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Saying the Quiet Parts Out Loud: Teaching Students How Law School Works

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Saying the Quiet Parts Out Loud: Teaching Students How Law School Works

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I. INTRODUCTION

The summer of 2020 was an inflection point for legal education's relationship with racial and other inequities. After Minneapolis police murdered George Floyd, faculty, administrators, and students spoke out with increased urgency about the need to address race in law school curricula. For example, professors sought to give race context to cases found in law school casebooks by not presenting judicial opinions

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as neutral statements of the law.¹ Many law schools, including our own, formally (re)dedicated themselves to helping students recognize and analyze structural inequalities and how the law perpetuates them.²

Law schools focused on what their faculty and graduates could do to change the legal landscape. Whether they did so effectively was vigorously discussed in the press and on Twitter.³ Students were frustrated: they were asking their schools to make changes but weren't getting very far.⁴ Students noticed the disconnect. We noticed the dis-

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1. Many law schools and faculties published new commitments to equity and inclusion, but if we are only going to cite one resource—and we are—we point you to the Law Deans' Antiracist Clearinghouse, an online space hosted by the Association of American Law Schools (AALS) in which “Black law deans, women law deans, LGBTQ law deans, people of color law deans, allied law deans, and deans with varying intersectional identities” can “address the malady of racism and the assault on black bodies,” and in creating “a space for our collective voices as leaders of law schools to engage our institutions in the fight for justice and equality, we strive to focus our teaching, scholarship, service, activism, programming, and initiatives on strategies to eradicate racism.” Angela Onwuaci-Willig et al., *Law Deans Antiracist Clearinghouse Project*, ASS'N OF AM. L. SCHS, <https://www.aals.org/about/publications/antiracist-clearinghouse/> [https://perma.cc/B2RL-BCHT] (last visited Oct. 12, 2021).
 2. For example, our law faculty adopted a new learning outcome: “Students shall be able to recognize, parse, and critically analyze the historical, social, and economic contexts underlying the law, particularly as they relate to racial, gender, or other inequities.” *Academic Policies: Learning Outcomes*, UNIV. OF N.C. AT CHAPEL HILL SCH. OF L., <https://law.unc.edu/academics/academic-policies/> [https://perma.cc/6F3R-5ZFM] (last visited October 12, 2021).
 3. See, e.g., Joe Patrice, *Michigan Law School Flubs George Floyd Statement*, ABOVE THE L. (June 8, 2020, 4:42 PM), <https://abovethelaw.com/2020/06/michigan-law-school-flubs-george-floyd-statement/?rf=1> [https://perma.cc/NHP9-JCSY] (describing the Michigan Law dean's response as striking a chord, “[n]ot so much for what it said, but for how it strained to, functionally, apologize for having to say anything about racial injustice at all.”); Joe Patrice, *The Rutgers Law School Faculty Response to the George Floyd Killing Is What We Need To See More of*, ABOVE THE L. (June 24, 2020, 12:16 PM), <https://abovethelaw.com/2020/06/the-rutgers-law-school-faculty-response-to-the-george-floyd-killing-is-what-we-need-to-see-more-of/?rf=1> [https://perma.cc/XZ7B-WTJ9] (“It's such a contrast to the Michigan Law statement, where a public institution suggested that it had little business commenting on matters outside the Quad—the Rutgers faculty proclaims without reservation that fighting racism is absolutely a professional concern of the law at all times and in all places.”); Erik Cliburn, *Law Schools Commit to Furthering Anti-Racist Training, Addressing Inequity*, INSIGHT INTO DIVERSITY (June 25, 2021), <https://www.insightintodiversity.com/law-schools-commit-to-furthering-anti-racist-training-addressing-inequity/> [https://perma.cc/V7V6-3CLF] (describing new courses, seminars, conferences, and studies that the law schools and the American Bar Association (ABA) have created to further anti-racism).
 4. The #MLawLoud hashtag is one example of student activism, led by students at the University of Michigan Law School; a community formed around the hashtag to support students who want to “improve the [law school] environment for students of color” and fight for improved representation and inclusivity. See

connect.⁵ This Article and the teaching methods it describes are one response to that disconnect.⁶

II. LAW SCHOOLS SHOULDN'T BE INCUBATORS OF INEQUALITY

Like the law we teach our students, legal education itself isn't neutral. It is the product of both structural forces and individual decisions. Hierarchy and structural inequality permeate our society; so of course, they also permeate the institutions within our society, including law schools. But law schools are not only passive recipients of these permeating atoms of injustice. They have some agency in determining which inequities to nurture (or not) in the learning environ-

Courtney Liss, *Want To Change the Law? Change Law School*, A.B.A. FOR L. STUDENTS: STUDENT LAW. BLOG (June 17, 2020), <https://abaforlawstudents.com/2020/06/17/want-to-change-the-law-change-law-school/> [<https://perma.cc/NUY5-C23M>] (“In mere hours, students and alumni from a variety of backgrounds took to Twitter to explain how the law school had not provided them with the educational or social opportunities to become the well-rounded and well-adjusted lawyers we strive to become.”); Areeba Jibril, McKayla Stokes & Mariah Young, *Students Take to Twitter To Demand Racial Equality*, A.B.A. FOR L. STUDENTS: STUDENT LAW. BLOG (July 1, 2020), <https://abaforlawstudents.com/2020/07/01/students-take-to-twitter-to-demand-racial-equality/> [<https://perma.cc/6C6N-GGMR>] (“As the leaders behind #MLawLoud and #NLawIndifference, we stand on the shoulders of giants; the law students of color who fought to make law school and the legal world a better place for us.”).

