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CREATING WISE CLASSROOMS TO EMPOWER DIVERSE LAW STUDENTS:  
Lessons in Pedagogy from Transformative Law Professors

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# CREATING WISE CLASSROOMS TO EMPOWER DIVERSE LAW STUDENTS:

## Lessons in Pedagogy from Transformative Law Professors<sup>†</sup>

SEAN DARLING-HAMMOND\* AND KRISTEN HOLMQUIST\*\*

*Many of today's law students experience a triple-threat. They suffer from the solo status that accompanies being a member of an underrepresented group, the stereotype threat that accompanies being a member of a stereotyped group, and the challenges that attend lacking a background in the law before beginning law school. But today's law schools often fail to create safe<sup>1</sup> environments, teach foundational content and skills, or take basic steps toward providing instruction that ensures students from all backgrounds are empowered to thrive. While much has been written about improving legal education and about the failure of current pedagogies to provide a sound education to students experiencing this triple-threat, little has been written about approaches that ensure that these students succeed. This article is an attempt to identify an initial pathway forward. It builds off of research regarding legal pedagogy, inclusive pedagogy, and the results of eleven in-depth-interviews with "transformative professors" who UC Berkeley Law students identified as being skilled at creating safe spaces and ensuring that individuals from all backgrounds succeed academically.*

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<sup>1</sup> We have used the term "safe" to describe techniques and environments that allay stereotype threat and solo status and allow students from underrepresented backgrounds to focus on learning.

*This rich data can inform professors and institutions across the state and country in their efforts to provide a legal education that, instead of simply benefiting the most privileged, provides a transformative education to all.*

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I. INTRODUCTION: A TALE OF TWO STUDENTS

Imagine two students, recently admitted to a top law school. Their names are Legacy Lawrence and First Generation Felicia.

Lawrence has multiple legal practitioners in his family, and spent two summers during college as well as two years after graduation working as an unpaid law clerk. He secured these positions with effort, certainly, but the social capital imparted by his parents and by his time at an elite private high school and college provided an advantage. Similar to many of his soon-to-be-peers in law school, Lawrence is a wealthy, White male.

Felicia, unlike most students at her school, does not come from a wealthy background, and is both Black and female. She is the first person in her family to ever attend college, let alone law school. To enable this huge generational shift, she graduated top of her class from her local public high school and received a full academic scholarship from a little known public college, where she also excelled. With humble beginnings, a much smaller professional network to draw from, and financial demands at home, she had neither the connections nor the time to work for free in a law office. With no mentors in her community who had been down the law road before, she had not yet set her sights on law school or even a legal internship, and knew little about what lay ahead.

Not so for Lawrence. His parents long ago placed him into an inertial flow that even he knew would lead to law school. Surrounded by a network of lawyers who had survived the trials and tribulations of 1L,<sup>2</sup> law journal memberships,<sup>3</sup> bar exams,<sup>4</sup> and everything thereafter, he knew that many law school teachers did not teach foundational concepts before diving into complex content. He was also aware that teaching would involve an often terrifying device known as the Socratic method,<sup>5</sup> and that most classes would provide scant feedback via a single, end-of-the-year issue spotter exam. Through his legal internships, he had already learned the basic structure of our nation's complex court systems, the way to dissect a judicial opinion to discern dicta from doctrine, the

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<sup>2</sup> The first year of law school is often termed "1L" among law students and professors. Many consider it to be the most psychologically demanding year of law school.

<sup>3</sup> Students in law schools often join journals, which write about legal issues. Most schools have a "flagship journal" which uses a "write-on" exam to determine students who will be offered membership. The process of "writing-on" for, and being a member of, a flagship law journal, provides unique insights into how to succeed as a law student.

<sup>4</sup> State bar exams require students to apply legal statutes and regulations to complex fact patterns—a skill heavily tested in most law school final exams.

<sup>5</sup> The Socratic method is a teaching device routinely employed by law professors in which teachers instruct by questioning students.

tricks to breaking claims and defenses into manageable elements, and the art of IRAC.<sup>6</sup>

Felicia, like Lawrence, earned straight As throughout high school and college. She did engaging work after college that allowed her to sharpen her wits and build valuable skills. On paper, to one unlearned in the way of a 1L, she seemed just as ready as Lawrence.

And so it is that they find themselves in the same 1L class, anticipating, with great trepidation, their first lecture. They seem at first glance to be equally engaged. Yet after three years, an experiential chasm divides them. Lawrence finds and joins his first study group within days while Felicia struggles to gain acceptance to even one during all six semesters.<sup>7</sup> Building on his past legal experience, Lawrence is able to discern key lessons from even the most confusing lectures. Shocked at how much is new, Felicia buries herself in self-instruction in the library, but with no legal background to lean on, she becomes increasingly perplexed. Lawrence gradually gains the confidence needed to interact naturally with professors and develops great mentoring relationships while Felicia remains too embarrassed by her confusion, and too discouraged by professors who underestimate her, to visit a single office hour. Drawing on his experiences from 1L year, Lawrence successfully gains admission to the school's flagship legal journal. Felicia's failed attempt to write on to the same journal is just one more discouraging blow. After three years, in addition to other honors and awards, Lawrence is inducted into the Order of the Coif,<sup>8</sup> while Felicia wonders what orders she could have followed to get that first elusive A or honor grade.

Felicia's deflating experience with law school has left her underprepared for the bar exam, and she fails her first time. She faces crushing debt and lacks the critical pre-requisites for legal employment—good grades, good connections, and bar membership. She is forced to decide whether to abandon her legal career before it has begun. Not so for Lawrence, who continues his family's professional legacy—just as anticipated.

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<sup>6</sup> IRAC is an acronym referring to the process of breaking a legal question into the Issue presented, the Rule that should be applied in resolving it, the Application of that rule to the facts of the case, and the Conclusion to be drawn.

<sup>7</sup> The difficulty that students of color experience in joining study groups is discussed later. See *infra*, note 124.

<sup>8</sup> The Order of the Coif is a national honor society for law school graduates who attended member schools.

These depictions seem stark, but they are representative. They combine the experiences of actual students, and are rooted in the real experiences of the authors who as law students, teachers, affinity group presidents, and advisors at UC Berkeley and UCLA law schools, have seen students in both molds follow predictable trajectories. Of course, some White and male students have backgrounds like Felicia's and feel the impact of lacking legal connections or a background in the law. And some students from underrepresented groups bear similarities to Lawrence and parlay their prior legal experience and social capital into legal academic success. But here, we are focusing on those students who face the mutually exacerbating triple-threat of the solo status<sup>9</sup> that accompanies being a member of an underrepresented group, the stereotype threat<sup>10</sup> that accompanies being a member of a stereotyped group, and the challenges that attend lacking a background in the law before beginning law school.<sup>11</sup> We focus on these "Felicias" because they are an increasing portion of the United States population and law school student universe.<sup>12</sup> They face unique challenges and law schools too often ignore their legitimate pedagogical needs.

#### A. *Lawrence and Felicia by the Numbers*

What are the pedagogical needs of "Felicias"? Student surveys from UC Berkeley Law School (hereinafter Berkeley Law) provide insight. The Berkeley Student Commission for Access to Legal Education (SCALE) is a collection of law student leaders devoted to ensuring that Berkeley Law students of all backgrounds have access to a high-quality

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<sup>9</sup> When individuals from underrepresented groups inhabit too small a share of the student population, their performance is depressed, especially in tasks in which members of their social group is stereotypically considered weaker, such as legal academic tasks. Mischa Thompson & Denise Sekaquptewa, *When Being Different is Detrimental: Solo Status and the Performance of Women and Racial Minorities*, 2 ANALYSES OF SOC. ISSUES & PUB. POL'Y, 183, 183 (2002). On the other hand, when students are in diverse environments where members of their social groups are well represented, they experience substantial educational benefits and can more easily realize their potential. Brief for American Educational Research Association et al. as Amici Curiae Supporting Respondents, *Fisher v. Univ. of Texas at Austin* et al., 133 S. Ct. 2411 (2012) (No. 11-345).

<sup>10</sup> Claude M. Steele, *Threat in the Air*, 52 AM. PSYCHOLOGIST 613, 613-629 (1997).

<sup>11</sup> Throughout the article, we will refer to "underrepresented students" and "Felicias" as students who experience this particular triple-threat.

<sup>12</sup> While the overall population of law students of color may be declining in some states, the proportion of law students who are low income, minority, or female has expanded tremendously in the past few decades, due in large part to the success of past desegregation and affirmative action policies.

education. They work on understanding the challenges faced by underrepresented students, improving access to foundational information, introducing law professors to advances in pedagogy, and reducing implicit bias among students and professors alike. In 2013, coauthor Sean Darling-Hammond led a SCALE survey asking 118 Juris Doctor (JD) students<sup>13</sup> from the classes of 2013, 2014, and 2015, about their law school experiences. The SCALE team analyzed the results of this survey by students' races (Black, White, East Asian, South Asian, Latino, and/or Native American), gender (male, female, and/or other), family income

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<sup>13</sup> While the results of this survey stem from Berkeley Law students, it is hard to imagine that these results would have been more encouraging had SCALE surveyed 118 students at other law schools. Berkeley Law stands out as especially committed to creating a positive environment for underrepresented students. It has worked to create an environment where underrepresented students can thrive by admitting, in the class of 2017, more students of color and female students, as a percentage of the overall class, than all other top ten law schools. See *Incoming Class Profiles for the Class of 2017 at Berkeley Law, Yale Law School, Harvard Law School, University of Virginia School of Law, Stanford Law School, Columbia Law School, The University of Chicago Law School, New York University School of Law, University of Pennsylvania Law School, The University of Michigan Law School, Duke University School of Law, and Northwestern University School of Law*, *Entering Class Profile*, <https://www.law.berkeley.edu/37.htm> (last visited Mar. 21, 2015); Harvard Law School, *HLS Profile and Facts*, <http://www.law.harvard.edu/prospective/jd/apply/classprofile.html> (last visited Mar. 21, 2015); Yale Law School, *Entering Class Profile*, <http://www.law.yale.edu/admissions/profile.htm> (last visited Mar. 21, 2015); University of Virginia School of Law, *Class of 2014 Profile*, <http://www.law.virginia.edu/html/prospectives/class14.htm> (last visited Mar. 21, 2015); Stanford Law School, *Conducting a Non-Discriminatory Interview At Stanford Law School*, <http://www.law.stanford.edu/sites/default/files/child-page/138214/doc/slspublic/conductingAnInterview.pdf> (last visited Mar. 21, 2015); Columbia Law School, *Entering Class Profile*, <http://web.law.columbia.edu/admissions/jd/experience/class-profile> (last visited Mar. 21, 2015); The University of Chicago Law School, *FAQs: About the Law School*, <http://www.law.uchicago.edu/prospectives/jdfaq/about> (last visited Mar. 21, 2015); New York University School of Law, *JD Student Body & Fall Entering Class Profile*, <http://www.law.nyu.edu/jdapplicants/classprofile> (last visited Mar. 21, 2015); University of Pennsylvania Law School, *Introducing the Class of 2017*, <https://www.law.upenn.edu/admissions/jd/entering-class-profile.php> (last visited Mar. 21, 2015); The University of Michigan Law School, *Class Statistics, 2014 Incoming Class*, <https://www.law.umich.edu/prospectivestudents/Pages/classstatistics.aspx> (last visited Mar. 21, 2015); Duke University School of Law, *Class of 2017 Profile*, <http://law.duke.edu/admis/classprofile/> (last visited Mar. 21, 2015); Northwestern University School of Law, *Class Profiles*, <http://www.law.northwestern.edu/admissions/profile/> (last visited Mar. 21, 2015). For information regarding which schools are considered "Top Ten" schools based on various rankings. See *Top 2015 Law School Rankings*, TOP-LAW-SCHOOLS.COM, <http://www.top-law-schools.com/rankings.html> (last visited Apr. 5, 2015). Berkeley Law has also shown a willingness to address issues underrepresented students face head on by organizing a school-wide retreat (hosted by the school and attended by the Dean and faculty and staff) to find solutions. This suggests that underrepresented students face similar, if not starker, challenges at other law schools.

(ranging from less than \$25,000 per year to over \$500,000 per year), and other factors.<sup>14</sup>

Our research demonstrated that many Black, Latino, female, and low-income family students indicated that they suffered academically from “classroom and school environments that did not encourage or allow students from diverse backgrounds to excel.”<sup>15</sup> We further reported that law students indicated being negatively impacted by a variety of challenges, including: “stereotyping, implicit and explicit bias, and prejudice;” “a default semester structure (with one issue spotter exam at the end of the year) that did not provide sufficient feedback to students to help them assess their progress and make appropriate adjustments in their approach;” “doctrinal classes that immediately required knowledge about court systems and legal concepts [that] students had no [previous] exposure to;” and “a feeling among students from diverse backgrounds that ‘high prestige’ opportunities (such as clerkships, law review membership, and other academic and non-academic distinctions) are not meant for them.”<sup>16</sup>

Latino and Black students and students from low-income families were much more likely to feel that the law school had failed to ensure they “knew how to study the law (explaining the definitions of legal terms and court systems, the way to read and brief a case, how to write an outline, etc.) before [they were] expected to learn legal content.”<sup>17</sup> Black students were 36% more likely than White students, and Latino students

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<sup>14</sup> While this data provides valuable insights, it should be noted that the sample underlying this data was limited by the fact that Berkeley Law, like most law schools, has a limited number of students in many nonracial and income categories. It is also hard to assess how representative the students who took the survey were of all Berkeley Law students. However, a substantial number of all students enrolled at the time of the survey, and a substantial number of students from many key demographic groups, participated. In total, 118 of the approximately 800 JD students at Berkeley Law participated. The number of students from each social category are described here: White—62; Hispanic/Latino/Latina—20; Black—7; East Asian—19; South Asian—12; family income <\$25,000 per year—10; \$25,000–\$50,000 per year—30; \$50,000–\$100,000—25; \$100,000–\$175,000—25; \$175,000–\$250,000—9; \$250,000–\$500,000—13; >\$500,000—4; Male—27; Female—83.

<sup>15</sup> UC BERKELEY LAW SCHOOL STUDENT COALITION FOR ACCESS TO LEGAL EDUCATION (SCALE), ONE SERIOUS CHALLENGE; SEVEN STRATEGIC INITIATIVES I (2013) [hereinafter SCALE Report].

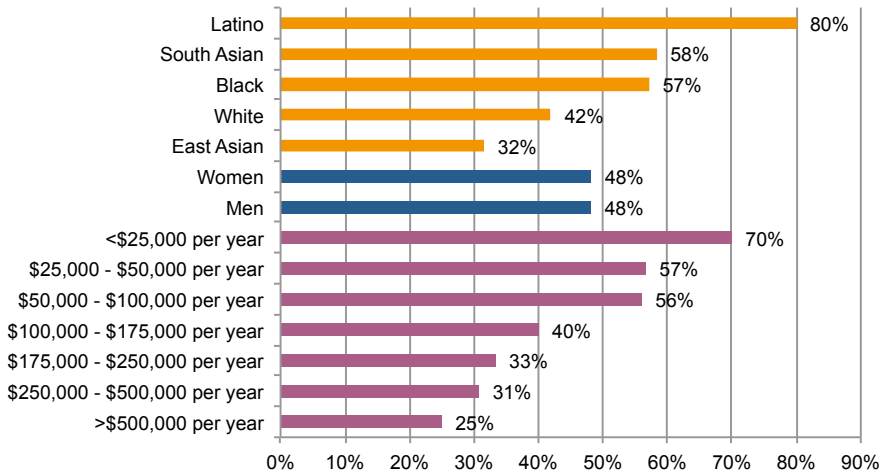
<sup>16</sup> *Id.*

<sup>17</sup> UC BERKELEY LAW SCHOOL STUDENT COMMISSION FOR ACCESS TO LEGAL EDUCATION (SCALE), RESEARCH AND INSTITUTIONAL KNOWLEDGE TO AID IN ELIMINATING STRUCTURAL BARRIERS AT BERKELEY LAW 7 (presented at UC Berkeley Law School SCALE retreat) (2014) (on file with authors) [hereinafter SCALE Retreat].



were 90% more likely than White students, to feel professors did not teach foundational content.<sup>18</sup> Students in the lowest income group (less than \$25,000) were more than two times more likely than students in the top three family income groups (\$175,000–\$250,000, \$250,000–\$500,000, and over \$500,000) to feel professors were skimping on the mechanics of law school.<sup>19</sup> This discrepancy may be due to the extent to which White and wealthy students had prior exposure to the law and thus needed less instruction to get up to speed.

**Percentage of students by race, gender, and family income level who felt professors did not teach how to study the law before teaching legal content.**

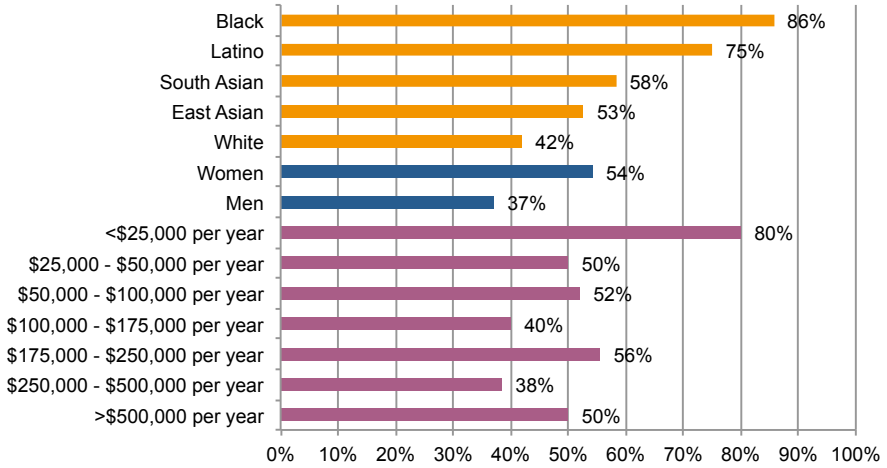


A similar theme emerged when students were asked if they felt professors provided instruction that allowed students of all backgrounds to learn. Black and Latino students were about twice as likely as White students, women were about 45% more likely than men, and individuals in the lowest income group were about 60% more likely than those of all other income groups to feel professors did not provide instruction that allowed students of all learning styles and backgrounds to learn. Importantly, large majorities of many of these groups (86% of Black students, 75% of Latino students, and 80% of students with family incomes below \$25,000 per year) felt teachers did not provide instruction that allowed all students to learn.

<sup>18</sup> *Id.*

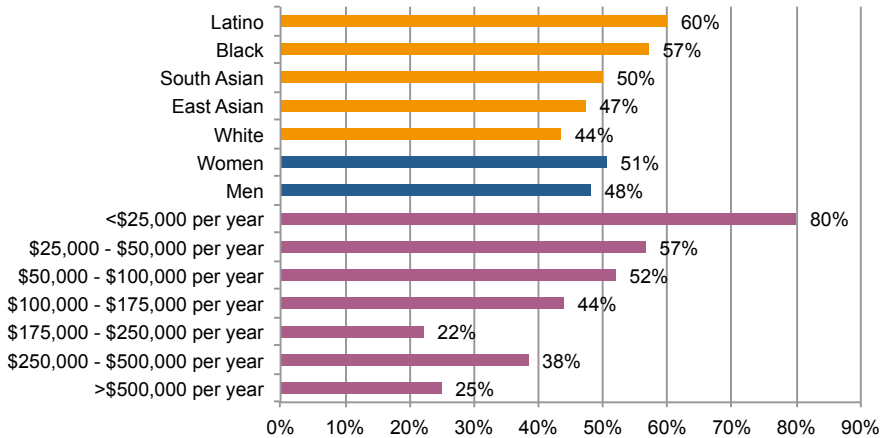
<sup>19</sup> *Id.* at 8.

**Percentage of students by race, gender, and family income level who felt professors did not provide instruction that allowed students of all learning styles and backgrounds to learn.**



Finally, we asked pointedly if students felt their academic performance was negatively impacted by the way teachers taught content. Latino and Black students were about 30% more likely than Whites students to feel that teaching styles harmed their academic performance. Students from the lowest-income families were more than twice as likely as students from the top three income groups and 80% of those in the lowest income group felt their academic performance was negatively impacted by the way teachers taught legal content.

**Percentage of students by race, gender, and family income level who felt their academic performance was negatively impacted by the way teachers taught the content.**



Women were 50% more likely than men (41% versus 27%) to indicate they worried about confirming stereotypes when they performed academically. Latino and Black students were twice as likely as White students to fear confirming stereotypes (58%, 57%, and 28% respectively).<sup>20</sup> As discussed below, the fear of confirming stereotypes can harm the performance of underrepresented students who have everything going for them—except that they believe that if they do not perform well, they will confirm their peers’ suspicions that they, or members of their social group, do not belong. This added pressure can sap focus during lecture and confidence during high stakes exams.

Women were twice as likely as men to indicate that racial and gender stereotypes made them uncomfortable admitting to peers and professors when they did not understand content (58% versus 26%).<sup>21</sup> The difference of experience was even greater based on race, as more than twice as many Blacks and Latinos than White students indicated that stereotypes had muted them when they felt uncertain.<sup>22</sup> Overall, 85%

<sup>20</sup> *Id.* at 27. A deeper look at the data revealed that the men and White students who indicated fear of confirming stereotypes were primarily men of color and White women. Only two white men indicated fear of confirming stereotypes about their race or gender, as compared to forty-one students of color/women.

<sup>21</sup> *Id.* at 28.

