

SUBVERSIVE LEGAL EDUCATION: REFORMIST STEPS TOWARD ABOLITIONIST VISIONS

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Exclusivity in legal education divides traditional scholars, students, and impacted communities most disproportionately harmed by the legal education system. While traditional legal scholars tend to embrace traditional legal education, organic jurists—those who are historically excluded from legal education and those who educate themselves and their communities about their legal rights and realities—often reject the inaccessibility of legal education and its power.

This Essay joins a team of community legal writers to imagine a set of principles for subversive legal education. Together, we—formerly incarcerated pro se litigants, paralegals for intergenerational movement lawyering initiatives, first-generation law students and lawyers, persons with years of formal legal expertise, and people who have gained expertise outside of law schools—bring together critical insight about the impact of legal education’s exclusivity and the means by which we have worked to expand

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access necessary for our survival. The Essay explores the frameworks of movement law, Black feminism, and abolition as impacted people look to reclaim experiences and create tools for subversive legal education that teaches that the law belongs to the people and how they themselves can make and change the law.

In Part I, we explore reformist strategies that address the pervasive racism in legal education and the bar admission system while leaving the institutional framework intact. In Part II, we share four case studies of transformative legal tools; these tools work to subvert legal education from a machine that excludes, extracts, and exploits our communities into a mechanism that educates and liberates our communities. In Part III, these case studies illuminate principles that prioritizes access, transparency, and collective design with impacted scholars and communities. This is a first step toward abolition—a radical reimagination of legal education that makes legal knowledge a right, that democratizes legal power, and that recognizes that the production of legal knowledge, teaching, and scholarship must include those whom the law impacts, consistent with the disability rights activism mantra “Nothing About Us Without Us.” For us, abolishing the existing structures perpetuating exclusive enclaves in legal education can assist in other abolitionist struggles, such as abolition of the prison industrial complex; these struggles are tied, not siloed from one another.

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INTRODUCTION

A. Overview of Our Project

this is the oppressor’s language

yet I need it to talk to you

—Adrienne Rich¹

Even when they are dangerous
 examine the heart of those machines you hate
 before you discard them
 and never mourn the lack of their power
 lest you be condemned
 to relive them.

—Audre Lorde²

Our project is reformist to the extent we engage with the oppressor’s language—and publish our work in a law review. But we move beyond reformist steps to the radical reimagining that Amna Akbar and Bennett Capers invite and that Swethaa Ballakrishnen and Sara Dezalay inspire.³ We propose dismantling the master’s house⁴ by replacing our current system of

1. ADRIENNE RICH, *The Burning of Paper Instead of Children*, in *THE FACT OF A DOORFRAME* 116, 117 (1984).

2. Audre Lorde, “For Each of You” (1997).

3. See generally Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, *Movement Law*, 73 *STAN. L. REV.* 821 (2021); Bennett Capers, *Afrofuturism, Critical Race Theory, and Policing in the Year 2044*, 94 *N.Y.U. L. REV.* 1 (2019). In exploring how to “de-centre and enlarge the gaze” of legal inquiry, Ballakrishnen and Dezalay employ Lois Weaver’s long table format—“a structured, stylised, open-ended, non-hierarchical format for interactional participation and intellectual political commitment. The idea of the long table is to structure conversation as a dinner party where conversation is the ‘only course.’” Swethaa S. Ballakrishnen & Sara Dezalay, *Introduction: Law, Globalisation, and the Shadows of Legal Globalisation*, in *INVISIBLE INSTITUTIONALISMS: COLLECTIVE REFLECTIONS ON THE SHADOWS OF LEGAL GLOBALISATION* 1, 4, 7 (Ballakrishnen & Dezalay eds., 2021). On this project, the coauthors met weekly in a long table Zoom session hosted by coauthor Sarah Medina Camiscoli.

4. See generally AUDRE LORDE, *The Master’s Tools Will Never Dismantle the Master’s House*, in *SISTER OUTSIDER: ESSAYS AND SPEECHES* 110, 110–13 (1984).

legal education—embracing abolition as a means of ending the carceral state and the legal institutions that enforce racist oppression.

Our objective is to broaden the discourse on legal education, rather than to provide a definitive blueprint. In Part I, we explore reforms that promote equality and democracy within existing mechanisms for distributing legal knowledge and power. In Part II, we illustrate legal education and empowerment outside law schools—in prison, in community legal advocacy, in youth empowerment, and in disability activism. Part III reimagines where legal education can take place when we democratize legal power and assert legal knowledge as a right.

We have collaborated as coauthors of diverse backgrounds: formerly incarcerated persons, legal fellows, legal workers, paralegals, a law student, recent law graduates, and a law professor. We define our coauthors collectively and interchangeably as *organic jurists* or *community legal writers*. Based on Antonio Gramsci’s concept of “organic intellectuals,”⁵ an *organic jurist* “studies, analyzes, and comments on the law.”⁶ Gramsci, who spent years imprisoned by Mussolini’s fascist regime, viewed every person as an intellectual.⁷ Professional intellectuals, those with formal education and certification, function to “maintain[] and reproduce[] a given economic and social order.”⁸ To counter hegemony, the oppressed classes generate “organic intellectuals,” whatever their training, who are organic to the oppressed classes and have the “capacity” to “oppos[e] and transform[] the existing social order.”⁹ We define *organic jurists* as legal scholars without traditional educational prerequisites.

We borrow *community legal writers* from Amanda Alexander, founder of the Detroit Justice Center. Community legal advocates are “trained community members who will help [impacted community members] understand, use, and shape the laws . . . [i]nstead of turning [only] to traditional lawyers . . . to empower them to solve justice problems on their own.”¹⁰ Community legal writers learn elements and procedures of legal scholarship to contribute their knowledge, tools, and insights. We coined these terms to model the flexibility necessary to expand access and opportunity.

5. Special thanks to Jacob Pearce for flagging the importance of Gramsci’s concept of the organic intellectual.

6. *Jurist*, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/jurist> [<https://perma.cc/7CJU-PM5N>] (last visited Mar. 4, 2022); see also *Community Legal Advocates*, DETROIT JUST. CTR., <https://www.detroitjustice.org/community-legal-advocates> [<https://perma.cc/8RX2-VQG9>] (last visited Mar. 4, 2022).

7. THE GRAMSCI READER: SELECTED WRITINGS 1916–1935, at 301, 305–06, 318–22 (David Forgacs ed., 2000).

8. See *id.*

9. *Id.* at 300–01, 305–06, 318–22. Gramsci understands the professional intellectuals as being organic to the dominant social order. See *id.* For our purposes, we use “organic” to refer particularly to those, regardless of training, with the “capacity” to “oppos[e] and transform[] the existing social order.” *Id.* at 300.

10. See *Community Legal Advocates*, *supra* note 6.

B. How We Got Here: Our Journey to Conceptualizing Subversive Legal Education

Christina: We begin subverting legal education's facade of neutrality by discussing identity. "[T]he personal is political" is a phrase long established in Black feminist literature, referenced in the Combahee River Collective's "Black Feminist Statement"¹¹ and Audre Lorde's *The Master's Tools Will Never Dismantle the Master's House*.¹²

I am a melanated, queer woman of color and the daughter of South Indian immigrants. Even with covering,¹³ I am too many degrees away from the privileges of a White¹⁴ man, despite my father naming me "Christina Elizabeth John," a name that passes on job applications but is disconnected from my ancestors. Mine is a name that does not protect me once people see me. After my arrest at twenty-one years of age, I cluelessly attempted to navigate the legal system. I did not know lawyers or otherwise have access to the legal system. When I called the district attorney's office to advocate for myself, I was told that they only spoke to lawyers. When I was able to afford a lawyer, the matter was essentially taken care of after a minutes-long chat with an assistant district attorney. Reflecting on my experience and the experiences of youth like Kalief Browder¹⁵ fueled my path in the law.

Russ: I am a sixty-five-year-old White heterosexual cis-male. My identity has opened doors for me and made me comfortable in the predominantly White, heterosexual, cis-male space¹⁶ where I have worked as a professor since 1990.¹⁷

11. Combahee River Collective, *The Combahee River Collective Statement*, in HOW WE GET FREE: BLACK FEMINISM AND THE COMBAHEE RIVER COLLECTIVE 15, 20 (Keeanga-Yamahatta Taylor ed., 2017).

12. See LORDE, *supra* note 4.

13. See Kenji Yoshino, *The Pressure to Cover*, N.Y. TIMES (Jan. 15, 2006), <https://www.nytimes.com/2006/01/15/magazine/the-pressure-to-cover.html> [<https://perma.cc/YYG2-LSRM>].

14. We coauthors view it as anti-racist to bring attention to White identity and not erase it. We believe that too often White history or a White-dominant legal system are taught as neutral history or a neutral legal system when they are anything but that. See, e.g., Bennett Capers, *The Law School as a White Space*, 106 MINN. L. REV. 7, 29 (2021) (describing "white letter law"). We are persuaded by the anti-racist arguments for why "White" should also be capitalized. Brittany Wong, *Here's Why It's a Big Deal to Capitalize the Word 'Black,'* HUFFPOST (Sept. 3, 2020, 4:13 PM), https://www.huffpost.com/entry/why-capitalize-word-black_1_5f342ca1c5b6960c066faea5 [<https://perma.cc/6423-HPPN>].

15. Kalief, a Black youth from the Bronx, was sixteen years old when he was arrested for a crime that he repeatedly insisted he did not commit. See Jennifer Gonnerman, *Kalief Browder, 1993–2015*, NEW YORKER (June 7, 2015), <https://www.newyorker.com/news/news-desk/kalief-browder-1993-2015> [<https://perma.cc/BWG7-KD92>]. Kalief spent three years on Rikers Island without a conviction; two of those years were in solitary confinement, where he attempted suicide several times. See *id.* He was released from Rikers in June 2013 and committed suicide just two years later. See *id.*

16. See generally Capers, *supra* note 14.

17. My religious commitments as a theologically left Jew shape my morality and my world view, but I believe that, despite the persistence of anti-Semitism in the United States, expressed in such events as the 2017 Unite the Right Rally in Charlottesville, Virginia, White

Inspired by civil rights lawyers, I began law school in 1978. I was quickly disillusioned, learning vocabulary that obscures how law structures power and justice, language my grandparents—only one of whom completed high school—could not readily engage. I asked now Judge Guido Calabresi, my torts professor, whether I should remain in law school. He urged me to focus my career on remaking the system of justice.

As a teacher, I aspire to apply the wisdom of bell hooks and Paulo Freire in recognizing my students as teachers.¹⁸ Christina has been my teacher as a student and as a teaching assistant and coteacher of my Lawyers and Justice seminar, and she is the first author of this Essay.

As a scholar, I have written about “White Lawyering.”¹⁹ We can have a just society when we denormalize Whiteness and dismantle structural racism. We can do that if White people like me share power and give up the benefits that structural racism has wrongly bestowed. I share my power as a law professor by participating in a team on which my position and identity do not determine my authority.