5. “We,” meaning the authors of this Article, but we were certainly not the only ones. For a thorough argument for restructuring legal education after the student-led activism of 2020, see Tiffany D. Atkins, *#ForTheCulture: Generation Z and the Future of Legal Education*, 26 MICH. J. RACE & L. 115 (2020). The entire article is compelling, but readers of this Article might be most interested in Part II of Professor Atkins’s article, which “discuss[es] current law school culture, identifying the areas where structural change is most needed to make the ‘matter’ in ‘Black Lives Matter’ faculty statements more authentic.” *Id.* at 121, 138–49.
6. This Article is just one of many in this emerging genre. See Renee Nicole Allen, *Our Collective Work, Our Collective Strength*, 73 RUTGERS U. L. REV. 881 (2021); Taleed El-Sabawi & Madison Fields, Comment, *The Discounted Labor of BIPOC Students & Faculty*, 12 CAL. L. REV. ONLINE 17 (June 2021), <https://www.californialawreview.org/the-discounted-labor-of-bipoc-students-faculty> [<https://perma.cc/D2WW-3UWJ>]; Rachel López, *Unentitled: The Power of Designation in the Legal Academy*, 73 RUTGERS L. REV. 923 (2021); Teri A. McMurtry-Chubb, *Writing at the Master’s Table: Reflections on Theft, Criminality, and Otherness in the Legal Writing Profession*, 2 DREXEL L. REV. 41, 60 (2009) (“The alternative [to giving more academic autonomy] is for women of color LRW professors to continue their walk in the contested space between criminality and legitimacy, to be branded as others in a segment of the profession that is already ‘othered.’”).

ment.⁷ As it stands, the environment where students learn the law can be an incubator of inequality.⁸

First, on the student side, resources are unevenly distributed: financial resources, health, family connections, social capital, and even information itself. This uneven distribution of resources among students, along with students' multifaceted identities, affect how students experience law school.⁹ Some can focus primarily on preparing for classes and making connections with professors. Others also work to support families. Some students come in with networks of legal professionals or academics "in their corner." Others are the first in their families to attend law school or haven't even met a practicing lawyer. Some students sit in class wondering if a professor will misgender them. Other students have disabilities that make law school or other aspects of life more difficult for them. And some bring a history of racial trauma and racialized classroom interactions¹⁰ that leave them on edge and feeling like they don't belong, especially if few of their professors look like them.¹¹ These factors and more contribute to dif-

7. See, e.g., Shaun Ossei-Owusu, *Guest Post: Legal Education and the Illusion of Inclusion*, LAW SCH. SURV. OF STUDENT ENGAGEMENT: INSIGHTS BLOG (Feb. 15, 2021), <https://lsse.indiana.edu/blog/guest-post-legal-education-and-the-illusion-of-inclusion/> [<https://perma.cc/9H4S-57L4>]. Consider, Professor Ossei-Owusu's insight for example:

Notwithstanding future uncertainty, one thing can be said with some measure of confidence: issues of race and gender—amongst other social categories—will remain relevant inside and outside the sometimes intellectually-cordoned off walls of law schools. How these issues are integrated in the classroom, if they are at all, will affect the substantive learning of law and will either include or exclude historically marginalized groups.

8. This is a longstanding issue. See, e.g., Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982), https://duncankennedy.net/documents/Photo%20articles/Legal%20Education%20and%20the%20Reproduction%20of%20Hierarchy_J.%20Leg.%20Ed.%20.pdf [<https://perma.cc/D79W-DH27>].
9. See, e.g., MEERA DEO & CHAD CHRISTENSEN, LAW SCH. SURV. OF STUDENT ENGAGEMENT, DIVERSITY & EXCLUSION: 2020 ANNUAL SURVEY RESULTS (2020), <https://lsse.indiana.edu/wp-content/uploads/2020/09/Diversity-and-Exclusion-Final-9.29.20.pdf> [<https://perma.cc/ST93-Z573>] (collecting data about how students from different backgrounds feel supported and included by their law schools and finding that students from more marginalized groups, and especially those at the intersection of multiple such groups, are less likely to feel valued by, like they belong at, or like they can be themselves at their law school).
10. See Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780, 783 (2018).
11. See, e.g., Cristal E. Jones, Comment, *Still Strangers in the Land: Achievement Barriers, Burdens, and Bridges Facing African American Students Within Predominately White Law Schools*, 39 MINN. J.L. & INEQ. 13, 33 (2021), https://lawandinequality.org/wp-content/uploads/2021/02/Still-Strangers-in-the-Land_-Achievement-Barriers-Burdens-and-B.pdf [<https://perma.cc/4BRU-UKJB>]

ferent educational, employment, and mental health outcomes among law students.¹²

Second, on the staff and faculty side, law school employees have different levels of pay, job security, and institutional support.¹³ For example, there are many categories of law school workers—staff, adjunct professors, contingent or fixed-term faculty, pre-tenure faculty, tenured faculty, and deans—but these titles mean little to students. A student may call lots of different people dean or professor but not realize that one full-time professor is paid two or three times more than another or that a third is an adjunct professor who has no say in the law school's decision-making.¹⁴ Thus students might not realize, for example, that the teachers they have the most individual contact with, like their legal writing professors, are also the teachers who are

(describing the racialized experiences and disparate outcomes of Black law students in predominately White law schools).

12. See, e.g., DEO & CHRISTENSEN, *supra* note 9, at 6. The report by Deo and Christensen notes:

Without institutional support, students from different backgrounds may not see themselves as valuable partners for building an inclusive community. Equally important, students who feel a strong sense of belonging are more likely to achieve academic and professional success; avoiding identity-based stigma allows students to fully engage and invest in the law school community as their authentic selves.