<sup>22</sup> *Id.*

of Black and Latino students felt stereotypes kept them from admitting when they did not understand content.<sup>23</sup> Given the confusion that students from all backgrounds experience in law school, this stereotype-induced silence might have debilitating effects for Felicias in particular.

Finally, and perhaps partially explaining some of the group based differences in educational experiences, women were 80% more likely than men (20% versus 11%) to feel their teachers had initially judged their academic capability based on their gender or race.<sup>24</sup> Black students were *five times* more likely than White students, and Latino students were *three times* more likely than White students, to feel prejudged by professors based on race or gender, with 43% of Black students and 26% of Latinos indicating feeling prejudged.<sup>25</sup> These fears of prejudgment might encourage fears of confirming stereotypes, which in turn might harm academic performance and silence students from pursuing clarification when necessary.

This data strongly suggests that low-income, minority, and female students are experiencing law school differently than wealthy, White, and male students. But data also suggests that what professors are doing matters. Many students from underrepresented groups tied their negative performance directly to teaching styles and biased treatment. Classroom management and demeanor can have real impacts on whether students are empowered to realize their potential, or spurred to silently buckle under fears of confirming stereotypes.

## II. GOALS AND ROADMAP

While this data provides a disheartening lens into the experiences of Black, Latino, low-income, and female law students, it also provides a silver lining. In our research focusing on Felicias, we observed that against all odds, many of these students have succeeded in law school—earning top grades, gaining admission to the flagship law journal (law review), and landing prestigious clerkships with judges. When we asked what they believed led to their success, many pointed to transformative teachers who helped make up for the preparation gap by teaching them foundational concepts, the legal approach, and allaying fears of not belonging.

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 32.

<sup>25</sup> *Id.*

This article attempts to understand how these teachers ensure that the promise that admissions officers see in Felicias is not lost due to a pedagogy developed at a time when law schools were meant, both legally and practically,<sup>26</sup> for Lawrences alone. It aims to catalogue and explain the techniques that these professors employ and share these techniques throughout the legal academy. It is an initial attempt to explore ways law school professors can reduce stereotype threat, create a sense of safety and belonging, and provide the kind of legal education that allows students from all backgrounds to have successful legal careers.

In Sections I and II, we describe the triple-threat that Felicias face, and the goals of this piece. In Section III, we review background research that informs our analysis of both the achievement gaps and legal pedagogy. In Section IV we outline the methodology employed in our legal pedagogy study. Section V summarizes main takeaways from interviews with transformative professors, highlighting ten common habits they employ to ensure students from all backgrounds are empowered to succeed. Section VI then digs deeper, providing narratives and examples to bring the techniques and approaches employed by these professors to life—approaches that allowed them to encourage students from all backgrounds to thrive. These habits align with the suggestions of Claude Steele regarding creating wise classrooms. They overlap with the recommendations of others who have studied legal pedagogy directly<sup>27</sup>, suggesting that many of the habits of these transformative professors will benefit the Felicias, Lawrences, and everyone in between. Section VII provides our concluding recommendations to professors.

This article is directed at law professors because they inhabit the nexus of power and understanding necessary for change. They have the power to adjust the practices employed in law school classrooms, which can significantly impact the experiences of students from different backgrounds. Additionally, they have the understanding that stems from working directly with students—an understanding, we hope, that will

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<sup>26</sup> See, e.g., Lawrence Gellhorn, *The Law Schools and the Negro*, 1968 DUKE L.J. 1069, 1069–72 (1968) (recounting the history of de facto and de jure law school segregation against Blacks); William C. Kidder, *The Struggle for Access from Sweatt to Grutter: A History of African American, Latino, and American Indian Law School Admissions, 1950–2000*, 19 HARV. BLACKLETTER L.J., 1, 1–3 (2003) (tracking pre-1960s de facto segregation in law schools and continued low rates of non-White admissions).

<sup>27</sup> For context, we note some of those overlaps throughout the text.

encourage them to appreciate and implement the recommendations in this article.

The following quotes from the interviewed professors aptly describe the purpose of this article:

*In elite schools, we don't spend enough time providing foundational educational tools to teachers. We need more of a focus on teaching.*

—Constitutional Law Professor

*I go to a lot of [other professors'] classes just to get ideas, but it's hard to do because of time. That's the value of th[is] article—getting a sense of what other professors are doing.*

—Civil Procedure Professor

We hope this article will help professors overcome the challenges they face in applying pedagogical approaches that are capable of helping students from all backgrounds succeed. As we will discuss in the next section, many of these approaches are applied in other educational contexts. This article hopes to bring these approaches to the legal academy.

### III. SOURCES OF AND SOLUTIONS TO ACHIEVEMENT GAPS

While little has been written about how to ensure that students who experience triple-threat in law schools succeed, a rich body of literature outside of legal academia explores both causes and potential solutions to race, gender, and income-based achievement gaps. We hope this article can serve two purposes: (1) to take steps toward applying what we already know about pedagogy toward improving legal pedagogy; and (2) to prompt more research on how these achievement gaps operate in law school and what we can do to bridge them.

At every level of education, including elite law schools, Black student achievement, *on average*, lags behind White student achievement.<sup>28</sup> The same is true for Latino student achievement, although to a lesser degree.<sup>29</sup> Social science literature suggests that these gaps may stem from

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<sup>28</sup> Katherine Y. Barnes, *Is Affirmative Action Responsible for the Achievement Gap Between Black and White Law Students?*, 101 Nw. U. L. Rev. 1759, 1806 (2007) [hereinafter Barnes]. For an empirical account of the achievement gap in higher education (but not including law school), see WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS* (1998).

<sup>29</sup> See, e.g., E. Michael Madrid, *The Latino Achievement Gap*, 19 MULTICULTURAL EDUCATION

two different categories of impacts. The first is a combination of factors we refer to as external factors. These are the kind of disadvantages tied to race and class that a student brings with her into the law school environment. The effects of societal discrimination, poor schools, depressed socioeconomic status, and stressful home lives—all of which Black and Latino students endure at higher rates than White students—can and often do diminish academic performance.<sup>30</sup> The second kind of adverse impacts are internal—those that arise within and stem from the educational environment itself. These range from stereotype threat, to discrimination (whether intentional or not), to outright hostility.

It is hard to tease apart the effects of external and internal negative impacts or how to ameliorate them. But social science suggests that pedagogy and the classroom environment can either depress or improve the performance of students of color. This section briefly explains some of that research. Although it is by no means exhaustive, it does provide a framework for understanding the habits of transformative professors offered later in this Article. First, it describes some of the ways that current law school classrooms may hinder the academic performance of many students of color—particularly with regard to internal impacts. Then it goes on to discuss the ways teachers may remedy, or at least lessen, the effects of internal and external impacts.

#### A. *Stereotype Threat—A Threat from Within*

In her study about the under-performance by underrepresented students in law school (and on bar exams), Katherine Barnes suggests that “law school culture significantly affects minority student achievement.”<sup>31</sup> Her study found that incoming markers of academic readiness (primarily LSAT scores and undergraduate grade point averages) insufficiently explained the difference in law school grades between White and Black students. Accordingly, she posited that something else—something that happens in law school itself—must be at work.<sup>32</sup>

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7 (2011), available at <http://files.eric.ed.gov/fulltext/EJ955929.pdf>.

<sup>30</sup> See, e.g., Carol Leroy & Brent Symes, *Teachers' Perspectives on the Family Backgrounds of Children at Risk*, 36 MCGILL J. OF EDUC. 45 (2001); Colette Van Laar & Jim Sidanius, *Social Status and the Academic Achievement Gap: A Social Dominance Perspective*, 4 SOC. PSYCHOL. OF EDUC. 235 (2001).

<sup>31</sup> Barnes, *supra* note 30, 1806.

<sup>32</sup> Barnes's 2007 article was a response to Richard Sander's work describing the “mismatch” theory. Sander suggests that affirmative action is responsible for suppressed law school grades and bar passage among Black students because it allows Black students to attend more

Part of that “something else” could well be the operation of stereotype threat. Stereotype threat theory posits that “societal stereotypes about groups can influence the intellectual functioning . . . of individual group members.”<sup>33</sup> Members of a stereotyped group are, of course, aware of those stereotypes. And when they are asked to perform a task (take a test,<sup>34</sup> play a sport,<sup>35</sup> audition for an orchestra<sup>36</sup>) that implicates

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elite law schools than they would if they were White with similar LSAT and undergraduate grade point averages. Those students, he suggests, are academically mismatched with their White law school peers, and as a result learn less and underperform. Richard H. Sander, *A Systemic Analysis of Affirmative Action in American Law Schools*, 57 STAN. L. REV. 367 (2004). Barnes’s 2007 analysis attempted to refute this theory, and suggested that law school culture itself caused disparities. In 2011, she published a partial correction of her earlier data analysis. The 2011 article:

present[s] a different picture of student outcomes. The data do not support either the antimismatch effect or the mismatch hypothesis: mismatched students do not explain the racial gap in student outcomes. The weakest students do not have systematically different outcomes at HBS, low-range schools, or mid-range schools. Black students have lower bar passage rates at HBS schools than at other institutions. Thus, the results suggest that there remain other factors, which I term race-based barriers, that adversely affect minority law student performance.

Katherine Y. Barnes, *Is Affirmative Action Responsible for the Achievement Gap Between Black and White Law Students? A Correction, A Lesson, and an Update*, 105 NW. U. L. REV. 791, 811 (2011). Sander’s work has been criticized on a variety of grounds, from empirical to normative. See, e.g., Ian Ayres & Richard R.W. Brooks, *Does Affirmative Action Reduce the Number of Black Lawyers?*, 57 STAN. L. REV. 1807 (2005); David L. Chambers, Timothy T. Clydesdale, William C. Kidder & Richard O. Lempert, *The Real Impact of Eliminating Affirmative Action in American Law Schools: An Empirical Critique of Richard Sander’s Study*, 57 STAN. L. REV. 1855 (2005) (reanalyzing relevant data); Daniel E. Ho, *Scholarship Comment: Why Affirmative Action Does Not Cause Black Students to Fail the Bar*, 114 YALE L.J. 1997 (2005). See also Andre Douglas Pond Cummings, “Open Water”: *Affirmative Action, Mismatch Theory and Swarming Predators—A Response to Richard Sander*, 44 BRANDEIS L.J. 795 (2006); Kevin R. Johnson & Angela Onwuachi-Willig, *Cry Me A River: The Limits of “A Systemic Analysis of Affirmative Action in American Law Schools,”* 7 AFR.-AM L. & POL’Y REP. 1 (2005); David B. Wilkins, *A Systemic Response to Systemic Disadvantage: A Response to Sander*, 57 STAN. L. REV. 1915 (2005).

<sup>33</sup> Steele, *supra* note 12, at 1.

<sup>34</sup> Claude M. Steele & Joshua Aaronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. OF PERSONALITY & SOC. PSYCHOL. 797 (1995).

<sup>35</sup> Sian L. Beilock, William A. Jellison, Robert J. Rydell, Allen R. McConnell & Thomas H. Carr, *On the Causal Mechanisms of Stereotype Threat: Can Skills That Don’t Rely Heavily on Working Memory Still Be Threatened?*, 32 PERSONALITY & SOC. PSYCHOL. BULL. 1059 (2006).

<sup>36</sup> Claude M. Steele described a scene from the movie *8 Mile* as an example of stereotype threat in action. The scene is not about auditioning for an orchestra, but about a rap contest. Mary Harrison, *Steele, Psych Profs Talk ‘Stereotype Threat’*, STANFORD DAILY, May 11, 2012 (“In the scene, Eminem freezes up before the crowd because he feels threatened at a rap battle where he is the only white person in the club. ‘That was a rough day for Eminem,’ Steele said.”), *available at* <http://www.stanforddaily.com/2012/05/11/steele-psych-profs-talk-stereotype-threat/>.



a negative stereotype about their group, their awareness of the bias can become acute. Psychologist Claude Steele, who coined the term “stereotype threat,” likens its impact to multi-tasking.<sup>37</sup> When a non-stereotyped student takes a test, he can focus wholly on the task in front of him. His performance should be indicative of his knowledge and abilities. A stereotyped student taking the same test has a more complex task to master. She not only has to write an essay or solve a math equation, but also must work hard to suppress her concern that her performance will support a stereotype (e.g., that Black students are less academically gifted, and that girls are not good at math). Importantly, this is not an issue of self-esteem. A test-taker can know herself to be knowledgeable and competent (or even excellent) with respect to the task at hand. It is the presence of the stereotype, and her knowledge of it, that creates the extra work and tends to depress performance.<sup>38</sup> This is why the phenomenon can impact the academic performance of even (maybe, especially) the best-prepared students of color.<sup>39</sup> Those whose identities and self-concepts are bound up with their academic performance, as presumably are many students at an elite law school like Berkeley Law, are perhaps most at risk. This is not because they doubt their ability—they have proven their ability to themselves and others over and over again—but because they care enough about the intellectual endeavor to worry about being stereotyped in a new environment as “not up to the task.”<sup>40</sup>

### B. *Identity Threats More Generally*

Stereotype threat, the anxiety that an individual’s performance could confirm a negative stereotype about a group that he or she belongs to, is a subset of the phenomena known as “identity threats.” Identity threats include a myriad of ways that negative beliefs about a social group can impact and harm members of that group. It captures those moments when people suspect that they are at risk of “social devaluation, exclusion, and biased treatment.”<sup>41</sup> Moreover, “[t]his is a broader conception of threat because it includes any situation that contains the

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<sup>37</sup> Claude M. Steele, Exec. Vice Chancellor and Provost at the Univ. of Cal., Berkeley, Faculty Workshop at UC Berkeley School of Law (October 7, 2014).

<sup>38</sup> Steele, *supra* note 12, at 2,5–6, 10.

<sup>39</sup> Steele & Aaronson, *supra* note 36, at 797–811.

<sup>40</sup> Steele, *supra* note 12, at 613–29.

<sup>41</sup> Belle Derks, Michael Inzlicht & Sonia Kang, *The Neuroscience of Stigma and Stereotype Threat*, 11(2) GROUP PROCESSES & INTERGROUP RELATIONS 163, 166 (2008).

possibility of being marginalized, including not only when stereotypes are ‘in the air’, but also when cues in the environment send messages that one’s social identity is not welcome.”<sup>42</sup>

Recall the SCALE findings that some number of underrepresented students reported “classroom and school environments that did not encourage or allow students from diverse backgrounds to excel” and that they suffered from “stereotyping, implicit and explicit bias, and prejudice.”<sup>43</sup> Research shows that these kinds of threats can decrease trust between a student and her teachers and depress a student’s performance.<sup>44</sup> Again, none of this research has been performed in law school settings, but it should be. Especially considering that the potential for suppressing academic performance is real.<sup>45</sup>

### C. *Ameliorating Internal Impacts*

If stereotype threat—and identity threats more generally—impact performance when students become especially aware of negative stereotypes, then reducing these threats is, at least in part, a matter of reducing a stereotype’s salience. In other words, teachers can improve student performance by dispelling the power of stereotypes in her classroom. Steele calls the kind of teaching that counters stereotype threat “wise.”<sup>46</sup> Wise schooling involves teacher behaviors that make it clear that students will be seen as individuals, that they will be held to high standards, and that

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<sup>42</sup> *Id.* (“People whose social identity is threatened are not only worried about what negative stereotypes say about them, but also about what they say about groups with which they belong and identify”).

<sup>43</sup> SCALE Report, *supra* note 17, at 1.

<sup>44</sup> JOSHUA ARONSON, IMPROVING ACADEMIC ACHIEVEMENT: IMPACT OF PSYCHOLOGICAL FACTORS ON EDUCATION 279–301 (2002); Steele, *supra* note 12, at 621.

<sup>45</sup> Derks, *supra* note 43, at 167 (“Social identity threat is best thought of as a predicament faced by a person in a situation; given the range of possible situations, groups of people, and types of stereotypes, it should come as no surprise that social identities can be threatened through multiple, interacting pathways. The most prominent of these are the physiological stress response due to increased arousal, negative cognitions that consume executive, and self-regulatory changes in the aims of managing thoughts and emotions”) (internal citations omitted).

<sup>46</sup> Claude M. Steele, *Race and the Schooling of Black Americans*, THE ATLANTIC MONTHLY, Apr. 1992, <http://www.theatlantic.com/past/docs/unbound/flashbks/blacked/steele.htm>. (“Erving Goffman, borrowing from Gays of the 1950s, used the term ‘wise’ to describe people who don’t themselves bear the stigma of a given group but who are accepted by the group. These are people in whose eyes the full humanity of the stigmatized is visible, people in whose eyes they feel less vulnerable. If racial vulnerability undermines black school achievement, as I have argued, then this achievement should improve significantly if schooling is made ‘wise’—that is, made to see value and promise in black students and to act accordingly”).

they are expected to meet those standards.<sup>47</sup> These messages replace the stereotype narrative with a new one: “my teachers believe I am capable of high-level work and will teach me, and push me, accordingly.”

Researchers have identified a set of practices and traits that can help achieve that shift. First, clear communication of high standards can help, as can an evidence-based belief that the students are up to meeting those standards.<sup>48</sup> Second, the quality of the relationship between teacher and student may affect threat reduction, at least in K–12 education. Specifically, a positive, warm and open relationship may improve student performance.<sup>49</sup> These same K–12 studies suggest that child-centered teaching approaches correlated with improved performance.<sup>50</sup> Whether that extrapolates to student-centered approaches in adult-learning environments is an interesting question worthy of further exploration. Finally, and importantly, successful threat-reducers incorporated issues of race and diversity into their curriculum rather than relying on a color-blind approach.<sup>51</sup>

Stereotype narratives can be dispelled outside the class, as well. It may be that when students are offered an alternative narrative to understand their frustrations and struggles with school, they are less apt to fear confirming a stereotyped view of their academic abilities. Psychologists have found that positive effects flow from diverse groups of students getting to know one another well, informally. The more students of color hear that their academic struggles are consistent with White students’, the more likely they may be to chalk those struggles up to the difficulty of school and less to stereotypes about their performance.<sup>52</sup> Short interventions that interrupt the narrative have worked, too. One study invited upper-level students of color to speak to freshmen students of color

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<sup>47</sup> Research by Steele and Geoffrey Cohen (among others) suggests that wise schooling matters in K–12 as much, if not more, as in elite colleges. Removing stigma (or racial vulnerabilities, as they call it) helps to work internal shifts. Children are more likely to become identified with school, expect more from themselves, and achieve academically when they learn in environments that make them believe that they can do just that. See Geoffrey L. Cohen & Julio Garcia, *Identity, Belonging, and Achievement: A Model, Interventions, Implications*, 17 *ASS’N FOR PSYCHOL. SCI.*, 365, 365–69 (2008).

<sup>48</sup> Geoffrey L. Cohen, Claude M. Steel & Lee D. Ross, *The Mentor’s Dilemma: Providing Critical Feedback Across the Racial Divide*, 25 *PERSONALITY & SOC. PSYCHOL. BULL.* 1302, 1302–18 (1999).

<sup>49</sup> CLAUDE M. STEELE, WHISTLING VIVALDI 179–80 (2010).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> CLAUDE M. STEELE, WHISTLING VIVALDI 166–67 (2010).

about their experiences as first-year students. They explained that they had felt frustrated and alienated, but that over time they gained a sense of belonging in the school. The freshmen then spent one hour writing about what they learned. Those freshmen outperformed similar students in a control group by a half a grade point.<sup>53</sup>

#### D. *Ameliorating External Impacts*

As explained above, the social science suggests that race-correlated achievement gaps are caused by both internal and external factors. And it appears that teachers can address the effect of external impacts through effective pedagogy. Research done primarily in the K–12 setting overwhelmingly suggests that high-quality teaching improves the performance of low income students and students of color.<sup>54</sup> In that environment, high quality seems to require, at least, content knowledge, experience, training, and overall academic ability.<sup>55</sup> Less may be known about exactly what skills and techniques effective teachers bring to the classroom, but recent analyses confirm that good teaching improves student learning. According to the National Academy of Education:

There is persuasive evidence that students benefit from high quality instruction and that these benefits are cumulative for students who have good teachers for several years. Teacher effectiveness is so critical that low-income students lucky enough to have three very good teachers in a row in elementary school earn test scores that, on average, are similar to middleclass children.<sup>56</sup>

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<sup>53</sup> Gregory M. Walton & Geoffrey L. Cohen, *A Question of Belonging: Race, Social Fit and Achievement*, 92 *J. PERSONALITY & SOC. PSYCHOL.*, 82, 92–96 (2007). All of these interventions, and more, are described in chapter nine of Steele’s 2010 book intended for lay audiences, *Whistling Vivaldi*.

<sup>54</sup> See generally Center for Public Education, *Teacher Quality and Student Achievement: Research Review*, (Nov. 1, 2005), <http://www.centerforpubliceducation.org/Main-Menu/Staffingstudents/Teacher-quality-and-student-achievement-At-a-glance/Teacher-quality-and-student-achievement-Research-review.html> (data tracked over many years in several states suggests that teachers have a substantial effect on student achievement).

<sup>55</sup> Significant evidence supports the importance of content knowledge, training and experience. *Id.* (citing Goldhaber and Brewer (1996), Greenwald, Hedges, and Laine (1996)). Less is known about exactly what skills and techniques excellent teachers bring to the classroom, even in K–12.

