

# Michigan Journal of Race and Law

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Volume 24

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2019

## Incorporating Social Justice into the 1L Legal Writing Course: A Tool for Empowering Students of Color and of Historically Marginalized Groups and Improving Learning

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### Recommended Citation

Sha-Shana Crichton, *Incorporating Social Justice into the 1L Legal Writing Course: A Tool for Empowering Students of Color and of Historically Marginalized Groups and Improving Learning*, 24 MICH. J. RACE & L. 251 (2019).

Available at: <https://repository.law.umich.edu/mjrl/vol24/iss2/3>

<https://doi.org/10.36643/mjrl.24.2.incorporating>

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INCORPORATING SOCIAL JUSTICE INTO THE 1L  
LEGAL WRITING COURSE: A TOOL FOR  
EMPOWERING STUDENTS OF COLOR AND OF  
HISTORICALLY MARGINALIZED GROUPS AND  
IMPROVING LEARNING

*Sha-Shana Crichton\**

*The media reports of police shootings of unarmed Black men and women; unprovoked attacks on innocent Jews, Muslims, religious minority groups, and LGBTQ persons; and current pervasive, divisive, and misogynistic rhetoric all cause fear and anxiety in impacted communities and frustrate other concerned citizens. Law students, and especially law students of color and of historically marginalized groups, are often directly or indirectly impacted by these reports and discrimination in all its iterations. As a result, they are stressed because they are fearful and anxious. Research shows that stress impairs learning and cognition. Research also shows that beneficial changes are made in the brain, and learning and cognition improve when students are empowered and motivated by their lessons. Incorporating issues of social justice into the first-year legal writing course benefits all students by equipping them with the knowledge and practical skills to address issues of social injustice and to affect social change. Incorporating issues of social justice into the first-year legal writing course has the added benefit of contributing to a learning environment that permits law students of color and of historically marginalized groups to learn more successfully by reducing stress, altering their perception of control over psychosocial stressors, building positive emotions, increasing confidence, and motivating them to learn.*

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\* This article is dedicated to Professor Spencer H. Boyer, a giant in legal education who incorporated issues of social justice into his courses. I thank Professors Steven Jamar, Franklin Knight, Nancy Cantalupo, and participants in the 2017 NYU Clinical Law Review Writers' Workshop, Phyllis Goldfarb, Binny Miller, Tim Casey, Monika Batra Kashyap, and Dustin Marlan for comments on an earlier version of this Article. I also thank Howard University School of Law librarian Victoria Capatosto for her stellar research skills and my amazing research assistants Shanice Hinckson, Elijah Jenkins, Chayhann Mars, Ronald Hamilton, and Kamali Houston. I am grateful to the editors of the Michigan Journal of Race & Law, and specifically Cleo Hernandez, for their commitment to this Article. I also thank the Howard University School of Law and Dean Danielle Holley-Walker for granting a summer stipend to research this article. Finally, I thank you mom for your insightful comments and editorial suggestions.

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## INTRODUCTION

Tulsa, Oklahoma. September 16, 2016. Terrence Crutcher, Black male, age 40, shot dead by police while walking to his vehicle with his hands above his head.<sup>1</sup> Charlotte, North Carolina. September 20, 2016. Keith Lamont Scott, Black male, age 43, shot dead by police while exiting his vehicle.<sup>2</sup>

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1. See Chelsea Bailey, *Terence Crutcher Shooting by Tulsa Police Was 'Tragic' but Justified: Jury Foreman*, NBC NEWS (May 20, 2017), <https://www.nbcnews.com/news/us-news/terence-crutcher-shooting-tulsa-police-was-tragic-justified-jury-foreman-n762566>.

2. Meg Wagner, *Charlotte Cop Who Killed Keith Lamont Scott Will Not Face Charges*, NY DAILY NEWS (Nov. 30, 2016), <https://www.nydailynews.com/news/national/charlotte-killed-keith-lamont-scott-not-face-charges-article-1.2892855>. See also Alan Blinder, *Protests Erupt in Charlotte After Police Kill a Black Man*, N.Y. TIMES

San Diego, California. September 27, 2016. Alfred Olango, Black male, age 38, shot dead by police while holding a vape smoking device.<sup>3</sup> The deceased was suffering from a mental breakdown.