Id.; see also Ossei-Owusu, *supra* note 7 (explaining how the Law School Survey of Student Engagement (LSSE) report “provides a glimpse into how law schools fail to meet the aspirational goal of inclusion that often takes up primetime real estate on their websites and promotional materials” and summarizing data about how students from a variety of backgrounds self-report different levels of inclusion and stigmatization in law school).

13. See, e.g., López, *supra* note 6; Jamie J. Baker, *The Intersectionality of Law Librarianship & Gender*, 65 VILL. L. REV. 1011, 1012 (2020) (describing how law librarians largely “lack status to engage meaningfully with the academy,” to participate “in true faculty governance to lead law schools forward,” and to “engage in controversial scholarship that informs the law librarianship profession”); MEERA DEO, UNEQUAL PROFESSION: RACE AND GENDER IN LEGAL ACADEMIA 79–98 (2019); Renee Nicole Allen, Alicia Jackson & DeShun Harris, *The “Pink Ghetto” Pipeline: Challenges and Opportunities for Women in Legal Education*, 96 U. DET. MERCY L. REV. 525, 527 (2019) (“In law schools, women in ‘pink ghettos’ predominately occupy skills positions like legal writing, clinic, academic success, bar preparation, and the law library.”).
14. For example, even though many students have rightly called on their schools to diversify their faculty, the students may not realize that not all professors get to vote on faculty hiring.

paid the least and have the least amount of job security.¹⁵ That, too, is hierarchy in action.¹⁶

Our students could feel these inequities affecting their legal education, even if they couldn't yet see them. We knew this feeling because these inequities had gradually become visible to us during our time in legal academia. And we wanted our first-year students to be able to see them as well—to know what to call them, where they are reinforced, and how they affect the way law students learn to be lawyers.¹⁷ We hoped to foster understanding about the experiences and challenges different students have while attending the same institution and to practice talking explicitly about how different the law

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15. See Amy H. Soled, *Legal Writing Professors, Salary Disparities, and the Impossibility of "Improved Status,"* 24 J. LEG. WRITING INST. 47, 48–49 (2020) (indicating that the annual base salary of legal writing faculty is \$95,664 as opposed to a median salary of \$168,840 for associate professors teaching doctrinal courses); *UNC Salary Information Database*, UNIV. N.C. SYS., <https://uncdm.northcarolina.edu/salaries/index.php> [<https://perma.cc/A6NL-936L>] (Sept. 30, 2021) (showing that one of the authors of this Article earns 35.9% of one of the other professors teaching some of her students this schoolyear); Deborah J. Merritt, *Salaries and Scholarship*, L. SCH. CAFE (Jan. 13, 2018), <https://www.lawschoolcafe.org/2018/01/13/salaries-and-scholarship/> [<https://perma.cc/E2UC-P66G>] (discussing significant pay gaps between legal writing faculty and other faculty members); see also LawProfBlawg, *Legal Writing Professors: A Story of a Hierarchy Within a Hierarchy*, ABOVE THE L. (Sept. 4, 2018, 4:04 PM), <https://abovethelaw.com/2018/09/legal-writing-professors-a-story-of-a-hierarchy-within-a-hierarchy> [<https://perma.cc/E2VC-QRZQ>] (“And, while the academy navel-gazes about class, gender, and racial diversity in academia, it hasn’t, in my opinion, addressed the institutional effects that permeate the various classist structures of legal academics. It isn’t about *just* paying legal writing professors what they are worth, it’s about respect and dignity.”); Michael Thaddeus, *A Smoking Gun at Columbia University*, ACADEME MAG.: BLOG (Aug. 2, 2021), <https://academeblog.org/2021/08/02/a-smoking-gun-at-columbia-university/> [<https://perma.cc/MYB6-BGFM>] (describing an e-mail from Columbia University President Lee Bollinger written in July 2020 about how to handle instruction during the COVID-19 pandemic where he said that “the instructional faculty for the Core is largely composed of non-tenure-track individuals, which means we should have greater leeway to expect in-person instruction, if that’s what we deem best.”).
16. As Taleed El-Sabawi and Madison Fields explain, “Being the community member that always raises issues comes at political costs, particularly for non-tenured faculty, who may be branded by administrators or colleagues as someone who is ‘difficult,’ impolite, and even, at times, too revolutionary. Gendered women BI-POC faculty may also be labeled as emotional or as overreacting.” El-Sabawi & Fields, *supra* note 6, at 24 (citing DEO, *supra* note 13, at 35–54).
17. Creating a professional legal identity on purpose, rather than just by default, is another movement within law school pedagogy that helps developing lawyers (and their professors) see the influence that teaching choices can have on “becoming a lawyer.” See, e.g., L. Danielle Tully, *The Cultural (Re)Turn: The Case for Teaching Culturally Responsive Lawyering*, 16 STAN. J. C.R. & C.L. 201 (2020), <https://www-cdn.law.stanford.edu/wp-content/uploads/2020/06/02-Tully-Website.pdf> [<https://perma.cc/BRS6-YZWQ>]; Laura A. Webb, *Speaking the Truth: Supporting Authentic Advocacy with Professional Identity Formation*, 20 NEV. L.J. 1079 (2020).

school environment can be for different people within it.¹⁸ And we wanted to help our students understand why individual professors, including us, couldn't fix the problems they called attention to. Ultimately, our goal was for students at least to learn some invisible rules of "how law school works" in their first year (and not years later)¹⁹ so that they could better navigate the system and more effectively advocate for themselves and for change while they were still in school.²⁰

III. ASYNCHRONOUS UNIT ON LAW SCHOOL INEQUALITY

For spring 2021, we created a series of asynchronous lessons that students could access from the beginning of the semester and complete at their own speed by a certain deadline. We set January and February deadlines for lessons with "traditional" 1L legal research and writing topics: How Federal Citation Works, How Trial Courts Work, and How Appellate Courts Work. Once students were familiar with the set-up and pacing of these lessons, we assigned the How Law School Works unit to be completed by late February, before graded assignments began.