<sup>56</sup> Suzanne Wilson, National Academy of Education, *Teacher Quality, Education Policy White Paper* (Nov. 11, 2009), [http://www.naeducation.org/cs/groups/naedsite/documents/webpage/naed\\_080867.pdf](http://www.naeducation.org/cs/groups/naedsite/documents/webpage/naed_080867.pdf) (citing B. Nye et al., *How large are teacher effects?*, 26(3) *EDUCATIONAL EVALUATION AND POLICY ANALYSIS*, 237–57 (2004); S.G. Rivkin et al., *Teachers, Schools, and*

Similar research is less plentiful in higher education, but promising information suggests that certain teacher practices can in fact reduce achievement gaps in college and law school. For example, a recent study out of the University of Texas measured the effect of a particular teaching method—daily online testing—on learning. This study was part of a larger body of research that suggests that frequent testing—or what psychologists call retrieval—improves student learning.<sup>57</sup> And what the University of Texas researchers found was that not only is daily testing indeed an effective way to boost student learning, but that it had particularly strong effects for low-socioeconomic status students. In other words, performance improved for all students, *and* the achievement gap between upper-middle and lower-middle class students shrunk. Even more promising, the experience in the studied course led to improved performance in classes the students took the following semester, as well.<sup>58</sup> The researchers suggest that regular online testing provides students with continuous feedback about their understanding of key concepts and provides an opportunity to retool their approach to learning content.<sup>59</sup> In addition, Stanford Law professors Daniel Ho and Mark Kelman published a promising paper just last

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*Academic Achievement*, 73(2) *ECONOMETRICA*, 417–58 (2005); J. Rockoff, *The Impact of Individual Teachers on Student Achievement: Evidence from Panel Data*, 94(2) *AMERICAN ECONOMIC REVIEW*, 247–52 (2004); W.L. Sanders & S.P. Horn, *Research Findings from the Tennessee Value-Added Assessment System (TVAAS) Database: Implications for Educational Evaluation and Research*, 12(3) *JOURNAL OF PERSONNEL EVALUATION IN EDUCATION*, 247–56 (1998)). See also Kristin Gehsmann & Haley Woodside-Jiron, *Becoming More Effective in the Age of Accountability: A High Poverty School Narrows the Literacy Achievement Gap*, in C.M. Fairbanks, J. Worthy, B. Maloch, J.V. Hoffman, & D.L. Schalert, Eds., *The 54th Yearbook of the National Reading Conference*, The National Reading Conference, 182, 182–197 (2005).

<sup>57</sup> See, e.g., H.L. Roediger et al., *Test-Enhanced Learning in the Classroom: Long-Term Improvements From Quizzing*, 17 *J. EXPERIMENTAL PSYCHOL.: APPLIED* 382, 382–95 (2011); P.K. Agarwal et al., *The Value of Applied Research: Retrieval Practice Improves Classroom Learning and Recommendations from a Teacher, a Principal, and a Scientist*, 24 *EDUC. PSYCHOL. REV.* 437, 437–48 (2012); Nicholas C. Soderstrom & Robert A. Bjork, *Testing Facilitates the Regulation of Subsequent Study Time*, 73 *JOURNAL OF MEMORY AND LANGUAGE* 99, 112 (2014); Harry P. Bahrick & Lynda K. Hall, *The Importance of Retrieval Failures to Long-Term Retention: A Metacognitive Explanation of the Spacing Effect*, 52 *JOURNAL OF MEMORY AND LANGUAGE* 575 (2005).

<sup>58</sup> James W. Pennebaker, et al., *Daily Online Testing in Large Classes: Boosting College Performance and Reducing Achievement Gaps*, 8(11) *PLOS ONE* 1 (2013).

<sup>59</sup> The researchers found that online testing helped boost “basic content knowledge that is needed for the mastery of courses” and overcome “deficits in procedural knowledge—the how of learning . . . including the basic ability to take notes, to study, to monitor their performance, and to think critically in ways that optimally prepare them for exams and other assessments.” *Id.* (emphasis omitted).

year finding that smaller class sizes and a pedagogy based on simulations, writing, and feedback (instead of a single exam at the end of the semester) reduced or eliminated a gender-correlated gap in law school grades.<sup>60</sup> More research is required, of course. But these studies show that teacher techniques and practices make a difference in higher education and law school environments as well. This suggests that improving legal pedagogy can decrease achievement gaps.

#### IV. “TRANSFORMATIVE PROFESSORS” QUALITATIVE STUDY METHODOLOGY

With the notion that legal pedagogy can make a difference in mind, one of the co-authors began a process of understanding what professors can do to help students of all backgrounds thrive. During the spring semester of 2013, he asked members of student groups which professors they considered to be the most effective at conveying complicated concepts and creating classrooms where all students (regardless of gender, race, or other group status) can learn. Students provided many glowing recommendations. Using the list of professors that students recommended as a baseline, he then utilized quantitative student evaluation scores to develop a smaller list of teachers. Berkeley Law conducts student evaluations at the end of each semester. The evaluations provide students with guidance regarding which classes to take and help Berkeley Law make tenure and retention determinations. These surveys ask students how much they agree (on a scale of 1–5) with the following statements:

- The instructor displayed knowledge and mastery of the subject.
- The instructor was well-prepared.
- The instructor’s presentation was organized and clear.
- The instructor stimulated student interest and thought.
- The instructor was responsive to and respectful of student ideas and questions.
- To the extent appropriate for the course, the instructor was available after class, during office hours, and for supervision of student writing.
- The assigned course materials were effective.
- Considering both the limitations and the possibilities of the subject-matter and the course, how would you rate the overall teaching effectiveness of this instructor?

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<sup>60</sup> Daniel E. Ho & Mark G. Kelman, *Does Class Size Affect the Gender Gap? A Natural Experiment in Law*, 43 J. LEGAL STUD. 291 (2014).

Professors were chosen for the study if they were both recommended by multiple students in the initial email requests, and garnered average scores between 4.5 and 5 on most of the student assessment criteria above for their instruction in courses with over 50 students. Of the thirteen professors who fit both criteria, eleven professors participated in in-depth interviews regarding their teaching practices.<sup>61</sup> The perspectives of these eleven individuals inform this article.<sup>62</sup> While there are clearly many ways to determine what constitutes excellent teaching, the eleven individuals interviewed are referred to as “transformative professors” throughout the article. This is meant to facilitate economy, convey the way many of their students perceive these professors, and suggest that embracing their pedagogical approaches may help transform legal instruction to ensure students from all backgrounds can learn and thrive.

This project was initiated in response to previous SCALE research on bridging achievement gaps at Berkeley Law. The approaches used to develop the rubric for the interviews and the means of synthesizing the data were based on qualitative best practices employed by top research firms.<sup>63</sup> After completing the interviews, analyzing the data, and drafting an original report that was distributed to Berkeley Law professors as part of an effort to improve the school’s pedagogy, Mr. Darling-Hammond recruited co-author and Berkeley Law lecturer Kristen Holmquist to help contextualize these findings within her experiences as an instructor who has been part of an ongoing, multi-year effort to improve legal pedagogy and close achievement gaps at a top law school. Because Professor Holmquist was one of the eleven teachers interviewed, both co-authors were careful to ensure that all data analysis and reporting on the interview findings was completed by Mr. Darling-Hammond before Professor Holmquist began her work on the project.

## V. EXECUTIVE SUMMARY: THE 10 HABITS OF TRANSFORMATIVE PROFESSORS

The eleven teachers interviewed include a diverse range of personalities and teaching styles. They teach a variety of core doctrinal and

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<sup>61</sup> The other two professors, though supportive of the research and willing to participate, were unavailable during the research timeframe.

<sup>62</sup> The names of these professors have been withheld to maintain their anonymity. Professors are, however, identified by a subject that they teach to demonstrate that their strategies are applicable to a variety of classroom environments.

<sup>63</sup> The rubric is on file with the authors and available upon request.



bar courses with different pedagogical demands, including Criminal Law, Evidence, Contracts, Constitutional Law, Legislation, Civil Procedure, Trusts and Estates, Family Law, and others. They represent different racial groups, religions, genders, socio-economic backgrounds, and political beliefs. Like many of the professors in the legal academy, some are much like Lawrence—White, male, and wealthy. Many of them are also much like Felicia—non-White, female, and/or first generation esquires. And all of them are regarded as being able to create environments that helped students from all backgrounds thrive. Conversations with these transformative professors revealed core themes that defined their pedagogy. These transformative teachers made an effort to:

1. Use E&E. Approach teaching with a sense of **Enthusiasm and Empathy**. Aim to understand the student experience, and inspire passion.
2. Communicate **high expectations** while creating **safe classroom environments**.
3. **Provide context** for comprehension. Assume intelligence of every student, but never assume prior experience or legal skills.
4. **Give the material structure** to make it stick. Structure the semester around a narrative arc or web of related themes or techniques and be transparent about how concepts fit together.
5. **Get feedback**. Use tools like clickers, breakouts, office hours, and mid-semester evaluations to understand and adapt to your students' progress and needs.
6. **Give feedback**. Provide assessment opportunities throughout the semester to help students learn and self-correct.
7. **Get practical**. Provide opportunities for students to learn practical and academic skills by assigning and reviewing briefs and motions and by reviewing practice exams in class and outlines during office hours.
8. Use the Socratic method to **teach, not intimidate**. Create an environment where **compassionate cold calling** is the norm.



9. **Modernize.** Transcend classical cases and embrace discussions about the modern political and social phenomena that attracted many students to law school.
10. **Learn from fellow professors** as much as possible.

## VI. DEEPER QUALITATIVE INSIGHTS

### A. *How to Use These Findings*

We now review the techniques transformative law professors use to ensure that students from all backgrounds succeed. As the professors quoted below explain, excellent teaching is an art form, personalized to each practitioner.

*If you're a teacher, you have to do what suits your strengths. If you're a lecturer, you'll lecture. If you're conversational, you converse with students. If you're a great debater, you have more of a back-and-forth with students. A lot of being a teacher is finding your voice. What works for one person won't work at all for somebody else.*

—Civil Procedure Professor

*My biggest challenge when I started teaching was to figure out how to become an individual as a professor, instead of a cookie cutter professor. I needed to bring my personality to the class. What I offer is unique from what any other professor provides. Teaching is creative.*

—Constitutional Law Professor

Thus, we suggest that readers apply and experiment with approaches that best fit their style and meet the unique needs of their classrooms. To this end, the article includes multiple approaches and techniques to addressing many problems and challenges.

### 1. *HABIT ONE: SHOW ENTHUSIASM AND EMPATHY (E&E)*<sup>64</sup>

*Approach Teaching with a Sense of Enthusiasm and Empathy.*

*Aim to Understand the Student Experience, Inspire Passion, and Impart Valuable Skills to the Next Generation.*

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<sup>64</sup> Many professors may know of the Examples and Explanations series, which are useful study and teaching guides. Here, we are recommending a different kind of “E&E”—empathy and enthusiasm. Without this approach, professors might lose many underrepresented students before they can even begin discussing examples or providing explanations.

***SHOW ENTHUSIASM TO INSPIRE AND IMPART LESSONS TO ALL STUDENTS***

Many transformative professors were inspired by the energy and enthusiasm that their students have about the law and about learning generally. They reported that they love helping students experience epiphanies as they master course content and the legal analytical approach. These professors enjoyed taking complex legal topics and finding ways to make them digestible.<sup>65</sup>

*I love making hard things easy for people. If there's somebody out there who wants to be a lawyer and for whom teaching would be a barrier, I love making it digestible and not intimidating. There's no better feeling than knowing you had a part in that light bulb going off.*

—Criminal Law Professor

*The most enjoyable and rewarding part of teaching is seeing people start to master the material and develop their skills. The cliché of course is “thinking like a lawyer” but you really do start to see development in people’s analytical abilities over the course of the semester. It’s rewarding to see people transform into capable attorneys before your eyes.*

—Civil Procedure Professor

These teachers seemed to feel most fulfilled when they embraced the challenge of breaking complex concepts into comprehensible segments while relishing in signs of student comprehension as a just reward. Spending time developing strategies and approaches for helping students understand complex content could help create a more satisfying semester for many professors.

Moreover, this approach can help mitigate the sense of isolation and intimidation underrepresented law students often experience.

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<sup>65</sup> For more support for the notion that skilled teachers focus on teaching the foundational concepts necessary to learn complex factual content, and guidance on how to inculcate foundational concept knowledge, see Berkeley Graduate Division, *Education: Organizing the Learning Process* (adapted from a talk by Professor Lawrence Lowery), UC Berkeley, <http://gsi.berkeley.edu/teachingguide/theories/educ-organize.html> (last visited Apr. 5, 2015). For a discussion of how excellent teachers avoid assumptions regarding prior student knowledge and help build a foundational knowledge base when necessary, see SUSAN A. AMBROSE ET AL., *HOW LEARNING WORKS: SEVEN RESEARCH-BASED PRINCIPLES FOR SMART TEACHING* 10–39 (2010).

Howard Katz and Kevin O’Neill, two professors who wrote a compendium of “Strategies and Techniques of Law School Teaching,”<sup>66</sup> note that “[i]f your students see that you really *care* about helping them to learn and grow, then you will have traveled a long way toward creating the right atmosphere” in your classroom.<sup>67</sup> Katz and O’Neill encourage professors to approach teaching with a “spirit of generosity, with abundant patience, and with empathy for your students,” rather than “weariness, cynicism, hostility, or condescension.”<sup>68</sup> The reward for this approach is “getting your students to see that it is not you against the class, but rather you and the class against the material.”<sup>69</sup> Many transformative professors embraced this approach:

*They know the most important thing to me is that they learn, so I never turn away a raised hand. I answer any question—I don’t hide balls.<sup>70</sup> I’m open about my own teaching process. I give them what they’re asking for.*

—Constitutional Law Professor

When professors demonstrate that participation is about learning, not performing, it can help alleviate any stereotype threat experienced by underrepresented students. When participation is deemed performative, these students may be more likely to worry that saying something wrong will confirm stereotypes. This fear saps focus that should be applied to the lesson of the day, and makes cold-calling a battle against social structures rather than an opportunity to learn. This is not a theoretical experience—it is a feeling that we, while students, felt firsthand. Moreover, in the SCALE Report, and at the Berkeley Law SCALE Retreat, many students reported feeling intimidated and put down by professors whose pedagogy did not clearly communicate that the professor was passionate about teaching *every* student, regardless of their starting point or background knowledge. The enthusiasm transformative

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<sup>66</sup> HOWARD E. KATZ & KEVIN FRANCIS O’NEILL, STRATEGIES AND TECHNIQUES OF LAW SCHOOL TEACHING: A PRIMER FOR NEW (AND NOT SO NEW) PROFESSORS 1 (2009).

<sup>67</sup> *Id.* at 42.

<sup>68</sup> *Id.* at 33.

<sup>69</sup> *Id.* at 33.

<sup>70</sup> For further support for the utility of answering questions, and inviting means of prompting students to ask questions when confused, see Berkeley Graduate Division, *Encouraging Participation: Encourage Student Questions*, UC Berkeley, <http://gsi.berkeley.edu/gsi-guide-contents/discussion-intro/participation/> (last visited Apr. 5, 2015).

professors have for the contributions of students from all backgrounds and starting points, and their delight at seeing light-bulbs go off above the heads of Felicias and Lawrences alike, transmits a very different message: “your educational growth matters, this classroom is for all of you, and we are in this together.”

Claude Steele’s research on “wise” classrooms underscores this finding. Steele found that stereotype threat is mitigated when students “feel valued by the teacher for his or her potential and as a person.”<sup>71</sup> This feeling of being valued for one’s potential and contributions is enhanced when professors show an investment in every student’s educational growth. Researchers of legal pedagogy have similarly echoed this finding. Michael Schwartz, Gerald Hess, and Sophie Sparrow confirmed these findings in an analysis of twenty-six “Best Law Teachers” in the United States, selected through a rigorous review and application process from twenty-five different schools across the country.<sup>72</sup> Specifically, they found that these professors “feel comfortable expressing love for their work and celebrating their students’ successes.”<sup>73</sup> And their students “perceive that these teachers will do whatever it takes to help them learn and are eager and able to engage their students.”<sup>74</sup> The “transformative professors” identified by students at Berkeley Law similarly expressed a sense of enthusiasm that helped students close preparation gaps and succeed.

### *CREATE AN ENGAGING CLASSROOM SPACE*

Classrooms designed to encourage eye contact and interaction send a powerful message all by themselves.<sup>75</sup>

*You want to set up a space without physical distance between the professor and the students. Hopefully people are sitting in a circle so nobody is looking at anybody’s backs and people are looking at each other.*

—Constitutional Law Professor

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<sup>71</sup> Steele, *supra* note 48.

<sup>72</sup> MICHAEL HUNTER SCHWARTZ ET AL., WHAT THE BEST LAW TEACHERS DO 19 (2013).

<sup>73</sup> *Id.* at 19.

<sup>74</sup> *Id.* at 20.

<sup>75</sup> For more information regarding the engagement benefits of moving around the classroom, see Berkeley Graduate Division, *Encouraging Participation: Move Around the Classroom or Lab*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/sections/participation.html#move> (last visited Apr. 5, 2015).

Unlike a classic podium setup, where students only speak to professors (and usually only to withstand a Socratic interrogation), in an engaging classroom space, every student can participate, and can aid in the education of other students. This can augment the extent to which students feel their contributions are valued, and thus can mitigate stereotype threat.

***AIM TO EMPATHIZE WITH AND UNDERSTAND ALL STUDENTS***

Transformative teachers consistently indicated that they strive to empathize with the law student experience by remembering their own 1L experiences. They think about how to keep students tuned in to the content, and take steps to pull students back into the lecture if they get distracted.

*You should be empathetic. Think back to how you felt in law school. Every semester I look at my notebook from my first semester of law school, and how stupid some of the things I wrote down were. I ask myself whether my expectations of students are realistic. Even as we get further from that experience, teachers should try to remember it.*

—Criminal Law Professor

*When I first find out what classroom I'll be in, I go to the classroom and sit at the very back and imagine what it's like to be in the back row trying to be an anonymous student. I see what I look like at the front of the class. That brings home how important it is not to be talking at the class. It's easy to zone out back there.*

—Criminal Law Professor

*You won't have people's attention 100 percent of the time, but how do you bring them back in? If they're handling a life crisis in the first ten minutes of class, that's important, that's life, but you don't want to lose them for the whole lecture. You can recap occasionally. And just make sure that every sentence isn't just related to the previous sentence.*

—Civil Procedure Professor

Empathy can also stem from professors realizing they may not “have been as brilliant as [they] remember [themselves] to have been,”

during 1L, and that “[i]t might be edifying if all new professors were required to go back and review the exams they wrote as first-year students.”<sup>76</sup> Humor aside, there is wisdom to this exercise. As human beings, professors naturally forget that what now seems obvious was once difficult.<sup>77</sup> This might lead them to view Felicia’s questions as uninformative and rudimentary—even when they may very well have benefited from hearing the answer to that question when they sat where Felicia sits now. A multi-faceted answer to Lawrence’s multi-tiered question may betray a lack of empathy with students who are unable to follow the question because the professor has failed to teach the premises upon which it relies. Professors should “try to see the subject through the eyes of someone who has not yet mastered it.”<sup>78</sup>

For transformative professors, empathizing with students also includes knowing 1L schedules (i.e., being aware of required writing assignments, deadlines, and holidays), and making sure students have some sense of how to outline for a class before they are sent off for Thanksgiving and/or spring break.

*I generally know their schedule and try to coordinate with WOA<sup>79</sup> deadlines, holidays, etc.*

—Criminal Law Professor

*[Instructors] should discuss outlining in class.*

—Criminal Law Professor

Empathy includes not overworking students. It is easy to forget that law students have many competing academic and extra-curricular demands on their time.

*As you prepare for the semester, figure out how much reading you want students to do and reduce it by 50%.*

—Civil Procedure Professor

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<sup>76</sup> KATZ & O’NEILL, *supra* note 68, at 1.

<sup>77</sup> Thomas Gilovich et al., *The Illusion of Transparency: Biased Assessments of Others’ Ability to Read One’s Emotional States*, 75 J. PERSONALITY & SOC. PSYCHOL. 332 (1998).

<sup>78</sup> KATZ & O’NEILL, *supra* note 68, at 9; *see also* SCHWARTZ ET AL., *supra* note 74, at 20.

<sup>79</sup> “WOA,” or Written and Oral Advocacy, is a first-year required course that provides practice and instruction in conducting legal research, drafting legal memoranda, and arguing before a court.

Finally, empathizing also includes taking stock of which content is easier or harder to master and spending careful time conveying the more complex content.

*I think about what will be difficult or easy for students to grasp. I get advice from other teachers who have taught the subject matter about what the typical pitfalls are for most students.*

—Criminal Law Professor

This sense of empathy was also a characteristic of the best teachers identified in the Schwartz, Hess, and Sparrow work. Those professors “exude[d] empathy” and felt “concern about every student, not just a select few.”<sup>80</sup> The importance of showing empathy for students of *all* backgrounds cannot easily be overstated. Georgia University warned that many professors would be out of touch with the concerns of their underrepresented students.<sup>81</sup> When this happens, these students are often reminded that their professors more easily empathize with Lawrences than Felicias, and this suggests to them that the law school environment is not truly for them.<sup>82</sup> Transformative professors fought against these trends by communicating their universal empathy and seeing the value in students from all backgrounds.

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<sup>80</sup> SCHWARTZ ET AL., *supra* note 74, at 18–19.

<sup>81</sup> University of Georgia Graduate School, Success in Graduate School for Minority Students, 4 The Five Minute Mentor (2005–2006), [http://gradschool.uga.edu/files/5\\_minute\\_mentor/5minute\\_v4n4\\_0405.pdf](http://gradschool.uga.edu/files/5_minute_mentor/5minute_v4n4_0405.pdf).