Racial conflict and attacks on diversity permeate our society. In just eleven days, police officers shot and killed three unarmed Black men across the U.S.<sup>4</sup> This followed on the heels of several similar shootings.<sup>5</sup> Media reports of police officers shooting unarmed men and women of color exhibit a perpetuation of a U.S. history steeped in racial conflict that results in the continued mistreatment of persons of color.<sup>6</sup> These reports of police shootings cause fear and anxiety in communities of color and frustrate other concerned citizens.<sup>7</sup> Law students of color are also fearful and anxious. Terrence, Keith, and Alfred could have been their father, brother, brother-in-law, uncle, cousin, friend, neighbor, or colleague. Their future clients will likely look like Terrence, Keith, and Alfred. Terrence, Keith, and Alfred could have been them. Law students of color are aware that because of an immutable trait—their race—they are not immune nor insulated from such tragedy.<sup>8</sup> As a cruel reminder of the vulnerability law students of color and of other historically marginalized groups face, on December 4, 2016, a police officer shot and killed 26-

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(Sept. 20, 2016), <https://www.nytimes.com/2016/09/21/us/protests-erupt-in-charlotte-after-police-kill-a-black-man.html> (police contending that the victim was holding a gun but his relatives contending that he was reading a book while waiting to pick up a child from school).

3. See Kristina Davis, *Alfred Olango's Widow, Kids Sue El Cajon Police in Shooting*, SAN DIEGO UNION-TRIB. (Feb. 22, 2017), <http://www.sandiegouniontribune.com/news/courts/sd-me-olango-suit-20170222-story.html>.

4. See notes 1-3 and accompanying text. See also PAUL BUTLER, *CHOKEHOLD: POLICING BLACK MEN* (2017) (describing police killing of unarmed Black men and men of color).

5. Daniel Funke & Tina Susman, *From Ferguson to Baton Rouge: Deaths of Black Men and Women at the Hands of Police*, L.A. TIMES (July 12, 2016), <http://www.latimes.com/nation/la-na-police-deaths-20160707-snap-htmstory.html> (describing similar prior shootings); see ANDREA J. RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* (2017); see also Devon W. Carbado, *Blue-on-Black Violence: A Provisional Model of Some of the Causes*, 104 GEO. L.J. 1479 (2016) (examining the reasons contributing to police violence against African-Americans).

6. andré douglas pond cummings, "Lord Forgive Me, But He Tried to Kill Me": Proposing Solutions to the United States' Most Vexing Racial Challenges, 23 WASH. & LEE J. C.R. & SOC. JUST. 3, 8-22 (2016).

7. Rachel D. Godsil & L. Song Richardson, *Racial Anxiety*, 102 IOWA L. REV. 2235, 2251 (2017); see BUTLER, *supra* note 4, at 111-112, 173-174 (describing Black and Latino males' fear of police).

8. See Debra Cassens Weiss, *Law Student Shot and Killed by Police Officer was Unarmed*, ABA J. (Dec. 14, 2016), [http://www.abajournal.com/news/article/law\\_student\\_shot\\_and\\_killed\\_by\\_police\\_officer\\_was\\_unarmed](http://www.abajournal.com/news/article/law_student_shot_and_killed_by_police_officer_was_unarmed) (medical examiner ruling as a homicide a law student of color being shot five times and killed by police).

year-old Saif Nasser Mubarak Alameri, a law student at Case Western Reserve University School of Law following a traffic incident.<sup>9</sup> Saif was shot five times.<sup>10</sup> He was unarmed.<sup>11</sup>

Police shootings are one of the many psychosocial stressors<sup>12</sup> that affect law students of color and cause them to continuously experience fear and anxiety.<sup>13</sup> Law students are no strangers to anxiety. Law school is fraught with a unique set of stressors that cause all law students, regardless of their race, ethnicity, or religion, to exhibit high levels of anxiety,<sup>14</sup> making them the most anxious of all graduate students.<sup>15</sup> Even more so than their White colleagues, law students of color and of historically marginalized groups are at even greater risk for StressPlus: elevated and sustained stress levels caused by feelings of fear and anxiety because of additional psychosocial stressors associated with belonging to a marginalized group.<sup>16</sup>