In *Movement Law*, Amna Akbar, Sameer Ashar, and Jocelyn Simonson teach:

When we produce legal scholarship, we propagate ideas. Typically, we tell stories about what is wrong with our systems and institutions of law, and we advocate for solutions. . . . Movements, like scholars, are fundamentally invested in the realm of ideas. But unlike most legal scholarship, left movements are invested in disrupting the status quo and transforming political, economic, and social relations. Movements often start with disrupting ideas and telling new stories about what is possible. Movement law attempts to engage, celebrate, and participate in disruption from the grassroots. When this effort arises from within the university, it is necessarily contradictory given the university’s central role in reproducing elite rule and the myth of meritocracy. Nonetheless, we believe it is important and possible for legal scholars to support efforts at radical and popular ideation toward transformation. Otherwise, we acquiesce to a much narrower and more elite discourse.²⁰

Christina: We are constructing this dialogue to represent conversations we have had through our relationships: student-professor, coeducators, coauthors, friends. bell hooks notes, “To engage in dialogue is one of the simplest ways we can begin as teachers, scholars, and critical thinkers to cross boundaries, the barriers that may or may not be erected by race, gender,

Jews primarily experience the law space through our White identity. *See generally* KAREN BRODKIN, *HOW JEWS BECAME WHITE FOLKS AND WHAT THAT SAYS ABOUT RACE IN AMERICA* (1998).

18. *See* BELL HOOKS, *TEACHING TO TRANSGRESS: EDUCATION AS THE PRACTICE OF FREEDOM* 40, 46–58 (1994) (analyzing the “banking” teaching method in which students are “passive consumers” from whom professors have nothing to learn and discussing Freire’s impact on hooks’ own teaching).

19. *See generally* Russell G. Pearce, *White Lawyering: Rethinking Race, Lawyer Identity, and Rule of Law*, 73 *FORDHAM L. REV.* 2081 (2005).

20. Akbar et al., *supra* note 3, at 829.

class, professional standing, and a host of other differences.”²¹ This dialogue can serve as a useful intervention. By modeling dialogue, we hope to encourage dialogue.

Russ: I have argued that legal institutions privilege White people and do not promote equal justice.²² Law schools further complicity in structural racism by teaching “that lawyers should ‘bleach out’ their racial, as well as their other personal identities,”²³ and “to treat whiteness as a neutral norm or baseline, and not a racial identity . . . to view racial issues as belonging primarily to people of color.”²⁴

Christina: Russ and I received educations approved by the American Bar Association (ABA) that trained us as Gramsci’s professional intellectuals who maintain and reproduce existing hierarchies.²⁵ I suggested we invite nonlawyers²⁶—persons we call organic jurists—who have used “subversive” methods to learn the law²⁷ by learning outside of law schools. Organic jurists have been my greatest educators for reimagining legal institutions. For those who say abolition is a fantasy, organic jurists have shown me that we, in fact, live a fantasy when we believe our society can sustain the existing system.

Russ: I have forty years of socialization in traditional legal scholarship. I had to set aside my inclination of drawing on convention. Christina persuaded me—asking me to act consistently with a position I had long argued—that the public good, justice, and democracy require we open the delivery of legal services to people without law degrees.²⁸

Christina: But how do we both bring people in and support them in the process? My labor has previously gone uncompensated and unrecognized. Women who are highly aware of the pay gap may be nodding along. If you have an intersectional identity, you may also be nodding along because you, too, have given your time, energy, and vulnerability without credit.

21. HOOKS, *supra* note 18.

22. See generally Russell G. Pearce, Eli Wald & Swethaa S. Ballakrishnen, *Difference Blindness vs. Bias Awareness: Why Law Firms with the Best of Intentions Have Failed to Create Diverse Partnerships*, 83 *FORDHAM L. REV.* 2407 (2015); Pearce, *supra* note 19.

23. Pearce, *supra* note 19, at 2083.

24. *Id.*

25. See *supra* notes 7–9.

26. The term nonlawyers is problematic, implying a status that is somehow less than that of lawyers. See, e.g., James Goodnow, *Non-Attorney—Distinction or Diss?*, *ABOVE THE L.* (Feb. 7, 2020, 11:47 AM), <https://abovethelaw.com/2020/02/non-attorney-distinction-or-diss/> [<https://perma.cc/4UQD-PJCA>].

27. See Akbar et al., *supra* note 3 (emphasizing the importance of collaborating on scholarship with grassroots movements).

28. See, e.g., Russell G. Pearce & Sinna Nasser, *The Virtue of Low Barriers to Becoming a Lawyer: Promoting Liberal and Democratic Values*, 19 *INT’L J. LEGAL PRO.* 357 (2012); Russell G. Pearce, *Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 *N.Y.U. L. REV.* 1229 (1995).

Coauthorship is one form of recognition for organic jurists that assumes “the personal is political.” Several individual feminists credited with coining the term have rejected the individual recognition, instead “cit[ing] millions of women in public and private conversations as the phrase’s collective authors.”²⁹

Russ: Every point Christina made was correct, but I worried about practicality and risk based on my forty years in legal scholarship. Would I—would we—be derided for listing seven coauthors, most of whom would be organic jurists? The more we discussed the topic, the more I agreed that subversive legal education requires vulnerability.

Christina: As bell hooks says, “When the obsession with maintaining order is coupled with the fear of ‘losing face,’ of not being thought well of by one’s professor and peers, all possibility of constructive dialogue is undermined.”³⁰ For transparency, we share our discomfort³¹ and fears of losing face. We reflect on our limits and lived experiences. We open ourselves to criticism to be held accountable³² to our words. We hope to model reformist steps in subversive legal education toward abolitionist visions that reimagine the legal academic space.³³

I. REFORMIST STEPS: THE ANTI-RACIST LAW SCHOOL

In this part, we examine proposals for making legal education more equal and inclusive while retaining existing institutions: the privilege to deliver legal services as a lawyer generally requires a college degree, a three-year law school degree, and bar admission.³⁴ But the existing forms, as Duncan

29. KERRY T. BURCH, *DEMOCRATIC TRANSFORMATIONS: EIGHT CONFLICTS IN THE NEGOTIATION OF AMERICAN IDENTITY* 139 (2012).

30. HOOKS, *supra* note 21, at 179.

31. The movement’s critiques may make us uncomfortable, and taking them on in the classroom may require risks, but we need to get uncomfortable. For too long, too many of us have looked the other way, even when we know better. It is time to look at the law beyond our conventional ways of seeing. It is time to bring in the people who for too long have been outside the classroom, and yet are so central to law’s operations. See Amna A. Akbar, *Law’s Exposure: The Movement and the Legal Academy*, 65 J. LEGAL EDUC. 352 (2015).

32. Akbar et al., *supra* note 3 (explaining that accountability is necessary in movement law).

33. “In [forwarding an abolitionist imagination], the movement offers transformative, affirmative visions for change designed to address the structures of inequality—something legal scholarship has lacked for far too long.” Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U. L. REV. 405, 410 (2018).

34. Although unauthorized practice laws restrict the practice of law to lawyers, the actual boundaries of this restriction sometimes blur. Many jobs, such as social work, could include legal advice for clients seeking government assistance, and others, such as accounting, are acknowledged to include a significant component of legal analysis and advice. Today, moreover, new types of legal services providers, many of which rely on artificial intelligence, are gaining a multibillion-dollar foothold in the legal services market. See RENEE KNAKE JEFFERSON ET AL., *PROFESSIONAL RESPONSIBILITY: A CONTEMPORARY APPROACH* 47–57 (2020).

Kennedy observed, reproduce the dominant societal hierarchies.³⁵ Or, in Gramsci's terms, legal education gives the "impression of being democratic in tendency."³⁶ We recognize that within these limits, change can make a difference to people who become lawyers, as well as to the functioning of the legal system.

A survey of all the ways to make legal education more equitable is beyond the word limits of this Essay. Rather, we seek to join and advance the scholarly conversation regarding one particular dimension of reform. We highlight some of the racist policies that "produce[] or sustain[] racial inequity between racial groups" and the anti-racist reforms suggested for "produc[ing] or sustain[ing] racial equality between groups."³⁷ We recognize that many readers will find our arguments more palatable when made within the spirit of disparate impact analysis: when facially neutral policies have racially disparate impacts, the burden shifts to defenders of those policies to provide nondiscriminatory justifications.³⁸ We hope this part provides a roadmap for conversation along these lines, although we are persuaded by Ibram X. Kendi's argument that, given the fundamental equality of all people, we should eradicate any policy that results in an outcome that subordinates a particular racial group.³⁹

The American legal system has long been the engine of White supremacy, through conquest, enslavement, and Jim Crow, and later through facially neutral laws that, despite the civil rights movement, continue to maintain disparate White power and wealth.⁴⁰ As of 2019, "the typical White family has eight times the wealth of the typical Black family."⁴¹ As Bennett Capers notes,

We live in a world built on racialized hierarchies and inequality, and much of the reason we live in such a world is because of what we call the law, from Slave Codes to the enshrinement of slavery in the Constitution to the doctrine of manifest destiny to anti-miscegenation laws to the Chinese Exclusion Act to zoning rules to qualified immunity to racialized highway

35. Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 592–95 (1982).

36. THE GRAMSCI READER, *supra* note 7, at 318.

37. IBRAM X. KENDI, HOW TO BE AN ANTIRACIST 18, 20 (2019).

38. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 792 (1973). We are using discriminatory impact as an analytic framework, rather than making a legal argument. *Cf.* Gary Peller, *Legal Education and the Legitimation of Racial Power*, 65 J. LEGAL EDUC. 405, 411 (2015); Valencia Richardson, *Data-Driven Discrimination: A Case for Equal Protection in the Racially Disparate Impact of Big Data*, 12 GEO. J.L. & MOD. CRITICAL RACE PERSP. 209 (2020).

39. *See* KENDI, *supra* note 37, at 18.

40. *See generally* AZIZ RANA, THE TWO FACES OF AMERICAN FREEDOM (Harv. Univ. Press 2010); K-Sue Park, *The History Wars and Property Law: Conquest and Slavery as Foundational to the Field*, 131 YALE L.J. (forthcoming 2022).

41. Neil Bhutta, Andrew C. Chang, Lisa J. Dettling & Joanne W. Hsu, with assistance from Julia Hewitt, *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FED. RSRV. (Sept. 8, 2020), <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm> [<https://perma.cc/U95N-4VUE>].

construction to so much more. It is the law, after all, that has contributed to why, even now, we are segregated in where we live and where we go to school and whom we love. Quite simply, law is haunted by race⁴²

The legal profession recapitulates White people's disproportionate representation, power, and resources⁴³—discriminatory impact occurs at every step through admission to the bar. As Deborah Rhode noted, “Law is the least diverse profession in the nation.”⁴⁴ Although non-Latinx White people are only 60.1 percent of the population,⁴⁵ they comprise 86 percent of lawyers,⁴⁶ while Black people are 13.4 percent of the population⁴⁷ and 5 percent of lawyers.⁴⁸ Capers notes that “[a] recent survey of 238 large firms found that fewer than 5% of associates are Black, as are fewer than 2% of the equity partners. By contrast, white lawyers make up almost 90% of the equity partners.”⁴⁹

Not surprisingly, legal education is the primary vehicle for recapitulating White people's disproportionate representation, power, and resources in the profession.⁵⁰ As Capers observes, law school is a “White space.” His description applies to the demography of students and teachers, as well as to pedagogy and architecture. Capers notes:

[I]n 2019, Latinx students accounted for 12.7% of students at ABA accredited law schools, even though Latinx individuals make up approximately 18.3% of the population in the United States. The number of Black students is even smaller. Blacks make up just 7.94% of law students, though Blacks make up 13.4% of the population.⁵¹

An American Bar Foundation study found that “Black students and Hispanic students are disproportionately enrolled in lower-ranked schools.”⁵² Capers notes, “At the top 30 law schools, Latinx students make up just 9% of the students; Blacks only 6%.”⁵³

42. Capers, *supra* note 14, at 58.

43. Cf. Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993).

44. Deborah L. Rhode, *Law Is the Least Diverse Profession in the Nation. And Lawyers Aren't Doing Enough to Change That*, WASH. POST (May 27, 2015), <https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/> [<https://perma.cc/V8K9-E9BV>].