<sup>82</sup> The issue of professors being more responsive to White male students transcends law schools. In a recent study, researchers sent emails from fictional students of various races and genders to 6,500 professors at top U.S. universities drawn from 89 disciplines and 259 institutions across the country requesting opportunities to discuss their research and the doctoral programs at the schools. Katherine L. Milkman et al., *What Happens Before? A Field Experiment Exploring How Pay and Representation Differentially Shape Bias on the Pathway into Organizations* (2014), available at <http://ssrn.com/abstract=2063742>. On the whole, the surveyed professors at private institutions were far more responsive to White male students. *Id.* They were 12% less responsive to Black males, 13% less responsive to Black females, 13% less responsive to Latino males, 5% less responsive to Latino females, 8% less responsive to Chinese males, 21% less responsive to Chinese females, 19% less responsive to Indian males, and 14% less responsive to Indian females. *Id.* at 53.

2. *HABIT TWO: COMMUNICATE HIGH EXPECTATIONS WHILE CREATING SAFE CLASSROOM ENVIRONMENTS*

***HIGH EXPECTATIONS***

Transformative professors explicitly and implicitly communicated that they had high expectations of and hopes for *all* of their students, regardless of their social identity or background. They explicitly communicated a belief that every student was capable of success by saying, for example, that every student in the room has something worthwhile to say and that they want to hear it. They also implicitly demonstrated this belief by reacting to the comments of students of all backgrounds with similar vigor and enthusiasm. Professors also worked with students individually to encourage students to meet high expectations. They suggested that if students were not meeting standards, they only needed to overcome the obstacles standing in the way of realizing their full potential.

*You have to have high expectations, but have empathy when students try and fail. You have to give them opportunities [to try again].*

—Criminal Law Professor

*All of my students are superstars. They all have something valuable to say in response to any question I could ask. That doesn't mean they'll get the right answer on the first shot. But I ask them follow up questions that allow them to get there on their own. I let them shine.*

—Criminal Law Professor

Where professors do not hold and communicate high expectations of students from certain social groups, the results can be disastrous. The SCALE research demonstrates that students are picking up on the extent that professors hold different expectations of the Felicias and Lawrences. These perceptions of negative stereotypes decrease trust between a student and her teachers. This can lead to detrimental behaviors like “self-handicapping, challenge avoidance, self-suppression and disidentification or disengagement with the task or the context in which the task is to be performed.”<sup>83</sup>

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<sup>83</sup> Kenneth Tyler & Christina Tyler, *Stereotype Threat* (Dec. 23 2009), <http://www.education.com/reference/article/stereotype-threat/> (internal citations omitted); *see also* Steele,



On the other hand, transformative professors understand that having high expectations of students can be a powerful prophylactic to the sense of non-belonging that many underrepresented students feel in law school classrooms. As Steele and other stereotype threat researchers note, when professors communicate that they have high expectations of students of color, they can encourage those students to strive to meet them and can reduce the achievement gap.<sup>84</sup> The best teachers identified in the Schwarz, Hess, and Sparrow piece also “see the promise in everyone” among their students,<sup>85</sup> and “operate from a strong belief in the capabilities of their student[s]” that leads them to “set clear, high expectations” for students.<sup>86</sup> Students pick up on these expectations and “take to heart their teachers’ belief that they have talent and can do great things with their lives”<sup>87</sup>—empowering them to strive with confidence.

Transformative professors took varied approaches to setting high expectations. Some stated explicitly to the entire class that they believed every student in the class was incredibly capable and that they expected top-notch work from each one. Others communicated privately with students who were struggling, whether in the classroom or on midterms, that they saw incredible potential in those students and expected more. These conversations often touched on obstacles these students were experiencing and means of overcoming them. In the SCALE survey, a number of Felicias described private, expectation-setting conversations with transformative professors as pivotal to their ultimate academic success.

### SAFE ENVIRONMENTS

Transformative professors explained that one key to ensure that students from all backgrounds learn content is to create a safe space where they are freed from distractions, such as stereotype threat and awareness of one’s solo status, and can focus on learning. These safe spaces

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*supra* note 12, at 613; Jessi L. Smith, *Understanding the Process of Stereotype Threat: A Review of Mediation Variables and New Performance Goal Directions*, 16 EDUC. PSYCHOL. REV. 177 (2004); Joshua Aronson, *Stereotype Threat: Contending and Coping with Unnerving Expectations*, in IMPROVING ACADEMIC ACHIEVEMENT: IMPACT OF PSYCHOLOGICAL FACTORS ON EDUCATION 279 (Joshua Aronson ed., 2002).

<sup>84</sup> Geoffrey L. Cohen, Claude M. Steel & Lee D. Ross, *The Mentor’s Dilemma: Providing Critical Feedback Across the Racial Divide*, 25 PERSONALITY & SOC. PSYCHOL. BULL. 1302, 1302–18 (1999).

<sup>85</sup> SCHWARTZ ET AL., *supra* note 74, at 19.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 22.

also helped students avoid emotionally painful distractions that can stem from hurtful statements by peers or brusque rebukes by professors.<sup>88</sup>

*I try to encourage an environment where people feel comfortable speaking out without being judged, told that they're wrong, or silenced. Part of that is cultivating the environment with the other students. I have to make it clear that this is a space that is an intellectual playground . . . where they don't have to beat up on each other.*

—Constitutional Law Professor

*I constantly strive to ensure students feel safe even during a robust debate.*

—Constitutional Law Professor

To establish safe environments, many transformative professors set ground rules in the classroom.<sup>89</sup> Those rules, though framed differently among the professors interviewed, boiled down to a few guidelines. First, think before you speak—be aware and sensitive to the variety of students' backgrounds and experiences. Second, recognize that students are working through difficult ideas that may be initially and unwittingly communicated in offensive ways. Listen with the benefit of the doubt in mind, and try to understand what underlies the student's remark.<sup>90</sup> Third, professors can and should empower their students to address the pain and discomfort that may arise in discussions of complex social issues. Students can and sometimes do make statements that offend their peers. Ensure that students who feel harmed by these comments can communicate their feelings. Address these issues in office hours, private meetings, and through emails, and then have a meaningful resolution with the entire class to ensure the classroom unit maintains coherence, trust, and focus.

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<sup>88</sup> *Id.* at 18. The authors note that the best teachers “show profound respect to their students and insist that their students respect . . . their fellow students, and everyone else in the law school community.”

<sup>89</sup> For additional guidance regarding setting ground rules and class guidelines, see Berkeley Graduate Division, *Teaching Discussion Sections: Creating Discussion Guidelines*, UC Berkeley <http://gsi.berkeley.edu/teachingguide/sections/guidelines.html> (last visited Apr. 5, 2015).

<sup>90</sup> SCHWARTZ ET AL., *supra* note 74, at 18. The twenty-six “best” law teachers similarly adopted an approach of “assum[ing] the best about their students” and “attributing good intentions to their behavior.”

*The aspiration is for the student who feels disrespected to feel respected, and the teacher can remind [students] that what you intend and how you are perceived may be different. It's taking the maliciousness and intent out of it, and pointing out that we all come from different perspectives and [will] see things differently, and that goes for me as a teacher, too.*

—Constitutional Law Professor

*If there are things that come up in class that I feel need to be dealt with before the next class, but not in class, I will discuss it with students individually. And in the next class, I may open things up for a broader discussion, but only after talking with [the relevant] students first. Sometimes, that involves having difficult conversations in class. As a teacher, you're taking a risk, and I've done that a couple of times, and it's been really hard to step out there, to know that you are going to have these difficult conversations in which people may get even more insulted or disrespected or misunderstood, but if we don't have them, we can't move forward.*

—Constitutional Law Professor

*[In class], we're talking about concepts that are personal, but [we're] thinking about how they relate to our ultimate goal [of learning Constitutional Law]. I'm generous with students who screw up. They're usually . . . trying to find a way to say something [that's hard to communicate]. We work together to find the underlying point. I try to help them work from that vulnerable place [by being] vulnerable in the classroom myself. When your teacher is willing to be real, you're more willing to put yourself out there.*

—Constitutional Law Professor

These ground rules can make a big difference, especially for students from marginalized communities. Many classic 1L cases deal with complex social issues that have potent and often painful impacts on underrepresented communities. For example, many professors use *City of Los Angeles v. Lyons*<sup>91</sup> to explain the concept of standing to sue. The case is a painful reminder of the pervasiveness of police violence against

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<sup>91</sup> 461 U.S. 95 (1983).

Black men<sup>92</sup> and the difficulty Black communities have experienced seeking justice for incidences of police violence.<sup>93</sup> Even more painfully, many property law classes begin with a discussion of *Dred Scott v. Sandford*,<sup>94</sup> in which the Supreme Court held that African Americans could be property and lacked standing to sue in federal court.

These and other social issues in cases should absolutely be broached. However, while discussing such charged content, it is easy for students to hurt one another unintentionally. The students most likely to be hurt are those whose communities and social groups more often bear the burden of unfair laws. For example, in the context of an affirmative action debate, Black and Latino students, who remain chronically under-represented in law schools and bars across the country, may feel legitimately offended by comments that admissions systems are fair. This may suggest that Black and Latino students are underrepresented because, as a group, they are less capable. Professors should deftly step in to communicate why a comment may offend someone, and remind students that painful comments may be unintentional and should be avoided. This allows offended students to feel validated in their feelings of pain and frustration so that they can redirect their attention to learning the law, and do so without feeling wary of their peers or isolated in their classrooms.<sup>95</sup> This simple intervention can help underrepresented students continue to engage by reducing feelings of stereotype threat and by ameliorating their sense that the classroom is meant for other, White and/or male, students.

*[In my class], students feel like “somebody understands me”  
and “if somebody says something racist, I know my teacher*

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<sup>92</sup> A report by Colorlines and The Chicago Reporter found that in each of America’s ten largest cities, “African Americans were overrepresented among police shooting victims.” Jeff Lowenstein, *Killed by the Cops*, COLORLINES, Nov. 4, 2007, available at [http://www.colorlines.com/archives/2007/11/killed\\_by\\_the\\_cops.html](http://www.colorlines.com/archives/2007/11/killed_by_the_cops.html).

<sup>93</sup> A report by the Washington Post found that “[a]mong the thousands of fatal shootings at the hands of police since 2005, only 54 officers have been charged” and “[m]ost were cleared or acquitted in the cases that have been resolved.” The report also found that “[m]ost of the police officers were [W]hite” and “most of the victims were [B]lack.” Kimberly Kindy, et al., *Thousands Dead, Few Prosecuted*, WASH. POST, April 11, 2015, available at <http://www.washingtonpost.com/sf/investigative/2015/04/11/thousands-dead-few-prosecuted/>.

<sup>94</sup> 60 U.S. 393 (1857).

<sup>95</sup> For more information regarding approaches to creating safe spaces and responding to offensive comments, see Berkeley Graduate Division, *Encouraging Participation: Create a Safe Space*, UC Berkeley, <http://gsi.berkeley.edu/gsi-guide-contents/discussion-intro/participation/> (last visited Apr. 5, 2015).

*won't let it fly." It helps them engage. We had a session at [the school I used to teach at] where students told professors how they felt about the teaching, and a student told another professor that she decided not to attend the lecture on affirmative action because she didn't feel safe or comfortable. That impoverished the conversation and her own knowledge of the issue. It is a failure of a law school when students of color are opting out of a conversation on race because they don't feel comfortable. I hope no student of color would say that about a conversation in my class.*

—Constitutional Law Professor

Some professors indicated that they do not force students of color to represent “token” positions, and instead encourage the classroom to address assumptions about difficult subject matter.

*If you want to get the marginalized perspective into the conversation, interestingly, you should not force the Black student to represent the [Black] defendant. Instead, you should try role playing, talking through it—how would you bring this case, what kinds of issues might you flag? There's one case in criminal law about determining when someone is in a conspiracy. The defendant's friend beats up a White kid, and of course the defendant is Black, and of course the court says there's a conspiracy. So I did a hypo. You, Joe, a White kid, are driving with Lisa over to Shattuck [Avenue], and Lisa stops the car walks out, and takes someone's purse. Are you in a conspiracy? Of course the student says, "No!" Then I ask why he assumes the defendant in that case was in conspiracy.*

—Criminal Law Professor

This approach is directly responsive to the admonitions that the University of Georgia provides its graduate students. Georgia warns minority students that they will feel pressure to represent a larger race or ethnic group.<sup>96</sup> When students are asked to speak for their social groups, they feel as though their contributions are valued due to their idiosyncratic knowledge and not their individual capabilities. These transformative

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<sup>96</sup> Success in Graduate School for Minority Students, *supra* note 83.

professors avoid placing this pressure on underrepresented students by encouraging the entire class to field questions that implicate matters of importance to specific communities and social groups.

This approach also meets the fourth goal of “wise classrooms.” Encouraging all students to think and speak cogently about the concerns of underrepresented students can help reduce stereotype threat. Such discussions fold these concerns into the fabric of the class instead of treating minority concerns as “irrelevant” or “a special topic.” According to Steele, this can help reduce stereotype threat.<sup>97</sup>

3. *HABIT THREE: PROVIDE CONTEXT, TEACH SKILLS, AND STRIVE FOR COMPREHENSION*

*Assume Intelligence of Every Student, but Never Assume Knowledge or Experience.*

As a broad point, a number of professors indicated that one should assume intelligence from every student, but never presume knowledge about either foundational content or the legal analytical approach.<sup>98</sup> This helps teachers strike the right balance between spoon-feeding content and rushing through foundational material.

*One thing I try to do as a teacher is assume intelligence in everyone and knowledge in no one.<sup>99</sup> It helps people feel they can be a lawyer. It's very difficult work that takes a lot of practice, but you can do it.*

—Criminal Law Professor

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<sup>97</sup> CLAUDE M. STEELE, WHISTLING VIVALDI 179–80 (2010).

<sup>98</sup> For additional information on helping students practice meta-cognition techniques that can help them master legal analytical approaches required to understand content, see Carol Ormand, *Teaching Metacognition*, SERC, [http://serc.carleton.edu/NAGTWorkshops/metacognition/teaching\\_metacognition.html](http://serc.carleton.edu/NAGTWorkshops/metacognition/teaching_metacognition.html) (summary of Marsha Lovett's presentation at the 2008 Educate Learning Initiative Conference). For guidance on how to help students learn foundation concepts necessary to productively engage in reading assignments, see Berkeley Graduate Division, *Teaching Critical Reading: Guiding and Motivating Students*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/reading/guiding.htm> (last visited Apr. 5, 2015).

<sup>99</sup> While this quote was provided earlier in this article, the sentiment relates to many aspects of effective pedagogy, and many of the interviewed professors articulated a similar notion of separating “knowledge” and “intelligence.” Such a division helps professors avoid underestimating students, especially students of color, who may not have had prior exposure to the legal justice system (and thus may not be able to express knowledge on day one), but are capable of gleaming that knowledge if given appropriate instruction (and are thus highly intelligent). The phrase seems a sufficiently pithy and poignant expression of this idea to warrant repetition.

*I start from the perspective of the student; I don't start a conversation until I've laid down priors. I find it very important to start from ground zero on any concept.*

—Civil Procedure Professor

*The professor has to model responses. You can't expect students to respond to your questions in ways that exemplify the method of approach to a problem—you can't expect students to just pick that up. You have to drill it and call attention to it.*

—Civil Procedure Professor

Transformative professors strongly stressed the importance of teaching these foundational concepts and skills to Felicias, who often have not had the opportunity to learn foundational legal skills that are essential to learning legal content.

Legal pedagogy literature supports this focus on initial skill building. Katz and O'Neill warned that:

Most students are confused about what their professors expect of them and what sorts of skills they are supposed to be developing . . . Once they see what your goals are, once they see what you expect of them, your students will be in a position to adjust their approach to the material. By failing to tell them, you leave them in the dark about what they should be doing.<sup>100</sup>

They also note that students, and especially those without prior exposure to law school, “are slow to perceive the fundamental difference between law school education and undergraduate education.”<sup>101</sup> This seems especially likely to be true of Felicias admitted to top law schools. Straight-A students in high school and college logically fall back on familiar study habits. Lawrences will know better. Transformative professors, as Katz and O'Neill recommend, work to ensure that students do not “fail to see that the job of a law student is to master a very different set of skills.”<sup>102</sup>

It may help to reserve time to explicitly describe the foundational concepts that are new to Felicias. Professors can explain that reading cases helps one understand how to write like a judge;<sup>103</sup> that each case

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<sup>100</sup> KATZ & O'NEILL, *supra* note 68, at 4.

<sup>101</sup> *Id.* at 31.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 7.

involves specific sections, including procedural posture, parties' arguments, and the holding,<sup>104</sup> and that each case is an opportunity to discern and apply the elements of a rule or statute.<sup>105</sup> This explicit explanation allows students to practice core skills *before* they find themselves "writing [their] first-year exams."<sup>106</sup>

An additional core skill that transformative professors discussed is outlining. Most transformative professors were aware that many students struggle to learn how to outline. Some considered points of entry, like office hours, where they could help students learn how to outline well in advance of the end of the semester, and in time to effectively understand complex concepts.

*Reviewing students' outlines during office hours is a great idea!*

—Criminal Law Professor

*I've had a lot of people bring in outlines [to office hours]. First years do it more, and students benefit a lot from that.*

—Civil Procedure Professor

Teaching the process of outlining can help students who have limited exposure to the law. This is because the process of outlining changes the way students read cases and take notes in lectures. When students who have not already learned the core skills of law school get feedback on their outlines, they are learning how to be better students and, eventually, legal practitioners. This knowledge may give them confidence to engage more deeply with their studies, which may help them achieve academic success and subsequent professional success. Moreover, the process of sitting down with a professor to learn the legal approach in an intimate, one-on-one setting communicates loud and clear that the professor is willing to invest in that student's success. If done right, such a meeting can demonstrate that the professor has high expectations of the student, and believes that the student can master the legal analytical approach and become an expert practitioner. Such an interaction may go a long way toward mitigating stereotype threat and allowing underrepresented students to thrive.

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<sup>104</sup> *Id.* at 53.

<sup>105</sup> *Id.* at 48.

<sup>106</sup> KATZ & O'NEILL, *supra* note 68, at 7.



Professors may worry that asking students to prepare a full outline well in advance of final exams is impractical, if not impossible. We agree. A meeting to discuss outlining can still be productive, however. After the first section of the course is complete, students can bring draft outlines for that section. This will allow professors to identify sticking points and help students understand how to best synthesize concepts and content.

In addition to outlining tips, transformational Professors almost universally agreed that practice exams should be made available and reviewed as a means of teaching the exam-taking approach in law school.

*Posting them for students is a must. Going through at least one in class seemed appreciated by students.*

—Criminal Law Professor

*I think they're probably one of the best ways to prepare you for this tool we have for evaluating you [on final exams]. I post all my past exams [for all the classes I teach], and I have a certain style of exam. If you get together with a study group and go through them, you'll do better. I also post the top exam. It can be terrifying, but it can help people realize they're being compared relatively and help them prepare.*

—Civil Procedure Professor

It may seem daunting to teach foundational skills to 1Ls while also teaching an entire doctrinal subject. Many transformational professors decided it is more constructive to focus on inculcating the analytical approach and key themes of the course rather than review all available doctrinal content.<sup>107</sup>

*You need to be careful in terms of what you include because even in a five-credit class . . . you have to accept that you're not going to teach the students everything about a given subject—you have to be choosy. You're much better off being deeper than broader.*

—Civil Procedure Professor

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<sup>107</sup> Katz and O'Neill echo the importance of accomplishing key teaching goals, rather than transmitting a deluge of content, and implore professors to “select a modest number of goals, topics, and approaches, and then focus on those selections throughout the semester.” *Id.* at 2. They further warn that “[t]he more ground you attempt to cover, the more superficial will be their comprehension.” *Id.* at 2.

*You can't rush through substance and give students enough time to understand the approach you're trying to develop. Overcrowding the syllabus is always a problem.*

—Civil Procedure Professor

*The overview approach misunderstands who our students are. It fails to engage them on the most important material. And it presents an impossible task. There's so much material, and so many cases, it's impossible to provide an overview.*

—Constitutional Law Professor

### ***FOCUS ON CLARITY AND COMPREHENSION***

Transformative professors consistently refuse to “hide the ball.”<sup>108</sup> To keep the classroom engaged, they explain complicated concepts clearly and intentionally by breaking them into digestible segments.<sup>109</sup>

*It's all about eliminating the mystique. This is especially important for first generation lawyers. I was one. I didn't know what a pleading was! But there were people around me who knew this secret language. So I try to [demystify].<sup>110</sup>*

—Criminal Law Professor

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<sup>108</sup> “Hide the ball” is a legal term of art meaning to withhold information or evidence. In the context of classrooms, teaching by “hiding the ball” means intentionally failing to communicate key concepts or content under the, arguably misguided, belief that students learn more when they teach themselves. As one author notes, however, “[t]he problem, as law students see it, is that the Socratic teacher never stops the interrogation long enough to allow the students to get a good look at the ball.” Pierre Schlag, *Hiding the Ball*, 71 N.Y.U. L. Rev. 1681, 1684 (1996).

<sup>109</sup> For a discussion of the importance of conveying foundation knowledge, and the means of doing so, see SUSAN AMBROSE, ET AL., *HOW LEARNING WORKS: SEVEN RESEARCH-BASED PRINCIPLES FOR SMART TEACHING* 10–39 (Jossey-Bass, 2010). Katz and O’Neill echo this point, writing that “[i]t isn’t ‘spoon feeding’ to recognize that there are limits to learning by induction and that we do not weaken our students by resorting to direct methods of communication.” KATZ & O’NEILL *supra* note 68, at 47. They exhort professors to be transparent about not only teaching goals, but substantive content, too, by summing up content and drawing attention to important points, which can increase “the likelihood of successful communication.” *Id.* at 47–48.