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9. *Id.*

10. *Id.*

11. *Id.*

12. Elizabeth Scott, *What is Psychosocial Stress? Psychosocial Stress is More Dangerous Than You May Know*, VERYWELL (Nov. 17, 2018), <https://www.verywellmind.com/what-is-psychosocial-stress-3145133> (“More simply put, psychosocial stress results when we look at a perceived social threat in our lives (real or even imagined) and discern that it may require resources we don’t have.”); BRIAN LUKE SEAWARD, *MANAGING STRESS: PRINCIPLES AND STRATEGIES FOR HEALTH AND WELL-BEING* 10 (8th ed. 2015) (defining stressors as any “situation, circumstance, or any stimulus that is perceived to be a threat”).

13. See Melissa Vallas, *The Psychosocial Impact of the Michael Brown Shooting*, PSYCHIATRYADVISOR (Sept. 10, 2014), <http://www.psychiatryadvisor.com/opinion/the-psychosocial-impact-of-the-michael-brown-shooting/article/370855/> (discussing the impact of the Michael Brown shooting on children and families who “identify with this tragedy” and noting that “[s]eeing and hearing about crime and violence can produce fear and anxiety”). The author also implores persons serving the affected families to be “sensitive and adequately prepared to recognize their needs and appropriately support them.” *Id.*

14. Suzanne C. Segerstrom, *Perceptions of Stress and Control in the First Semester of Law School*, 32 WILLAMETTE L. REV. 593, 595 (1996).

15. Christine Pedigo Bartholomew & Johanna Oreskovic, *Normalizing Trepidation and Anxiety*, 48 DUQ. L. REV. 349, 359 (2010); see also Segerstrom, *supra* note 14, at 595.

16. See Jason Silverstein, *How Racism is Bad for Our Bodies*, THE ATLANTIC (Mar. 12, 2013), <https://www.theatlantic.com/health/archive/2013/03/how-racism-is-bad-for-our-bodies/273911/> (findings from a sociological study show that “because of the prevalence of racial discrimination, being a racial minority leads to greater stress.”); see also Sean Darling-Hammond & Kristen Holmquist, *Creating Wise Classrooms to Empower Diverse Law Students: Lessons in Pedagogy from Transformative Law Professors*, 17 BERKELEY J. AFR.-AM. L. & POL’Y 47 (2015); Jennifer A. Heissel et al., *Stress, Sleep, and Performance on Standardized Tests: Understudied Pathways to the Achievement Gap*, 3 AERA OPEN 1, 2 (2017) (noting that on average “some racial-ethnic minorities face more stressors than White youth” including stressors “specific to the experience of race-ethnicity, such as exposure to stereotype threat . . . and perceived discrimination”); Hope Landrine & Eliza-

In our current social climate, StressPlus is more likely the norm than the exception. Traditional and new media platforms alike present constant and ubiquitous reminders of psychosocial stressors associated with belonging to a marginalized group, including discrimination in all of its iterations—stereotype threats, microaggressions, and racial biases.<sup>17</sup> Law students are usually tethered to their computers and mobile devices and are plugged into social media,<sup>18</sup> which make them a captive audience to a constant source of news that reminds law students of color and of historically marginalized groups of their vulnerability. This reminder makes them even more prone to conscious and subconscious feelings of fear and anxiety.<sup>19</sup>

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beth A. Klonoff, *The Schedule of Racist Events: A Measure of Racial Discrimination and a Study of its Negative Physical and Mental Health Consequence*, 22 J. OF BLACK PSYCH. 144, 146 (1996) (noting that “[r]acist events can be viewed as culturally specific stressors because they are negative events (stressors) that happen to African Americans, because they are African Americans”); David R. Williams & Selina A. Mohammed, *Racism and Health I: Pathways and Scientific Evidence*, 57 AM. BEHAV. SCI. 1152, 1159 (2013) (explaining that “compared to [W]hites, [B]lacks and U.S.-born Latinos had higher exposure to a broad range of psychosocial stressors”).