45. *QuickFacts: United States*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/PST045219> [<https://perma.cc/P2BU-77NJ>] (last visited Mar. 4, 2022).

46. *Lawyers by Race & Ethnicity*, AM BAR ASS'N, https://www.americanbar.org/groups/young_lawyers/projects/men-of-color/lawyer-demographics/ [<https://perma.cc/5HFK-DTWD>] (last visited Mar. 4, 2022).

47. U.S. CENSUS BUREAU, *supra* note 45.

48. *Lawyers by Race & Ethnicity*, *supra* note 46.

49. Capers, *supra* note 14, at 22.

50. See Peller, *supra* note 38; cf. Etienne C. Toussaint, *The Purpose of Legal Education*, 11 CALIF. L. REV. (forthcoming 2023).

51. Capers, *supra* note 14, at 24.

52. MIRANDA LI, PHILLIP YAO & GOODWIN LIU, AM. BAR FOUND, WHO'S GOING TO LAW SCHOOL? 2 (2020), http://www.americanbarfoundation.org/uploads/cms/documents/who_is_going_to_law_school_policy_brief.pdf [<https://perma.cc/C4UF-6FAB>].

53. Capers, *supra* note 14, at 24.

This underrepresentation does not reflect college enrollment where “52.9 percent [of students] are non-Hispanic white, 20.9 percent are Hispanic, [and] 15.1 percent are black.”⁵⁴ Probably the most significant roadblock to law school admissions is the ABA’s requirement that law schools “require each applicant for admission . . . take a valid and reliable admission test to assist the school and the applicant in assessing the applicant’s capability of satisfactorily completing the school’s program,”⁵⁵ namely either the Law School Admission Test (LSAT) or the Graduate Record Examination (GRE).⁵⁶

As commentators note, these criteria “lock[]-in” White dominance.⁵⁷ White test-takers receive an average LSAT score of 153; Black test-takers average 142, and Latinx test-takers average 146.⁵⁸ GRE results are similarly disparate.⁵⁹ To the extent the LSAT is at all predictive, its value is somewhat circular—it correlates loosely with what we already do, but these measures do not necessarily tell us whether someone will be a better lawyer.⁶⁰ The LSAT predicts only one-third of the difference in first year grades, which means two-thirds of the difference depends upon other factors: “[A] 6-point score difference between two LSAT scores accounted for only a 0.1 difference in law school grade point average.”⁶¹ And though the LSAT correlates with “how well a student will do on the Bar Exam on the first attempt . . . [i]t is not . . . a successful measure for . . . subsequent attempts.”⁶² Employing disparate impact tests, the use of the LSAT or GRE cannot be justified. An anti-racist law school would not require either for admission.⁶³

54. *More than 76 Million Students Enrolled in U.S. Schools*, Census Bureau Reports, U.S. CENSUS BUREAU (Dec. 11, 2018), <https://www.census.gov/newsroom/press-releases/2018/school-enrollment.html> [<https://perma.cc/L8HN-U5PD>].

55. AM. BAR ASS’N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2021–2022, at 33 (2021), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2021-2022/2021-2022-aba-standards-and-rules-of-procedure-chapter-5.pdf [<https://perma.cc/2TC9-Q8EU>].

56. *See id.*

57. Capers, *supra* note 14, at 48; *see also* DARIA ROITHMAYR, REPRODUCING RACISM: HOW EVERYDAY CHOICES LOCK IN WHITE ADVANTAGE (2014); Erika Wilson, *Monopolizing Whiteness*, 134 HARV. L. REV. 2382 (2021).

58. Marisa Manzi, ‘Already Behind’: Diversifying the Legal Profession Starts Before the LSAT, NPR (Dec. 22, 2020, 5:00 AM), <https://www.npr.org/2020/12/22/944434661/already-behind-diversifying-the-legal-profession-starts-before-the-lsat> [<https://perma.cc/4D9A-XE4C>].

59. ETS, A SNAPSHOT OF THE INDIVIDUALS WHO TOOK THE GRE GENERAL TEST: JULY 2016–JUNE 2021, at 6–8 (2022), <https://www.ets.org/s/gre/pdf/snapshot.pdf> [<https://perma.cc/4PG3-MSRP>].

60. Diane Curtis, *The LSAT and the Reproduction of Hierarchy*, 41 W. NEW ENG. L. REV. 307, 316–20 (2019).

61. Paul Caron, *Taylor: The GRE Is No Law School Diversity Tool*, TAXPROF BLOG (June 16, 2016), https://taxprof.typepad.com/taxprof_blog/2016/06/taylorthe-gre-is-no-law-school-diversity-tool.html [<https://perma.cc/NB9X-3NDW>].

62. Mona E. Robbins, *Race and Higher Education: Is the LSAT Systemic of Racial Differences in Educational Attainment?* (2017) (unpublished manuscript), <https://repository.upenn.edu/spur/18> [<https://perma.cc/6MFL-YJTH>].

63. *See* Capers, *supra* note 14, at 48.

Law schools additionally create discriminatory barriers through their cost. “Black families’ median and mean wealth is less than 15 percent that of White families.”⁶⁴ But law schools, by deciding to prioritize merit-based scholarships over need-based scholarships to attract applicants with higher LSAT scores for *U.S. News and World Report* rankings purposes,⁶⁵ seemingly do not factor structural racism into financial aid decisions. These practices compound the disproportionate obstacles facing Black graduates, saddling them with higher debt than White graduates.⁶⁶ Indeed, “Black or African American law school graduates loan debts are 97% higher on average than white law school graduates.”⁶⁷ To mitigate this disparate treatment, dramatically increasing financial aid available on the basis of family wealth can apportion debt more equally. Another approach could be to create low-cost law schools like the YMCA schools that provided low-cost evening legal education for working class, immigrant, and minority communities.⁶⁸

Moreover, law school hiring perpetuates the White space. Law professors are 69.4 percent White and 7.2 percent Black.⁶⁹ Further, 76% of law professors in this country are “graduates of just fourteen American law schools, all of which are among the most highly ranked schools in the country The average black enrollment at these schools is 6.92% while the average black enrollment at the schools considered unranked is 13.7%.”⁷⁰ The discriminatory impact of hiring criteria places the burden on law schools to find new ways to hire to end White advantage.

The pedagogy of law school further perpetuates structural racism. The dominant role ideologies are those of the neutral partisan lawyer, neutral judge, and neutral teacher.⁷¹ But if the context is a racist system, neutrality leaves the system undisturbed. Sandy Levinson describes how lawyers

64. See Bhutta et al., *supra* note 41.

65. Curtis, *supra* note 60.

66. See generally AM. BAR ASS’N, STUDENT DEBT: THE HOLISTIC IMPACT ON TODAY’S YOUNG LAWYER (2021), https://www.americanbar.org/content/dam/aba/administrative/young_lawyers/2021-student-loan-survey.pdf [<https://perma.cc/9SEL-ECE4>].

67. *Average Law School Debt*, EDUC. DATA INITIATIVE (Dec. 5, 2021), <https://educationdata.org/average-law-school-debt> [<https://perma.cc/7YCY-BQGC>].

68. Dorothy E. Finnegan, *Raising and Leveling the Bar: Standards, Access, and the YMCA Evening Law Schools, 1890–1940*, 55 J. LEGAL EDUC. 208, 209 (2005); Steven C. Bahls & David S. Jackson, *The Legacy of the YMCA Night Law Schools*, 26 CAP. U. L. REV. 235, 237 (1997).

69. *Law Professor Demographics and Statistics in the U.S.*, ZIPPPIA, <https://www.zippia.com/law-professor-jobs/demographics/> [<https://perma.cc/YTF5-HJB7>] (Dec. 14, 2021).

70. Rory D. Bahadur, *Law School Rankings and the Impossibility of Anti-Racism*, 53 SAINT MARY’S L.J. (forthcoming 2022), <https://ssrn.com/abstract=3911457> [<https://perma.cc/HB5G-ALZH>] (citing Sarah Lawsky, *Entry Level Hiring—JD School Total and Over Time*, PRAWFSBLAWG (May 27, 2020, 6:31 AM), <https://prawfsblawg.blogs.com/prawfsblawg/2020/05/entry-level-hiring-jd-school-total-and-over-time.html> [<https://perma.cc/65WE-FKN2>]).

71. See Melissa Mortazavi, *The Cost of Avoidance: Pluralism, Neutrality, and the Foundations of Modern Legal Ethics*, 42 FLA. ST. U. L. REV. 151, 154–55 (2017) (describing the problematic moral fiction of the neutral-partisan ideal among law students, lawyers, judges, and academics).

aspire to “bleach out” personal identities,⁷² maintaining the profession’s Whiteness. Eduardo Capulong, Andrew King-Ries, and Monte Mills further note that neutral ideologies make Whiteness “the norm, i.e., the assumed unstated, invisible measure of neutrality and objectivity.”⁷³ Neutral law professors teach black letter law instead of what Capers terms “white letter law,” which would teach how black letter law is applied differently when race is involved.⁷⁴ White dominance is not explicitly taught, and race is otherwise treated as supplemental. This reinforces what Kimberlé Williams Crenshaw calls “perspectivelessness”⁷⁵ or what Elizabeth Mertz describes as “erasure or cultural invisibility” or “amorality”⁷⁶—“what is understood as objective or neutral is often the embodiment of a white middle-class world view.”⁷⁷ Role neutrality leads to training lawyers, professors, and judges who function as cogs in a structurally racist system. The inability to think critically about why White people dominate power and resources “locks in White advantage,”⁷⁸ making structural change unlikely.

A belief in neutrality can obscure unequal treatment in courts. The ABA and the National Center for State Courts have recognized that the persistence of implicit bias requires judges to move beyond, not ignore, their biases to deliver impartial justice.⁷⁹

Readily available resources, such as a recent book from Teri A. McMurtry-Chubb, and the edited volume from Nicole P. Dyszlewski, Raquel J. Gabriel, Suzanne Harrington-Steppen, Anna Russell, and Genevieve B. Tung offer specific, accessible, and practical recommendations for both first-year and advanced courses.⁸⁰ K-Sue Park’s article on property law offers an invaluable model for faculty seeking to understand how facially

72. Pearce, *supra* note 19, at 2083; David B. Wilkins, *Identities and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV. 1502, 1514–15 (1998).

73. Eduardo R.C. Capulong, Andrew King-Ries & Monte Mills, *Antiracism, Reflection, and Professional Identity*, 18 HASTINGS RACE & POVERTY L.J. 3, 15 (2021).