<sup>110</sup> Demystifying complex concepts may help students learn more successfully because it divorces comprehension from intelligence, and helps students believe they can understand concepts, rather than be sidelined by concerns about their innate intelligence. For example, researchers have demonstrated that teaching Black college students that intelligence is mutable can increase their enjoyment of learning, the extent to which they associate “academic success” with their personal self-concept, and their academic performance, even after controlling for SAT scores. See, e.g., Joshua Aronson, Carrie B. Fried & Catherine Good, *Reducing*

*I've realized the importance of transparency—providing a syllabus that explains to the students what the purpose of the course is, how we'll approach it, what my expectations are and what theirs should be of me, and that sets forth the full semester plan. And once they're on top of the material, I develop simulations that make the material more concrete and related to the work that lawyers do.*

—Civil Procedure Professor

Transformative professors further suggested the need to slow down and re-teach difficult concepts when necessary to ensure widespread comprehension. They believed students learn best through repetition.<sup>111</sup>

*[If students don't understand a concept], I will literally start over and try to do it again in a different and clearer way. And usually I find that if the students aren't getting it and there's a big gulf, it means that what I've done so far is not successful, so I try to go back to the drawing board and find a different way to approach this from the very beginning that will convey the material more effectively. Sometimes material is just hard—like Erie.<sup>112</sup> I teach it and care a lot about it, and I refuse to let it go. I know they're not going to get it the first time around, and that's good. Being confused is good if something is confusing. So I double back.*

—Civil Procedure Professor

*Another thing I think is really important is repetition. Students claim it is helpful that I provide the three takeaways from the lecture at the end of class.*

—Civil Procedure Professor

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*the Effects of Stereotype Threat on African American College Students by Shaping Theories of Intelligence*, 38 J. EXPERIMENTAL SOC. PSYCHOL. 113, 118–22 (2002), available at <http://www.sciencedirect.com/science/article/pii/S002210310191491X>.

<sup>111</sup> For more evidence that repeatedly encouraging information recall can aid in retention, see John F. Kihlstrom, *How Students Learn—and How We Can Help Them*, [http://socrates.berkeley.edu/~kihlstrm/GSL\\_2011.htm](http://socrates.berkeley.edu/~kihlstrm/GSL_2011.htm) (last updated June 13, 2014). Rephrasing questions is one way of slowing down the teaching of complex concepts. See Berkeley Graduate Division, *Encouraging Participation: Rephrase the Question*, UC Berkeley, <http://gsi.berkeley.edu/gsi-guide-contents/discussion-intro/participation/> (last visited Apr. 5, 2015).

<sup>112</sup> This professor was referring to the Erie Doctrine, one of the doctrines taught in many first year Civil Procedure classes and stemming from the major Supreme Court decision: *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938).

*When I first started teaching, I thought if you laid something clearly out once, it would be clear to the class, and if you subsequently revisited it, it would be boring. . . . But that's not how people learn—they learn through repetition and building blocks. You lay something down clearly once, and you repeat it, and every time you build on it you go back and repeat the basics and show the way the building blocks work, and it takes less and less time each time you go back, but that repetition is crucial to what makes people learn.*

—Constitutional Law Professor

Many professors warned against relying on the casebook to explain complicated concepts. They suggested that it is more effective to actively break complex concepts down for students, and use simple hypotheticals to uncover and overcome sticking points.<sup>113</sup>

*For kinesthetic learners, I'll try to do things like unpacking a statute or doing a hypothetical.*

—Criminal Law Professor

*If people aren't getting it, I try to use hypotheticals to expose the problem. What we do in casebooks is look at really hard questions with no easy answers. But I use hypotheticals to review easy questions and extrapolate concepts from the easy cases for the hard cases. It seems like a really obvious approach, but I didn't see it much in my legal education. You also give students confidence when they answer the easy questions and even if they can't answer the tougher question later they still have that confidence and can try again.*

—Civil Procedure Professor

Successful professors bridge the gap between students from all backgrounds and the casebook. This approach is essential to ensuring that students new to legal concepts are not disadvantaged by a pedagogy that is more fitting for legacies. Many transformative professors suggested that another means of bridging the gap between students and the

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<sup>113</sup> Katz and O'Neill similarly suggest that professors "identify[] key points to be retained from a given lesson," and break those key points down explicitly. KATZ & O'NEILL, *supra* note 68, at 1.

casebook is to use visuals to recap core lessons from the lecture. These visuals included using PowerPoint, images, and charts. These visual aids can also ensure that students are able to comprehend what is going on in lecture.<sup>114</sup>

*I use PowerPoint quite a bit. I do a review at the beginning and end of class. It aids retention because you're saying the same thing multiple times in different ways.*

—Criminal Law Professor

*I use PowerPoint to sum up major points and put in funny pictures to go with cases so people remember what cases are about.*

—Criminal Law Professor

While most professors recommended using PowerPoint, many warned about over-using the program.

*I don't think you should over-think PowerPoint at all. I use it to speak to the visual learners. The visual learners don't want glitter. They just want to see it. I don't think you want it to overshadow what's going on in the classroom. And I don't want it to just be something [pretty] during class, but a reference [students] can use after class, so the bells and whistles are useless for my purposes.*

—Criminal Law Professor

#### 4. *HABIT FOUR: PROVIDE STRUCTURE*

*Structure the Semester Around a Narrative Arc or Web of Related Themes or Techniques and be Transparent About how Concepts Fit Together*

Transformative professors provided a unifying theme or narrative throughout the semester to help students make links across material. These themes and narratives facilitate deeper concept comprehension and content retention. For example, one approach to teaching Contracts is to help students go through the step-by-step process of drafting a contract and teach the various black-letter-law issues as they arise. Another

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<sup>114</sup> Katz and O'Neill warn that classroom experiences in law school can often feel like a "verbal ping-pong match" that leaves students, on-and-off-call, confused about the main points of the lecture. *Id.* at 57. They suggest using "visual reinforcements of the topic or theme or point you're covering" to help students keep track of what is being discussed, and to actively identify the key points in an otherwise obtuse conversation. *Id.*

approach is to group content around key themes, such as major topics (e.g., identifying a breach of a legal duty) or approaches to legal analysis (e.g., textualist argumentation).

*It's very important to try to explicitly weave every day into a narrative that spans the entire class. I carefully consider the order of the classes, and what we do and don't cover. I say very explicitly how what we did yesterday ties into what we'll cover today and where we're going, and I find it is effective because it creates one story line that everybody can be part of over the semester. And it has the more boring function of simply repeating what we're doing and why it's important.*

—Civil Procedure Professor

*I think a lot, at the outset of the semester, about ways the semester ties into one central narrative. I try to start broadly with that overall narrative. Then I try to say, "here's why what we've done before has led us to the topic we're talking about today." I try to tell some story that leads us to the controversy [and doctrine] we're dealing with. It may be chronological or doctrinal or a clash of legal theories, but I try to tell some story. I find it works really well.*

—Civil Procedure Professor

*It's about really breaking it down into its constituent parts and seeing how they build upon one another. If we're starting a new area, we begin by reviewing the skeletal outline, and then zoom into the knobby legal issues. It's the kind of content you would see in Gilberts. I just make it plain. The very first day of class is a 20-minute outline of the whole class and it gets returned to throughout.*

—Constitutional Law Professor

*I try to frame every class as [being] about some theme or a set of themes, and you build on that as you go through the semester. That's the skeleton: thematic ideas that undergird the whole class. And everything else is putting meat on that skeleton.*

—Criminal Law Professor

Many professors did not recommend a disconnected survey or broad overview of legal concepts but instead suggested a thematic grouping as a more student-friendly teaching approach.<sup>115</sup>

*I've seen several professors whose approach is a broad overview approach. That's a mistake. It underestimates our students—they can review commercial outlines on their own and learn the black letter law basics. And it's a mistake because it doesn't force students to wrestle with the really hard questions. It treats all topics as similarly weighty, and if everything is similarly weighty, than it's all weightless. For a new professor, I would say, as you're preparing for class each day, I would ask what are the half-dozen things that you want to revisit over and over again? If you're preparing a semester, what are the one or two questions that students ought to see clearly? Sometimes those questions have answers, and sometimes they recur [without clear answers]. But I would encourage new professors to realize they are not trying to cover everything.*

—Constitutional Law Professor

*I [became] comfortable with [having] a bigger teaching goal. I want students to learn the process more than the substance, to learn how to think about [and answer] a question.*

—Constitutional Law Professor

Clarifying content through a pre-planned structure can help reduce the gap between students who have a background in the law and those who do not. The latter might, for example, easily blend doctrines that have similar elements. For example, in a torts class, a student who has not

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<sup>115</sup> Katz and O'Neill urge professors to be transparent with students regarding the structure of their course, and suggest providing a "one-page chart that displays all of the topics to be covered in your course, arrayed in a format that shows how they fit together." *Id.* at 46–47. Katz and O'Neill note that one way to transparently communicate the structure of the course is "situating the topic you're covering in its larger doctrinal context." *Id.* at 31. If, for example, a constitutional law professor is introducing "true threats," they might say, "we now turn to the doctrine of 'true threats.' This is a category of unprotected speech. It is one of the five such categories, along with fighting words, obscenity, child pornography, and the advocacy of imminent lawless action." *Id.* at 32. Katz and O'Neill also suggest professors "flag[] important transitions as you move through the semester." *Id.* at 31. When creating a narrative arch to a class, Katz and O'Neill encourage professors to think about what "topics to which the students must first be exposed to understand certain other topics." *Id.* at 24.

benefited from clearly demarcated instruction regarding the elements of duty, breach, and proximate cause may be baffled by the recurrence of the concept of “foreseeability” in the analysis of each element. Ensuring that instruction clearly distinguishes different topics, and makes the distinctions between topics explicit, can ensure that students learning concepts for the first time are able to master them.

5. *HABIT FIVE: WELCOME FEEDBACK*

*Use Tools like Clickers, Breakouts, Office Hours, and Mid-Semester Evaluations to Understand and Adapt to your Students’ Progress and Needs*

Nearly all transformative professors indicated the importance of connecting with students and understanding student experiences. Opportunities to connect with students also helped fuel student engagement. These included using clickers (remote controls students use to answer multiple choice questions posed in real time),<sup>116</sup> splitting students into small groups, mandating office hours, and offering mid-term teacher evaluations.

***CONNECT INDIVIDUALLY TO ENSURE ALL STUDENTS ARE LEARNING***

A number of professors explained that it is important to connect with students on an individual level because, without the connection, students often slip through the cracks.

*I think it’s very hard for professors to monitor whether students are keeping up, especially if students don’t check in with professors. Some students don’t come to office hours maybe because of intimidation. It’s normal for students who are struggling not to reach out. I often won’t know a student was struggling until it is too late.*

—Constitutional Law Professor

*A huge issue is access, which is provided when professors are welcoming and ensure that there is enough interaction between students and professors so there is an opportunity to learn who needs help and to provide it. That break[s] down walls so people*

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<sup>116</sup> For additional guidance on how to use clickers, see Derek Bruff, *Classroom Response Systems (“Clickers”)*, Vanderbilt Center for Teaching, <http://cft.vanderbilt.edu/guides-sub-pages/clickers> (last visited Apr. 8, 2015).



*can talk about substance. And if we do talk about substance and there are red flags, I can ask them to come in for office hours and talk more about that.*

—Constitutional Law Professor

Transformative professors relied on various and constantly evolving approaches to assessing whether students are learning the material.

*If I could go back to when I started teaching and give myself advice, I would like to tell myself: listen, listen, listen, assess, assess, assess, solicit feedback after class time, in class, and at office hours, to figure out what students are understanding.*

—Civil Procedure Professor

Assessment is especially critical for ameliorating stereotype threat. When a professor assesses a student's progress, helps the student overcome his or her obstacles, and through this process accelerates the student's growth, the professor demonstrates to the student that he or she sees the student's potential and is investing in it. This communicates high expectations, which, as noted previously, can engender positive self-fulfilling prophecies and reduce stereotype threat.

### ***GET DAILY FEEDBACK FROM THE CLASS: CLICKERS & SMALL GROUPS***

Many professors recommended using clickers to get a sense of whether students understand the content. They also indicated that clickers keep students engaged and provide a break for professors to refresh during lectures.<sup>117</sup>

*[Clickers are] a terrific way to figure out what people are getting and what they're not to help focus the discussion. I will frequently ask a question, give students choices, give them a second to respond, and figure out from that whether we need to discuss this question more. In terms of the intimidation factor, if a student is having a hard time with something, I'll say to the student, "I know you're generally getting this material, so if you're*

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<sup>117</sup> Additional information about the utility and uses of clickers can be found at Berkeley Graduate Division, *Tools for the Classroom Setting: Clickers*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/tech/classroom.html#clickers>; see also Berkeley Graduate Division, *Active Learning Techniques: Peer Instruction*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/sections/active.html#peer>.

*having a hard time with this, I need to step back.” I try to take on the responsibility and then frame a slightly different question [for them to] respond with the clickers, or ask them to discuss amongst themselves and then answer, or vice versa, but I use [the clickers] to . . . focus on the question. It lets the intimidated student off the hook. I think if people try them, they’ll like them.*  
—Civil Procedure Professor

*Clickers are really helpful. It’s a great way to get 100 percent participation and get a sense of whether students are completely lost or not.*  
—Criminal Law Professor

In addition to providing an opportunity for professors to monitor student comprehension, clickers allow students to revisit the material and to assess their level of understanding of specific topics.

In addition to clickers, tools like quizzes and “TWEN”<sup>118</sup> provide additional advantages.<sup>119</sup> They allow professors to get feedback without triggering stereotype threat. The hand-raising approach can easily trigger stereotype threat by creating a public inquiry of whether students, including underrepresented students, know the correct answer to questions tricky enough to warrant a show of hands. Using clickers or TWEN fully sidesteps this risk of stereotype threat while still allowing professors to get real-time feedback regarding whether students are comprehending the content.

About half of the transformative professors interviewed also suggested asking the class a question and then splitting students into small groups to provide professors with an opportunity to assess students’ understanding of the content.<sup>120</sup> As with clickers, breaking students into small groups ensures student understanding of the content and encourages more participation. Finally, discussing a novel legal concept in a small group helps students learn to collaborate, which is a critical legal skill.

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<sup>118</sup> TWEN is “The West Education Network,” which provides quizzes professors can give to students in real time in class or as homework assignments.

<sup>119</sup> KATZ & O’NEILL, *supra* note 68, at 35.

<sup>120</sup> Katz and O’Neill similarly recommend breaking students into small groups to do an analytical exercise right after you have completed reviewing a topic or segment. *Id.* at 38.

*I've broken people into groups of four or five in the large classroom. It really helps them participate because they're talking to each other, and there's less pressure. But the most important thing pedagogically is that we learn differently if we're reading, writing, or speaking, and we need to do all three to acquire clarity regarding ideas and remember them. Just having students talk out loud about different subjects will help them learn them.*  
—Constitutional Law Professor

*Lawyers collaborate, and students need to learn how to collaborate. When students are struggling, putting them into small groups is like replicating the classroom times forty-five because you have all these active learning discussions going on. It's a chance for students to teach each other, work out their ideas, and learn to collaborate. And if I'm flummoxed as to what's confusing them, it gives me a chance to [listen to them] and get back on course.*  
—Civil Procedure Professor

*[After I split students up and ask a question], I'm walking around, listening to what students say in their groups, and getting a sense of the class. I use that time to get to know my students. And it makes the discussion better.*  
—Criminal Law Professor

One professor limited the amount of time students spent in groups to mitigate the risk of some students dominating conversations for too long.

*The downsides are the downsides with any group dynamic: that it's possible that one person feels shy and doesn't feel comfortable interacting in that way, or that there's a steamroller. But if you keep it short, that's a small risk. I believe the positives tend to outweigh the risks. You give everybody an opportunity to be active with the material, to get their hands dirty.*  
—Constitutional Law Professor

Small groups allow every student to “play an active role” in the group discussion or project. This is especially important for students who may be unsure of their contributions' value. By collaborating, students

may realize that they learned more than they originally thought and may be encouraged to participate in future class-wide discussions.

Some transformative professors suggested preempting student morale issues by ensuring that students do not feel like “the only one who doesn’t get it.” As mentioned in the previous section, the use of clickers and small groups can help professors understand when students are struggling to understand the content. Similarly, these techniques can also help students understand that others are also struggling with the content.

*If somebody feels lost, and the clicker shows 50 percent of the class doesn’t get it, it makes them feel better. And as a teacher it lets you know when to slow down and revisit material and when to move on.*

—Criminal Law Professor

#### **GET REGULAR FEEDBACK FROM THE CLASS:**

##### **OFFICE HOURS, MID-SEMESTER EVALUATIONS & RESPONSE PAPERS**

Most professors strongly recommended encouraging students to attend office hours throughout the semester. They also encouraged making office hours more accessible so students will take advantage of them. Professors can make office hours more accessible both by setting them for consistent times, which allows students to schedule them in, and by encouraging students to come even if their questions are not class-related.<sup>121</sup>

*[I would advise professors to] schedule [office hours] for a realistic time for students; make everyone come see you at least once by announcing they have to on the syllabus.*

—Criminal Law Professor

*As far as office hours go, I like to start office hours by asking people how they’re doing to get to know them a little bit to make people feel a little more comfortable, and I’m actually interested in knowing how people are doing. I try to keep my finger on the pulse on the morale of the students—[law school is] a slog.*

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<sup>121</sup> For additional guidance regarding how to foster connection and helpful interaction during office hours, see Berkeley Graduate Division, *Questions for Students in Office Hours*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/presem/office-hours.html> (last visited Apr. 8, 2015).

*I also let them know that you don't have to have a question to come to office hours, you can come by just to say hello. And I encourage students to come to office hours in groups if there are students who feel less comfortable coming to office hours one-on-one.*

—Civil Procedure Professor

*I put in my course information sheet and say in class that I want everyone to come see me at least once in the semester, and I always say we don't have to talk about [legal] topics—we can talk about celebrity gossip.*

—Civil Procedure Professor

*I think every professor should be required to have office hours once a week and it should be posted on their website. The onus should not be on the student to make an appointment. If you don't have office hours, it's not fair to colleagues. I have had students ask me questions for classes I was not teaching because the professor did not have office hours.*

—Criminal Law Professor

Black and Latino students in the SCALE survey were more likely than students of other racial groups to express having experienced difficulty joining study groups.<sup>122</sup> They also expressed that they were hesitant to ask professors for clarification when they did not understand content because they were afraid of confirming stereotypes.<sup>123</sup> According to some transformative professors, mandatory office hours can help mitigate the negative impact of this effect by making office hours seem more accessible and by encouraging students from all backgrounds to engage. This provides an opportunity to ask professors for assistance and counterbalance the impact of being unable to join a study group.

*One thing I hated as a law student was that I was too nervous to talk to professors. But I always felt upset that there was a group of gunners who got all the good information after class talking to the professor. It made me feel like I was not part of the in-group. I felt like “those are the people who get the grades and*

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<sup>122</sup> SCALE Retreat, *supra* note 19.

<sup>123</sup> *Id.*

*clerkships—that’s not me.” So I generally don’t like to linger after class because it just asks for that to happen. Instead, I encourage people to come to office hours—in fact I force them to at least once. That breaks the mystique. It forces you to realize there’s nothing magical about talking to professors. And if I do have a conversation where an interesting tidbit comes up, I tell the whole class the answer to the good question so there isn’t a secret society of gunners who have all the good information.*

—Criminal Law Professor

Finally, some professors suggested that mid-semester teaching evaluations can effectively provide long-term feedback.<sup>124</sup>

*Another thing I do that I think other people should do is take the temperature of the classroom half way through [using a mid-semester course review]. Students are really good and thoughtful about what they want you to know about how the class is going— they’re really respectful, and I get a lot of feedback about what’s working well and what could be better. It also gives students a chance to vent. And if you’re responsive, it helps them feel a sense of ownership. You can say “I hear you, I can give more hypos,” or, “I hear you, you hate cold calling. I won’t stop, but I’ll explain why I do it, and you’ll understand why I’m doing it—and understand that it’s not to mess with you.” I think they appreciate the respect that a dialogue communicates. I think it matters to them to be heard and recognized and have it explained.*

—Criminal Law Professor

A number of transformative professors suggested using study questions or response papers to provide students with a reason to prepare more thoroughly for class.<sup>125</sup> They noted that response papers also

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<sup>124</sup> For detailed guidance on how to conduct, analyze, and report the results of mid-semester evaluations, see Berkeley Graduation Division, *Evaluating and Improving Your Teaching: Conducting a Midterm Evaluation*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/improve/midterm-eval.html>. For other means of gleaning student feedback on teaching methods throughout the semester, see Berkeley Graduation Division, *Linda von Hoene, Evaluating and Improving Your Teaching: Five Ways to Improve Your Teaching, 2: Solicit Feedback from Your Students*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/improve/five-ways.html>.

<sup>125</sup> For more information regarding the utility of in-class writing, and suggested approaches,

provide consistent feedback about whether students are learning the content, and a means to identify students who may be struggling.