17. See Press Release, American Psychological Association, *Stress in America: The State of Our Nation* (Nov. 1, 2017) [hereinafter *Stress in America Part I*] (“Looking at Americans’ news consumption and social media habits can provide some insight into why the state of our nation and its uncertain direction have become such significant sources of stress. Americans care about staying informed, with most (95 percent) saying they follow the news regularly and 82 percent saying they check the news at least once each day.”). See Joanne M. Hall & Becky Fields, “*It’s Killing Us!*” *Narratives of Black Adults About Microaggression Experiences and Related Health Stress*, 1-14 GLOBAL QUALITATIVE NURSING RES. 1, 2 (2015). See also DERALD WING SUE, *MICROAGGRESSIONS IN EVERYDAY LIFE: RACE, GENDER, AND SEXUAL ORIENTATION* 5 (2010) (defining microaggressions as “brief and commonplace daily verbal, behavioral, and environmental indignities, whether internal or unintentional, that communicate hostile, derogatory, or negative racial, gender, sexual-orientation, and religious slights and insults to the target person or group”).

18. Press Release, American Psychological Association, *Stress in America: Coping With Change Part 2* (Feb. 23, 2017) [hereinafter *Stress in America Part II*] (commenting on the impact of technology on Americans and noting that “technology and social media use has paved the way for the ‘constant checker’—those who constantly check their emails, texts or social media accounts (43 percent of Americans)). This attachment to devices and the constant use of technology is associated with higher stress levels for these Americans.” *Id.*

19. See Kristen Bialik & Katerina Eva Matsa, *Key Trends in Social and Digital News Media*, PEW RES. CTR. (Oct. 4, 2017), <http://www.pewresearch.org/fact-tank/2017/10/04/key-trends-in-social-and-digital-news-media/> (“Digital news and social media continue to grow, with mobile devices rapidly becoming one of the most common ways for Americans to get news.”). See also Neil Strauss, *Why We’re Living in the Age of Fear: This is the Safest Time in Human History. So Why Are We All So Afraid?*, ROLLING STONE (Oct. 6, 2016), <http://www.rollingstone.com/politics/features/why-were-living-in-the-age-of-fear-w443554> (quoting Margee Kerr, a sociologist at the University of Pittsburgh and the author of *Scream: Chilling Adventures in the Science of Fear*). Dr.

Fear and anxiety can cause stress.<sup>20</sup> Stress can impair a student's ability to learn,<sup>21</sup> and can lead to severe emotional, physical, and cognitive harm.<sup>22</sup> Students who continuously experience fear and anxiety are at a learning deficit; they cannot optimally learn new information, nor can they retain or recall old information.<sup>23</sup>

A law school's primary function is to educate all law students.<sup>24</sup> The American Bar Association requires law schools to facilitate and to assess student learning.<sup>25</sup> While law schools may not have the power to control the sources of psychosocial stressors that cause fear and anxiety in law students of color and of historically marginalized groups, law schools can mitigate the deleterious impact of these psychosocial stressors on law students' ability to learn by creating learning environments focused on facilitating learning.<sup>26</sup>

Learning environments that facilitate learning empower and motivate students by encouraging positive emotions, such as confidence, by stimulating their interest, and by showing them how to use their skills to change their experiences and to help others.<sup>27</sup> Neuroscientist Mary Helen Immordino-Yang points out that "[a]ny competent teacher recognizes that emotions and feelings affect students' performance and learn-

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Kerr posits that members of the society are more fearful now that they were 200 years ago and the main reason is "the immediacy with which we get the news. This makes it feel more emotionally charged. We start receiving notifications on our phone as soon as these disasters happen. So there's a false sense of involvement that we didn't have 150 years ago. . . . The more we see dramatized and traumatic events, the more common we believe them to be." *Id.* Dr. Kerr further noted that "[i]t's confirmation bias. We see a shooting on the news and it sensitizes us to pay extra attention to shootings whenever they happen in the future, which confirms the idea that it's a big problem." *Id.*

20. STANLEY RACHMAN, ANXIETY 6 (3d ed. 2013).

21. See BRUCE MCEWEN & ELIZABETH NORTON LASEY, THE END OF STRESS AS WE KNOW IT 62 (2002) (commenting that "[e]xcessive levels of stress hormones interfere with the formation and retrieval of memories, including those associated with context").

