying with the definition of social justice as power imbalance and the idea that some with privilege have more power than others, it asks students to consider examples that they have seen of power imbalance damaging those with less power. It asks them to define power and privilege, which students should be able to do by describing what it was about power and privilege that mattered. For example, if they saw a landlord/tenant case or studied landlord/tenant law, they could have seen the power of freeholders to control the landlord/tenant arrangement that they have obtained because they own land and perhaps considered ways that privilege and power might be shared with a tenant. It then asks students to consider the privilege that they have and how they can use that privilege and the power that comes with it.

*Statements E and F: Procedural and Substantive Problems with the Law:*<sup>192</sup>

Law students are used to thinking of law as describing substantive rights and procedural rules that describe how facts are applied to those laws. These statements are designed to make it so that students can remember that both substance and procedure matter and that there can be manifestations of power in both. They are also intended to make clear to students that if there is a dichotomy of law into substance and procedure, students should remember that social justice matters in both. Social justice is not just about whether the less powerful have access to the court or procedural rules that make it so that they can have their issues explained. There is social injustice in law that oppresses the less powerful, such as: (1) a custody law that does not recognize living situations more common in low-income or non-heterosexual couples; (2) in criminal law that gives higher sentences to people who use drugs more often used by low income people or minorities; and (3) in welfare law that finds a person has a disability

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b. I define power and privilege this way:

c. I have developed privilege in law school and have privilege beyond what many people that looks like this:

d. I have power that I can use as a lawyer. Some things I can do to help the less powerful are as follows:

192. e. The procedural process problems that affect the powerless I have seen are as follows:

f. The substantive law that adversely affects the powerless, even though it may have been crafted with or without their input to advance them in society are as follows:

and cannot support themselves and then gives them much less than the Federal Poverty Level in support. Students are encouraged to consider all of these problems.

*Statement G: Particular Social Justice Callings*<sup>193</sup>

Students often are particularly called to address certain forms of oppression. Sometimes it is students who have seen oppression in their families or communities, such as having family members with a disability and understanding their problems. Sometimes it is something that they have seen in their law school or other experiences, like walking through urban communities and seeing homelessness or reading about foreclosures on subprime loans and being taken by the idea of a person trying to “follow the rules” and still losing. Statement G allows students to reflect on these callings, name them, and keep them fresh in their minds.

*Statements H through I: Seeing Structural Legal Issues*:<sup>194</sup>

Many institutions are built with power and reflect it. Students are asked in these statements to consider institutions they have seen oppress the less powerful. Some are easier to see, such as a federal agency that imposes values of the majority on those that must hope that those agencies help or protect them. They often do not. Students are asked to reflect on general systems and legal advocacy systems, describing how they allow or fail to allow the less powerful to be heard. Although this is part of a statement put in the credo for people who define social justice in large part as Access to Justice, it is a real problem that students should know and address.

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193. g. Some causes of oppression through abuse of power that are important to me include the following:

194. h. Legal institutions can both support those with less power and oppress them. Legal and political power structures designed by those with power for those in power may oppress (negatively affect) those with less power. I will help alter those structures or help those with less power navigate these systems in the following ways:

i. Without representation or other access to the court and legal system, clients do not have voice and cannot exercise power. I will make sure that these clients who do not have access to representation can access the legal system in the following ways:

*Statements J through L: Giving Voice to the Less Powerful:*<sup>195</sup>

Important to social justice is giving voice to the less powerful, including ensuring that they are heard when describing problems that affect them, and understanding that they are better at doing so than many lawyers that represent them. Among other things, it requires stepping back and noticing differences in the way that the less powerful may identify a problem, its consequences, and appropriate strategies. Statements J through L ask students to consider how the lawyer can share the power they have to help the less powerful attain their goals.