*One other thing that I've done is to send emails at the end of every day, or week, recapping what we've just done. I also send out study questions in advance of every class, so people can feel like when they come in they know what they should be thinking about. The expectation is that people will read the questions and formulate answers, and when we discuss the question in class, they'll be able to test themselves against what we ultimately talk about. That's useful to people to get feedback in real time.*

—Civil Procedure Professor

*[Reflection essays are] better for the professor, and have positive externalities on the rest of the class because it forces students to prepare. If you're writing a response paper, you've done that reading for those two weeks. You get a more committed class. And when you show respect by giving comments, they realize you've spent time on it, and that's reciprocated. There's some warm feeling that is generated from that.*

—Civil Procedure Professor

In-class writing assignments can help students not only stay engaged with content,<sup>126</sup> but practice the analytical approach that is being inculcated.

*If you think something is important to learning, you should be willing to devote class time to it. That's why I let people write in class. We'll do a short thing—spend seven minutes writing the beginning of an answer. It's another way of getting everyone active, getting juices flowing.*

—Constitutional Law Professor

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see Berkeley Graduate Division, *Encouraging Participation: Set Pre-Discussion Assignments*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/sections/participation.html#pre-assignments>.

<sup>126</sup> For more information regarding the utility of in-class writing, and suggested approaches, see Berkeley Graduate Division, *Encouraging Participation: Ask for Written Responses or Free-Writes*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/sections/participation.html#written> (last visited Apr. 8, 2015).

## 6. *HABIT SIX: GIVE FEEDBACK*

### *Provide Assessment Opportunities Throughout the Semester to Help Students Learn and Self-Correct*

Every transformative professor felt it was important to use multiple assessment tools over the course of the semester. This recommendation is the most resounding and consistent recommendation from the interviewees. Professors suggested using papers,<sup>127</sup> response papers, midterm exams, and other evaluations, graded and ungraded, throughout the semester. Frequent assessment and feedback help students stay engaged and check to ensure they understand the content, provide points of entry to help struggling students, and reward and teach skills more aligned with legal practice. These tools also allow students to evaluate their growth and make critical course corrections in their learning approach so they can be prepared for each final exam, and can take more strategic and concrete steps toward being prepared for the Bar.<sup>128</sup>

Because of the scope of support for this recommendation, and the wealth of pedagogical benefits professors suggested stemmed from multiple assessments, we have offered a number of examples and strategies to facilitate assessing students more often.

*The nice thing about assignments along the way is that it forces people [to] not save the “aha” moment for the end. It’s very tempting as a law student to say “it will all come together eventually.” But we all get so much more out of class if we’re learning along the way.*

—Constitutional Law Professor

*We should be treating exam taking, or legal analysis, as a skill that itself needs to be worked on. You practice, you get feedback,*

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<sup>127</sup> For guidance on effectively developing and grading writing topics, see Berkeley Graduate Division, *Before You Grade: Assignment Design*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/grading/assignmt-design.html> and Berkeley Graduate Division, *Working with Student Writing*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/writing/grading.html> (last visited Apr. 8, 2015).

<sup>128</sup> For tips on giving feedback on written assignments that helps students grow and learn, see Berkeley Graduate Division, *Writing Comments on Student Work*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/grading/comment.html>. For guidance regarding how and when to return reviewed assignments, see Berkeley Graduate Division, *Communicating with Students: Grading Student Work*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/grading/return.html> (last visited Apr. 8, 2015).



*you work that feedback in the next time you practice—like learning to swing a baseball bat.*

—Constitutional Law Professor

*The one thing I absolutely agree with is that there should be learning opportunities throughout the semester. It's just inexcusable that a big first year class gives a grade based on one exam at the end of the semester. Maybe not every professor wants to grade 100 exams [in the middle of the semester], but they should still be able to write an exam question and provide a sample answer. And it would keep people motivated. If you know every three weeks you have to put something in writing, you know you have to study along the way. I try to give students an opportunity to put what they've learned so far into practice [by] prepar[ing] a written answer to an exam-like problem that covers what we've studied for five weeks. I give them individual feedback on every paper. I also give an outline that shows how I would have organized my answer. This is all about approach — how do you organize your paragraphs, the issues you're going to address. I try to drill that into them, so when they get a problem in practice or on an exam they have an approach in mind.*

—Civil Procedure Professor

*It's so important to give meaningful feedback students can use to improve their own learning. That's why I like the early hypothetical exercise assignments. I use a midterm. In small sections, a written essay midterm—that was great. If I could carve out more time, [I would use] multiple midterms.*

—Civil Procedure Professor

*I have students draft a sample complaint, and the variance in performance is larger in the first semester—[that's when] you can target certain people and provide advice that will be helpful. For students that didn't perform as well, I encourage them to come see me [and I provide assistance during that semester and on]. And students who invest in this do well!*

—Civil Procedure Professor

*I have a collaborative advocacy writing piece. It's very different from exam writing. This does a few things. First, it approximates*

*what they'll actually be doing as lawyers. The issue spotter exam approximates what they will do on the bar exam, but that's it. And I feel like nowadays when what's hitting the headlines is "law school does not prepare people for practice as lawyers," [it's important to ensure] people [do not] go through all of their doctrinal classes and never have to draft a pleading or a contract. So many students have indicated that they appreciated drafting the memo and flexing those analytical muscles [by] analogizing and distinguishing cases. You have a client, a problem, and you're doing the actual work. The other thing that it does is that it makes the subject matter less abstract. Instead of learning the rules of evidence, you see a motion to exclude. It makes it real. One day, you will be filing a piece of paper that looks like this! Also, you work collaboratively as a lawyer. And you have time to do that. And if you can do that, you'll be a great lawyer. It's not cheating or going soft on them, it's [teaching them] the necessary skills they'll be using.*

—Criminal Law Professor

Law students showed a similar desire for multiple assessments. When SCALE surveyed students, they found that 75% of students actually *wanted* midterms for all first-year classes so that they could “determine what concepts, skills, and content they need to focus on to prepare for final exams.”<sup>129</sup> Moreover, 89% of Latino students and 86% of Black students indicated that they believed their performance would have been specifically improved if professors had provided “different kinds of assessments—papers, practice motions, etc.,—rather than an exam that is most or all of the grade.”<sup>130</sup>

These students have good reason to want assessments. As Pennebaker, Gosling, and Ferrell found, providing frequent assessments to college students, even in the form of simple online quizzes on recently conveyed concepts and content, can help reduce the racial achievement gap.<sup>131</sup> Moreover, *all* of the twenty-six law professors that Schwartz, Hess, and Sparrow identified as being some of the best in the world also

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<sup>129</sup> SCALE Retreat, *supra* note 19.

<sup>130</sup> *Id.*

<sup>131</sup> James W. Pennebaker, Samuel D. Gosling & Jason D. Ferrell, *Daily Online Testing in Large Classes: Boosting College Performance and Reducing Achievement Gaps*, (Nov. 20, 2013), <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0079774>.

eschewed a simple issue spotter format, and used a variety of tools to assess their students, including “practice exams, lawyering exercises, clickers, small-group exercises, multiple choice quizzes, and a variety of writing assignments.”<sup>132</sup> These twenty-six professors also provided “thorough feedback that balances positive and constructive comments.”<sup>133</sup> This balance fits well with the balance described earlier of creating a safe classroom environment while communicating high expectations. Striking this balance may help reduce stereotype by engendering a wise classroom where students of all backgrounds feel they are expected to accomplish great things, not meet remedial goals.<sup>134</sup>

To avoid overburdening students with busy schedules, some transformative professors suggested providing multiple opportunities to do written work.

*I provide three different opportunities over the course of the semester to turn in a written project—and students have to do at least one, but can do all three. They test different skills. [For example], one was a client memo and another was a policy oriented question.*

—Constitutional Law Professor

With respect to time concerns from grading,<sup>135</sup> some transformative professors suggested allowing or even requiring students to write papers in groups. This also provides students with practical experience learning to collaborate on a legal project.<sup>136</sup> To avoid students being “pulled down” by free-riding peers, one professor suggested using these assignments as ungraded opportunities for peer-to-peer learning and growth.

*The drawback is that [grading papers] takes time if you’re not just going to give check mark grades. I try to give three or four substantive comments on each reflection essay. The solution is*

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<sup>132</sup> SCHWARTZ ET AL., *supra* note 74, at 21.

<sup>133</sup> *Id.*

<sup>134</sup> Steele, *supra* note 48.

<sup>135</sup> For additional guidance on managing time while grading, see Berkeley Graduate Division, *Time Management Suggestions for Grading Student Writing*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/writing/time.html> (last visited Apr. 8. 2015).

<sup>136</sup> For detailed guidance regarding effective approaches to developing, structuring, and assigning group assignments, see Berkeley Graduate Division, *Teaching Discussion Sections: Group Work*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/sections/groupwork.html> (last visited Apr. 8. 2015).

*to encourage [students to work in] groups. The groups are good for everyone. It's good for students—that's what practice is like. And it's good for professors, who get better papers with fewer hours of grading.*

—Civil Procedure Professor

*[In one of my assignments], students are required to work in groups. It wasn't graded, so you didn't have to worry someone else would pull you down. [These assessments provided real life experience because] so much of lawyering is collaborative. Someone in the group would say "I see you wrote it like that, that doesn't make sense to me," and their partner would explain it—and students really appreciated [the] collaborative nature [of the assignment].*

—Constitutional Law Professor

Transformative professors provided mixed views regarding the use of teaching assistants to review student assignments. Some professors were asked whether they would prefer to use teaching assistants to provide feedback or forego giving feedback at all. These interviewees preferred the latter.

*Having teaching assistants review non-exam assignments would be better than not [assigning] the assignment.*

—Criminal Law Professor

## 7. HABIT SEVEN: REMAIN PRACTICAL

### *Provide Opportunities for Students to Learn Practical and Academic Skills by Assigning and Reviewing Briefs and Motions*

A number of transformative professors reported using practical assignments to help students master content by applying it in a “real-world” context. Practical assignments included writing letters to clients and bench memoranda for judges. One professor suggested taking a more experiential approach to teaching practical skills and maintaining student engagement.<sup>137</sup>

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<sup>137</sup> The 2007 Carnegie Foundation Report on Legal Education also argues that law schools should provide more practical and experiential learning opportunities. JAMES R. MAXEINER, *EDUCATING LAWYERS NOW AND THEN* 25–26 (2007).

*We can start with a real life problem rather than a case. In my Con Law class, we would look at cases from the initial stages. The client brought this issue in, the parties said this, the court discovered this, and the court said this. And then the students would argue both sides. They would see what the Supreme Court was doing, and why this case happened, so it wasn't just abstract principles. They were seeing it as a real problem with real people and I think that taught them to be better lawyers. If there were standing issues, we would talk about how the standing issues arose in the complaint. And we would talk about how we could change the law while looking at the statute. They could see what a good complaint looked like, a good deposition, a good appellate brief. So they're not just focusing on the Supreme Court decision. I think that's how law ought to be taught. I think it was easier to learn the doctrine knowing how the case evolved.*

—Constitutional Law Professor

Providing opportunities to engage practical skills may reduce stereotype threat and improve underrepresented students' performances. Many minorities and women go to law school because they want to apply practical skills to address real-world social problems.<sup>138</sup> We have met students who dream of being first chairs in class action lawsuits in which they represent members of their community or social group while taking on businesses that unfairly hire and retain workers, school districts that provide unequal and inadequate educational funding, prisons that inhumanely treat prisoners, or state laws that infringe on constitutional rights. These types of practical exercises may help these students recall the reason they came to law school and provide strong motivation to engage and excel.

Prior research suggests that practical experiences are essential to learning the law. Katz and O'Neill recommend courtroom simulations, which they note will help students make "a quantum leap" in their understanding of the topics covered and improve students' analytical skills and confidence.<sup>139</sup> Similarly, the twenty-six "best" law professors "challenge their students to move beyond an understanding of doctrine and

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<sup>138</sup> See Robert Granfield & Thomas Koenig, *From Activism to Pro Bono: The Redirection of Working Class Altruism at Harvard Law School*, 17 CRITICAL SOC. 57 (1990).

<sup>139</sup> KATZ & O'NEILL, *supra* note 68, at 39.

theory to tasks that require application and synthesis of doctrine, theory, and practice, such as drafting documents to solve clients' problems."<sup>140</sup> The general advantages of these exercises give students an opportunity to practice the skills learned through practicing the law, have general and specific significance. In addition to helping underrepresented students engage with issues that matter to them, or at least polish skills they can use to address those issues, these exercises also help close the gap between Felicias and Lawrences. While Lawrence may have already drafted a memo before his first day of law school, Felicia almost certainly has not. Providing all students with opportunities to apply the law directly helps ensure that students are equally empowered to learn.

8. *HABIT EIGHT: TEACH WITHOUT OF INTIMIDATING*

*Use the Socratic Method to Create an Environment Where  
Compassionate Cold Calling is the Norm*

Every transformative professor provided clear guidance about avoiding pitfalls when applying the Socratic method.<sup>141</sup> They consistently noted that it should not be combative, frightening, or humiliating. They warned against treating students like adversaries in a courtroom or treating answers as ridiculous.

*I think the rational for the fear/intimidation teaching approach is that you have to get used to thinking quickly and the culture of war because that's litigation. But having spent [a great deal of time] in the courtroom, [that style of the] Socratic method didn't teach me anything about the courtroom.*

—Constitutional Law Professor

*I work really hard to make getting called on a relatively painless experience so students know when they raise their hand they're not going to be rebuked or shot down. I try to make*

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<sup>140</sup> SCHWARTZ ET AL., *supra* note 74, at 19.

<sup>141</sup> For a review of criticisms of the Socratic method, especially criticisms regarding the alienating effect of Socratic questioning on underrepresented students, see, e.g., Susan Sturm & Lani Guinier, *The Law School Matrix: Reforming Legal Education in a Culture of Competition and Conformity* 60 VAND. L. REV. 515, 516 (2007) (citing multiple studies that suggest that the Socratic Method “contributes to law student disengagement, particularly for women and people of color”); Alan A. Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 407 (1971).

*every in-class interaction comfortable and respectful, and I think that works.*

—Civil Procedure Professor

*We know that fear interferes with the ability to learn and listen. So if you spend most of your time in the classroom being afraid, it's going to interfere with your ability to learn. And certainly, that's most of what I felt when I was in law school—will I be called on, will I know the answer, will I be humiliated. For a sub-group of law students, that fear enhances their ability to learn—that sense of competitiveness, the adrenaline, gets them learning their best. I think that those are the kinds of learners who do best in law school. [But] most people don't learn that way. For most people, fear, and particularly fear of embarrassment and humiliation, is a real impediment to learning—particularly if you're studying a new subject and learning a new [legal] language. We don't learn unless we make a lot of mistakes. How do we learn otherwise? You have to feel free to make mistakes and not feel that you're going to be embarrassed by it, and that you're going to suffer from your peers or professors feeling that you're dumb.*

—Constitutional Law Professor

However, almost universally, professors felt that the Socratic method had many benefits.<sup>142</sup> Chief among these benefits were: helping students learn how to provide concise answers to legal questions and think on their feet; ensuring students have a high level of preparation for class; helping students wrestle with content so they more acutely comprehend and remember it; and helping students understand the legal problem-solving approach.

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<sup>142</sup> For additional defense of the Socratic method, see, e.g., Burnele V. Powell, *A Defense of the Socratic Method: An Interview with Martin B. Louis (1934–94)*, 73 N.C.L. L. REV. 957, 961 (1995); Elizabeth Garrett, *Becoming Lawyers: The Role of the Socratic Method in Modern Law Schools*, 1 GREEN BAG 2D 199, 201 (1998); Cynthia G. Hawkins-Leon, *The Socratic Method-Problem Method Dichotomy: The Debate Over Teaching Method Continues*, BYU EDUC. & L.J. 1, 5 (1998). Even some critics have noted that the method “can cultivate skills that are valuable in certain professional contexts,” Deborah L. Rhode, *Missing Questions: Feminist Perspectives on Legal Education*, 45 STAN. L. REV. 1547, 1557 (1993), and “deserves a continued place in legal pedagogy.” David Garner, *Socratic Misogyny? Analyzing Feminist Criticisms of Socratic Teaching in Legal Education*, 2000 BYU L. REV. 1597, 1648 (2000).



*The Socratic method ensures everybody contributes. I know it gets short shrift and people rail about it, and I know people of color say it does them a disservice. I think it can be isolating for many students and especially students of color, but the dialogue between instructor and student, and making sure everybody does it, that to me is how you make sure everybody is heard in the classroom. The whole profession [of being a lawyer] involves being asked questions and providing concise cogent answers.*

—Criminal Law Professor

*I think people misunderstand the Socratic method, which breeds hostility towards it. The standard rationale [for the method] is to teach people how to think on their feet and learn to be public figures. The second thing is you're essentially ensuring a high level of preparation—they know they might be cold called so they read. That's important. But the most important thing is that when you ask students to think about something and subsequently provide a possible resolution, students remember it. As a basic pedagogical technique, it's important for people to see what the problems are and wrestle with them before they glean a resolution.*

—Constitutional Law Professor

*I think [the Socratic method] works on a few levels. People are seeing the problem solving approach. That's the theory of the Socratic method, working both sides so you can advocate your position and defend it. I also want people to be able to orally advocate their positions so that when students get called into their supervisor's office [at a legal job], they can describe the case and answer questions. I [also] hope I've set up a controversy that students will be interested to hear students work through. And when you're cold calling, it creates an incentive for students to follow the conversation as well.*

—Civil Procedure Professor

These professors also provided guidance on how to effectively apply the Socratic method in a way that is not threatening<sup>143</sup> and encourages

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<sup>143</sup> Research demonstrates that making students feel threatened and inducing high levels



ongoing participation. Perhaps the most widespread suggestion represented in this Article is to practice what might be termed “compassionate cold calling”—a version of the Socratic method rooted in a deep understanding of the student experience and focused on helping student comprehension, not professorial dominance. This can be accomplished by establishing an environment of collaboration and learning early on.<sup>144</sup> In such an environment, students are encouraged to demonstrate prepared effort. Mistakes are accepted and even encouraged as part of the learning process. Professors established this environment by admitting their own fallibility,<sup>145</sup> acknowledging the stressful nature of Socratic questioning,<sup>146</sup> and setting classroom expectations about how Socratic questioning is meant to facilitate learning.

*[My students] understand that my questioning is more low stakes than what they'll be doing in practice. I send out a course policy handout that elaborates, and try to tell everybody at the beginning of the semester that it is entirely OK to be wrong as long as you're open and engaged and well prepared. I try to make clear that I understand that it's nerve racking, and that I was not the most eager participator in law school myself. So I promise in our interactions to do the best I can to be respectful, and not to go after somebody or try to score a cheap shot. But I*

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of cortisol (the stress hormone) can hinder memory retention. Daniela Kaufer, *What Can Neuroscience Research Teach Us About Teaching?*, (Jan. 27, 2011) (part of the How Students Learn Speaking Series at UC Berkeley), <http://howstudentslearn.wordpress.com/2011/01/27/daniela-kauffer-what-can-neuroscience-research-teach-us-about-teaching/>.

<sup>144</sup> For a description of the characteristics and benefits of collaborative learning environments, see Gerald Hess, *Heads and Hearts*, 52 J. LEG. EDUC. 75, 76, 87 (2002); Randall Vernevia, *Increasing Retention and Improving Performance: Practical Advice on Using Cooperative Learning in Law Schools*, 16 T.M. COOLEY L. REV., 201, 203–04, 242–43 (1999).

<sup>145</sup> Expressing fallibility also encourages student participation. See Berkeley Graduate Division, *Encouraging Participation: Don't be Afraid to Say You Don't Know Something*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/sections/participation.html#dont-know> (last visited Apr. 8, 2015).

<sup>146</sup> While transformative professors acknowledged and proactively addressed the stressful nature of Socratic questioning, some legal pedagogy experts warn that those wedded to the “old” approach of Socratic education (that focuses on asking questions about minor and obscure content) generate undue stress in students, which can lead to burnout. JOHN SONSTENG, ET AL., *A LEGAL EDUCATION RENAISSANCE: A PRACTICAL APPROACH FOR THE TWENTY-FIRST CENTURY* 40, 43 (2008).