74. Capers, *supra* note 14, at 31.

75. Kimberlé Williams Crenshaw, *Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT’L BLACK L.J. 1, 2 (1988).

76. ELIZABETH MERTZ, *THE LANGUAGE OF LAW SCHOOL: LEARNING TO “THINK LIKE A LAWYER”* 1 (2007).

77. Crenshaw, *supra* note 75, at 3.

78. Capers, *supra* note 14, at 32; cf. Toussaint, *supra* note 50.

79. See *Implicit Bias Initiative*, AM BAR ASS’N. <https://www.americanbar.org/groups/litigation/initiatives/task-force-implicit-bias/> [https://perma.cc/4UHC-AXBX] (last visited Mar. 4, 2022); JERRY KANG, NAT’L CTR. FOR STATE CTS., *IMPLICIT BIAS: A PRIMER FOR COURTS* (2009), <http://wp.jerrykang.net.s110363.gridserver.com/wp-content/uploads/2010/10/kang-Implicit-Bias-Primer-for-courts-09.pdf> [https://perma.cc/4UHC-AXBX]; *Implicit Bias*, NAT’L CTR. FOR STATE CTS., <https://www.ncsc.org/information-and-resources/improving-access-to-justice/racial-justice/implicit-bias> [https://perma.cc/56LD-B2U8] (last visited Mar. 4, 2022).

80. See generally NICOLE P. DYSZLEWSKI ET AL., *INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION AND EQUITY IN THE LAW SCHOOL CLASSROOM* (2021); TERI A. MCMURTRY-CHUBB, *STRATEGIES AND TECHNIQUES FOR INTEGRATING DIVERSITY, EQUITY, AND INCLUSION INTO THE CORE LAW CURRICULUM: A COMPREHENSIVE GUIDE TO DEI PEDAGOGY, COURSE PLANNING, AND CLASSROOM PRACTICE* (2021). These books are also great resources for identifying the many other invaluable books and resources on point.

neutral legal categories mask structural racism.⁸¹ Capulong, King-Ries, and Mills offer a guide for forming an anti-racist professional identity as opposed to an identity that ignores institutional racism.⁸²

As Mertz and Crenshaw note, the false veneer of neutrality has a discriminatory impact by leaving structural racism intact.⁸³ Research has shown that the Socratic method is permeated with implicit bias⁸⁴ and the style of negative reinforcement has a racially problematic impact. A Stanford study found that Black students do not respond as well as White students to “unbuffered critical feedback” but do respond as well as, or better than, White students to “wise intervention” combining “rigorous feedback” invoking “high standards with the assurance of students’ capacity to reach those standards.”⁸⁵ Moreover, law school classrooms are racially hostile environments because of microaggressions, microinsults, and trauma.⁸⁶ McMurtry-Chubb notes:

Implementing DEI curricular and classroom initiatives requires that faculty . . . see with fresh eyes who their students are and will be, how they do and would like to teach them, and to what effect . . . these considerations call professors to grapple with the reality of racism as trauma historically and in the lived experiences of their students in and outside of their classrooms.⁸⁷

After graduation, the bar exam perpetuates structural racism. Milan Markovic has described bar examinations as “major obstacles to diversifying the legal profession,”⁸⁸ noting that

Black, Hispanic, and Asian test takers have historically failed bar examinations at higher rates than white takers [W]ere bar examinations subject to Title VII scrutiny, they would be struck down because of their unproven validity and disparate impact on minority groups. Although courts have consistently rejected constitutional challenges to . . . bar exams, they have voiced concerns about arbitrary grading and unscientific selections of “cut scores.” Because bar examinations are challenging without ensuring that candidates are prepared to represent

81. See Park, *supra* note 40.

82. See Capulong et al., *supra* note 73.

83. See MERTZ, *supra* note 76; Crenshaw, *supra* note 75, at 1.

84. See generally Rory Bahadur & Liyun Zhang, *Socratic Teaching and Learning Styles: Exposing the Pervasiveness of Implicit Bias and White Privilege in Legal Pedagogy*, 18 HASTINGS RACE & POVERTY L.J. 114 (2021).

85. Geoffrey L. Cohen, Claude M. Steele & Lee D. Ross, *The Mentor’s Dilemma: Providing Critical Feedback Across the Racial Divide*, 25 PERSONALITY & SOC. PSYCH. BULL. 1302, 1304, 1316 (2012).

86. See MCMURTRY-CHUBB, *supra* note 80, at 6–7, 41–42; Jonathan Feingold & Doug Souza, *Measuring the Racial Unevenness of Law School*, 15 BERKELEY J. AFRICAN-AMERICAN L. & POL’Y 71 (2013).

87. MCMURTRY-CHUBB, *supra* note 80, at 41–42.

88. Milan Markovic, *Protecting the Guild or Protecting the Public?: Bar Exams and the Diploma Privilege*, GEO. J. LEGAL ETHICS (forthcoming) (manuscript at 2), <https://ssrn.com/abstract=3789235> [<https://perma.cc/2CML-WAKG>].

actual clients, commentators have charged that their primary purpose is to limit competition and protect (predominately white) incumbents.⁸⁹

Markovic interrogates whether bar exams exclude incompetent lawyers.⁹⁰ Comparing the rate of disciplinary cases against Wisconsin lawyers admitted through diploma privilege and those admitted through the bar exam, Markovic identified “no evidence that the bar examination affects attorney misconduct.”⁹¹ Given the significant discriminatory impact of the exam and the absence of evidence that it serves nondiscriminatory purposes, the bar exam must be abolished.

Discriminatory impact characterizes every step through bar admission, and structural racism within the legal profession, unsurprisingly, recapitulates structural racism in our society. As a result of the disparate impact, anyone who wants to end racism in legal education and bar admission should interrogate and reconsider each of these policies. If you find racist outcomes unacceptable, these policies must be rejected and replaced. But these reforms are only the beginning. We must look beyond the status quo to take into account the production of legal knowledge and power outside the narrow confines of the legal profession.

II. CASE STUDIES IN SUBVERSIVE LEGAL EDUCATION

In Part II, pathbreaking scholars share frameworks that disrupt the traditional approaches to legal education with more democratic and liberatory pedagogies. Inspired by movement lawyer Amanda Alexander’s employment of “community legal advocates,” our team designed this Essay to create a space for community members who understand and support subversive legal education to share their work through scholarship. Instead of relying only on traditional legal scholars, we place the opportunity to practice legal scholarship in the hands of the organic jurists. This allows them to share their knowledge of how impacted, excluded advocates access, explore, and create legal knowledge to engage legal power in solving pressing social justice problems.⁹² Like community legal advocates, these authors hope to use the learning from this project on traditional legal scholarship to transform knowledge, tools, and insights in and outside of historically exclusive legal spaces. These individuals share their subversive models of legal education to disrupt current models of legal education that perpetuate oppression and to democratize access to legal education and legal power. Here, these authors both imagine and demand new possibilities in legal education for the dignity of their own lives.

89. *Id.* at 2–3.

90. *Id.*

91. *Id.* at 23.

92. *See Community Legal Advocates*, *supra* note 6.

A. Legal Tools for Intergenerational Movement Lawyering

1. The Project

My name is Maryam Salmanova, and I am a youth leader at the Peer Defense Project. We created my position as “Paralegal of Movement Lawyering.” Every day, I bring to this role my experiences as an organizer, an alum of the New York City Department of Education, a youth leader in participatory budgeting efforts in local government, and a paralegal. My personal experiences with government institutions inspire my commitment to subversive legal education. In this section, I will illuminate the technologies we have built as a community—students, legal workers, lawyers—in order to democratize access to legal tools and knowledge.

The Peer Defense Project is a youth-led, intergenerational firm that builds youth power in schools, courts, and the government through a movement lawyering model.⁹³ Our mission is to develop youth leaders to build legal tools to remedy the harms of segregation and systemic racism with power and self-determination. We create legal tools and democratize knowledge production and access.

We currently build legal education and tools for youth in three areas: abolition, integration, and governance. Our tools support youth and youth-centered institutions to listen to youth concerns, learn youth rights, lead in governmental institutions, legislate, litigate, and leverage power.

As the authors of *Movement Law*⁹⁴ discuss, the following processes democratize legal knowledge and sustain expertise and change: locating resistance, understanding existing dynamics, shifting knowledge, and embodying solidarity. *Movement Law* illustrates how movements shift the paradigms of legal knowledge and legal practice. Similarly, the Peer Defense Project shares and expands knowledge and access of law to youth and with youth.

I first experienced the harms of not having access to legal education as a five-year-old immigrant from Azerbaijan looking to enroll in the New York City Department of Education. My English as a second language (ESL) teacher introduced me to the New York City public school system—the largest and most segregated school system in the United States. As an English-language learner, my capacity to socialize was already limited without my having a tongue to relate to my peers. The law required my teachers to schedule English-language prep during my kindergarten recess hour—the only time I could even try to connect through play with other children. Neither I nor my family understood the rights of immigrant youth to participate in regularly scheduled activities, so I had to suffer through these forms of isolation and segregation. I internalized the direct harms of segregated schools and a lack of legal autonomy as personal deficiencies

93. See Akbar et al., *supra* note 3, at 821; see also Purvi Shah, *Movement Lawyering Reading Guide*, 47 HOFSTRA L. REV. 99 (2018).

94. See *id.*

rather than as rights violations by the Department of Education. It was not until years later that I began to locate the legal language to understand or change the Department of Education's calculated neglect, racism, and classism through my studies at the City University of New York in literature and heterodox economics.

As a paralegal at the Peer Defense Project, I work to empower students to navigate the school system and to build legal tools to challenge its inequities. Together, we have the opportunity to explore, challenge, and redefine traditional limitations of legal education.

We worked on our first intergenerational movement lawyering model, for a case on behalf of IntegrateNYC, PS 132 Parents for Change, and 14 individual plaintiffs in *IntegrateNYC, Inc. v. New York*.⁹⁵ From the beginning, we created norms with the legal team at Public Counsel to build youth autonomy and youth institutional power in schools, courts, and our weekly meetings. We worked to ensure the plaintiffs understood how their stories demonstrated the direct culpability of the defendants' perpetuation of racism and violating state human rights law and educational constitutional rights. We designed tools to ensure intergenerational understanding from the first step. We used Universal Design for Learning (UDL) framework⁹⁶ to ensure students and parents fully understood the retainer they signed for the case.

As the case gained public recognition, we worked to center student leadership in an intergenerational press conference,⁹⁷ earned media coverage,⁹⁸ and created a "Know Your Case" public education campaign on social media.⁹⁹ We democratized access to legal education by ensuring that students both understood the case and could share their story. Oftentimes, youth plaintiffs will share the story of harm while the attorneys make any and all comments on the actual rights violations. We wanted to expand and elevate the expertise of New York students so that they could serve as credible messengers and advocates in their community about their story *and their case*.

95. Complaint, *IntegrateNYC, Inc. v. New York*, No.152743/2021 (N.Y. Sup. Ct. Mar. 9, 2021). Integrate NYC, in partnership with NYC Coalition for Educational Justice, PS 132 Parents for Change, and fourteen expert students, launched a lawsuit against the city for violating equal protection, rights to a sound, basic education, and human rights.

96. To ensure students and parents fully understood the retainer they signed for the case, we used multimedia, visuals, and circle talks to process the court documents and receive student input. We provided networks, resources, and connections to experts to expand our plaintiffs' understanding of the case and access to supports while we waited for a favorable outcome. See *The UDL Guidelines*, UDL GUIDELINES, <https://udlguidelines.cast.org/> [<https://perma.cc/BRJ9-NGLP>] (last visited Mar. 4, 2022).

97. Peer Defense Project (@peerdefense), INSTAGRAM, <https://www.instagram.com/p/CWEcTVQjQ-n/> (last visited Mar. 4, 2022).