22. *Id.* at 58-60, 62.

23. *Id.* at 62.

24. Praveen Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, 32 B.C. J.L. & SOC. JUST. 331, 336 (2012).

25. STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, §§ 301, 302, 314 (AM. BAR ASS'N 2017) [hereinafter ABA STANDARDS].

26. See Jerome M. Organ, David B. Jaffe & Katherine M. Bender, *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*, 66 J. LEGAL EDUC. 116, 146-47 (2016) (pointing out the impact of stressors on law students and arguing that law schools are responsible for "the development of law students at their law school" and that "law schools cannot expect students to grow intellectually and professionally when they are experiencing significant mental and emotional challenges").

27. MARY HELEN IMMORDINO-YANG, EMOTIONS, LEARNING, AND THE BRAIN 28 (2016).

ing . . . .”<sup>28</sup> Neurologist and educator Judy Willis further points out that students become more emotionally resilient and “learn more efficiently and at higher levels of cognition” “[w]hen teachers use strategies to reduce stress and build a positive emotional environment.”<sup>29</sup>

Incorporating issues of social justice into the law school curriculum contributes to a learning environment that builds positive emotions and empowers and motivates law students of color and of historically marginalized groups to learn. Educator Christine Sleeter emphasizes that students become empowered when they learn to address “social issues that have meaning to their lives.”<sup>30</sup>

There is a growing trend among legal writing professors to incorporate issues of social justice into the legal writing curricula.<sup>31</sup> In their seminal article on incorporating social justice into the legal writing curricula, law professors Pamela Edwards and Sheilah Vance highlight the many benefits to all law students when professors incorporate social justice into their teaching.<sup>32</sup> For marginalized students, these benefits include creating a positive emotional environment, building students’ confidence by providing an outlet for their voice, and acknowledging that their concerns are important.<sup>33</sup>

Drawing from the works of neuroscientists and educators, this Article extends the call to incorporate issues of social justice as a mandatory component of the first-year law school curriculum, starting with the first-year legal writing course. The ongoing reports of heightened racial and ethnic conflicts and attacks on diversity, in addition to the surveys indicating that first-year law students experience extraordinarily high stress levels, suggest that first-year law students of color and of historically marginalized groups are at an increased risk for StressPlus. This is an important reason why law schools should introduce issues of social justice

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28. *Id.* at 28.

29. JUDY WILLIS, RESEARCH-BASED STRATEGIES TO IGNITE STUDENT LEARNING: INSIGHTS FROM A NEUROLOGIST AND CLASSROOM TEACHER 57 (2006) (ebook) [hereinafter WILLIS, RESEARCH-BASED STRATEGIES].

30. Christine Sleeter, *Forward* to RUCHI AGARWAL-RANGNATH, SOCIAL STUDIES, LITERACY, AND SOCIAL JUSTICE IN THE COMMON CORE CLASSROOM: A GUIDE FOR TEACHERS viii (2015) (“As students learn to unpack and delve into social issues that have meaning to their lives and then to act on issues in a way that is consistent with participatory democracy, they become empowered.”).

31. Kirsten Clement & Stephanie R. Hartung, *Social Justice and Legal Writing Collaborations: Promoting Student Engagement and Faculty Fulfillment*, 10 DEPAUL J. FOR SOC. JUST. 1, 2 (2017).

32. Pamela Edwards & Sheilah Vance, *Teaching Social Justice Through Legal Writing*, 7 J. LEGAL WRITING INST. 63, 64, 68 (2001) (noting that the benefits apply to members of the non-dominant (or outside group) as well as the dominant “ingroup”).