*also expect people to be prepared and engaged. And as long as you're engaged, it doesn't matter if you're wrong.*

— Civil Procedure Professor

*If law teaching works really well, you're creating a collaborative environment where we all recognize this is tough material and there aren't clean answers, but we're engaging in a communal project of trying to understand it.*

— Civil Procedure Professor

*[To use the Socratic method effectively], you should show respect and encouragement, be sensitive when students are anxious or unprepared, admit [your] own mistakes, and be transparent. Talk about how the law school classroom can be intimidating, and approach it in a way [that] allow[s] [you] to have fun.*

— Civil Procedure Professor

*I try to be human, and non-hierarchical. I give them the sense that I don't know everything, and I don't. That makes [students] feel at ease with their own vulnerability. I try to laugh at myself to give the sense that if I can laugh at myself, anything they do won't be that bad, and [that] if anybody is going to be made fun of, it's me. It's part of the process of cultivating that environment. I don't want a thick boundary [between the student and me]. That creates a greater opportunity for intimidation to exist, especially for students from marginalized backgrounds.*

— Constitutional Law Professor

Earlier, we mentioned the importance of being transparent with students regarding teaching goals and the pedagogical approach employed. Transparency is especially important in the realm of the Socratic method. As Katz and O'Neill warn, "for many students, the Socratic method . . . will seem pointless, malicious, and opaque, a bow of submission to some antiquated tradition."<sup>147</sup> They suggest introducing or concluding "any Socratic interlude with a direct explication of your aims in performing it, both pedagogical and substantive." Such explications can include explaining to students the value of wrestling with a legal question out loud, that even professors sometimes believe they understand

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<sup>147</sup> KATZ & O'NEILL, *supra* note 68, at 31–32.

content better than they actually do.<sup>148</sup> Consequently, the professor must realize the shortfalls in his or her understanding by seeking to explain it to someone else, whether a judge, a colleague, a peer, an incredibly patient partner, or, in the student's case, a professor. The authors recommended explaining the pedagogical advantage of the Socratic method right in the syllabus.<sup>149</sup>

To reduce Socratic shock, Katz and O'Neill also recommend calling on students by name before asking them any questions.<sup>150</sup> Katz and O'Neill also specifically noted that because Socratic interludes only exacerbate the "verbal ping-pong" feeling that many law school lectures can adopt, "any Socratic interlude should be followed by a direct communication of the key points that the professor was trying to convey."<sup>151</sup>

For compassionate cold calling, Katz and O'Neill note that professors should not "be hasty to cut off student discussion," and should instead allow students "every opportunity to discover (and therefore 'own') the correct answer." This point is especially salient in relation to underrepresented students, who, in the authors' experiences, often face a sea of eyes when they participate. They may take more time to arrive at a clear conclusion as they brave the anxiety that accompanies sailing the sea of eyes, especially when such scrutiny triggers stereotype threat. The authors warn professors not to "pounce on every off-topic remark."<sup>152</sup>

A few transformative professors explained that one way to create a more collaborative, free-flowing, personal environment is to get out from behind the desk. If done carefully, this can reduce the distance, literal and figurative, between the student and the professor.<sup>153</sup>

*To translate the feel of a seminar room to the large classroom, you can get out from behind the podium and walk around the classroom. The problem is, depending on how it's done, that can also be very intimidating. But it's a great way to get away from having a physical desk between you and the students.*

—Constitutional Law Professor

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<sup>148</sup> *Id.* at 36.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.* at 34.

<sup>151</sup> *Id.* at 48.

<sup>152</sup> *Id.* at 50.

<sup>153</sup> For additional suggestions for creating cooperative, engaging classroom environments see KATZ & O'NEILL, *supra* note 68, at 122, 125.

Many transformative professors who were concerned about the misuse of the Socratic method suggested that their peers make each application of the method into a conversation rather than a quiz. This meant engaging the entire classroom in a discussion in which multiple students worked together to answer questions geared toward understanding and exploring the lesson of the day.

*When the Socratic method is a conversation among students and the teacher, not a quiz, I think it can be much more effective than a lecture. It should be a conversation in which we are all working on this together—that there aren't right answers—that if we bring in all of our perspectives, we're all going to learn from this process.*

—Constitutional Law Professor

*I always cold call. And I tend to stay with people for a long time. I tend to cycle through maybe three or four people in a class period. And that's because I really want to have a conversation with one or two people about a case. I want it to actually be a conversation, not me just peppering the audience with questions.*

—Civil Procedure Professor

They also suggested that professors should be flexible by providing students with opportunities to indicate that they will not be fully prepared to participate in class. Many professors thought it was too much to ask all students to be “on-call” and prepared for every single day of the semester, when a given day could include, for example, deaths in the family.

*The other part of the compassionate [cold calling] is that whenever somebody emails and says they're not ready, I won't call on them. One thing I've been told by students from marginalized communities is that they [both] have more extracurricular activities [and] they sometimes face challenges other students don't—like taking care of a sick relative. I want to keep the playing field as level as possible by not needlessly calling on them when they have other things going on.*

—Criminal Law Professor

They suggested that the Socratic method should not leave students blindly fumbling in the dark, but should guide students to the right answer.<sup>154</sup> This helps students learn the content, practice the legal problem-solving approach, and maintain confidence.

*Anybody who gets into Berkeley is a superstar—it's really hard to get into Berkeley! They all have something to say on any question on anything I could ask. It doesn't mean they'll get the right answer on the first shot. If not, I ask them follow up questions that allow them to get there on their own. That's letting them shine. And it's making them feel like they're part of the discussion. There's a delicate dance—just as the best oral advocates are the ones who make the judges feel like they're the ones who figured it out, the best professors make students feel that way. It's almost a Jedi mind trick. Invariably, even when they get it wrong, they'll say something interesting and creative, and your job is to point out why what they said adds a different dimension to the problem that [the class] should be thinking about. So it's not "haha Jill didn't know the right answer!" it's "Jill eventually got the right answer and she came up with something none of you did." You're not patronizing. You're being honest. You're using every opportunity to point out to the shy student that they are contributing to the conversation.*

—Criminal Law Professor

To ensure that the Socratic method helps keep all students involved, some professors suggested emphasizing the quality of a student's effort and not the quantity of attempts to volunteer.

*I try to be respectful of people who don't want to raise their hand that much. As long as they're well prepared and engaged when I call on them, that's fine with me. It's not a requirement of a great lawyer that you have to weigh in on every discussion. I try to make sure people don't feel I'm tallying up hand raises.*

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<sup>154</sup> For guidance regarding avoiding putting students down and steering students towards right answers, see Berkeley Graduate Division, *Encouraging Participation: Tactfully Correct Wrong Answers*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/sections/participation.html#tactfully> (last visited Apr. 8, 2015).

*I try to make clear to the students that I'm more interested in quality of participation than quantity.*

—Civil Procedure Professor

Many transformative professors called on their peers to appreciate the fact that, for students, cold calls can seem like a very intimate, emotional experience where they are finally engaging directly with the professor. They recommended that professors treat cold calls as they would any emotional, personal conversation<sup>155</sup> and know students' names and interests.<sup>156</sup> These professors thought that this method facilitates a one-on-one relationship that encourages active participation, and creates an environment of comfort and collaboration.

*I think it's respectful of students to know who they are. They're paying a lot of money to go here. They're paying [our] salaries], in fact. I guess it's so intuitive. The teacher student relationship is an incredibly intimate one. You're spending an hour a day with them in conversations about difficult issues like homicide and rape. It's so awful thinking about having a conversation where they are just "the man in the blue cap, third from the left in the back row." I can't imagine not knowing my students' names given that you're trying to inspire them.*

—Criminal Law Professor

*I try to learn everybody's name as early as I can in the semester, and I'm self-conscious about it. I hand out a survey on the first day of class that includes students' backgrounds and what they're hoping to get out of it. By studying those responses during the first two weeks, it helps me remember the names and a bit about students. I will occasionally call on people who have a particular connection to a case—a Vermont case and a Vermont student, or an accounting scandal case and a former*

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<sup>155</sup> For guidance regarding making cold call experiences more comfortable, meaningful, and intimate, see Berkeley Graduate Division, *Encouraging Participation: Give Nonverbal Support*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/sections/participation.html#non-verbal> (last visited Apr. 8, 2015).

<sup>156</sup> For research showing that getting to know students can motivate student learning, see Vanderbilt University Center for Teaching, *Motivating Students: Strategies for Motivating Students*, Vanderbilt University, <http://cft.vanderbilt.edu/teaching-guides/interactions/motivating-students/#strategies> (last visited Apr. 8, 2015).

*accountant. I think my knowledge of their name helps them feel more comfortable, like there's some kind of one-on-one relationship between me and them.*

—Civil Procedure Professor

*I get to know everybody's names within two weeks—it's super important to me to know their names. I feel like it's a personal experience, and it hints back to why I think students feel comfortable with me—that I really want this to feel like it's a collaborative process. You're not just a person sitting out there, you are my teammate and we're going to figure this out together. And having someone know your name is critical in that process.*

—Constitutional Law Professor

Katz and O'Neill similarly recommend studying seating charts to memorize students' names.<sup>157</sup> The twenty-six “best” professors similarly “developed personal connections to their students”<sup>158</sup> that enriched classroom experiences and allowed students to focus on learning content rather than impressing the professor.

Professors may be able to benefit from tools that help them remember students' names. At UC Berkeley's “bCourses” website,<sup>159</sup> professors can take an automatically generated online quiz with flashcards of students' names and faces. Other schools may have, or might develop, similar tools. Some transformative professors recommended using these kinds of tools.

*It is helpful to memorize names. [bCourses] has a “get to know your students” quiz. A student's picture pops up and if you know his name then you say it to yourself, and then it pops up, if you were right, you put him in a pile. If you were wrong, you put him in another. It's flashcards. I use that before the first day.*

—Criminal Law Professor

*I try to learn all of the names by the first day of class. There's the quiz that's built into [bCourses]. I try really hard. [When I was]*

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<sup>157</sup> KATZ & O'NEILL, *supra* note 68, at 34.

<sup>158</sup> SCHWARTZ ET AL., *supra* note 74, at 18.

<sup>159</sup> The bCourses website provides educational tools to UC Berkeley students and faculty, including course materials and training materials.

*in law school, when a professor knew your name, it was huge. It makes you feel like you belong—there's a sense of inclusion.*  
—Criminal Law Professor

Most transformative professors thought that the Socratic method can and should be an incredibly democratizing technique, allowing every student to participate at least once. To further facilitate the gains provided by the Socratic method, professors also suggested ensuring that a few student volunteers do not dominate the conversation. They recommended that professors make room for new hands and voices, especially when they come from members of less participatory demographic groups, like women and minorities.

*I get typically shy demographics to participate by forcing everyone to! I like that the Socratic method is intensely democratic. I keep careful records about who I've called on and when I called on them. I try to make sure everybody speaks.*  
—Civil Procedure Professor

*I call on all of the students. Calling on all the students is a way for me to bring people into the conversation, check on where people are, and break the ice. It's not uncommon that once I call on someone they're a more regular participant. The other thing I do is self-consciously try and limit the amount of class time that's being taken up by the more confident members of the classroom. Those are often White students and most often White men. I try to make sure I'm calling on women and students of color to make sure their voices are heard.*  
—Constitutional Law Professor

*First, I try to call on everyone. I use the on-call system to make sure everybody talks. Second, I try to be a good listener. Third, I try not to let certain students dominate, although [I recognize that] there are people who learn by talking, and others who learn by reading, and listening.*  
—Civil Procedure Professor

*Most people do cold calling in 1L classes, and then they give it up, and then the discussion is just from volunteers. I think that's terrible. It's boring. It arouses student resentment. It conveys the*



*wrong message that only people who volunteer are worth listening to, and it make students feel silent.*

—Civil Procedure Professor

Katz and O’Neill note that a seating chart, when “placed in compassionate hands . . . can be a gentle tool for coaxing even the shyest students out of their cocoons”<sup>160</sup> and “counteract[ing] the dominance of monopolizers.”<sup>161</sup>

Many transformative professors encourage shy students who, according to student and professor anecdotes, are more often women<sup>162</sup> and students of color<sup>163</sup> to participate more. These methods include calling on shy students directly, encouraging them to contribute during office hours, and sharing their out-of-the-class insights during lectures.<sup>164</sup> Transformative professors also resist the temptation to call on “the usual suspects”—students who contribute regularly to class discussion—and instead wait for shyer students to volunteer to answer questions.<sup>165</sup>

*When I see the usual suspects raising their hands, I say “how about hearing from someone we haven’t heard from yet.” I don’t like to single people out. I just wait until somebody I haven’t heard from raises their hand and it eventually happens.*

—Criminal Law Professor

*If a [quiet] student talks to me during office hours and has interesting comments, I may suggest that he or she be more active*

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<sup>160</sup> KATZ & O’NEILL, *supra* note 68, at 33.

<sup>161</sup> *Id.* at 35.

<sup>162</sup> Research demonstrates that female law students not only speak less, but that they are called on less when they volunteer. Professors may also react less warmly to underrepresented students. For a discussion of these issues, and tips on how to ensure students from all backgrounds are encouraged to volunteer, see Berkeley Graduate Division, *Encouraging Participation: Be Aware of Who You Are Calling On*, UC Berkeley, <http://gsi.berkeley.edu/gsi-guide-contents/discussion-intro/participation> (last visited March 16, 2015).

<sup>163</sup> SCALE Retreat, *supra* note 19.

<sup>164</sup> For additional information regarding the value of bringing students’ outside comments into classroom discussions, see Berkeley Graduate Division, *Encouraging Participation: Bring Students’ Outside Comments into Class*, UC Berkeley, <http://gsi.berkeley.edu/gsi-guide-contents/discussion-intro/participation> (last visited March 20, 2015).

<sup>165</sup> For guidance regarding how to dissuade conversation domination and encourage shy student participation, see Berkeley Graduate Division, *Encouraging Participation: Limit the Contributions of Students who Dominate*, UC Berkeley, <http://gsi.berkeley.edu/gsi-guide-contents/discussion-intro/participation> (last visited March 20, 2015).

*in class discussion. And I try to make being called on in class not an intimidating experience.*

—Civil Procedure Professor

*I provide additional encouragement that isn't visible to the classroom. I might send a hesitant person who was on call an email to say "great job and points today—I would love to hear more from you." That can make a more reticent student participate more. In class, I have check marks [for students who have participated]. When things slow down, I call on someone who hasn't participated yet. But you have to be careful because who you think is participating more or less may not be right. Our memory is selective. You won't remember [a] week later, and [the check marks] help me.*

—Civil Procedure Professor

These professors also suggested that splitting students into groups allows shy students to find their voice and share their thoughts with the larger class, so they can see that they, too, understand the content.<sup>166</sup>

*I also sometimes have students talk in groups amongst themselves. This forces even the people who are too shy to speak to speak to somebody about the issue and the case. It brings them out of their shell. And once they talk to the person next to them, and they see the person next to them was thinking the same thing, they're more likely to talk to the class.*

—Criminal Law Professor

Given Berkeley Law's generally liberal student body, some professors suggested utilizing the Socratic method and debate-style teaching to give space to conservative legal philosophies, and to ensure that conservative students did not feel isolated in the classroom. This approach may generally be helpful for ensuring that students from any underrepresented viewpoint are heard.

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<sup>166</sup> For more information on the uses and effectiveness of splitting students into small groups, see Berkeley Graduate Division, *Active Learning Techniques: Class Debate*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/sections/active.html#class> (last visited Apr. 8, 2015).

*I find conservative students—[for example,] students who are pro law-and-order<sup>167</sup> [and tend to side with the prosecution rather than with criminal defendants]—often feel alienated. One challenge has been making sure those students are part of the conversation while still ensuring that you're not making anyone feel alienated in the other direction because of their race or gender. A civil procedure professor gave great advice, which was: students will never volunteer in class if you don't set an example. If a viewpoint is absent, play devil's advocate to give it a voice. It was up to me to take up and force students to debate the law and order position.*

—Criminal Law Professor

*I introduce conservative perspectives that [are] not articulated. It is my job to ensure that students think about both sides of every issue.*

—Constitutional Law Professor

Some transformative professors also indicated that professors using the Socratic approach should be wary of tangential questions, and should approach each lecture with a plan regarding what to cover so they can stay on target.<sup>168</sup> This not only keeps the lecture or review session moving, it also helps students acquire a better sense of what is important, and avoids making students feel concerned if they do not understand questions that are deep in the weeds.

*I also try to come in every day with a sense of something clear and discreet that I want to accomplish that day. It could be “I want you to understand this doctrine.” Other days it’s “I’m*

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<sup>167</sup> In politics, law and order is shorthand for a strict criminal justice system, especially in relation to violent and property crime, through stricter criminal penalties. These penalties may include longer terms of imprisonment, mandatory sentencing, three strikes laws, and in some countries, capital punishment. Supporters of “law and order” argue that effective deterrence combined with incarceration is the most effective means of crime prevention. Opponents of law and order argue that a system of harsh criminal punishment is ultimately ineffective because it does not address underlying or systemic causes of crime. See *Law and Order (politics)*, WIKIPEDIA, [http://en.wikipedia.org/wiki/Law\\_and\\_order\\_\(politics\)](http://en.wikipedia.org/wiki/Law_and_order_(politics)) (last visited March 20, 2015).

<sup>168</sup> For further support for this approach, see Berkeley Graduate Division, *Encouraging Participation: Make Your Section Goals Clear*, UC Berkeley, <http://gsi.berkeley.edu/teaching-guide/sections/participation.html#goals> (last visited Apr. 8, 2015).

*teaching this doctrine, but what I'm really teaching is rule vs. standard, or how law develops to deal with changing historical circumstances." If you have a plan, it helps keep the discussion from flying off on too much of a tangent.*

—Civil Procedure Professor

*One thing I worry about is that in the first year classes, you get some people who are way too into the weeds and that freaks other students out, leaving me to say "you don't need to know that." If used sparingly and constructively, that is an effective thing to do. And that helps students realize that the key isn't to memorize the note cases, it's to understand why the question is hard—to internalize the conflicts.*

—Civil Procedure Professor

*It's easy to lose track of the big picture. It's a classroom of smart people so we can get pulled deep into topics, but we need to pull back.*

—Constitutional Law Professor

Katz and O'Neill similarly warn against letting "obscure questions bog down you[r] class sessions," and instead encourage "quelling the anxiety that obscure questions trigger in some students" by simply offering to discuss such obscure questions after class.<sup>169</sup> This is critical advice for reducing stereotype threat for Felicias, who are not equipped on the first day of class to ask or understand layered questions that presume prior knowledge of legal structures and topics. As noted previously, when professors save these complex questions for after class, it communicates that the classroom is a space for everyone to learn legal concepts, and that all questions, even the essential questions regarding foundational concepts, are welcome. This can ameliorate stereotype threat by helping students from stereotyped groups feel that their contributions are valued.

#### 9. *HABIT NINE: MODERNIZE*

*Transcend Classical Cases and Embrace Discussions About  
the Modern Political and Social Phenomena that Attracted  
Many Students to Law School*

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<sup>169</sup> KATZ & O'NEILL, *supra* note 68, at 51.

*UPDATE LECTURES AND USE MODERN CASES*

Some professors indicated that one common trap is to use the same cases each year. As illustrative as some classic cases can be, students have minimal connection to, for example, early twentieth-century train baggage scales<sup>170</sup> and early nineteenth-century fox hunting.<sup>171</sup> Students may experience difficulty relating to archaic fact patterns and antiquated social concerns in those cases. Professors can keep their classes fresh by updating lecture notes and incorporating more modern cases.

*With Civil Procedure, I start with a recent case. That's exciting to the students. God forbid you start with Pennoyer v. Neff,<sup>172</sup> or Nicaastro.<sup>173</sup> It's not relatable!*

—Civil Procedure Professor

*When teaching the same classes again, the challenge is to keep it fresh. Part of it is to revamp my notes instead of reusing them. Also, whenever a new case comes out, or there's something big from the headlines like the George Zimmerman trial, you can use those as examples. It forces you to rethink the material based on new current events.*

—Criminal Law Professor

*I am on various listservs<sup>174</sup> and case summary services, so if a case comes out on a topic that's interesting, I take the summary from BNA<sup>175</sup> and I print it out and put it in my file. And I read The New York Times and Washington Post, and I read Civ. Pro. blogs—if I see interesting discussions, I print them. And then when I hit the topic as I'm teaching, I pull the folder with those printouts, and I use that in revising the notes.*

—Civil Procedure Professor

<sup>170</sup> See *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99 (N.Y. 1928).

<sup>171</sup> See *Pierson v. Post*, 2 Am. Dec. 264 (N.Y. 1805).

<sup>172</sup> *Pennoyer v. Neff*, 95 U.S. 714 (1878).

<sup>173</sup> *J. McIntyre Machinery Ltd. v. Nicaastro*, 131 S. Ct. 2780 (2011).

<sup>174</sup> A listserv is “used for software for managing e-mail transmissions to and from a list of subscribers” and allows users who have common interests to share information, cases, and other content. *LISTSERV*, MERRIAM-WEBSTER ONLINE DICTIONARY, <http://www.merriam-webster.com/dictionary/listserv> (last visited March 20, 2015).

<sup>175</sup> BNA is a short for Bloomberg BNA, “a leading source of legal, tax, regulatory, and business information for professionals.” *About Us*, BLOOMBERG BNA, <http://www.bna.com/about-bna-a4760> (last visited March 20, 2015).

Katz and O'Neill echo this point, suggesting that “professors must stay current,”<sup>176</sup> and “regularly update and revise”<sup>177</sup> their lectures. The twenty-six “best” law professors similarly take this advice to heart, and “conduct additional research to find new cases; news stories that show modern applications of the doctrine; or insights about the parties or the lawyers involved in the cases they teach.”<sup>178</sup> They also recommend avoiding leading courses with extended and advanced discussions of antiquated cases as students often lack the needed context to benefit from these discussions. They call this, “avoiding the Marbury gap.”<sup>179</sup> Too many professors, they warn, have students read older cases before students have enough of a grasp of the topic to have a meaningful discussion. They then guide these students through hours of reading and discussion regarding the validity and implications of the holding of the case.<sup>180</sup> These kinds of discussions, especially when they occur in the fall semester of the first year, likely have disproportionate impacts on students who have little previous exposure to the law. These students will feel lost in comparison to Lawrences who, having discussed similar issues with legal professionals in their family, already have meaningful things to say about these antiquated cases. This will only deepen a Felicia’s sense that she has nothing to contribute and does not belong. If classic cases highlight key themes, consider raising these themes when the cases are read and returning to them throughout the course rather than trying to complete the discussion at the outset.<sup>181</sup> For example, if a constitutional class must begin with an exploration of *Marbury*, save and revisit the discussion on the validity of judicial review for later lectures throughout the semester.

This point is especially important for non-White, non-male students. The cases of old were almost universally written by all White, all male benches, discussing issues impacting society at a time when segregation and Jim Crow norms often kept non-White individuals from getting a day in court. These cases often do not seem relevant to the issues affecting underrepresented students. By clearly communicating the purpose of discussing these cases and postponing extensive treatment of those cases

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<sup>176</sup> KATZ & O'NEILL, *supra* note 68, at 9.