98. Pooja Salhotra, *NYC School Segregation Legal Battle Continues Despite Proposed Changes to Gifted Test*, CHALKBEAT N.Y. (Oct. 15, 2021, 4:23 PM), <https://ny.chalkbeat.org/2021/10/15/22728581/nyc-school-segregation-integratenyc-lawsuit-gifted> [<https://perma.cc/WFF7-GUH9>].

99. See *supra* note 97 and accompanying text.

When my coauthors invited me to share about this journey, I immediately experienced our collaboration in legal scholarship as a subversive act. In acknowledging one another as scholars, we challenge the gatekeeping, elitism, and exclusion that define legal education. Our inclusion in a historically exclusive literary discipline reminded me of Audre Lorde's reflection on discrimination in feminist literary magazines that purposefully excluded poetry:

Unacknowledged class differences rob women of each others' energy and creative insight. Recently a women's magazine collective made the decision for one issue to print only prose, saying poetry was a less "rigorous" or "serious" art form. Yet even the form our creativity takes is often a class issue. Of all the art forms, poetry is the most economical.¹⁰⁰

Together, we—paralegals, formerly incarcerated poets, activists, and students—bring critical insight from the global majority about the exclusivity of legal education. We reclaim our experience as impacted peoples; we work to understand the systems that harm us, and we build legal tools for our communities to share. Subversive legal education means access and transparency with impacted communities and requires that legal scholarship includes our voices.

2. "First Five": A Technology to Expand Youth Access and Power in Exploring Litigation

Technology's tools and activities can facilitate a platform or conversation. As we work to expand the Peer Defense Project, we rely on openness and curiosity to create unprecedented, versatile technologies. We build these technologies to democratize understanding and legal education when we work with young people to design tools or consider how we might participate in new cases that seek to empower and provide resources to youth.

At the top of each meeting, we review the "First Five." This norm ensures our intergenerational group understands and aligns to the following: 1) confidentiality, 2) capacity, 3) accommodations, 4) agenda, and 5) roles. Appendix A holds a concise explanation of how this norm creates equitable boundaries and access.¹⁰¹

As youth impacted by legalized segregation and exclusivity from legal knowledge, we create *time and space* to build comfort around legal education and to identify the design of infrastructure to democratize our learning. The First Five helps create a foundation on which legal education is dynamic and expanding. In fact, I facilitated a series of conversations¹⁰² with my peers at the Peer Defense Project to reflect on the arguments in *Movement Law* and

100. AUDRE LORDE, *Age, Race, Class and Sex: Women Redefining Difference*, in *SISTER OUTSIDER: ESSAYS AND SPEECHES* 114, 116 (1984).

101. See *infra* Appendix A.

102. Telephone Interview with Aneth Naranjo, Exec. Dir. of People Operations, Obrian Rosario, Exec. Dir. of Outreach, Sarah Medina Camiscoli, Exec. Dir. of Sys. & Anna Milliken, Youth Fellow (Oct. 5, 2021).

to explore how we have built subversive methodologies through regular norms, routines, and technologies to empower youth in legal spaces.

We reclaim our experience as impacted peoples; we work to understand the systems that harm us, and we build legal tools for our communities to share. Subversive legal education means access and transparency with impacted communities and requires that legal scholarship includes our voices.

3. The “Know Your Case Campaign”: A Technology to Democratize Public Information Throughout Litigation

While we encourage movement lawyers working with youth to build plaintiff tool kits, we emphasize that internal knowledge about a public case is insufficient for movement lawyering. Public court documents must be made publicly accessible outside of esoteric court dockets. In ongoing conversations with plaintiffs about effective mediums for challenging the exclusive mechanisms obscuring legal education, we aligned on Instagram. Our plaintiffs and partners have been creative storytellers. The idea of amplifying this experience on a medium with expansive accessibility creates a replicable tool. With this focus, we launched a “Know Your Case” campaign on Instagram.

Within the ten-slot allocation for each post on Instagram, we explained our amended complaint. We used UDL to interpret the complicated legal language, introduce the parties, and translate their pleadings into multiple formats, mediums, and languages. Please refer to Appendix B for a complete breakdown of the posts and intentions.¹⁰³

4. Subversive Legal Education: A Practice

Information and knowledge exist in many mediums. Wisdom exists both inside and outside of institutions. The legal profession often deliberately dismisses a locus of community, networks, and experiences. Centering youth voice creates vision and democratizes knowledge. Redefining the parameters of legal education becomes a subversive practice. Our tools acknowledge that while the case moves through the court system, students continue to navigate the nation’s most segregated school system.¹⁰⁴ During this waiting period, our subversive technologies help demystify conversations, intentions, and focus. These tools provide access to forums through comments and messages. With these tools, we create alignment and knowledge in resistance—dialogue actively creates awareness across generations. Legal expertise expands outside of siloed credentials. Subversive legal education builds legal autonomy and legal networks for the students and families directly experiencing the disparate impact and violence of segregation.

103. See *infra* Appendix B.

104. See Jessica Gould, *New York’s Schools Are Still the Most Segregated in the Nation: Report*, GOTHAMIST (June 11, 2021), <https://gothamist.com/news/new-yorks-schools-are-still-the-most-segregated-in-the-nation-report> [<https://perma.cc/ER5A-XCEV>].

B. Disability Rights and “Nothing About Us Without Us”

Data sets, regressions, and spreadsheets—my professors emphasized these research methods when I was writing my senior thesis. However, this insular approach bothered me. I knew it would not justly depict the stories of the displaced Crimean Tatars, a Muslim group indigenous to Crimea, who fled their homes for Western Ukraine after the 2014 annexation of the peninsula.¹⁰⁵

There is a lot of time and space between me and my grandmother. My name is Vira Tarnavska, and I am an immigrant from Ukraine and the first person in my family to attend college in the United States. I have opportunities my grandmother could only dare imagine. My grandmother is a Muslim Tatar who was eighteen years old when she fled from Russia to Ukraine in search of a better life. Her plight as a refugee inspired me to write my senior thesis in college.

To honor my grandmother, I resisted pressure to solely rely on a quantitative approach to research. I was indebted to my country, my heritage, and my grandmother to bring a voice to the Crimean Tatars’ untold stories. I drafted a lengthy list of interview questions, scheduled as many meetings with Crimean Tatars as I could possibly fit into one week, and took a flight to Ukraine. After transcribing and translating hours of conversations, the common themes throughout the interviews became the basis of the findings and recommendations in my thesis.

Three years later, when I worked in the Disability Rights Division (DRD) at Human Rights Watch, I was pleasantly surprised to discover more than one way to approach human rights research. The disability rights movement’s motto, “Nothing About Us Without Us,” powerfully “expresses the conviction of people with disabilities that *they* know what is best for them.”¹⁰⁶ In advocacy, research, and any decision that impacts their lives, people with disabilities are “the ones whose voices must lead the way.”¹⁰⁷ At DRD, I was reminded that people are central to human rights research. Although my thesis was based on information that I learned directly from the Crimean Tatars, I still wondered whether readers would question my conclusions because I did not provide enough quantitative support. Witnessing DRD researchers center their work on the human experience proved to me that emphasizing the human element can be an equally valuable way to conduct academic research.

105. See generally Steven Pifer, *Crimea: Six Years After Illegal Annexation*, BROOKINGS (Mar. 17, 2020), <https://www.brookings.edu/blog/order-from-chaos/2020/03/17/crimea-six-years-after-illegal-annexation/> [<https://perma.cc/CC6F-6WDU>] (discussing the 2014 annexation of Crimea by Russia).

106. Eli A. Wilff & Mary Hums, “*Nothing About Us Without Us*”—*Mantra for a Movement*, HUFFPOST (Sept. 6, 2017), https://www.huffpost.com/entry/nothing-about-us-without-us-mantra-for-a-movement_b_59aea450e4b0c50640cd61cf [<https://perma.cc/HT4V-YPAG>].

107. *Id.*

Every DRD report centers the voices of people with disabilities.¹⁰⁸ Recommendations reflected information collected from directly impacted individuals. Report pages quoted people with disabilities recounting their experiences. Their voices were not distilled through the lens of one author. In DRD, people with disabilities lead as decision-makers. “Many of us in the division have disabilities,” Carlos Ríos Espinosa, senior researcher and advocate, told me.¹⁰⁹ Ríos Espinosa was 4 months old when he got polio, and he has been a wheelchair user since then.¹¹⁰ Others in the division have close family members with disabilities.¹¹¹ People with disabilities are members of DRD’s advisory committee, which helps the division identify emerging human rights issues, among other responsibilities.¹¹²

DRD empowers disability rights leaders through the Marca Bristo Fellowship.¹¹³ This year’s fellow, Bryan Russell, is a Peruvian human rights advocate who is “one of the few people with Down Syndrome worldwide to run for public office.”¹¹⁴ Hauwa Ojeifo, the previous fellow, was the first person in Nigeria “with a mental health condition to publicly urge lawmakers to ensure inclusion of people with psychosocial disabilities in creating human-rights-respecting mental health legislation.”¹¹⁵ DRD colleagues support the fellows by providing training, knowledge sharing, and advocacy opportunities.¹¹⁶

DRD conducts advocacy by directly involving people with disabilities, aligning with disabled people’s organizations, and “jointly pushing for change.”¹¹⁷ Ríos Espinosa worked with a local organization of women with disabilities on reforming Mexico’s General Law on Women’s Access to a

108. See, e.g., “Better to Make Yourself Invisible”: Family Violence Against People with Disabilities in Mexico, HUM. RTS. WATCH (June 4, 2020), <https://www.hrw.org/report/2020/06/04/better-make-yourself-invisible/family-violence-against-people-disabilities-mexico#> [<https://perma.cc/ACD7-BYMT>] (scaffolding policy recommendations with case studies from five individuals whose stories illustrate the domestic abuse and silencing faced by people with disabilities).

109. Interview with Carlos Ríos Espinosa, Senior Researcher and Advoc., Human Rights Watch (Sept. 29, 2021) [hereinafter Espinosa Interview].

110. Carlos Ríos Espinosa, ‘Crip Camp’ Tells the Story of the US Disability Rights Movement, HUM. RTS. WATCH (Mar. 24, 2020, 6:40 PM), <https://www.hrw.org/news/2020/03/24/crip-camp-tells-story-us-disability-rights-movement> [<https://perma.cc/8WZS-4QMY>].

111. Award for Disability Rights Work, HUM. RTS. WATCH (June 10, 2019, 8:00 AM), <https://www.hrw.org/news/2019/06/10/award-disability-rights-work> [<https://perma.cc/36BN-S376>].

112. Advisory Committees, HUM. RTS. WATCH, <https://www.hrw.org/about/people/advisory-committees> [<https://perma.cc/R6PB-HS8V>] (last visited Mar. 4, 2022).

113. Fellowship Honors Disability Rights Icon Marca Bristo, HUM. RTS. WATCH (Sept. 8, 2020, 4:54 AM), <https://www.hrw.org/news/2020/09/08/fellowship-honors-disability-rights-icon-marca-bristo> [<https://perma.cc/SU2D-BMMC>].

114. Peruvian Advocate for People with Disabilities Honored, HUM. RTS. WATCH (Sept. 8, 2021, 12:01 AM), <https://www.hrw.org/news/2021/09/08/peruvian-advocate-people-disabilities-honored> [<https://perma.cc/H82V-G8SH>].