33. *Id.* at 64-70.

early—ideally, in the first-year curriculum. The first-year legal writing course is an excellent place to start because teaching law students legal research, reasoning, and writing skills and teaching them how to use those skills to work on issues of social justice empowers students by imbuing them with the confidence that they can influence legal and social change to help real people.<sup>34</sup> The ability to help real people builds interest and motivates law students to learn.<sup>35</sup> Additionally, working on issues of social justice helps law students re-evaluate situations and familiar experiences that are psychosocial stressors, driving them to alter their perception of control over those stressors.<sup>36</sup> An enhanced perception of control makes the students less likely to internalize the stressors and become stressed.

Part I of this Article examines fear- and anxiety-induced stress in law students and examines how the pervasiveness of psychosocial stressors in our society impacts law students of color and of historically marginalized groups. Part II looks at how the brain learns and how stress impacts the brain's ability to learn effectively. This section also analyzes how positive emotions help to manage stress, undo the effects of stress, and help the brain to heal and learn successfully. Part III argues that it is necessary for law schools to incorporate issues of social justice into the first-year legal writing curriculum, as this will 1) create a learning environment that will help all law students to become competent lawyers, and 2) build positive emotions in law students of color and of historically marginalized groups who experience a heightened level of stress because of their status as members of historically marginalized groups. The positive emotions empower these students and motivate them to learn. Part IV concludes by noting that the benefits of creating a learning environment that reduces stress, facilitates learning, and empowers and motivates law students of color and of historically marginalized groups to learn are too important

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34. Clement & Hartung, *supra* note 31, at 17 (“[S]tudents are more motivated on assignments with a social justice component.”); see also Stephanie Roberts Hartung, *Legal Education in the Age of Innocence: Integrating Wrongful Conviction Advocacy into the Legal Writing Curriculum*, 22 B.U. PUB. INT. L.J. 129, 157 (2013).

35. Clement & Hartung, *supra* note 31, at 1.

36. Andrew Baum et al., *Stress and the Environment*, 37 J. SOC. ISSUES 4, 14 (1981) (“Perceptions of control, or the degree to which a stressor is seen as being under an individual's control, are also important in the appraisal of threat. . . . When control is not perceived as feasible or when a stressor is seen as unpredictable, greater costs will be exacted.”); DOUGLAS BERNSTEIN, *ESSENTIALS OF PSYCHOLOGY* 407 (2010) (“The perception of control also mediates the effects of stressors. If people feel they have some control over stressors, those stressors usually have less impact.”) “People who feel they have no control over negative events appear especially prone to physical and psychological problems. They often experience feelings of helplessness and hopelessness that in turn may promote depression or other mental disorders.” *Id.*

for law schools not to intentionally incorporate issues of social justice into the first-year legal writing curriculum.

### I. FEAR AND ANXIETY IN LAW STUDENTS

Law students are the most anxious and stressed of all graduate students.<sup>37</sup> Researchers, scholars, and professors have posited an array of both intrinsic and extrinsic reasons for the high stress levels among law students. These reasons include stressors uniquely associated with law school,<sup>38</sup> such as: 1) the prevailing law school culture of individualism and rivalry<sup>39</sup> that underscores a “fierce competition for grades,”<sup>40</sup> class rank,

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37. Segerstrom, *supra* note 14, at 595. Psychological distress among law students appears to “to some degree, specific to law school and not a function of graduate education in general. For instance, in comparative studies of law students, medical students, and graduate students, law students consistently reported significantly higher levels of stress than did medical students, including stress related to learning the subject material, amount of time required for studying, fear of failure, the classroom milieu, and financial pressures.” *Id.* See also Ian Ayres et al., *Anxiety Psychoeducation for Law Students: A Pilot Program*, 67 J. LEGAL EDUC. 118, 120 (2017) (commenting that “law students’ rates of anxiety and depression are higher than the corresponding rates among medical school students”); Bartholomew & Oreskovic, *supra* note 15, at 359 (noting that “law students experience levels of depression, anxiety, alcohol consumption, drug use, and stress far in excess of other graduate students”); Abigail A. Patthoff, *This Is Your Brain on Law School: The Impact of Fear-Based Narratives on Law Students*, 2 UTAH L. REV. 391, 424 (2015) (noting that law students in the United States “regularly top the charts as among the most dissatisfied, demoralized, and depressed of graduate-student populations”); Todd David Peterson & Elizabeth Waters Peterson, *Stemming the Tide of Law Student Depression: What Law Schools Need to Learn from the Science of Positive Psychology*, 9 YALE J. HEALTH POL’Y L. & ETHICS 357, 359 (2009) (noting that law students have “significantly” higher stress levels and stress symptoms than medical students in a similar academic situation).

38. Ayres et al., *supra* note 37, at 119 (referring to law school as a “high-stress environment”). See James Archer, Jr. & Martha M. Peters, *Law Student Stress*, 23 NASPA J. 48, 49 (1986) (“There is considerable agreement on the major law school stressors. The Socratic method of teaching, high expectations, competitive environment, heavy work load, final examinations, social isolation, and family tension have been identified as stressors.”).

39. A. Rachel Camp, *Creating Space for Silence in Law School Collaborations*, 65 J. LEGAL EDUC. 897, 902 (2016) (noting that using the Socratic method as the primary instructional tool “has created a culture of individualism and competition among [law] students”); See Ayres et al., *supra* note 37, at 119 (“[L]awyers and law students operate in environments that are apt to generate anxiety. Most students experience law school as quite competitive.”).

40. Peterson & Peterson, *supra* note 37, at 360; Archer, Jr. & Peters, *supra* note 38, at 49 (noting that “most law students are accustomed to being at the top of their classes” therefore “[w]hen these students are graded on a competitive curve, only a few will be able to earn the grades they have earned in the past . . . breed[ing] a competitive environment in what may already be a self-selected aggressive group”); Mark V. Tushnet,

and internships;<sup>41</sup> 2) the Socratic method of teaching that is new and frightening to many students;<sup>42</sup> 3) the lack of feedback from professors;<sup>43</sup> 4) the pressure of the heavy workload, that often leads to social isolation;<sup>44</sup> 5) worry about law school-related debt; 6) the uncertainty of finding a job after graduation;<sup>45</sup> and 7) certain personality traits among some law students that lead to unhappiness and pessimism.<sup>46</sup>

Law students responding to a survey revealed that their first year of law school was the most stressful of their law school tenure.<sup>47</sup> It comes as no surprise, then, that first-year law students comprised the largest group of law students to indicate that stress negatively impacted their law school performance.<sup>48</sup>

In addition to the stress associated with being in law school, law students also deal with the stress associated with daily living. They too are concerned about misplacing their car keys, an inconclusive medical test, the declining health condition of a loved one,<sup>49</sup> finances, job prospects,

*Evaluating Students as Preparation for the Practice of Law*, 8 GEO. J. LEGAL ETHICS 313, 313–14 (1995).

41. See Archer, Jr. & Peters, *supra* note 38, at 54.

42. Ayres et al., *supra* note 37, at 119 (referring to the Socratic method as “a source of anxiety”); Segerstrom, *supra* note 14, at 594–95 (“the Socratic method [is] traditionally thought to be a primary stressor in law school”); Peterson & Peterson, *supra* note 37, at 360.

43. Archer, Jr. & Peters, *supra* note 38, at 49.

44. *Id.*; Ayres et al., *supra* note 37, at 119 (“[T]he time pressures of law school can crowd out positive personal experiences (e.g., dating, exercise), which likely impairs student wellbeing.”).

45. Ayres et al., *supra* note 37, at 119 (noting that law students are anxious about “whether they will be able to get a job in the profession”); Organ et al., *supra* note 26, at 146–47 (noting that the “transition for many of our students from college to law school, which includes learning the new language of the law, dealing with anxieties about their future beyond graduation, and managing the debt many take on to finance their legal education, creates stressors for which many are unprepared”).

46. Peterson & Peterson, *supra* note 37, at 360; See Michael I. Meyerson, *Law School Culture and the Lost Art of Collaboration: Why Don't Law Professors Play Well with Others?*, 93 NEB. L. REV. 547, 555 (2014); Archer, Jr. & Peters, *supra* note 38, at 49.