<sup>177</sup> *Id.*

<sup>178</sup> SCHWARTZ ET AL., *supra* note 74, at 20.

<sup>179</sup> KATZ & O'NEILL, *supra* note 68, at 25. The *Marbury Gap* is named after the iconic case, *Marbury v. Madison*, 5 U.S. 137 (1803).

<sup>180</sup> KATZ & O'NEILL, *supra* note 68, at 25–26.

<sup>181</sup> *Id.* at 26.

for a later, more appropriate time, professors can encourage underrepresented students to stay engaged.

***ENGAGE THE SOCIAL ISSUES THAT BRING MANY STUDENTS  
TO LAW SCHOOL OR PERSONALLY IMPACT THEIR COMMUNITIES***

One approach to ensuring students from diverse backgrounds feel more comfortable in the classroom is to engage the difficult social issues just below the surface of many cases. Professors also provided tips regarding how to engage these difficult issues in a way that pulls students from all backgrounds into the discussion and inculcates critical skills.

*Part of it is putting on the table the historical context and saying, “this is unfair,” so [that] nobody is tiptoeing around the subject. Often the elephant in the room is race, or gender, or homophobia. If the teacher brings the unfairness up, everybody can relax about it and we can get on with [learning together].*

—Constitutional Law Professor

*One [way to help all students stay engaged] is to be aware of cultural critiques of the rule that exist. In our discussion of rape, for example, I had an article about male prison rape. It wasn’t in the casebook, but it’s a really important article that [disagrees with the prevailing legal paradigm]. [The day we reviewed the article was the day] one man of color in the class raised his hand for the first time.*

—Criminal Law Professor

*Law can seem very white and very male. Most of the judges, most of the people who’ve made the law that we study, were White men, and most of them with fairly traditional values and lives. There’s a big risk of alienation for minority and women students, and I want to play an active role in reducing that alienation and making them feel they’re at home here. One of the ways I do that is by raising civil rights issues often imbedded in the cases. If I ignore [these issues] to focus on the rule, I risk exacerbating the alienation—further [proving] that this is not a place where some students are welcome because this issue that*

*is so important is being ignored. So I try to work hard at not ignoring those issues.*

—Civil Procedure Professor

*I tell my students, “It’s really important that you pay attention to what seems [un]fair. The goal of the classroom is to analyze why [you feel something is unfair] and articulate [why it is unfair].” I think it’s incredibly important that students clue in to their moral intuitions, but not stop there. [They should] talk about why we [hold a social belief], what values are implicated, and how [the belief] relates to content and rhetorical techniques. Basic notions of fairness initially propel many people to come to law school, and an unwillingness to discuss those questions generates alienation. It’s deeply frustrating to come motivated by fairness and justice and find that those intuitions are excluded in the classroom. It’s important to ask, “what is the connection between this and justice?” This allows students to reconnect legal education to their larger aspirations.*

—Constitutional Law Professor

This approach may reduce stereotype threat by bolstering one element of Steele’s “wise” classrooms by communicating to underrepresented students that concerns that affect them are folded into the fabric of the class, and are as central to understanding the law as the topics that resonate with the Lawrences. This can help ensure that students from all backgrounds feel that the classroom environment, and the law more broadly, are *for them*. It has been the authors’ experience that when students can see themselves in the legal profession, they more easily engage in legal study and parlay their classroom experiences into extracurricular activities, like trial team or article-writing, that prepare them for a legal career.

Moreover, this can address the concern raised by the University of Georgia that minority students often feel a “general lack of cultural understanding” from faculty.<sup>182</sup> A sensitive, thoughtful discussion of the issues that affect the underrepresented communities can help students feel that professors have some common cultural understanding, and, according to transformative professors, it is better than intentionally

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<sup>182</sup> Success in Graduate School for Minority Students, *supra* note 83.



ignoring these topics to avoid seeming out of touch. When these topics are ignored, it can feel like a complete erasure of minorities from the law. This can be especially painful in courses like criminal law, where many defendants are minorities, and constitutional law, where many class-plaintiffs are minorities, and where the social structures underlying the laws that are used to prosecute or deny relief to these underrepresented individuals can feel weighty and unjust.

Some transformative professors introduce challenging content by first reminding students that some material may be difficult to discuss for some of their peers.<sup>183</sup> This encourages a certain level of sensitivity.

*Before the actual classes on rape, I remind everyone that they don't know the history of the person sitting next to them—they may have been the victim of a sexual assault, the victim of a false sexual assault allegation, etc., and to be passionate yet respectful in their discussion.*

—Criminal Law Professor

They also framed conversations around finding shared solutions to legal and social problems, rather than simply pitting students on opposite sides of touchy topics.<sup>184</sup>

*The most difficult conversation we probably have is affirmative action and the impact of [social] systems on communities of color. There's a sentiment that you can't punish the current privileged generation to deal with [past wrongs], and the sense*

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<sup>183</sup> For additional guidance regarding discussing emotionally charged or traumatic experiences that have occurred in or out of the classroom, see Berkeley Graduate Division, *Teaching Discussion Sections: Discussing Traumatic Events*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/sections/traumatic.html> (last visited Apr. 8, 2015).

<sup>184</sup> Framing conversations around a collaborative exercise of finding solutions to complex social problems may also facilitate greater involvement by female students, who, research suggests, “are less competitive in the aggregate,” but succeed in “cooperative, team oriented environment[s].” LANI GUINIER ET AL., *BECOMING GENTLEMEN* 6 (Beacon Press 1997). It may also intrinsically motivate all students to learn, which can engender more persistent engagement than the extrinsic motivator of academic performance. See Berkeley Graduate Division, *Psychology: Motivation and Learning*, UC Berkeley, <http://gsi.berkeley.edu/teachingguide/theories/psych-motivation.html> (last visited Apr. 8, 2015). For other approaches to increasing intrinsic motivation to learn, see, e.g., EVA KYNDT ET AL., *The Direct and Indirect Effect of Motivation for Learning on Students' Approaches to Learning Through the Perceptions of Workload and Task Complexity*, 30 HIGHER EDUC. RES. AND DEV. 135, 135–50 (2011); KEN BAIN, *WHAT THE BEST COLLEGE TEACHERS DO* 32-42 (Harvard University Press 2004).

*that you can't leave marginalized people marginalized. What I say is, "if we're going to thrive as a diverse community, how can we come together?" We need to think about how we can most effectively fix the current problems and engage in a conversation about broader possibilities than the doctrine allows. [This approach] allows for thinking about the law in a more complete and robust way, and . . . gets [students] out of that sense of helplessness. Having a conversation about bias and unfairness and . . . a law that perpetuates it [without discussing solutions] can create [that] helplessness.*

—Constitutional Law Professor

Katz and O'Neill indicated that this approach can prevent "students from passively accepting the law as they find it," which is less engaging.<sup>185</sup> It also ensures that when students learn the law as it stands, they are more "attuned to the need for nuance and complexity, and genuine understanding of the difficulties faced by any rule-maker."<sup>186</sup> Students are "forced to recognize that any rule has an underlying purpose [and so] must be carefully tailored to achieve that purpose without causing unintended mischief."<sup>187</sup> This approach is especially crucial for students whose social groups and communities more often bear the brunt of unfair laws; and disproportionately experience criminal punishment, constitutional infringements, uncompensated pain and suffering, or unconscionable contracts. Engaging these students as rule-makers can make the law seem less static and cruel, and more organic. It can also help these students see themselves as potential arbiters of the laws of tomorrow, which they may well become, especially if they stay engaged.

Nearly all transformative professors remind students that while many aspects of the law may seem unfair, they are not eternally entrenched. Transformative professors call on students to think creatively about how they would change the law while drawing on their unique moral compasses and talents.<sup>188</sup> This can help students feel agency over

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<sup>185</sup> KATZ & O'NEILL, *supra* note 68, at 1.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> This may also respond to the concern raised by Elizabeth Mertz who found that law professors too often focus on providing a surface level review of legal concepts that sidelines the moral and social issues that may be most interesting to members of marginalized groups. ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO "THINK LIKE A LAWYER"* 211–14

their educational journey and stay engaged. Professors also provided suggestions regarding how to encourage students to approach the study of law with the confidence necessary to suggest reforms, such as reminding students to bring their prior experiences to bear, and to recall their aspirations of being agents of change.

*Another thing I try to do is impart the idea that lawyers can change the law. In each of those big cases, it took somebody saying, "Wow, this is really unfair," and somebody tak[ing] it on, [and] preserv[ing] the issue for appeal. [And in some of them], ten years later, the Supreme Court agree[d] with them! I want them to feel that when they have an intuition that something in the law is unfair, those instincts have validity and power. It's not like, "that's not the law so get over it!"*

—Criminal Law Professor

*I tell them what my ambitions for them are—for them to be agents for change—for them to be able to change the world in some way. I think many of them come into school to develop skills to be a change agent, so I try to help them do that in whatever walk of life they want to. A lot of assignments put them in the role of seeing what the law is and imagining what it could be. Too much of 1L is the former, not the latter. I want to engage on the latter. That's part of creating that environment where folks feel at ease and feel like they have agency. It's designed to pump them up and given them confidence.*

—Constitutional Law Professor

*I notice in office hours and response papers that [students] feel like[,] "who am I to say that? I don't know anything." These folks are extraordinarily talented. You don't need to know everything about the law to change it. We instill in folks this idea that they are empty vessels we are filling. But I like them to think about what they bring into the classroom and think about how*

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(Oxford University Press 2007). The Carnegie Foundation's 2007 report on improving legal pedagogy echoed similar concerns. JAMES R. MAXEINER, *EDUCATING LAWYERS NOW AND THEN* 54–56 (Vandeplas Publishing 2007).

*to engage their experiences and knowledge base to learn and think about how to change what is.*

—Constitutional Law Professor

In many instances, the typical doctrinal syllabus involves covering emotionally complex subject matter. Some professors recommended preemptively warning students about emotionally charged topics and providing students with room to discuss those topics with their professors before the material is covered.

*I have a note on my criminal law syllabus at the beginning of the semester that says that we'll be talking about emotionally charged subject matter, like rape and racial profiling, and that [students] should feel free to discuss with me if they are having any difficulties with the subject matter. Students take me up on this.*

—Criminal Law Professor

One professor gave surprising advice for colleagues regarding approaching racially charged topics. This professor indicated that White professors should feel more comfortable talking about race in part because they are less likely to be accused of pulling the race card or being overly focused on race. This professor also provided guidance on how White professors could approach preparing discussions on racially charged topics, including doing background research on implicit bias and engaging students in conversations about how they want sensitive topics to be covered.

*One thing that makes this easier for me, because I'm white, is [that] I can talk about race. [A Black professor and I] co-taught a class, and we decided I would talk about race, because nobody would accuse me of pulling the race card. To my White colleagues, I would say "we have it easier. It's easier for us to bring up these issues than our colleagues of color. So don't be afraid to bring it up. Don't be afraid to acknowledge that this is difficult and awkward and you might do it wrong." And I often say "do a bunch of reading, and talk to people who write about race. Read about implicit bias, and talk to students about how they would like to have these topics discussed." [I suggest this]*

*because I think it's hard for a teacher to talk about things that they don't have any expertise about. We're supposed to be the authority figures, and if you don't have expertise, and you feel inadequate, it's hard to risk putting yourself out there.*

—Constitutional Law Professor

10. *HABIT TEN: LEARN FROM FELLOW PROFESSORS*

Most professors also indicated the importance of learning from other professors, and having professors visit their classes to give feedback. Many professors called for a culture of aspiration—as opposed to perfectionism—in which professors collaborate to help each other improve without fear of judgment.

*I think many people are nervous about teaching, and they're hesitant to have people come to their class. You can get solip-sistic about it, and be unaware of how you're doing. There are some law schools where it's just a matter of routine that faculty members visit each other's classes. It's not evaluative, it's just what's done because they all want to be better teachers. [The reason that it doesn't happen more is] insularity and ego. When [professors] publish an article, they know it's as good as [it] can [be]. It makes people nervous to be watched. If [they] don't have a culture of [learning and making mistakes], they feel like they're being assessed. They're willing to talk about teaching issues, but actually inviting people into the classroom is rarer. I think it's about creating a culture of aspiration and growth as opposed to perfectionism.*

—Civil Procedure Professor

In addition, like the twenty-six law professors who “made efforts to develop their expertise as teachers by studying the teaching and learning literature,”<sup>189</sup> Berkeley Law recently took two steps to encourage professors to learn from one another. First, in August 2013, the school hosted the inaugural Teaching Institute, at which nearly every Berkeley Law professor watched presentations by peers hand-picked for their ability to create safe classroom environments, transmit complex content to students from all backgrounds, and achieve other pedagogical goals.

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<sup>189</sup> SCHWARTZ ET AL., *supra* note 74, at 22.

Second, in January 2014, Berkeley Law also hosted a retreat to bring the school together to discern solutions for improving, among other things, legal pedagogy. These suggestions included having sign-ups for specific time frames during which professors could observe each other's teaching, or specific weeks during which all participating professors' classes would be open to observation. Both approaches would allow professors to make their classrooms available only when they are comfortable.

These kinds of approaches are critical to ensuring the success of underrepresented students. As noted previously, we believe that a good professor can make a huge difference for the Felicias of the law-school world. Many professors could improve their pedagogical approaches by engaging fellow professors who are already gifted at educating students from all backgrounds. This effect could spread like ripples in a pond, allowing more and more students to benefit from a pedagogy adapted to the needs of *all* students, and allowing students from all backgrounds to thrive.

*ADDITIONAL TIPS FROM TRANSFORMATIVE PROFESSORS: REVIEW SESSIONS, SYLLABI, AND CASEBOOKS*

All of the professors provided specific guidance on how to use review sessions. They indicated that review sessions should not involve unguided question-and-answer sessions. Some indicated that reviewing a practice exam during the review session is effective. Others indicated that reviewing content from class or student questions collected prior to the review session can be helpful. Professors indicated that these approaches clarify professors' expectations and provide opportunities to review content that may not have been covered clearly the first time. Professors also indicated that when reviewing questions, the review should be structured to track the content of the class.

*I think review sessions where people answer [free form] questions are pointless. Office hours [serve that purpose]. And you should have [office hours] during exam period. I think [during the review session], you should go over something like an exam. It shows folks what they're going to be doing. It's very clear what the expectations are and it's finite. If you're just randomly going through a bunch of stuff, that's harder [for the student].*

—Criminal Law Professor

*At the end of the semester, I do an issue-spotter exam-style question [review]. I do a series of written questions on discovery and preclusion and I have people come up with answers on that and I spend a whole day going over them. The hope is that people are able to easily identify the black letter law, and that people aren't guessing at all what I'm looking for in the exam. That way I can focus on the substance instead of having them worry about the way to answer for me. 1L fall students are rightfully concerned about the final exam, so I do the best I can to demystify that process as much as I can. I tell them, "here is what I want your exam to look like. Here is what I want you to do."*

—Civil Procedure Professor

*I give lecture-based reviews. It's not a Q&A. I prepare them. I do a pretty intensive review in the review session. Students have said they've been helpful. Then I often do an optional Q&A session. I ask for questions to be sent by a date so I can order them and answer them [during] the session.*

—Civil Procedure Professor

*The best use I've gotten [out of review sessions] [are the ones where I say], "send me questions in advance," and that gives me a sense of what pops up multiple times [and] what may not have come out as clearly as hoped, [so] I can focus on those concepts.*

—Civil Procedure Professor

Notably, Katz and O'Neill strongly discourage question-and-answer sessions for the end of the year review, noting that beyond being the easiest for professors, "there is little else to recommend."<sup>190</sup> Instead, they suggest that professors either guide students through a summarizing lecture of the course or interactively walk students through a sample exam that is similar to the exam they will give, paying close attention to the analytical approach students should utilize.<sup>191</sup>

This advice is particularly applicable to conducting a review session that will benefit students from all backgrounds. As previously noted, two critical strategies for ensuring Felicias are given a fair shot to succeed are to focus on ensuring comprehension of complex concepts and teaching

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<sup>190</sup> KATZ & O'NEILL, *supra* note 68, at 62.

<sup>191</sup> *Id.*



foundational skills, such as the legal analytical approach. A thorough summary of the course can aid in deep comprehension by helping students distinguish blurred concepts, identify elements with more clarity, and finally see the full arc of the course. An interactive walkthrough of an exam that is similar to the final exam provides practice of the legal analytical approach needed for the final exam. By boosting comprehension and relevant analytical skills, these types of review sessions will help ensure students from all backgrounds can effectively prepare for the exam and mitigate the unfair advantage of having to compete with students who have learned the content and skills outside of the course.

A few transformative professors also indicated that limiting the original syllabus to a course overview and releasing updated syllabi every two weeks can provide flexibility. This flexibility can allow professors to keep all the content fresh and allocate adequate time to various materials. It also affords professors opportunities to spend the time needed to really dig into teaching skills and complex content that, as previously mentioned, can do wonders for Felicias in the classroom.

*I release a more detailed syllabus every two weeks or so rather than one at the beginning that I promise to stick to, so I can be flexible.*

—Criminal Law Professor

Some transformative professors warned that their colleagues should carefully select casebooks, or develop their own mix of materials from casebooks, articles, and recent cases. Casebooks vary significantly and greatly impact teaching.

*It's useful to spend a lot of time picking your casebook—they're very different from one another in, for example, the approach and tone and emphasis. Having a casebook you've put some thought into is really important.*

—Civil Procedure Professor

Regarding the choice of textbook, Katz and O'Neill suggest professors select one that will encourage understanding from a student who has no context in the topic. After scanning the table of contents, "if you feel that the book is organized in a way that will confuse students . . . you



should strongly consider rejecting it.”<sup>192</sup> “A poorly organized book can undermine your performance of two important tasks: helping your students to see the big picture, and preventing them from blurring discrete topics and doctrines.”<sup>193</sup> “You can never fully overcome the organizational flaws that you inherit from your casebook.”<sup>194</sup> They especially warn of textbooks that conclude segments on a topic simply by asking questions about the content discussed but do not attempt to explain or contextualize that content.<sup>195</sup> They warn, “steer clear of books . . . that will not deign to explain.”<sup>196</sup>

This seems pertinent to ensuring students from all backgrounds can succeed. First, they assist with comprehension and, perhaps more importantly, they avoid panic. Textbooks that contain lengthy thickets of chapter-concluding questions may impact Lawrences and Felicias very differently. A Lawrence, who does not need additional content to glean doctrinal elements from an often obtuse case, will either delight at the food for thought afforded by these questions or will know he can ignore them based on his accurate assessment that they do not provide information that can be used on the exam. A Felicia, feeling in the dark for a light switch to guide her frightening foray into legal learning, may very well read these questions as intended to provide subtle hints regarding what the law *is*, rather than as questions that may lead to inquiries about what the law *could be*. This can lead to an even deeper confusion about what the elements of a claim or defense are, or how to analyze a set of facts in light of the applicable law. To ensure that students from all backgrounds can utilize the textbook for clarity, professors should select textbooks carefully.

## VII. CONCLUSION: BECOMING A TRANSFORMATIVE PROFESSOR

The transformative professors discussed here provided a roadmap for professors willing to do their part toward ensuring that students of all backgrounds can succeed in law school. They encouraged their peers to share enthusiasm and empathy with *all* their students; create positive self-fulfilling prophecies by communicating universal high expectations; dedicate time at the outset of the semester to teach the foundational

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<sup>192</sup> *Id.* at 15.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.* at 16.

<sup>195</sup> *Id.* at 19.

<sup>196</sup> KATZ & O'NEILL, *supra* note 68, at 19.

skills that Felicias lack due to constrained access to social capital and pre-law legal work; create safe spaces to invite all students to discuss critical, modern social issues that impact women and minorities; structure the semester with consideration of what students who are new to the topic would need to know to understand it; assess students frequently to help them grow; teach the practical skills that many women and minorities are eager to use to improve society; practice compassionate cold-calling; and leverage opportunities, whether online or in person, to constantly polish their pedagogical craft.

However, we are also mindful that eleven interviews cannot uncover a panacea for creating wise classrooms, reducing stereotype threat, and leveling the playing field. Thus, in addition to adopting these recommendations, we hope readers will consider continuing the journey to discover solutions. Specifically, we hope professors and researchers will assess the effectiveness of implementing these suggestions, in part or in whole. The debate about academic performance has been, we believe, unjustly overwhelmed by a philosophy that tells professors they are off the hook. This philosophy soothingly says that the real causes of continued achievement gaps, both during and after law school, are the intellectual and cultural shortcomings of Felicias. We reject this premise wholeheartedly. We have met and worked with hundreds of brilliant Felicias, and we have seen so many shine.

We hope that you will reject this premise, too. We hope you will study the approaches employed by expert professors and recommended by pedagogy experts around the world. We hope that you will help ensure your students have a fair chance to get the education they need and deserve. And we hope that legal pedagogy researchers will work to quantify, in more concrete terms, the impact that the quality of pedagogy can have. While we believe there are strong links between these phenomena, we are unaware of any research that assesses these links directly.

We implore professors, specifically, to improve legal pedagogy because you occupy a rare nexus. More than any other decision-makers in law school, you both understand how classroom experiences impact students and have the power to restructure the classroom. We hope you will encourage your institution to research and implement strategies that have not only been proven effective in other educational domains, but seem very effective in law school classrooms as well. The Teaching Institute at Berkeley Law, where professors come together to hear about

and learn how to implement the techniques used by professors who are helping Felicias succeed, provides one model law schools can adopt. We hope you will encourage your school to provide training to professors that will help them empathize with Felicias and ensure that they thrive.