*Statements M through R: Legal Steps the Student Will Take to Help Clients.*<sup>196</sup>

These statements ask students to think through what legal work they will do to represent the less powerful. They consider what legal ideas

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195. j. The less powerful are better than I am at defining how powerlessness is affecting them. I will listen to the powerless in the following ways:

k. I understand that my life experience may be different from my clients' experience and that their values and expectations may be different from mine, particularly if I have been privileged by my race, gender, or other traits that my clients do not share. When I see laws and legal situations affecting my clients negatively or interpreted differently by them, I will take these steps to think about why my clients and I are affected differently:

l. I can empower and bring forth the voice of those less powerful and work on behalf of and with clients instead of imposing my ideas of what they need on them in the following ways:

196. m. Legal ideas and strategies that I learned in law school that in law school that could be used to help address social justice failures are as follows:

n. Some non-traditional lawyering skills I have learned and other privilege and skills I have that will help me advocate with people with less power than me are as follows:

o. I feel more comfortable working within the system to bring change, within the system to spread the voice of those less powerful than me, or outside the system helping express resistance:

p. Other people have different skill sets than I have and have also work to promote social justice, including other professionals. I can collaborate with them in the following ways:

q. Allies of which I know that want to do work like the sort I want to do are as follows:

r. I will look for both legal and non-legal solutions to problems, though I will not compromise my clients' rights within the legal system without my clients' permission and understanding. I will help clients understand what legal steps I can take that am foregoing with their consent in the following ways:

and strategies they have seen that they can use in social justice work, including both traditional and non-traditional legal skills. It asks them to note the privilege they have and how they can apply it. It also asks them to think through their comfort level in certain types of work.

Some lawyers prefer working within the system while others are ready to take action through resistance. Lawyers must be comfortable in what they do. Both types of work are valuable. It asks them to reflect on what they will actually do. It also asks them to consider ways they might work interdisciplinary with other professionals and collaborate with non-professionals to further social justice, looking for who may be allies in their work. Finally, it asks students to remember that clients are still their clients to whom they owe the duty to represent, as the clients would like to be represented, without compromising their clients' interests.

*Statement S: Hours Dedicated to Social Justice:*<sup>197</sup>

In a bow to Rule 6.1, this statement suggests that to do social justice work, one must commit time to doing it. The small amount of 50 hours per year that Rule 6.1 suggests is likely too little. However, a student must realize that time must be blocked out to ensure that working for the less powerful is a significant part of their practice.

*Statements T through V: Social Justice Duties When Representing the Powerful:*<sup>198</sup>

Lawyers represent powerful clients, too. When they do, they must be careful that they are not using their own power or that of their client to oppress the less powerful. They should be considering how the actions they take affect the less powerful who are not at the table to protect themselves and consider whether they want to take all legal actions requested of them. This is also true for political action. Political

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197. s. I will spend this percentage of my time working to sharing power to those people:

198. t. In my practice that is not focused on sharing my power to those with less powerful, I will not abuse my power to the disadvantage of the less powerful. I will make sure that I am not doing this in the following ways:

u. In all of my work I will think when I apply law about the effect that my work has on my client and others in the following ways:

v. When I work as a lawyer on political projects or act politically, I will know about ways that my vote and other political actions could work to give power to those with less power than me in the following ways:

stands that lawyers take on their own or on behalf of their clients must not damage the less powerful and should be considered.

*Statements W through Y: Reflecting on Social Justice:*<sup>199</sup>

These statements ask the student to think about their own sense of social justice, how that vision compares to that of their teachers, fellow students, and other people with whom they interact. They must recognize that they have things to learn from these other people. It asks them to think through what things they have learned already from others that they like and will make part of their own sense of social justice. It asks them to think about how and with whom they are going to continue to reflect on social justice with others when they graduate. Further, it puts the burden on them to keep connected with the law school and the community as an alumnus to spread social justice and ensure that the law school is well represented as an advocate for social justice.

*Statements Z and AA: A Vision of a World with Social Justice:*<sup>200</sup>

Students should think that social justice is possible. They should have a vision of what it looks like and they should strive to reach it. The last two statements ask students to create that vision for themselves and to consider how they will make it come to be.

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199. w. My teachers and colleagues have different ideas about social justice than I do. I like the following things that I learned from my teachers and colleagues about social justice that I will incorporate in my practice:

x. I will continue to reflect on and learn about social justice throughout my career and with the following lawyers and non-lawyers:

y. As an alumnus of my law school, I will advocate for students at my school and attorneys in the community to learn about the following ways they can and should interact with and help those with less power:

200. z. If people that have less power than me had more access to power or had things that those with power have, it would otherwise look like this:

aa. The world can be socially just! Here is why and how I will help: