

THE TIME IS NOW: ABA STANDARD 303(C) AS THE IMPETUS FOR A TRULY INCLUSIVE 1L CLASSROOM

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ABSTRACT

There is a troubling and invasive paradox that has existed in our law school classrooms for too long. We continue to use outdated teaching practices to train future lawyers, despite our knowledge that these practices are not best practices and can be harmful to diverse students.¹ The existing model for law school teaching has been described as oppressive, all-consuming, overly white,² and even “intellectually violent” for students of color.³ The underlying norm of law schools has been characterized as not only “white,” but also “heterosexual, upper-class-identified, able-bodied, and politically conservative.”⁴ As a result, diverse students often struggle academically and psychologically in our law school classrooms.⁵ This is

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1. In this Essay, I use the term “diverse” to describe students whose identity encompasses one or more race, ethnicity, culture, gender, gender identity, gender expression, sexual orientation, socioeconomic status, religion, spirituality, disability, age, national origin, immigration status, or language that has historically been marginalized.

2. Anne D. Gordon, *Cleaning up Our Own Houses: Creating Anti-Racist Clinical Programs*, 29 CLINICAL L. REV. 49, 49, 53 (2022).

3. Shaun Ossei-Owusu, *For Minority Law Students, Learning the Law Can Be Intellectually Violent*, ABA J.: YOUR VOICE (OCT. 15, 2020, 11:23 AM), https://www.abajournal.com/voice/article/for_minority_law_students_learning_the_law_can_be_intellectually_violent [https://perma.cc/QKA8-2BN3].

4. Eduardo R.C. Capulong, *Christopher Columbus Langdell, Black Lives Matter and Legal Education*, JURIST: COMMENTARY (July 8, 2020, 9:14 PM), <https://www.jurist.org/commentary/2020/07/eduardo-capulong-legal-education/> [https://perma.cc/G49R-522E].

5. Erin C. Lain, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780 (2017); Sean Darling-Hammond & Kristen Holmquist, *Creating Wise Classrooms to Empower Diverse Law Students: Lessons in Pedagogy from Transformative Law Professors*, 24 NAT'L BLACK L.J. 1 (2015); Gordon, *supra* note 2; Deborah L. Rhode, *Managing Stress, Grief, and Mental Health Challenges in the Legal Profession; Not Your*

particularly true for diverse students in the first year, or “1L,” year who are developing an understanding of what it takes to become a lawyer. Teaching practices, such as cold calling and lack of explicit instruction, can create a feeling of alienation for diverse law students at this crucial foundational point in their legal education.

This fall, law schools were required to implement the American Bar Association’s new Curriculum Standard 303(c), which requires that all law students be educated on bias, cultural competency, and racism. In this Essay, I argue that the American Bar Association’s new Standard is our chance to finally take the steps scholars have advocated for many years and make the law school experience, especially the 1L curriculum, more inclusive. Anything otherwise would be strongly antithetical to the underlying goals of the new standard.

INTRODUCTION

Since the late 1800s, law school classrooms have relied on antiquated teaching practices,⁶ which were created in an ancient era of law school education when students and faculty were almost exclusively white and male.⁷ Any law school graduate reading this today, across multiple generations, would likely be able to tell a similar tale of their law school experience. The infamous 1L year stands out as the most dreadful year, filled with its inescapable cold calls and other mysterious practices, such as case briefing, IRAC, study groups, outlining, law review, and high-stakes final exams. The “glorified hazing” in our law school classrooms has

Usual Law Review Article, 89 FORDHAM L. REV. 2565 (2020); Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591 (1982); Kathryn M. Young, *Understanding the Social and Cognitive Processes in Law School That Create Unhealthy Lawyers*, 89 FORDHAM L. REV. 2575 (2020); Jeannie Suk Gersen, *The Socratic Method in the Age of Trauma*, 130 HARV. L. REV. 2320 (2017).

6. “The plain fact is that American legal education, and especially its formative first year, remains remarkably similar to the curriculum invented at the Harvard Law School by Christopher Columbus Langdell over a century and a quarter ago. Invented, that is, not just before the Internet, but before the telephone; ... not just before *Brown v. Board of Education*, but before *Plessy v. Ferguson*.” L. Danielle Tully, *What Law Schools Should Leave Behind #IncludeTheirStories: Rethinking, Reimagining, and Reshaping Legal Education*, 2022 UTAH L. REV. 837, 838 (quoting Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 VAND. L. REV. 597, 597 (2007)).

7. Bennett Capers, *The Law School as a White Space*, 106 MINN. L. REV. 7, 18 (2021); Tully, *supra* note 6 at 845.

become understood as a rite of passage for lawyers,⁸ and despite our progress in understanding how individuals learn, the law school classroom has largely remained the same over the years.⁹

The 1L year sets the tone for the trajectory of students' legal careers.¹⁰ And yet, 1L classes are more likely to impose pedagogical methods,¹¹ such as so-called "Socratic" questioning,¹² which are outdated, oppressive, shocking, and have the potential to inflict psychological harm.¹³ Hierarchical grading practices, for instance, can lead to chronic anxiety in law students and law students can spend months and years in an unhealthy state of fight-or-flight.¹⁴ Many scholars have critiqued law school teaching methods and their harmful impact, particularly on diverse students.¹⁵ However, law school teaching has remained significantly the same.

In 2020—a year of unforgettable devastation, global pandemic, racial reckoning, and many abrupt changes to our way of life—our classrooms suddenly shifted to virtual platforms, and many law schools issued statements committing to diversity and inclusion.¹⁶ In June of 2020, 150 law school deans wrote a letter to the American Bar Association (ABA), calling for the organization to require that law school provide training and education on bias, cultural awareness, and racism for law students, explaining that "such skills are essential to professional competence, legal practice, and being a lawyer."¹⁷ "We are in a unique moment in our history," the letter continued, "to confront racism that is deeply embedded in our

8. Rachel Gurvich, L. Danielle Tully, Laura A. Webb, Alexa Z. Chew, Jane E. Cross, & Joy Kanwar, *Reimagining Langdell's Legacy: Puncturing the Equilibrium in Law School Pedagogy*, 101 N.C. L. REV. F. 118, 156 (2023).

9. *Id.* at 155.

10. Eduardo R.C. Capulong, Andrew King-Ries, & Monte Mills, *Starting at the Start: Integrating Race and Reflection for an Antiracist Approach to Professional Identity Development in the First-Year Curriculum*, in INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION & EQUITY IN THE LAW SCHOOL CLASSROOM 23 (Nicole P. Dyszlewski, Raquel J. Gabriel, Suzanne Harrington-Steppen, Anna Russell, & Genevieve B. Tung, eds., 2021).

11. Tully, *supra* note 6, at 840.

12. Catherine Bramble & Rory Bahadur, *Actively Achieving Greater Racial Equity in Law School Classrooms*, 70 CLEV. ST. L. REV. 709, 709 (2022).

13. *Id.* at 748–49.

14. John Bliss & David Sandomierski, *Learning Without Grade Anxiety: Lessons from the Pass/Fail Experiment in North American J.D. Programs*, 48 OHIO N.U. L. REV. 555, 574 (2021).

15. Lain, *supra* note 5.

16. Capers, *supra* note 7, at 44.

17. Letter from Alicia Ouellette, President & Dean Albany L. Sch., et al., to Members of the Council of the ABA Section of Legal Educ. & Admissions to the Bar, AM. BAR ASS'N (2020).

institutions, including in the legal profession.”¹⁸

In February 2022, the ABA’s House of Delegates approved changes to its law school accreditation Curriculum Standard 303¹⁹, adding the requirement that law schools provide education to law students on bias, cross-cultural competency, and racism at the start of the program of legal education, and at least once again before graduation.²⁰ The “Interpretations” accompanying the amended Standard provide examples of how the requirement might be implemented, including through first year orientation, lectures, or courses, but stopping short of prescribing the form or content of the education.²¹ They explain that *all* law schools must demonstrate that *all* law students are required to participate in a “substantial activity designed to reinforce the skill of cultural competency” and their “obligation as future lawyers to work to eliminate racism in the legal profession.”²² Law schools were expected to implement their plans by the fall of 2023.²³

The update to the ABA Standard falls largely in line with what the deans requested in their letter but fails to require that law schools look closely at how their own practices align with its underlying goals to promote anti-bias, anti-racism, and cross-cultural competency. Nonetheless, in the arc of the trajectory of the history of law school education in this country, the ABA’s mandate is quite outstanding.

The challenge now is for law schools and law teachers to accept this new requirement as an opportunity to thread inclusiveness throughout the law school learning experience from start to finish. We law teachers can begin to implement these changes as soon as possible in the first-year curriculum. Standard 303(c) specifically requires that law schools provide

18. *Id.*

19. AM. BAR ASS’N SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, REVISIONS CODIFIED IN THE ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS AFTER ABA HOUSE OF DELEGATES CONCURRENCE IN FEBRUARY AND AUGUST 2023, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2023-2024/2022-2023-standards-and-rules-of-procedure-revisions.pdf

20. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2022-2023 Standard 303(c) (AM. BAR ASS’N 2022) [hereinafter ABA Standard 303(c)]. These changes were accompanied by changes to ABA Standard 303(b) with the addition of Standard 303(b)(1), which requires law schools to now offer substantial opportunities for law students for the development of a professional identity.

21. *Id.*

22. *Id.*

23. Gurvich, Tully, Webb, Chew, Cross, & Kanwar, *supra* note 8, at 155.

education on bias, cross-cultural competency, and racism at the start of the program of legal education.²⁴ A first-year curriculum that, in and of itself, is not inclusive for all students would be arguably contradictory to the goal of providing instruction on bias, cross-cultural competence, and racism.

This Essay puts forth that ABA's Standard 303(c) is an opportunity for legal educators to deeply reflect on our pedagogical practices and to be thoughtful about how our own teaching methodology may promote or inhibit our goal to educate students on bias, racism, and cultural competency, beginning with the 1L year. The teaching methodology in first year law school classrooms today is far too similar to the days when law school classrooms were much less diverse. Part I of this Essay describes the lack of inclusivity in law school classrooms, particularly in the first year. Part II proposes solutions to making the 1L curriculum more consistent with the spirit of ABA Standard 303(c). Part III of this Essay explains why this moment is the right time to finally implement the changes to make the law school classroom more inclusive.

I: The Pedagogical Methods in Use in the 1L Classroom Are Not Inclusive and Are in Contradiction to the Goals Underlying ABA Standard 303(C).

Despite decades of scholarship on how law school classrooms perpetuate hierarchies of race, gender, sexuality, and class and centuries of research about the science of learning, some law school teachers continue to implement teaching practices that are outdated and not inclusive.²⁵ Legal scholars have written time and time again about how the white-normative standards of law schools are pervasive and unremarked upon, and the impact this has on diverse students.²⁶

The first year of law school, arguably the most critical, is a law student's introduction to the legal profession. In the same classrooms where diverse law students are expected to develop important legal and analytical skills,

24. ABA Standard 303(c), *supra* note 20 (requiring that the law school provide education to law students on this topic at the start of the program of legal education, and at least once again before graduation).

25. See, e.g., Kennedy, *supra* note 5; Kimberlé Williams Crenshaw, *Toward a Race-Conscious Pedagogy in Legal Education*, 11 NAT'L BLACK L.J. 1 (1988); Capers, *supra* note 7; Jamie R. Abrams, *Legal Education's Curricular Tipping Point Toward Inclusive Socratic Teaching*, 49 HOFSTRA L. REV. 897, 904 (2021).

26. See, e.g., Capulong, King-Ries, & Mills, *supra* note 10; Capers, *supra* note 7.

they are inundated with messaging of what it means to be a lawyer that can signal that they do not belong.²⁷ Professor Shaun Ossei-Owusu describes how the process of learning the law can be “intellectually violent,”²⁸ especially for students of color, calling on the phrase “spirit-murder,”²⁹ coined by Professor Patricia Williams, to describe what can happen to diverse students in the process of “learning to think like a lawyer.”³⁰

Students of color consistently report disparity in their law school satisfaction, with Black women the least likely to report a positive experience.³¹ Black, Latinx, female, and students from low-income families express challenges in law school classrooms, including stereotyping, implicit bias, explicit bias,³² and experiencing law school as “a racially and gender-hostile environment.”³³ These students also report difficulty with the lack of direct instruction on foundational vocabulary and concepts, such as the court system,³⁴ and dissatisfaction with the lack of feedback and little guidance on how to study, read, and brief cases despite high-stakes exams.³⁵

Unfortunately, some law school classrooms continue to rely on a pedagogical style that is an “artifact of another generation” and harmful to today’s more diverse student body.³⁶ Diverse law students learn how to “think like a lawyer” in the manner prescribed by Christopher Columbus Langdell in the 19th century, but they often find themselves on the margins of the law school experience with a sense that they do not belong.³⁷ Law school can be a difficult, traumatic experience for any student, but this is heightened when you “inject[] a layer of difference into an already highly competitive and challenging educational environment,” creating complex

27. Capers, *supra* note 7, at 12; Capulong, King-Ries, & Mills, *supra* note 10.

28. Ossei-Owusu, *supra* note 3.

29. Patricia Williams, *Spirit-Murdering the Messenger: The Discourse of Fingerpointing as the Law’s Response to Racism*, 42 U. MIAMI L. REV. 127, 129–30 (1987). Williams describes ‘spirit murder’ as an impact of racism on individuals, which is “devastating, costly, psychically obliterating” in nature, “so deeply embedded in culture as to prove extremely resistant to being recognized,” and difficult to prove. *Id.*

30. Ossei-Owusu, *supra* note 3; Williams, *supra* note 29.

31. See Abrams, *supra* note 25, at 907.

32. Darling-Hammond & Holmquist, *supra* note 5, at 7.

33. Jonathan Feingold & Doug Souza, *Measuring the Racial Unevenness of Law School*, 15 BERKELEY J. AFR.-AM. L. & POL’Y 71, 104 (2013).

34. Darling-Hammond & Holmquist, *supra* note 5, at 7.

35. *Id.*

36. Gurvich, Tully, Webb, Chew, Cross, & Kanwar, *supra* note 8, at 146.

37. Capers, *supra* note 7, at 12.

challenges beyond an already difficult starting point.³⁸

Some would argue that traditional law school teaching practices are purposefully designed toward exclusivity. Facing poor public perception about legal education, Christopher Columbus Langdell's vision was to make entry into the profession more restricted and the process of learning the law more scientific.³⁹ At the time, many lawyers worked as apprentices rather than studying in classrooms.⁴⁰ Those who pursued formal education, attended lectures by lawyers and judges, memorizing and transcribing information.⁴¹ Langdell, Dean of Harvard Law School from 1870 to 1895, instituted practices including exams focused on hypothetical questions, a pedagogical approach that he called "Socratic questioning," analysis of appellate decisions, the case method,⁴² and the institution of the five original classes that are still taught in the 1L year at most law schools: Civil Procedure, Contracts, Criminal Law, Property, and Torts. More than 150 years later, Langdell's method continues to be the standard pedagogical approach in most law school classrooms.⁴³

Langdell's efforts to make the law "a more respectable and worthy"⁴⁴ profession led to it becoming more "exclusive and rarified."⁴⁵ His teaching methods instill beliefs of hierarchy⁴⁶ and solidify norms that promote existing power structures to students from the moment they walk into law school.⁴⁷ The method is not student-centered, but rather professor-centered.⁴⁸ The so-called Socratic method involves the professor asking a series of discrete questions in a rather performance-like manner, emphasizing what students do not know, centralizing the professor who

38. Feingold & Souza, *supra* note 33, at 92.

39. JOAN W. HOWARTH, SHAPING THE BAR: THE FUTURE OF ATTORNEY LICENSING 19 (2022); Gurvich, Tully, Webb, Chew, Cross, & Kanwar, *supra* note 8, at 123.

40. Gurvich, Tully, Webb, Chew, Cross, & Kanwar, *supra* note 8, at 125.

41. *Id.* at 126.

42. The case method was created by Christopher Columbus Langdell as an attempt to teach the law in a more scientific manner through the reading of judicial decisions. *See, e.g.*, Edwin W. Patterson, *Case Method in American Legal Education: Its Origins and Objectives*, *The*, 4 J. LEGAL EDUC. 1 (1951).

43. *Id.* at 131.

44. Linda H. Edwards, *The Trouble with Categories: What Theory Can Teach Us About the Doctrine-Skills Divide*, 64 J. LEGAL EDUC. 181, 199 (2014).

45. HOWARTH, *supra* note 39, at 19.

46. Abrams, *supra* note 25, at 908.

47. Kennedy, *supra* note 5, at 591.

48. Abrams, *supra* note 25, at 897; Bramble & Bahadur, *supra* note 12, at 735; Kennedy, *supra* note 5, at 593.

holds the secret answers, and, ultimately, instilling feelings of fear and embarrassment in the students.⁴⁹ Rather than fostering learning and growth, instructor-focused “Socratic” questioning has been described as a harmful assault, causing students to respond as if they are in danger.⁵⁰

This teaching method reflects hegemonic values, such as being logical, confrontational, argumentative, impersonal, and assertive.⁵¹ This style can be disconcerting for individuals who prefer a more cooperative and communal style of learning, including some women.⁵² In “Becoming Gentleman: Women’s Experiences at One Ivy League School,” authors Lani Guinier, Michelle Fine, and Jane Balin found that women law students felt alienated by “Socratic” instruction, and felt that their voices were “stolen” from them during the first year.⁵³ The method also “humiliates, embarrasses, and devalues” students, ostracizing students who are not strong oral communicators or who do not think quickly on their feet.⁵⁴

Langdell’s “Socratic” method also devalues difference, which can contribute also to the silencing of students of color.⁵⁵ It teaches students that “thinking like a lawyer” is objective and impartial, which can be complicated for students of color who frequently experience challenging racial interactions in the world.⁵⁶ What Professor Kimberle Crenshaw terms as a “norm of perspectivelessness”⁵⁷ in law schools is particularly challenging for students of color because they must “erase themselves” and set aside their history and identity in order to engage objectively.⁵⁸ Challenges linked to students’ identities, such as racial identity, often go unaddressed in law school classrooms despite concrete consequences for

49. Abrams, *supra* note 25, at 908; Kennedy, *supra* note 5, at 593.

50. Gersen, *supra* note 5, at 2325; Kennedy, *supra* note 5.

51. Bramble & Bahadur, *supra* note 12, at 750 (citing Ruta K. Stropus, *Mend It, Bend It, and Extend It: The Fate of Traditional Law School Methodology in the 21st Century*, 27 *LOY. U. CHI. L.J.* 449, 461 (1995)).

52. *Id.* at 750.

53. Lani Guinier, Michelle Fine, & Jane Balin, *Becoming Gentlemen: Women’s Experiences at One Ivy League Law School*, 143 *U. PA. L. REV.* 1, 3–4 (1994).

54. O. J. Salinas, *Secondary Courses Taught by Secondary Faculty: A (Personal) Call to Fully Integrate Skills Faculty and Skills Courses into the Law School Curriculum Ahead of the NextGen Bar Exam*, 107 *MINN. L. REV.* 2663, 69–70 (2023).

55. Capers, *supra* note 7, at 39.

56. Margaret E. Montoya, *Silence and Silencing: Their Centripetal and Centrifugal Forces in Legal Communication, Pedagogy and Discourse*, 33 *U. MICH. J.L. REFORM* 263 (2000); Capulong, *supra* note 4; Feingold & Souza, *supra* note 33, at 110–12.

57. Crenshaw, *supra* note 25, at 2.

58. Capers, *supra* note 7, at 37–38.

diverse students.⁵⁹ For example, conversations about affirmative action are common in first year Constitutional Law classes.⁶⁰ For students of color, it is difficult to have these conversations through a norm of perspectivelessness without divorcing themselves from their identity, personal experiences, and the potential impact of bias and stereotyping in the classroom.⁶¹

The Langdellian method is not optimal learning for any student because it is passive learning and not student-focused. Classrooms that are more inclusive and that utilize active learning techniques produce more equitable outcomes.⁶² In passive learning environments, diverse students are not provided regular opportunities to contribute to the learning experience by sharing their diverse perspectives and experiences.⁶³ Black students, for example, have been found to benefit from experiences that encourage connection, practice, renewal, exploration, design, resistance, and empowerment.⁶⁴ There are minimal opportunities for these kinds of experiences in most 1L classrooms.

Law school classrooms also have a problem with transparency that highly impacts diverse students. There is a “hidden curriculum” of unspoken rules within law school classrooms.⁶⁵ Students do not receive enough explicit instruction on vocabulary, foundational knowledge, or critical skills, such as exam writing, analysis, and study skills, which they are required to master to be successful.⁶⁶ Professors in large classrooms rarely spend time explaining foundational concepts or how law school works.⁶⁷ Instead skills are taught in a “mystified context” with the expectation that they will be “absorbed by osmosis.”⁶⁸ This is unfair.⁶⁹

59. Feingold & Souza, *supra* note 33, at 99.

60. *Id.*

61. Capers, *supra* note 7, at 37.

62. Abrams, *supra* note 25, at 898; Bramble & Bahadur, *supra* note 12, at 725.

63. Bramble & Bahadur, *supra* note 12, at 726.

64. Kali Nicole Murray, *Breaking Through Silence: The Necessary Space of the Doctrinal Classroom*, in INTEGRATING DOCTRINE AND DIVERSITY: INCLUSION & EQUITY IN THE LAW SCHOOL CLASSROOM 43 (Nicole P. Dyszlewski, et al., eds., 2021).

65. Cristal E. Jones, *Still Strangers in the Land: Achievement Barriers, Burdens, and Bridges Facing African American Students within Predominately White Law Schools*, 39 LAW & INEQ. 13, 39 (2021).

66. See Bramble & Bahadur, *supra* note 12, at 746–47.

67. Darling-Hammond & Holmquist, *supra* note 5, at 8; Kennedy, *supra* note 5, at 596.

68. Kennedy, *supra* note 5, at 596.

69. Bramble & Bahadur, *supra* note 12, at 749.

Skills training is extremely necessary, especially for students who lack context or basic foundational knowledge, but it is often isolated or viewed as supplementary.⁷⁰ Many law students of color do not feel like they really belong in the profession, given the nature of the first-year classes, until they take skills or experiential learning classes that directly teach skills and give them a chance to practice.⁷¹ Professor O.J. Salinas writes:

I did not think I belonged in the law school classroom or in the legal profession...I did not feel like I could really do the type of work that lawyers do until I started participating in skills courses.⁷²

The traditional law school classroom, especially during the first-year, undervalues skills training and relegates this work almost exclusively to academic support professors and clinicians.⁷³ Because skills classes are often optional or supplementary, students have to find time to attend them to learn how to read a case, prepare for class, outline, and study in law school.⁷⁴ It is crucial for law students to have these skills in order to be successful in school.⁷⁵ However, many law school classrooms fail to provide necessary explicit instruction and foundational content to help students thrive.⁷⁶ This creates a disparity for students who are unable to simply “absorb” these skills in the large law school classroom.⁷⁷

Many law students are also unable to track their progress. Most 1L classes are graded based on one final exam with minimal feedback throughout the semester. This means that exams are extremely high-stakes and anxiety-inducing. The method of using a single high-stakes summative assessment is problematic for all law students, especially historically excluded students.⁷⁸ Without feedback or formative assessment throughout the semester, students can experience their exam grades as “as almost totally

70. Kennedy, *supra* note 5, at 596.

71. BRYAN STEVENSON, *JUST MERCY: A STORY OF JUSTICE AND REDEMPTION* 12–13 (2014), (Stevenson recalling his disappointment with law school until an experiential advocacy opportunity).

72. Salinas, *supra* note 54, at 2679.

73. See Bramble & Bahadur, *supra* note 12, at 746; HOWARTH, *supra* note 39, at 61; Gurvich, Tully, Webb, Chew, Cross, & Kanwar, *supra* note 8, at 143; Salinas, *supra* note 47, at 2689.

74. Gurvich, Tully, Webb, Chew, Cross, & Kanwar, *supra* note 8, at 143.

75. HOWARTH, *supra* note 39, at 62.

76. Darling-Hammond & Holmquist, *supra* note 5, at 1.

77. Kennedy, *supra* note 5, at 596.

78. Gurvich, Tully, Webb, Chew, Cross, & Kanwar, *supra* note 8, at 138.

arbitrary.”⁷⁹ In most other educational settings, students receive feedback throughout the course in the form of short assignments, quizzes, and midterms, but most law schools only offer a single final exam.⁸⁰

High-stakes final exams are problematic in many ways. They create “destabilizing and destructive discomfort and foster fixed mindsets,” and this is most deeply felt by diverse students.⁸¹ They often test a narrow set of skills, such as issue spotting,⁸² and do not really address character-related competencies or other important skills.⁸³ There is also a question of the reliability of law school exams in measuring knowledge or thinking ability, especially given the exam conditions.⁸⁴

The 1L year is unforgettably difficult for many law students.⁸⁵ By graduation, many law students leave law school less happy and less hopeful, and some leave with new mental health diagnoses.⁸⁶ Substance abuse and mental health conditions are created or exacerbated by factors such as the intense rigor and competition in law schools and the financial burden of student loans.⁸⁷ The constant state of anxiety that students experience in law school can lead to health problems and diminished cognitive function later in life.⁸⁸ On top of this, there are many incentives to refrain from seeking help, including stigma and fear of the potential impact on employment or admission to the Bar.⁸⁹

As an added stress, diverse students also deal with the psychological weight of implicit and explicit bias, as well as alienation created by classroom teaching methodology.⁹⁰ The “hostility” of law school teaching methods can lead to a sense of unwelcome and lack of psychological safety for students of color.⁹¹ Cold-calling, for example, has been found to cause more stress for women, particularly women of color,⁹² and to be traumatic

79. Kennedy, *supra* note 5, at 600.

80. Feingold & Souza, *supra* note 33, at 93.

81. Tully, *supra* note 6, at 859.

82. Gurvich, Tully, Webb, Chew, Cross, & Kanwar, *supra* note 8, at 139–40.

83. Tully, *supra* note 6, at 857–66.

84. *Id.* at 858.

85. *See, e.g.*, Gordon, *supra* note 2, at 53.

86. Young, *supra* note 5, at 2576.

87. Rhode, *supra* note 5, at 2568; Bramble & Bahadur, *supra* note 12, at 749.

88. Bliss & Sandomierski, *supra* note 14, at 574.

89. Rhode, *supra* note 5, at 2568.

90. *Id.*

91. Lain, *supra* note 5, at 786.

92. Young, *supra* note 5, at 2594.

for some Black students.⁹³

II: Toward Making Law School Classrooms More Inclusive, Beginning with the 1L Year

The ABA Standard 303(c) moves law faculty toward improving the quality of our profession by requiring us to educate future lawyers on bias, racism, and cultural competence. Our teaching practices logically should align with this important goal, rather than hinder it.⁹⁴ Our classrooms should not be a hostile environment causing stress to any student; exclude any student from the benefits of a law school education; or contribute to feelings of marginalization, “reduced well-being, lower performance, and less opportunity”⁹⁵ for students. What follows is a list of recommendations directed toward the 1L curriculum because it is such a crucial and formative year, but these recommendations could ultimately extend throughout the law school experience.

Law students would benefit if the 1L doctrinal classroom provided a space for active and experiential learning⁹⁶ to enhance outcomes for all students, including diverse students.⁹⁷ The work of educational philosophers Jean Jacques Rousseau and John Dewey demonstrates that students benefit when teaching is student-centered⁹⁸ and provides ample opportunity for experiential learning and practice.⁹⁹ To accomplish this, we as law teachers must endeavor to engage true active learning and student-centered teaching practices. If we fail to use the best available pedagogy and centralize our students, we are arguably contributing to our student’s failure, particularly for students who struggle to adjust to the norms of predominately white law schools.¹⁰⁰

Law students would benefit if law faculty stopped hiding the ball, especially for 1L students, and help students see how best to succeed in law

93. Jones, *supra* note 65, at 15.

94. Salinas, *supra* note 54, at 2687.

95. Anne D. Gordon, *Better Than Our Biases: Using Psychological Research to Inform Our Approach to Inclusive, Effective Feedback*, 27 CLINICAL L. REV. 195, 197 (2021).

96. Murray, *supra* note 64.

97. Bramble & Bahadur, *supra* note 12, at 713.

98. *Id.* at 716–17.

99. *Id.* at 717.

100. Derrick A. Bell, Jr., *Black Students in White Law Schools: The Ordeal and the Opportunity*, 2 U. TOL. L. REV. 539, 548 (1970).

school. Eliminating some of the mystery can be done through clear syllabi, rubrics, transparency about exams, and consistent inclusive practices.¹⁰¹

Law students would benefit from access to fair assessments that measure a wide range of competencies, and they should be able to track their progress before the exam. Because these exams are so consequential, it is important that our exams are fair for students from all backgrounds.¹⁰² Law students would benefit from explicit instruction, skills training, and frequent feedback during their learning so that they can track their progress.¹⁰³

Law students would benefit from the integration of skills training into doctrinal classrooms, especially in the 1L year, and an end to “the divide between skills and doctrine”¹⁰⁴ and the “false hierarchy of knowledge over skills.”¹⁰⁵ Law students would benefit if doctrinal professors integrated direct instruction on important skills that will enable their students to be successful in the classroom, supplemented by academic support classes, where these skills can be reinforced and practiced. There are many issues with exclusively relying on “skills” professors to do this important work.¹⁰⁶ Law students would benefit if a greater diversity of skills were taught and evaluated in the 1L classroom to help students develop skills beyond those taught through the Langdellian method, including ethical, emotional, and interpersonal skills.¹⁰⁷ This could be achieved through the addition of simulation skills classes or clinical classes in the 1L year.

Finally, law students would benefit from more space for discussion in our 1L classrooms on issues that touch on race, gender, and class. The danger of not making time for these conversations is that it can alienate students in their first year of law school.¹⁰⁸ Syllabi should include discussion on these topics. When done properly, discussions can increase feelings of collaboration and cooperation, and help students feel like they belong, which is crucial to student success.¹⁰⁹

Table 1 summarizes some suggestions of practices and examples of

101. Gordon, *supra* note 2, at 95.

102. Tully, *supra* note 6, at 866.

103. *Id.* at 867–68.

104. Gurvich, Tully, Webb, Chew, Cross, & Kanwar, *supra* note 8, at 153.

105. HOWARTH, *supra* note 39, at 60.

106. Edwards, *supra* note 44, at 181–82; Salinas, *supra* note 54 at 2689.

107. Tully, *supra* note 6, at 866.

108. Gordon, *supra* note 2, at 95; Bramble & Bahadur, *supra* note 12, at 750.

109. Gurvich, Tully, Webb, Chew, Cross, & Kanwar, *supra* note, 8, at 154.

tools we can use to make 1L classrooms more inclusive.¹¹⁰

Table 1: Suggestions for a More Inclusive 1L Classroom

		Through
Model	<ul style="list-style-type: none"> - Inclusive principles - Wellness - Cultural competence - Responsiveness 	<ul style="list-style-type: none"> - Community agreements - Centering wellness - Teaching about implicit and explicit bias - Responding to microaggressions
Create	<ul style="list-style-type: none"> - An inclusive environment - Safe space - Connection between students - Connection between professor and student 	<ul style="list-style-type: none"> - Assigning diverse authors - Introducing critical perspectives - Making space for discussion
Communicate	<ul style="list-style-type: none"> - Expectations - How to do well in your class 	<ul style="list-style-type: none"> - Clear syllabus with rubrics - Goal setting - Clearly identifying exam expectations
Teach	<ul style="list-style-type: none"> - Foundational knowledge - Exam skills - Study skills - Promoting active learning - With students at the center - A broader range of skills 	<ul style="list-style-type: none"> - Small group activities - Pair share discussions - Discussion questions - Review activities

110. Darling-Hammond & Holmquist, *supra* note 5, at 23; Bramble & Bahadur, *supra* note 12, at 721, 739–40; Murray, *supra* note 64, at 41–49. Tiffany D. Atkins, #ForTheCulture: Generation Z and the Future of Legal Education, 26 MICH. J. RACE & L. 115, 156 (2020).

Evaluate	<ul style="list-style-type: none"> - Evaluate as often as possible - Regularly check for comprehension 	<ul style="list-style-type: none"> - Practice exams and questions - Writing exercises - Formative and summative Assessments
Provide	<ul style="list-style-type: none"> - Practice opportunities - Clear syllabus - Opportunities to reflect and discuss - Frequent feedback 	<ul style="list-style-type: none"> - Simulated activities - Role playing - Debates - In-class activities

III: Why Now?

One unexpected positive takeaway from COVID-19 is the knowledge that law faculty can abruptly shift our practices to meet the needs of our students when necessary. What will it take for us to see the urgency of the need to make our law school classrooms more inclusive? At a minimum, ABA's Standard 303(c)'s requirement should be persuasive. The new standard is representative of a shifting tide around us that will impact how we train lawyers, including the NextGen Bar Exam, multiple studies, and other updates to the ABA's Curriculum standard.¹¹¹ The recent Institute for the Advancement of the American Legal System (IAALS) "Building a Better Bar Study," along with several other past studies of legal education, have charged us to make our professional training support a broader range of skills and to be more inclusive for the diversity of today's students.¹¹²

Further, the NextGen Bar Exam is moving our profession in this direction. The new bar exam will be administered to some of this year's

111. William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, & Lee S. Shulman, SUMMARY OF THE FINDINGS AND RECOMMENDATIONS FROM EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007), http://archive.carnegiefoundation.org/publications/pdfs/elibrary/elibrary_pdf_632.pdf [<https://perma.cc/GUJ3-YXB3>]; Deborah Jones Merritt & Logan Cornett, *Building a Better Bar: The Twelve Building Blocks of Minimum Competence* (AccessLex Institute Research Paper No. 21-02, 2020), <https://www.ssrn.com/abstract=3793580> [<https://perma.cc/T7FD-MZCX>]; *Best Practices for Legal Education*, CLINICAL LEGAL EDUC. ASS'N, <https://www.cleaweb.org/Bes> [<https://perma.cc/UW5F-447M>] (last visited Jul 24, 2023).

112. Sullivan, Colby, Wegner, Bond, & Shulman, *supra* note 110; Merritt & Cornett, *supra* note 110, at 3-4; *Best Practices for Legal Education*, *supra* note 110; Gurvich, Tully, Webb, Chew, Cross, & Kanwar, *supra* note 8, at 148.

entering classes of 1Ls when they graduate in 2026.¹¹³ The exam will test a broad range of “foundational lawyering skills” and will “balance the skills and knowledge needed in litigation and transactional legal practice.”¹¹⁴ The changes to the bar exam welcome changes to our curriculum. The exam emphasizes skills, knowledge, and practical skills.¹¹⁵ A shift toward more inclusive practices that emphasize the underlying values of ABA Standard 303(c) would be in line with this change.

In addition to Standard 303(c), the ABA updated Standard 303(b), adding a requirement that law schools provide substantial opportunities for students to develop a professional identity.¹¹⁶ The Interpretations explain that this involves intentional exploration of the “values, guiding principles, and well-being practices” necessary for successful legal practice.¹¹⁷ As we help our students develop their professional identities, students will benefit if we relinquish outdated practices of teaching students to “think like a lawyer” through the traditional approach, which excludes diverse students. Also, in accordance with ABA Standard 303(a)(1), law schools must offer a curriculum that teaches the importance of “cross-cultural competency to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism.”¹¹⁸

Overall, the new ABA standards call for law schools to address bias and racism, teach culturally competent lawyering, help students build their professional identity, and create “inclusive, empowering, and dynamic classrooms,”¹¹⁹ which requires a reexamination of teaching practices that are not in line with these goals. In this moment, we are challenged to think creatively about how to implement these changes, maximizing the benefit to our students. Regrettably, the new standards, particularly Standard 303(c), will likely present serious challenges for faculty in states with laws

113. NAT’L CONF. OF BAR EXAM’RS, <https://nextgenbarexam.ncbex.org/> [<https://perma.cc/2MAY-HMAQ>] (last visited July 21, 2023).

114. *Id.*

115. *Id.*

116. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2022-2023 Standard 303(b)(3) (AM. BAR ASS’N 2023).

117. *Id.*

118. ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2022-2023 Standard 303(a)(1) (AM. BAR ASS’N 2023).

119. Abrams, *supra* note 25, at 903. Author’s note: The Standard does not actually state a requirement to create “inclusive, empowering, and dynamic classrooms.”

and regulations that restrict the discussion of race, racism, gender, sexuality, or other “divisive concepts.”¹²⁰

CONCLUSION

As law school educators, we are tasked with the incredibly important job of training the next generation of lawyers. We must, therefore, seriously consider our role in perpetuating hierarchy and exclusion in our profession through our teaching practices.¹²¹ We should not continue teaching the way we were taught because that is the way it is. Instead, we should view law school teaching as a set of “choices that we make every day” to grow our students into “strong, healthy lawyers.”¹²² We have known for decades how harmful and unfair our teaching practices are for many of our students, but for the most part, we have continued to engage these practices. Our pedagogical approach must reflect the underlying values that we intend to teach our students,¹²³ and hopefully those values are inclusive and empowering and not alienating for our students. We should not scare our students, confuse our students, or continue to engage in “glorified hazing,”¹²⁴ and instead move toward being more transparent, direct, and student-focused, and teaching all our students how to succeed. This Essay offers some suggestions about how we can achieve this, but the list is not exhaustive. We must think creatively, thoughtfully, and with an open mind as we move forward.

Ultimately, ABA Standard 303(c) codifies that “we must do more,”¹²⁵ and we should begin with the critical 1L year.¹²⁶ Construed broadly, the updates to ABA Standard 303 with respect to bias, racism, cultural competency, and professional identity, along with the interpretive comments, reflect that the learning environment is as important as our curricular choices.¹²⁷ On its surface, ABA Standard 303(c) requires that we

120. See Tokarz, et al., *A.B.A Standard 303(c) and Divisive Concepts Legislation: Challenges and Opportunities*, 73 WASH. U.J.L. & POL’Y (forthcoming 2023).

121. Capulong, *supra* note 4.

122. Young, *supra* note 5.

123. Murray, *supra* note 64, at 45.

124. Gurvich, Tully, Webb, Chew, Cross, & Kanwar, *supra* note 8, at 156.

125. *Id.* at 152.

126. Tully, *supra* note 6, at 840.

127. Kim Diana Connolly & Elisa Lackey, *The Buffalo Model: An Approach to ABA Standard 303(c)’s Exploration of Bias, Cross-Cultural Competency, and Antiracism in Clinical & Experiential*

provide education on bias, racism, and cultural competency to the curriculum and suggests that we achieve this through sessions, courses, lectures, and other educational experiences. However, let us not just add another class. Instead, let us make the entire educational experience align with these goals through inclusive teaching practices. Anything otherwise would fail to seize this moment of opportunity and cut against this current momentum of progress, which has so long been needed in our profession.