115. Fellowship Honors Disability Rights Icon Marca Bristo, *supra* note 113.

116. Espinosa Interview, *supra* note 109.

117. Interview with Jane Buchanan, Deputy Dir. for Disability Rts., Human Rights Watch (Sept. 29, 2021).

Life Free of Violence.¹¹⁸ He explained that the women “take the main voice” in their joint advocacy because “they are in a better position and have more authority than me, a man, to advocate for themselves.”¹¹⁹

When I heard my grandmother’s immigration story, spoke with the Crimean Tatars in Ukraine, and read the narratives of people with disabilities in DRD reports, I found a common thread. They wanted decision-makers to hear their true concerns. “Nothing About Us Without Us” represents the disability rights movement’s commitment to bring the voices of people with disabilities to the forefront.¹²⁰ Applying a similar approach to legal education would benefit law students, lawyers, and more importantly, their clients. People—not law students, law scholars, or lawyers—are central to legal education, legal scholarship, and legal advocacy. Individuals who are directly impacted by the legal system are vital sources of knowledge that we should not overlook in our classrooms. Lawyers’ duty to zealously represent their clients does not stop there. Lawyers should also help their clients develop the tools to independently navigate the legal system and advocate for themselves. People with lived experiences are authoritative authors, beyond their obvious position as sources of information. We should embrace “Nothing About Us Without Us” in legal scholarship to collaboratively produce authentic, impactful, and inclusive knowledge.

C. Jailhouse Lawyering and In-Prison Self-Education

“Doesn’t look like much,” I remember thinking the first time I walked into a prison law library. It was smaller than a typical library, had no computers but plenty of shelves filled with dog-eared books, some missing pages, and others missing chapters thanks to incarcerated individuals who could not afford to pay for photocopies. My name is Aundray Jermaine Archer, and I was serving twenty-two years to life for a murder I did not commit. My neighbor had suggested I visit the law library, the unofficial house of worship where, no matter one’s religion, one can find faith, if I hoped to legally shorten my prison stay. The first law clerk I spoke to advised me, “Innocence doesn’t matter in court.” He was correct; guilt had played no role in my conviction. My future had been shaped by people who spoke a language filled with incomprehensible terminologies and phrases and affirmed by twelve people who probably understood less than I had. If I hoped to regain control over my future, I needed to begin by learning the language of law.

Using the Jailhouse Lawyer’s Manual¹²¹ to simplify otherwise complex legalese, I developed a belief that if I kept the faith, I would earn my place in the afterlife—society. I educated myself through correspondence with paralegal courses and prison legal research workshops, and along the way,

118. Espinosa Interview, *supra* note 109.

119. *Id.*

120. *See supra* note 109.

121. *See generally* COLUMBIA HUM. RTS. L. REV., JAILHOUSE LAWYER’S MANUAL (12th ed. 2020), <http://jlm.law.columbia.edu/a-jailhouse-lawyers-manual-12th-edition/> [<https://perma.cc/CR72-HZTZ>].

filed petitions and briefs to regain my freedom. I learned to practice law akin to a doctor practicing medicine on himself; every failure to follow legal procedures, every misuse of a legal term, every violation of motion practice, came with immediate consequences—ridiculing remarks by district attorneys, denials by courts, and reduced chances of freedom. On my sixth birthday inside, I received a letter informing me that the appellate court had denied my appeal of my criminal conviction. While most incarcerated people lose hope after being denied on appeal, the denial inspired me to study law even more in hopes of leveling the playing field. Once, I filed a pro se motion requesting a new trial based on newly discovered witnesses that would testify that I did not commit the crime. The district attorney argued that the law procedurally barred my claim because, although I did not know about the witnesses, my trial lawyer had known and chose not to use them. The court agreed. I filed another pro se motion arguing that I had been denied effective assistance of trial counsel due to my lawyer's failure to use those witnesses. The court denied my motion, declaring it too easy to second-guess failed trial strategies in hindsight.

I became a law clerk, and with time and experience, I minimized mistakes and won a few legal victories for others over law school-educated assistant district attorneys. I had become an “organic jurist,” someone who learned law literally through “trial and error.” Recognizing the power of my legal education, I facilitated legal research classes for incarcerated individuals entrapped in an alien legal system. Many struggled to comprehend the Latin phrases, esoteric terms, and technical legal requirements. While law school-educated prosecutors had access to legal search engines, including LexisNexis and Westlaw, we had not graduated high school and were limited to the scant and poorly maintained resources of the prison law library. I made it a point to always walk clients through the legal process, explaining every stage of their legal proceedings so they could understand what was happening.

Today, I work at a law firm while enrolled in LSAT prep, my first step toward becoming a lawyer. My in-prison experience, community employment, and law school involvement have shown me that many people dedicated to assisting clients adversely impacted by the justice system do not have the experience to relate to those they are so eager to serve. Often, they lack the language or cultural understanding to relate to clients; thus, I advise my colleagues to also attempt to teach our clients to advocate for themselves because being fluent in the language of law is vital to understanding the power it entails and learning how to harness that power. In June 2021, I co-coordinated a Legal Aid Society of Westchester County-sponsored “Know Your Rights” forum, where we broke down complex legal jargon into everyday terms for over one hundred directly impacted people. When my colleagues comment on how I overcame insurmountable odds and have become an asset to society, I tell them I am not a token—there are many more individuals capable of accomplishing the same, if not more, if given the same opportunity and education.

I once read that “written laws are like spiders’ webs, and will, like them, only entangle and hold the poor and weak, while the rich and powerful will easily break through them.”¹²² Poor, uneducated people make up small insects; wealthy, educated individuals constitute larger organisms. To benefit intended targets, subversive legal education must include directly impacted individuals not only as authors but also as legal practitioners, providing the legal education, structure, and language necessary to attain self-agency. Today, I continue to fight for my innocence. Six months after my release, I filed yet another post-conviction motion to overturn my wrongful conviction, this time with a wealth of experience, an abundance of resources, and the assistance of an attorney. Although my lawyer is my attorney of record, I am actively involved in all strategic decisions and have agency over the arguments raised in the fight to clear my name.¹²³

D. Pro Se Litigation and Self-Representation

My name is Aron Pines, and my understanding of the law began with my experience as a pro se litigant. Sanborn and I called it swinging. We were locked up in the county jail when he first spoke about it. I was twenty-one with a murder charge and was preparing to go to trial. We spoke one night a few weeks before my court date. I was stressed—I did not trust my public defender enough to go to trial, but it seemed inevitable. “I don’t do lawyers. I swing,” Sanborn said, as he motioned like a batter with both hands. “I represent myself at trial.”

Swinging.

During the three years I had been detained at the county jail, I had never come across someone who represented themselves in court. The rare times that anyone spoke before the judge, they were considered crazy. But Sanborn was not crazy. He epitomized the subversive legal education—a disruptor with a deep understanding of how the judicial system worked against him and the tenacity to strike back through litigation. The American justice system often exploits the lack of legal understanding on the part of the defendant. Access to proper legal resources is limited, as well as the means for defendants to be instructed properly on how to interpret and apply the law in relation to their own cases; yet Sanborn had upended the established norm.

Over the next few weeks, I tethered myself to his hip. I often found him sitting at his desk in the cell, his legs crossed, glasses loosely clinging to the bridge of his nose, a thick law book in his hand. I would ask him questions—about litigation, discovery, statutes—and he would hand me the books he was reading and instruct me to go over certain chapters. One night in my cell, I was reading a section that focused on pro se representation. It was then that the idea to represent myself at my own trial made all the sense imaginable.

122. Plutarch, *Solon: The Lawmaker of Athens*, A HISTORY OF GREECE, <https://www.ahistoryofgreece.com/biography/solon.htm> [<https://perma.cc/PM9Y-C5C6>] (last visited Mar. 4, 2022).

123. At the time of this writing, the motion is pending.

The following month, the trial court held a *Faretta* hearing¹²⁴ to approve my right to waive counsel. I was then granted access to the law library every day rather than one hour a week. Sanborn and I went to work immediately. We started by going over the different articles of evidence, parts of a trial, and the U.S. Constitution. We spent hours walking the yard, talking litigation, or in the multipurpose room, going over discovery and witness profiles and preparing a defense. I discovered, through the veil of complex legal jargon, that the law oriented itself toward impartial logic, yet there was an element of fluidity that allowed for logic to be challenged and redefined; that each case presented a variety of components that evince a different way of interpreting law and prior precedent. The law galvanized my creativity; a breath of fresh air in a claustrophobic void. It allowed me to reclaim an essence of life that I had lost, an agency that would propel my ambition for liberation. Over the summer that year, I drafted my own legal brief in defense of a motion that the state had submitted to the court. The prosecutor had moved to submit evidence under New Jersey Rule of Evidence 803(c)(3), or the state-of-mind exception to the hearsay rule; but the evidence was inflammatory and could violate my right to a fair trial. I argued using New Jersey Rule of Evidence 403(a), which requires the court to exclude relevant evidence if its probative value is outweighed by its risk to cause prejudice. I would have never stood a chance had I still been ignorant of the law. In the fall, we argued before the court and the judge ruled in favor of the defense. Sanborn always told me you had to “muddy the waters” to challenge everything when it comes to liberating yourself—both body and mind. I was becoming a disruptor; someone who subverted the judicial process of being represented by court-appointed counsel.

Swinging.

Through my journey, I realized the significance of educating oneself about the law, especially those who are most vulnerable to the legal system’s web. There exists a tragedy, an injustice, in the fact that the people most likely to be confronted with the carceral state are equally likely to neither have the resources needed to secure a legal education or adequate representation. This perpetuates a gross hierarchy of power: those confronted with the judicial system are exploited by this lack of resources and legal savvy. Defendants plead guilty, not always due to an actual matter of guilt, but sometimes due to an inability to navigate litigation, as well as a deep-rooted disenchantment toward the courts and its agents. Prior to developing legal knowledge as a pro se litigant, I too shared this disenchantment. I loathed the prosecutor, was suspicious of the judge presiding over my case, and was convinced that my public defender would not exhaust himself when representing me at trial. My decision to represent myself as a pro se litigant was a direct result of the

124. See *Faretta v. California*, 422 U.S. 806, 835 (1975) (a defendant has a Sixth Amendment right to represent oneself at trial, so long as the defendant has “voluntarily and intelligently” waived the right to counsel, “clearly and unequivocally declar[ing] . . . that he wanted to represent himself” and did so voluntarily and intelligently, as may be established in a “*Faretta* hearing”).

lack of trust I held toward my court-appointed counsel. It illuminated the more egregious issues surrounding mass incarceration—a relational breakdown between defendants and the court-appointed counsel charged with properly representing them. Why else would a twenty-one-year-old kid relieve his attorney from the duty of defending him at trial?

Prior to becoming a pro se litigant, I believed that my fate was solely dependent on the ability and sincerity of my attorney; I never considered that I could take a proactive role and educate myself on the law. Sanborn shattered every misconception that I previously held toward the law. He demystified it. It no longer felt like some sacred weapon used by government officials to leverage power but rather something accessible and necessary—a tool to be utilized when mitigating the stifling advances of a judicial system far too willing to exploit a population that it shows no incentive to inform. Subversive legal education seeks to operate as a bridge for the populations most at risk of exposure toward the prison industrial complex. It seeks to decenter the focus of law school as the only means of acquiring legal knowledge. I am an advocate for establishing a mechanism that would provide proper legal training for incarcerated populations, such as workshops and seminars designed to give a basic understanding of laws and constitutional rights and to teach the proper way of going over discovery. Providing legal access can be one method for shrinking mass incarceration. Legal education not only arms populations with the intellectual stamina to defend themselves in the judicial process but also fosters healthy cooperation between clients and attorneys. It is important for impacted populations to have a self-deterministic attitude toward freedom. We must obliterate traditional ways of navigating the judicial system and use agency to gain liberation.

III. ABOLITIONIST VISIONS

The educational models in Part II illustrate that abolition cannot be achieved if visioning remains within the walls of law school. Steps created within law schools are reforms at most. We explore ways to approach abolitionist visions where legal knowledge is democratized and legal education is lifelong. As paralegals, formerly incarcerated poets, activists, and students, we bring critical insight from the global majority about the exclusivity of legal education. We work together to understand the systems that harm us and build legal tools to share with our communities. Subversive legal education means access and transparency with impacted communities and requires that legal scholarship includes all of our voices.

A. Legal Knowledge as a Right

Law is the language of power,¹²⁵ and “lawyers in the United States enjoy a near monopoly on the knowledge of what the law is and how it works.”¹²⁶ In a society where structural racism is pervasive, the arduous requirements for becoming a lawyer skew the monopoly White and wealthy.¹²⁷ People who seek legal knowledge face several barriers.

Aundray Archer and Aron Pines illustrate these challenges through their experience with the carceral system. Archer writes of his first time in the prison law library: “It was smaller than a typical library, had no computers but plenty of shelves filled with dog-eared books, some missing pages, and others missing chapters thanks to incarcerated individuals who could not afford to pay for photocopies.”¹²⁸ Although the Supreme Court has held that incarcerated people have a right to adequate law libraries or legal assistance,¹²⁹ most prison libraries lack adequate resources, or access to libraries is so circumscribed as to undermine any right to access.¹³⁰

The inadequate access to legal knowledge in the carceral system exemplifies how unequal access to legal knowledge magnifies injustice. Pines observes:

The American justice system often exploits the lack of legal understanding on the part of the defendant. Access to proper legal resources is limited, as well as the means for defendants to be instructed properly on how to interpret and apply the law in relation to their own cases

. . .

This perpetuates a gross hierarchy of power: those confronted with the judicial system are exploited by this lack of resources and legal savvy. Defendants plead guilty, not always due to an actual matter of guilt, but sometimes due to an inability to navigate litigation, as well as a deep-rooted disenchantment toward the courts and its agents.¹³¹

125. See generally ROBERTO MANGABEIRA UNGER, *KNOWLEDGE & POWER* 80 (1975) (explaining that public rules are a language of power); Robert M. Cover, *Nomos and Narrative*, 97 HARV. L. REV. 4, 6 (1983) (arguing that law creates and maintains worlds); Gerald E. Frug, *The Language of Power*, 84 COLUM. L. REV. 1881 (1984).

126. Bridgette Dunlap, *Anyone Can “Think Like a Lawyer”*: *How the Lawyers’ Monopoly on Legal Understanding Undermines Democracy and the Rule of Law in the United States*, 82 FORDHAM L. REV. 2817, 2817 (2014).

127. See *supra* Part I.

128. See *supra* Part II.C.

129. See, e.g., *Bounds v. Smith*, 430 U.S. 817 (1977).

130. See Dale Chappel, *Are Prison Law Libraries Adequate?*, PRISON LEGAL NEWS (Apr. 1, 2020), <https://www.prisonlegalnews.org/news/2020/apr/1/are-prison-law-libraries-adequate/> [<https://perma.cc/5FNJ-NR32>]; Alfred King, *Prison Law Libraries Provide Inadequate Access to Legal Resources*, SAN QUENTIN NEWS (Feb. 20, 2020), <https://sanquentinnews.com/prison-law-libraries-provide-inadequate-access-to-legal-resources/> [<https://perma.cc/R8FF-FA6Y>]; Atanda S. Sambo, Saliu A. Usman & Nafisa Rabi, *Prisoners and Their Information Needs: Prison Libraries Overview*, LIBR. PHIL. & PRAC. (2017), <http://digitalcommons.unl.edu/libphilprac/1467> [<https://perma.cc/79BF-4FAD>].

131. See *supra* Part II.D.

Archer underscores this point: “[G]uilt had played no role in my conviction. My future had been shaped by people who spoke a language filled with incomprehensible terminologies and phrases and affirmed by twelve people who probably understood less than I had.”¹³²

Salmanova’s case study, drawing on her childhood experiences as an immigrant enrolled in ESL classes, further underscores the negative impact of monopolized legal knowledge:

The law required my teachers to schedule English-language prep during my kindergarten recess hour—the only time I could even try to connect through play with other children. Neither I nor my family understood the rights of immigrant youth to participate in regularly scheduled activities, so I had to suffer through these forms of isolation and segregation. I internalized the direct harms of segregated schools and a lack of legal autonomy as personal deficiencies rather than as rights violations by the Department of Education. It was not until years later that I began to locate the legal language to understand or change the Department of Education’s calculated neglect, racism, and classism through my studies at the City University of New York in literature and heterodox economics.¹³³

The counter to a system in which legal knowledge and legal power disproportionately belong to the few is a system in which legal education is a right. As Archer reflects, “If I hoped to regain control over my future, I needed to begin by learning the language of law.”¹³⁴

When legal education is a right, the walls of law school must fall. Legal education would be available throughout society, becoming a central component of universal education, as core as math, reading, or history.¹³⁵ The Peer Defense Project, for example, supports this by teaching ways to educate youth to become legal agents, democratizing legal knowledge and power.

Legal education should be freely available to all adults, not only students at community or four-year colleges, who seek to understand the laws that shape their lives. As both Archer and Pines demonstrate, legal education occurs in prison, and effective legal teachers do not need formal legal training. Their stories underscore the importance of a right to legal education throughout the carceral state for as long as it exists. Pines offers a way to fulfill the Supreme Court’s aspiration of full and adequate access to legal knowledge:

I am an advocate for establishing a mechanism that would provide proper legal training for incarcerated populations, such as workshops and seminars designed to give a basic understanding of laws and constitutional rights and

132. *See supra* Part II.C.

133. *See supra* Part II.A.

134. *See supra* Part II.C.

135. This parallels the way civics was once part of the established curriculum but goes further beyond the minimum of civics to developing mastery of legal language and concepts. *See, e.g.,* Rebecca Winthrop, *The Need for Civic Education in 21st Century Schools*, BROOKINGS (June 4, 2020), <https://www.brookings.edu/policy2020/bigideas/the-need-for-civic-education-in-21st-century-schools/> [<https://perma.cc/HG3U-R7K9>].

to teach the proper way of going over discovery. Providing legal access can be one method for shrinking mass incarceration. Legal education not only arms populations with the intellectual stamina to defend themselves in the judicial process but also fosters healthy cooperation between clients and attorneys. It is important for impacted populations to have a self-deterministic attitude toward freedom.¹³⁶

This mechanism further demands that the lawyer-client relationship works as a locus to share legal knowledge. Archer elaborates that, beyond mere representation, lawyers should “attempt to teach . . . clients to advocate for themselves because being fluent in the language of law is vital to understanding the power it entails and learning how to harness that power.”¹³⁷

Democratizing does not mean the end of schools specializing in law. Teachers of law—and legal services providers—can continue to seek specialized training at law schools.

B. Democratizing Legal Power

Democracy requires a democratic and participatory approach to determining who has the power to participate in the legal system. To fully accomplish that goal—for people more generally to understand and harness the power of the law—we must abolish our system of licensing the privileged few. Instead, it should be replaced with a system that opens the legal system to advocates with a wide range of training and expertise, much like the organic jurists and community legal advocates we highlight.

Gerald López, who coined the term *rebellious lawyering* and inspired community and progressive lawyering, has long argued for the value of legal advocates without law degrees.¹³⁸ Drawing on the work of information economists who maintain that “[c]ontributing to and drawing upon what we collectively know . . . can . . . transform the . . . way we govern ourselves,”¹³⁹ López opines, “No longer would our democracy honor more often in the breach than in the observance of the claim that decisions reflect the input of everyone—including ‘ordinary folks’ of all races, cultures, genders, and income levels.”¹⁴⁰

Consider parent advocates, a type of peer advocate trained to help parents procure solutions at the agency level and facilitate community organizing.¹⁴¹

136. See *supra* Part II.

137. See *supra* Part II.

138. See Jessica A. Rose, *Rebellious or Regnant: Police Brutality Lawyering In New York City*, 28 *FORDHAM URB. L.J.* 619, 622–23 (2000) (outlining López’s “rebellious lawyering” as a professional or lay lawyer’s use of lawyering skills to alleviate a subordinated position, in contrast with “regnant lawyering” perpetuating traditional power inequities between lawyer and client and between client and society).

139. Gerald P. López, *Shaping Community Problem Solving Around Community Knowledge*, 79 *N.Y.U. L. REV.* 59, 64 (2004).

140. *Id.*

141. Jane M. Spinak, *They Persist: Parent and Youth Voice in the Age of Trump*, 56 *FAM. CT. REV.* 308, 314–15 (2018).

An example of parent advocate training is the Child Welfare Organizing Project's (CWOP) Parent Leadership Curriculum, "a [six]-month training program for parents with child welfare experience to learn about the child welfare system, to learn how to effectively advocate for themselves, and to learn how to help other parents advocate for themselves."¹⁴² CWOP-trained parent advocates were hired to work at CWOP, foster care agencies, and family defense practices.¹⁴³

The Bronx Defenders, viewing parents as collaborators and coequal problem solvers, similarly created the Parent Liaison Institute, "a community-based twelve-week advocacy training program":¹⁴⁴

Former and current clients, social workers, criminal defense lawyers, family defense lawyers, doctors, psychiatrists, and community activists jointly created the curriculum The goal was for all of the participants to bring knowledge and skills back to their neighborhood, and . . . to become employed as parent advocates in local child welfare agencies.¹⁴⁵

This model recognizes community and lived experience, decentering lawyers in empowerment and knowledge production. This community-built and community-led program informed by lived experience did not rely on institutional measures of expertise.

Salmanova's discussion of the Peer Defense Project also illustrates how individual offices can provide training for impacted individuals to analyze their lived experiences through a legal framework. The Peer Defense Project created mechanisms for youth litigants to participate in their own advocacy and understand how their experiences in the New York City educational system illustrate the legal violations by city and state actors. The Peer Defense Project models this approach from the beginning by reviewing the retainer agreement as an exercise for facilitating dialogue where youth litigants can ask questions and share knowledge with their licensed advocates. The Peer Defense Project developed the "First Five" to facilitate meetings and utilized platforms such as Instagram to translate various aspects of litigation, exemplifying a collective approach not limited to those already involved, inviting others in.

For Archer and Pines, learning the law was not simply a means of understanding legal strategy as clients but a means of representing themselves in court. Both underscore the importance of self-determination and helping peers learn and understand the law.

The case studies are not geared solely toward individual and collective empowerment. This is a radical departure from formal legal education and licensing that focuses on individual development. Community legal advocates and organic jurists learn the law to become proficient in translating legal concepts for their community and translating lived experience into legal

142. *Id.* at 316.

143. *Id.*

144. Kara R. Finck, *Applying the Principles of Rebellious Lawyering to Envision Family Defense*, 23 CLINICAL L. REV. 83, 102 (2016).

145. *Id.*

advocacy. Rather than relying on sources purely from the academy, community legal advocates create knowledge with and for the community in order to democratically build legal power. Community legal advocates share a perspective with the community that is extremely underrepresented in traditional spaces.

To democratize legal power, the requirements of law school and bar admission must be abolished.¹⁴⁶ Our case studies demonstrate the success of sharing legal knowledge in service of exercising legal power. The Peer Defense Project created a civil procedure workshop for youth litigants to understand how their case would move through the court system. Incarcerated folks, even in harsh conditions with limited resources, learn and teach the law, representing themselves and others.

Until the introduction of unauthorized practice laws of the early twentieth century, transactional legal representation was unregulated. Until the creation of the organized bar in the late nineteenth century and the accompanying uniform and restrictive admissions requirements, bar admission required only a few questions by a judge. Many low-cost law schools providing the opportunity for legal education to students from low-income backgrounds existed early in the twentieth century.¹⁴⁷ Some did not require high school degrees, and none required a college education. In response, the ABA and the Association of American Law Schools tightened requirements, and these schools declined. Scholar Henry Drinker viewed “Russian Jew Boys” as the greatest threat to professional ethics, requiring deterrents like college.¹⁴⁸ From our modern perspective, there is little justification for the requirements that too many uncritically embrace today.¹⁴⁹

C. *The Pedagogy of “Nothing About Us Without Us”*

In a democratic legal regime, the people are central to the legal narrative. This understanding should shape teaching and scholarship. Unfortunately, as our case studies highlight, the prevailing legal narrative is one created by lawyers for lawyers. In a law school classroom or in court, lawyers and judges write for the most part about those outside their group. Rarely do

146. We are of course open to forms of consumer protection so long as they do not serve to reimpose a monopoly on legal power. We also recognize that the requirements of law school and the bar exam were not even widespread until the late nineteenth century. See BENJAMIN H. BARTON & STEPHANOS BIBAS, *REBOOTING JUSTICE: MORE TECHNOLOGY, FEWER LAWYERS, AND THE FUTURE OF LAW* 60–61 (2017).

147. See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, at 99–101 (1983).

148. *Id.* at 184 n.41; see also *id.* at 99–101, 176; cf. Russell G. Pearce, *Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School*, 29 *LOY. U. CHI. L.J.* 719, 732–33 (1998).

149. While many commentators accept the existing requirements without question, some leading scholars have indeed sought to rethink legal education, especially with regard to ways to provide more opportunities to people from low-income backgrounds. See, e.g., BENJAMIN BARTON, *FIXING LAW SCHOOLS: FROM COLLAPSE TO THE TRUMP BUMP AND BEYOND* (2019); BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012).

those impacted by the law have a role in shaping that narrative, in teaching and writing about law, or in constructing legal opinions. As a White space, the legal profession is not a representative or democratic space.

Tarnavska has shared an antidote to otherizing those impacted by law. “Nothing about us without us” demands that impacted individuals engage as active participants in their own advocacy. Through this lens, law cannot be understood without the participation and perspective of those who experience it.

Similarly, when legislators who had never experienced incarceration visited his prison, Archer and other incarcerated men stressed that plans about them should not be devised without them; legislators who had never experienced incarceration would not get it right without working with those who had lived experience. As Archer says, “subversive legal education must include directly impacted individuals not only as authors but also as legal practitioners.”¹⁵⁰ Access to subversive legal education for those most subject to the legal system constitutes a major step toward equality, diversity, and inclusion.

Abolishing legal education as it exists cannot happen without leadership from those impacted by the law and the effects of legal education. Those directly impacted are our educators; more than simply being invited to the space within law school walls, they must be seen as educators who will lead the practice of abolition through visioning and imagination, within and beyond the walls of law school.

CONCLUSION: ABOLITION IS IMAGINATION

This Essay begins with reformist steps and ends with abolition of the existing system in favor of a democratic and participatory model of legal education. Our reformist steps join with Bennett Capers in opening the doors of law schools and ending law school as a White space.¹⁵¹ At minimum, the discriminatory outcomes that pervade legal education and bar admission require rethinking every step in the established process. Or, rather than seek facially neutral justifications for racist policies, we should reject them altogether in favor of anti-racist policies that promote equality among racial groups.

But reformist steps are only a temporary step toward a just society. Subverting injustice requires a world where the walls of law school and the organized bar do not obscure and monopolize legal knowledge and power. We do not claim to offer a blueprint for democratizing legal knowledge and power. It would be misguided to expect a law review essay—of all the available tools—to be such a vehicle. We imagine legal education beyond the existing walls of law school and the gates of the legal profession. We do seek to abolish law school as the only location for education and the profession as the only avenue for advocacy.

150. *See supra* Part II.

151. *See* Capers, *supra* note 14.

Abolition requires “work in solidarity with others toward the world as they wish for it to be,”¹⁵² so we imagine building together. We imagine those traditionally viewed as experts sharing their platforms with those who are not. We imagine many more articles coauthored by lawyers passionate about social justice issues and those most directly impacted who have gained expertise through lived experiences. This is the pedagogy of “Nothing About Us Without Us”—all teaching and scholarship of law must include the participation and wisdom of those impacted by the law.

As we model, abolition is a gradual, collaborative process requiring many perspectives, particularly of those most acutely impacted by racist and oppressive punishment mechanisms. Historically, the abolitionist movement has been a movement of growth away from morally unsustainable practices.¹⁵³ The abolitionist movement is concerned with repair, restoration,¹⁵⁴ and hope.¹⁵⁵ Abolition without addressing the social ills—without implementing creative, imaginative reforms to build alternative systems that prioritize healing and potential and that we create hand-in-hand with those most impacted by social ills—is irresponsible, only making already existing harmful mechanisms look all the more desirable.

We imagine a world where other locations for legal education besides law school are robustly supported. So that police officers are not giving children their first lesson in the law, we imagine a cumulative development of legal education in grades K–12, when youth are taught their rights and discuss questions of accountability and repair. We imagine a world where legal education is well resourced in prisons and jails for as long as the carceral state exists. We imagine a system of legal knowledge that empowers community legal advocates, litigants partnering with trained legal services providers, and pro se litigants.

To achieve abolition, we must practice imagination. With imagination, the master’s tools can be repurposed; they can be democratized to be reclaimed as the people’s tools.¹⁵⁶

152. Keeanga-Yamahtta Taylor, *The Emerging Movement for Police and Prison Abolition*, NEW YORKER (May 7, 2021), <https://www.newyorker.com/news/our-columnists/the-emerging-movement-for-police-and-prison-abolition> [<https://perma.cc/JRH4-K4UZ>].

153. See Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156, 1161 (2015) (defining prison abolition as “a transformative goal of gradual decarceration and positive regulatory substitution wherein penal regulation is recognized as morally unsustainable”).

154. See Taylor, *supra* note 152.

155. *Id.* (“Hope is a discipline. We must practice it daily.” (quoting Mariame Kaba)).

156. See Lorde, *supra* note 4, at 1–2. Lorde’s famous quote, “the master’s tools will never dismantle the master’s house,” is often misinterpreted to mean that the tools of institutions cannot be repurposed to achieve something other than what the master intended. *Id.* Using the master’s tools in the way the master intended would mean that “only the most narrow parameters of change are possible and allowable.” *Id.* But if the master used differences to “divide and conquer” and we instead used differences to “define and empower,” we would find use for the tools. *Id.*

APPENDIX A

“First Five”: A Technology to Expand Youth Access and Power in Exploring Litigation

1. Confidentiality Review

While knowledge and experience are personal, establishing an understanding of confidentiality allows for ideas, identities, and developments to be protected or projected with consent.

2. Capacity Check

During each meeting, the facilitators consider each participant’s individual needs and boundaries as we move through challenging conversations about race, trauma, and litigation with people across age, identity, and experience.

3. Accommodations Check

Enabling Live Transcript: Auditory processing is centered in COVID-era telecommunications, however maintaining visual cues helps to facilitate an added layer of information understanding.

Cameras, Mics, and Tele-Accessibility: Practicing an intergenerational effort recognizes capacities vary—especially in what being present looks like. Addressing in the beginning of virtual meetings how people can participate opens up the ability to voice expertise without the pressure of conforming to any particular form.

Trigger Warnings: Trauma responses are managed differently. We recognize the importance of identifying and preparing participants to grapple with potentially triggering content.

4. Agenda Review

With a walk-through of an agenda, everyone who is present is both able to consent to the course of events, as well as add any additional topics. Furthermore, the combination of intention and agenda helps focus clarity checks but does not impose limitations. For instance, we create space throughout the meeting for pauses; one can choose to bring forward questions, but simply sitting with information is integral to processing.

5. Role Assignment.

In a youth-led and intergenerational space, we create clarity around facilitation, pacing, and notetaking so we can share in leadership and participation.

APPENDIX B

First Post: Sharing the Background of the Case and the Complaint

We created our social media launch after the filing of our litigation. The ongoing manner of legal cases presented us with a specific opportunity: first, introduce *IntegrateNYC v. State of New York*.

Our first post needed to articulate that our schools were racist; they violated our constitutional rights to a sound basic education. Despite over seventy years since *Brown v. Board of Education*,¹⁵⁷ schools are more segregated than ever. Violating rights to equal protection, schools actively breach student human rights.

While restitution takes time to develop, this suit came with demands. Following the framework of the 5 R's, students' demands were cited as follows on bright illustrations:

- The right to inclusive, anti-racist schools and curriculum
- Access to resources for students to actively identify and dismantle racism
- Culturally responsive mental health supports
- Diverse educators

We name and define the parties involved: plaintiffs, defendants, intervenors. As such, the post carries a slide to name the respondents at the local and state levels. Furthermore, the post defines intervenors. After the case was filed, an organization was able to obtain permission from the judge to enter this litigation. They are a third party aligned with the defense: intervenors.

We identify organizations, including PS 132 Parents for Change and the NYC Coalition for Educational Justice. Youth-led IntegrateNYC is also among the organizational plaintiffs. This post helps articulate their role in pursuing their rights. It also helps to avoid jeopardizing the privacy of individual clients. Using functions like tagging, Instagram allows us to directly connect anyone on the page to the networks involved.

This resource is available in English, Spanish, French, and Mandarin. The virtual press conference breaks up posts about the litigation. The combination of these five posts were guided by a UDL framework. The social media platform makes it easy to display many points of access. This post distills the complaint, yet information sharing is versatile. We create this replicable repository, amplifying print media coverage. With the space

157. 347 U.S. 143 (1954).

for video sharing, an intergenerational and comprehensive Zoom press conference is on the page.

The captions and comments are also offered in a compiled version. They function as an alternative text.

Second Post: Sharing the Messages of the Motions to Dismiss

Shortly after the filing of the complaint, the city, state, and intervenors filed a motion to dismiss. Digesting the three documents to be engaging, creative, and accurate became our new focus.

Opting for a familiar format, we selected to form a text message thread. Smartphones and social media are endemic. The legal advice would be something new paired with something borrowed, the group message structure.

The city and state offered deflections of responsibility. The intervenors minimized the severity and harm of the consequences of racism. An exchange of several messages between two students captures this avoidance of responsibility.

As with the breakdown of the complaint, this resource is online in Spanish, French, and Mandarin.

Moderation

As we move through our projects, our internet presence will change. Right now, we find ourselves on Instagram and similar social sites. We are choosing to operate in free, familiar, and functional formats, aligning with the principles of movement law. With current and updated discourse, these posts democratize vocabulary.