We distributed the asynchronous units as "lessons" in our learning management system, Sakai. The landing page of the How Law School Works lesson contained this overview:

This asynchronous unit is designed to broaden your understanding of how law school works. Some of the information might be familiar to you and other information might not. In [Research, Reasoning, Writing, and Advocacy], we mainly focus on how to work in the legal profession after law school. But you're here, in law school, and this is a good opportunity to practice navigating an unfamiliar institution. These podcasts are also intended to provide perspective on various people's experiences of being in or working at a law school. Budget about 3 hours to complete this unit. I will also schedule some optional

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18. See, e.g., Nantiya Ruan, *Papercuts: Hierarchical Microaggressions in Law Schools*, 31 HASTINGS WOMEN'S L.J. 3, 6 (2020) ("By becoming aware of status hierarchy [among law school workers] and the hierarchical microaggression experienced by skills faculty, this Article aims to start a conversation in law schools on how to successfully address them and bring a bit of dignity and justice back in those workplaces.").
 19. To make things even more complicated, even the law students most invested in change move on after three years, taking with them student activists' institutional memory and leaving new generations of students trying to navigate a foreign system that often was not built for them.
 20. A separate question is whether students should have to be activists in the schools they pay to attend and considers the toll that activism takes on those students. This tweet by then-3L Michigan Law student Courtney Liss captures the issue: "We have all been saying this and I'm saying it again but the way that everyone expects POC students to do activism for their entire time in school and then critiques us on whether or not the solutions are enough while doing ~the least~ themselves is nonsense + causes burnout." @CourtneyLiss, TWITTER (Mar. 26, 2021, 11:02 AM), <https://twitter.com/CourtneyLiss/status/1375478175992582144> [<https://perma.cc/WJM3-D27S>].

discussion sections for any students who would like to discuss the podcasts or the issues they raise.

We asked students to listen to three podcasts and answer a reflection question after each podcast. The three podcasts we assigned were:

1. An episode of the *Ipse Dixit* podcast²¹ featuring Professor Katherine Macfarlane on “Accommodating Disabilities in Law School and Practice.”²² In this podcast, Professor Macfarlane discusses her own experiences as a disabled law student, lawyer, and law professor. She explains how difficult it is to get any kind of disability accommodation in law school and law practice. She also talks about ways to improve the law school experience for people with disabilities.
2. An episode of the *Future Law* podcast²³ with Professor Deborah Merritt discussing challenges facing law schools and the legal profession, as well as potential paths for reinvention.²⁴ Professor Merritt explains key challenges threatening

21. *Ipse Dixit* “is a podcast on legal scholarship,” created by Brian L. Frye, the Spears-Gilbert Associate Professor Law at the University of Kentucky College of Law. Bryan L. Frye et al., *IPSE DIXIT*, <https://shows.acast.com/ipse-dixit/about> [<https://perma.cc/G7XK-EX58>] (last visited Oct. 23, 2021). Each episode “features a different guest discussing their scholarship.” *Id.*

22. Here is the description of the episode from the *Ipse Dixit* website, which is the same blurb we gave students preparing to complete the unit:

In this episode, Katherine Macfarlane, Associate Professor of Law at the University of Idaho College of Law, discusses her work on how disabilities affect law students and lawyers, and how we can better accommodate people with disabilities. She begins by explaining the legal obligations that law schools and law firms have to accommodate people with disabilities under the Americans with Disabilities Act. She describes the different kinds of disabilities that may affect law students and the kinds of accommodations that they may need and deserve. She reflects on her own experiences requesting accommodations for her disability as a law student, lawyer, and law professor. And she provides some thoughts on how law schools and law professors can better accommodate students with disabilities. Macfarlane is on Twitter at @KatAMacfarlane.

Bryan L. Frye et al., *Katherine Macfarlane on Accommodating Disabilities in Law School and Practice*, *IPSE DIXIT* (Mar. 14, 2019), <https://shows.acast.com/ipse-dixit/episodes/katherine-macfarlane-on-accommodating-disabilities-in-law-sc> [<https://perma.cc/5MLJ-DEYH>].

23. *Future Law Podcast*, hosted by law professors Michael Madison (with the U.S. perspective) and Dan Hunter (from Australia), aims to “cut[] through the noise surrounding the future of law,” focusing especially on how law and the legal profession can keep up with “expanding and accelerating technologies.” Michael Madison & Dan Hunter, *FUTURE L. PODCAST*, <https://omny.fm/shows/future-law-podcast-1/playlists/podcast> [<https://perma.cc/FZT8-3344>] (last visited Oct. 25, 2021).

24. Here is the description of the episode from the *Future Law* website, which is the same blurb we gave students preparing to complete the unit:

law schools' financial stability—overall fewer applications and lower net tuition—and describes how squeezed law school budgets could lead to innovation, if only so many schools weren't so resistant to change. She also highlights three trends in the legal profession—more non-lawyers doing legal work, lack of access to legal services, and the potential for artificial intelligence to improve the delivery of legal services—as potential drivers of change, but only if the regulators, the profession, and the academy are open to it. Finally, she addresses the mismatch between the current model of legal education and what she sees as the future of the legal industry.

3. An episode of the *Strict Scrutiny* podcast²⁵ with Professor Meera Deo discusses race and gender in legal academia.²⁶ In this podcast, Professor Deo describes her findings from an ongoing long-term study of the intersectional effects of race and gender on law professors.²⁷ One of the main findings is the disproportionate amount of “academic caretaking” that falls on women of color in the legal academy. The *Strict Scrutiny* hosts, Professors Litman, Murray, and Shaw, also shared their experiences on the hiring market and as law professors. The podcast

Professor Deborah Merritt of the Moritz College of Law at Ohio State University talks with Dan Hunter and Mike Madison about the sources of critical challenge in US law schools today and describes paths to reinvention, including a new focus on clients, for herself, for current students, and for law faculties.

Michael Madison & Dan Hunter, *Interview 9.1—Deborah Merritt, Professor at the Ohio State University*, FUTURE L. PODCAST (Aug. 18, 2019, 3:00 PM), <https://omny.fm/shows/future-law-podcast-1/interview-deborah-merritt> [<https://perma.cc/9RZG-RNDV>].

25. *Strict Scrutiny* is a podcast hosted by three women law professors: Michigan's Professor Leah Litman, NYU's Frederick I. and Grace Stokes Professor of Law Melissa Murray, and Cardozo's Professor Kate Shaw. The podcast is “about the United States Supreme Court and the legal culture that surrounds it. But it's more than that.” Leah Litman et al., STRICT SCRUTINY, <https://strictscrutinypodcast.com/about/> [<https://perma.cc/Y57M-V3BD>] (last visited Oct. 25, 2021). In addition, it seeks to expand the conversation around these subjects both by “celebrat[ing] the contributions and opinions of women and people of color” and to do so in a way that is more accessible to more people. *Id.*
26. Here is the description of the episode from the *Strict Scrutiny* website, which is the same blurb we gave students preparing to complete the unit: “Leah and Melissa and Kate are joined by Meera Deo, Professor of Law at Thomas Jefferson School of Law, William H. Neukom Fellows Research Chair in Diversity and Law at the American Bar Foundation, and author of *Unequal Profession: Race and Gender in Legal Academia* (Stanford U Press 2019).” Leah Litman et al., *Cute as a Button*, STRICT SCRUTINY (Nov. 23, 2020), <https://strictscrutinypodcast.com/podcast/cute-button/> [<https://perma.cc/92A3-HQ8W>].
27. Professor Deo's scholarship in this area is extensive. See generally DEO, *supra* note 13.

title, “Cute as a Button,” came from a “compliment” that one of them received during the faculty hiring process.

We asked all students to listen to and reflect on the podcasts hoping that the experience would give them a shared vocabulary with which to discuss important issues. After each podcast, we asked students to respond to this reflection prompt: “Describe something you learned from this podcast, something that surprised you, or your response to something you heard.” Only professors had access to the students’ reflections. Finally, students could track their progress through the asynchronous unit using a live checklist in our learning management system.

Completing the lesson was mandatory for all students, but a faculty-led Zoom discussion session about the material was optional. We did this for a few reasons. First, law students are constantly making choices about how to spend their limited time. We wanted to let students choose whether to allocate additional time to structured, professor-led discussion of the issues raised by the podcasts. Second, we also knew that making discussions like this one mandatory is the kind of thing that faculty can get blowback for, whether in student evaluations, complaints to administrators, or elsewhere. Listening to the podcasts helped students see how differently situated faculty might face different kinds of repercussions—from challenges to their authority in the classroom to complaints on evaluations to job loss.²⁸

We co-led the discussion session and invited all three sections of our students.²⁹ We hoped that by combining our sections, students could benefit from multiple professors’ perspectives and have a rich discussion, even if only a few people from each section participated. We didn’t have a fixed presentation or agenda; instead, we just opened the floor for student comments and conversation. The resulting discussion was lively, respectful, and productive. That said, the session was voluntary, and so students who were really interested self-selected into the discussion. Likely as a result, we didn’t encounter resistance.

IV. THE UNIT SUCCEEDED: STUDENTS UNCOVERED LAW SCHOOLS’ HIDDEN STRUCTURES

Students found all three podcasts eye-opening: in their reflections, they expressed surprise, horror, and gratitude. And in our live discussions, students wanted to know what they could do to fix the problems

28. See DEO, *supra* note 13, at 55–78; Allen et al., *supra* note 13, at 527.

29. This worked particularly well because our students were in the same “college” (what is sometimes called a “section” at other schools). Thus, while they did not all have the same legal writing professor, they took all of their other courses together and had gotten to know and trust each other, opening the door to productive and candid conversations.

they heard about in the podcasts. As described below, students also reacted differently to the different podcasts. Professor Macfarlane's podcast included her own personal experiences, and students had personal reactions. By contrast, Professor Merritt's podcast described macro-level trends and challenges in both the legal profession and legal education, and students engaged with her ideas at the macro-idea level. And finally, Professor Deo's podcast included both personal stories and structural descriptions, and students mapped those onto their own law school experiences.

A. How Is Law School Inaccessible to Students with Disabilities?

Multiple students who self-identified as having a disability said that Professor Macfarlane's podcast was affirming. Many students expressed dismay or embarrassment that they hadn't known about the barriers that make law schools and legal employment inaccessible to people with disabilities. Three of Professor Macfarlane's points about law school really resonated with students: laptop bans, extra time on exams, and the burdensome process of getting accommodations.

First, Professor Macfarlane explained how laptop bans force a student who needs a laptop as part of an accommodation to choose between (1) involuntarily disclosing their disability in order to have a laptop or (2) foregoing an accommodation—a laptop—that allows them to participate to the same extent as their classmates. Many students hadn't previously thought about the many ways laptop bans might affect students with disabilities and were grateful to learn about them.

Second, Professor Macfarlane's podcast explained how extra time on exams, one of the most common accommodations in the law school setting, harms as well as it helps. Even if extra time makes some exams more accessible to students with certain disabilities, it also often means that students who receive the accommodation must take the exam in a separate room, again forcing involuntary disclosure of disability. The accommodated students then face stigma for their disabilities and (inaccurate) perceptions by classmates—and, surprisingly, even some professors—that they are receiving an unfair advantage.

Third, Professor Macfarlane described how difficult it is to seek a disability accommodation, regardless of whether that request is granted. Getting "proper documentation" of a disability is a time-consuming and expensive process, which sometimes must be repeated annually.³⁰ These costs affect how easily students can access the

30. One of Professor Macfarlane's recent articles describes the price of documenting disability and suggests an alternative model, at least in the employment context. See Katherine A. Macfarlane, *Disability Without Documentation*, 90 *FORDHAM L.*

accommodations that enable them to learn. Professor Macfarlane's description especially resonated with students who had been through the accommodations journey, including the futility of having to suggest accommodations for law school exams before ever taking a law school exam.

Professor Macfarlane's podcast, in which she spoke from both expertise and personal experience, was a crucial part of the How Law School Works unit. Disabled students felt validated and less alone after hearing how Professor Macfarlane navigated her disability in law school and in practice. Their peers learned more about what law school is like for disabled students—and why accommodations aren't an advantage—without requiring disclosure or additional labor from their classmates. And the podcast furthered our goal of making one kind of exclusion and inequity more visible to those who are not personally affected: many students who didn't know about the accommodations process expressed that they would be more mindful of accessibility issues going forward.

B. How Are Law Schools Preparing for the Future of Practice?

Professor Merritt's podcast looked at the future of legal education and the legal profession and was most interesting to students when she exposed a mismatch: legal education that isn't suited to where the profession is going or what people need from it. Professor Merritt divided law schools into three groups with different incentives and resources to innovate. The first category is wealthy schools that place most of their students with big law firms and from which most of the professors in the legal academy are hired. These schools have the money to innovate but no motivation to change their basic structure, which serves the corporations and firms that many of their graduates work for.³¹ The second category is financially constrained schools that place students in a mix of large firms, government, small firms, and solo-practitioner offices. Innovation is tough at these schools because they can't afford marginal innovation, they must continue placing stu-

REV. 59 (2021), http://fordhamlawreview.org/wp-content/uploads/2021/10/Macfarlane_October.pdf [<https://perma.cc/ZDR2-PKNY>]; see also Elizabeth F. Emens, *Disability Admin: The Invisible Costs of Being Disabled*, 105 MINN. L. REV. 2329, 2337 (2021) (“This Essay concerns the heavy burdens of life admin that typically accompany disability in order to inform disability law and improve legal doctrine.”).

31. Because these are the same institutions from which the bulk of law faculty are hired, it is perhaps unsurprising that law schools are so resistant to change and often reproduce or reinforce the same hierarchies. See Sarah Lawsky, *Lawsky Entry Level Hiring Report 2021*, PRAWFSBLAWG (May 18, 2021), <https://prawfsblawg.blogs.com/prawfsblawg/entry-level-hiring-report/> [<https://perma.cc/HQX7-FKGM>].

dents without structural changes, and they may want to emulate the first category of elite schools (e.g., Harvard). The third category is schools that are in such financial peril that they need to either innovate radically or shut down.

Some students empathized with the deans of schools in the second and third categories, commenting on the tough choices those deans must make between gambling on innovation and sticking with what (maybe) works. But students also expressed frustration that a legal education could cost so much and still not prepare them to work effectively with clients. The podcast elicited serious concerns about the economics of the profession, particularly for students who wanted to do lower-paying public interest work and were disheartened by Professor Merritt's forecast.

Professor Merritt also described some structural sources of institutional resistance to change in law schools. For example, many current law faculty simply don't have a good picture of what lawyers do in the workplace now or even what would-be clients need from their lawyers. Without that information, law schools can't tell if they are serving those needs. Professor Merritt also opined that some doctrinal law professors don't have the expertise to teach students "how to lawyer" and seem unwilling to learn new skills.³² Instead, she explained, law schools often address this teacher shortage by hiring people into less prestigious non-tenure-track positions to teach lawyering skills, resulting in a "caste system" that separates lower paid expert teachers from higher paid expert researchers. Students described these barriers with words like depressing, frustrating, and ridiculous. They seemed particularly dismayed that a professor's desire for prestige would drive decision-making.

The student reflections also reminded us that decades-long debates about the role of law schools were new to our students. They didn't know about major calls for reform like the MacCrate Report, the Carnegie Report, or the Institute for the Advancement of the American Legal System (IAALS) Report.³³ They had fresh thoughts on the pur-

32. Professor Merritt described how she learned to be a clinical professor after decades of being a "pointy-headed" doctrinal professor, modeling the learning process for her students. However, Professor Merritt did not think that telling faculty that they have to learn would go very far. Madison & Hunter, *supra* note 24, at 32:20–28.

33. See, e.g., AM. BAR ASS'N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (1992), <https://www.corteidh.or.cr/tablas/28961.pdf> [<https://perma.cc/E3VU-VY9R>]; WILLIAM M. SULLIVAN ET AL., CARNEGIE FOUND. FOR THE ADVANCEMENT OF TEACHING, EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF THE LAW (2007), http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf [<https://perma.cc/9PT7-Z3WL>]; ALLI GERKMAN & LOGAN CORNETT, INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., FOUNDATIONS FOR PRACTICE: THE WHOLE LAWYER AND THE CHARACTER QUOTIENT, (July 26, 2016),

pose of law school, whether they were learning enough about client relations, whether regulators help or hurt innovation, whether law schools were supplying what the legal market demands, and whether artificial intelligence will bring the whole endeavor to an end. The costs of becoming a lawyer and paying for legal services elicited particular concern. Even though our students were all in a J.D. program, many liked Professor Merritt's ideas about adding less expensive non-J.D. paths to deliver legal services because doing so could make them more affordable. In the end, we discovered value in introducing students—the consumers and, hopefully, beneficiaries of legal education—to the classic literature about why legal education looks the way it does, not only to pull back the curtain on the whole endeavor and ask who it's really serving, but also to help them hold their institutions accountable.

C. How Do Race, Gender, and Status Affect Law Professors' Livelihoods?

In our discussion groups, students were eager to discuss Professor Deo's podcast. Perhaps the identity of those facilitating the discussion mattered: we are both women, fixed-term legal writing professors, and one of us is a woman of color. We sit at the intersection of multiple vulnerable classes in the legal academy. And as professors who met with each of our students at least six times per semester, provided individualized feedback on so much of their work, offered academic advising and advice about navigating law school, and organized social events to help build community, the concept of academic caretaking was a helpful label for something they saw us doing, especially in the COVID era. Or perhaps the eagerness was because we're at a public institution so all our salaries are public (and students are savvy and told us that they had looked them up).³⁴

Students' written reflections confirmed that they were particularly interested in the phenomenon of academic caretaking. This was the first time that many had heard about "service" as that term is used in academia. They were interested to learn that this thing they had seen professors doing that was not quite teaching and was not quite research had a name, and that it's one of the kinds of work law schools

https://iaals.du.edu/sites/default/files/documents/publications/foundations_for_practice_whole_lawyer_character_quotient.pdf [https://perma.cc/N7RK-U45W].

34. Another possible explanation is that legal academia is very much a black box for students, who have little information—and, typically, even less explicit instruction from faculty—about what law professors do and what challenges we may face. And of course, students are naturally curious about their professors and upset by the inequitable treatment. So this podcast might have generated similar responses regardless of who assigned it. *See generally* Litman et al., *supra* note 26.

expect. At the same time, some students had noticed that this service did not seem to be evenly distributed among the faculty.

Professor Deo's podcast confirmed their observations, highlighting the particularly high service burdens on women of color and non-tenure-track professors and explaining how professors are rarely, if ever, compensated for their service, even when they go above and beyond their institution's norms. For example, Professor Deo explained how a professor might receive a financial reward for a prestigious article placement, but not for spending extra hours mentoring students (or counseling students through racial trauma, writing the first draft of diversity policies, setting up Doodle polls for committee meetings, helping students manage impostor syndrome before job interviews, supporting students through sexual harassment, and so on).

Finally, in their written reflections, some students shared complicated feelings about their own relationships with professors. On the one hand, they appreciated the time and attention they received from their female and lower status professors. On the other hand, they recognized that this work was unequally distributed and expressed guilt about seeking academic care from the two of us. This is something that we, as professors, anticipated and affirmatively raised in our discussion. We explained that while we wanted them to be aware of general trends, we both valued frequent and meaningful interactions with students and encouraged them to keep coming to us as much as they wanted. Happily, they did—but they also asked what they could do to increase the status and compensation of professors “like us” at the law school. It shouldn't be their job, of course, but this example shows that once students have a better sense of how law schools work, they are better situated at least to ask for changes they care about at their own institutions.

Students were also struck by how hard it is to get a job in the legal academy, especially for women of color, who are more likely to face explicit and implicit bias and to lack insider knowledge and resources that other candidates enjoy. Professor Deo and the *Strict Scrutiny* hosts explained how the “meat market”³⁵—the American Association of Law Schools (AALS) law professor hiring conference that happens each fall—is governed by unspoken rules and why candidates with certain pedigrees, connections, and mentors were much more likely to succeed.³⁶ For better or worse, both of us were hired to our positions in

35. Just a random plea here to be slightly less gross and refer to it as the “meet market.”

36. See DEO, *supra* note 13, at 12–34 (data about makeup of law faculty); Eric J. Segall & Adam Feldman, *The Elite Teaching the Elite: Who Gets Hired by the Top Law Schools?*, 68 J. LEGAL EDUC. 614 (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3279878 [<https://perma.cc/6RTK-S5ZH>]; Milan Markovic, *The Law Professor Pipeline*, 92 TEMPLE L. REV. 813, 822–34 (2020) (discussing statistical analysis of law faculty hiring).

other ways,³⁷ but just learning about the “meat market” was an unpleasant experience for students that showed them how it was full of obstacles for “non-traditional” candidates. After they listened to the podcast, students better understood the barriers to entry in legal academia for candidates with certain backgrounds, how those barriers might connect to some of their own challenges in law school, and why law school faculties aren’t as diverse as they could be.

D. “How Law School Works” Says the Quiet Part Out Loud

Our unit only scratched the surface of the ways in which law schools are affected by structural inequality. Nevertheless, it was enough to prompt students to talk about their concerns. Many students seemed relieved to hear, from professors they trusted, that (1) the inequalities they had observed or experienced in law school were real, (2) other people in other places had noticed them too, and (3) at least in the space we had created for them, it was okay to talk about them. Ultimately, we think that faculty and administrators should encourage conversations like this in the law school community, even if doing so means sometimes acknowledging that there are problems they cannot change easily, quickly, or perhaps at all. Here, candor is key: once students understand the different institutional forces at play or what constraints the law school is operating under, then they can talk with faculty and administrators using that shared knowledge. This transparency can build trust among students, faculty, and administrators.³⁸

More generally, *How Law School Works* also gives students practice learning about and navigating the inner workings of unfamiliar institutions. That practice will be useful as students navigate new

37. Professor Deo describes the phenomenon of “accidental law professors” in *Unequal Profession*. Many women and especially women of color enter legal academia through alternate or non-traditional pathways. This means that, if law schools want to assemble a diverse faculty, they will need to put in more work to identify, recruit, and retain these professors. DEO, *supra* note 13, at 13.

38. See DEO & CHRISTENSEN, *supra* note 9, at 4 (highlighting the foreword by Dean Kimberly M. Mutcherson explaining some of the many changes needed for law schools to become more inclusive spaces where students from a variety of backgrounds feel welcome, and noting that “it all begins with difficult, probing, and uncomfortable conversations.”). And, as Dean Mutcherson explains, what we do in law schools affects our students long after they leave our classrooms. See *id.* Dean Mutcherson further stresses:

Students whose law schools do not challenge them to reflect on their own cultural backgrounds and critique the law’s treatment of race, gender, sexual orientation, and other marginalized identities will be ill-equipped to use their law degrees in the diverse world into which they graduate. Students who do not feel a sense of belonging at their law schools will not have the support they need to thrive.

Id.

practice settings and seek to understand power dynamics or other structural issues. And hopefully, they will understand that saying the quiet parts out loud can help everyone.

V. WE WILL DO THIS AGAIN, AND MAYBE YOU CAN TOO

Overall, *How Law School Works* was a success, and we plan to incorporate it into our teaching every year. The subject will always be timely. In future years, we can adjust the content. We might incorporate short readings: personal essays, pieces from the popular press, blog posts, or accessible law review articles.³⁹ We can also, of course, add to or change the podcasts we use or include new or different topics, like student debt or the effect of law school rankings⁴⁰ on law school budgets.⁴¹

We'd love for law professors across the country to incorporate a unit like this into their curriculum. And we'd especially love it if a broad cross-section of faculty across a variety of backgrounds and titles—including the professors least likely to experience negative consequences for talking about the hidden rules and hierarchies of law schools—would do so. We incorporated the unit into the second semester of a first-year legal writing course, which, as law school courses go, is often seen as the best choice for addressing cultural competency and professional norms. It cannot be the only choice, though.⁴² Hidden

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39. In addition to those we've cited elsewhere, see Hannah Taylor, *The Empty Promise of the Supreme Court's Landmark Affirmative Action Case*, SLATE (June 12, 2020, 1:50 PM), <https://slate.com/news-and-politics/2020/06/grutter-v-bollinger-michigan-law-diversity-racism.html> [<https://perma.cc/EFQ2-ESQW>]; Deborah W. Denno & Bruce A. Green, *Mental Health and the Legal Profession: Foreword and Dedication*, 89 FORDHAM L. REV. 2415 (2021), <http://fordhamlawreview.org/wp-content/uploads/2021/05/Denno-and-Green-May-.pdf> [<https://perma.cc/53YX-U4JQ>]; NAT'L LGBT BAR ASS'N & FOUND., LGBTQ+ BEST PRACTICES FOR LAW SCHOOLS: A GUIDE TO INSTITUTIONAL EQUITY (2020), <https://lgbtbar.org/wp-content/uploads/sites/6/sites/8/2020/10/Law-School-Best-Practices-Guide.pdf> [<https://perma.cc/8R8M-AM4F>]; Lee Rawles, *How Neurodiverse Lawyers Can Thrive in the Profession—and Change It for the Better*, A.B.A. J.: MOD. L. LIBR. (Aug. 11, 2021), <https://www.americanbar.org/groups/journal/podcast/how-neurodiverse-lawyers-can-thrive-in-the-profession-and-change/> [<https://perma.cc/R7HA-UHBN>].
40. See, e.g., Kyle McEntee, *The Law School Rankings Rat Race Has New Cheese*, ABOVE THE L. (Mar. 23, 2021, 11:43 AM), <https://abovethelaw.com/2021/03/the-law-school-rankings-rat-race-has-new-cheese/> [<https://perma.cc/AY3D-GQL9>]; Rory D. Bahadur, *Law School Rankings and the Impossibility of Anti-Racism*, 53 ST. MARY'S L.J. (forthcoming 2022).
41. Other possibilities include: why we have a mandatory grading curve and its effects on faculty and students; mental health in law schools and the legal profession; whether the bar exam is inherently discriminatory; and whether the Langdellian model of legal education makes sense in the twenty-first century.
42. Although writing on the slightly different topic of incorporating comparative rhetorical traditions into the law curriculum, Professor McMurtry-Chubb's caution is appropriate here:

rules are a feature of the traditional first-year casebook classes, and so this unit could fit into that broader theme. For upper-level courses, the podcasts (or readings) could be tailored to subject matter (e.g., disability law, employment law). Regardless, the primary criterion is whether professors and students are looking critically at norms *within* the law school.

Although we've described a unit about the "quiet parts" of law school, the quiet parts of any legal institution could serve as a topic and interesting pedagogical tool—clerkships, for example. As the legal academy continues to direct attention to systemic inequalities and resistance to change in the legal system, let's start by looking inward, saying the quiet parts out loud, and equipping our students not only to navigate, but also to improve, their own institutions and legal education more generally.

It would be untenable to implement the classroom exercises I suggest above, and many more like it, solely within the confines of the modern legal writing course. It is more untenable still to place the onus of this task on law professors of legal writing who, still writing at the master's table, occupy chairs with missing legs, no legs, or who are forced to stand in inequity and job instability.

Teri A. McMurtry-Chubb, *Still Writing at the Master's Table: Decolonizing Rhetoric in Legal Writing for a "Woke" Legal Academy*, 21 SCHOLAR 255, 290 (2019) (footnote omitted).