47. *Law Student Stress*, LSSSE BLOG (Aug. 8, 2016), <http://lssse.indiana.edu/blog/law-student-stress/>; Segerstrom, *supra* note 14, at 600.

48. Archer, Jr. & Peters, *supra* note 38, at 49; *Law Student Stress*, *supra* note 47. About half of law student respondents (46.9 percent) indicated that stress or anxiety impacted their law school performance with only 19.5 percent indicating either “not at all” or “very little.” *Id.* “First-year students reported that stress or anxiety impacted their law school performance at higher rates than 3L students. However, 1L students also reported their law school emphasized ways to effectively manage stress greater than 2L or 3L students.” *Id.*

49. See SEAWARD, *supra* note 12, at 11–12

and the current social and political climate.<sup>50</sup> According to The American Psychological Association 2017 Stress in America Survey (“Stress Survey”), Americans now report significant levels of stress when thinking about the future of the country and the current social and political divisiveness.<sup>51</sup> Whether through news reports or direct experience, law students are exposed to these stressors that cause them to become anxious and stressed. Tethered to their cell phones and media devices, law students are prone to continuously experience anxiety when listening to the news reports of unpredictability regarding key governmental decisions,<sup>52</sup> the uncertainty regarding the future accessibility of health care,<sup>53</sup> and the prevalence of gun shootings in schools.<sup>54</sup>

Law students of color and of historically marginalized groups are impacted by yet an additional layer of stressors that makes them prone to StressPlus—discrimination.<sup>55</sup> Evidence of discrimination permeates society and also seeps into the law school environment.<sup>56</sup> Law students of color and of historically marginalized groups are at risk for greater stress, StressPlus, when they listen to news reports of police shootings of unarmed persons of color<sup>57</sup> and to pervasive racist, homophobic, xenopho-

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50. See *Stress in America Part I*, *supra* note 17, at 4.

51. *Id.* at 1 (noting that money and work have been consistently listed as stressors, but in 2017, “the future of our nation” emerged as a “common new source of significant stress”). See generally Firdaus S. Dhabhar, *Effects of Stress on Immune Function: Implications for Immunoprotection and Immunopathology*, in *THE HANDBOOK OF STRESS SCIENCE: BIOLOGY, PSYCHOLOGY, AND HEALTH* 46, 59 (Andrew Baum & Richard Contrada eds., 2010) (“Due to a host of psycho-socio-political factors, stress has unfortunately become an increasing and inevitable part of people’s lives.”).

52. See Matt Kwong, *In a Divided U.S., Therapists Treating Anxiety are Hearing the Same Name Over and Over: Donald Trump*, CBC (July 28, 2018), <https://www.cbc.ca/news/world/trump-anxiety-disorder-mental-health-political-divide-us-1.4762487>.

53. See *Stress in America Part I*, *supra* note 17, at 5 (“[T]wo in three adults (66 percent) say the cost of health insurance causes them stress. Health care policy changes and having good health insurance cause stress for 60 percent of Americans.”).

54. Brian Resnick, *American’s Teens are Extremely Stressed out About School Shootings: They’re Not Wrong to be*, VOX (Oct. 31, 2018), <https://www.vox.com/science-and-health/2018/10/31/18043622/teen-mental-health-apa-stress-in-america-gen-z-mass-shootings>

55. Edwards & Vance, *supra* note 32, at 68 (listing sources that document the “alienation that [W]hite women, people of color, gays and lesbians, and other outsiders face in law schools”). See Darling-Hammond & Holmquist, *supra* note 16, at 52 (noting survey results indicating that UC Berkley Law School students from diverse backgrounds felt discriminated against, othered, alienated, and marginalized at the law school and as result “suffered academically”).

56. Darling-Hammond & Holmquist, *supra* note 16, at 52.

57. Cummings, *supra* note 6, at 5 (noting the pervasiveness of the shootings: “[n]ightly newscasts detail seemingly weekly killings of unarmed African American men by law enforcement officers”).

bic, and Islamophobic rhetoric.<sup>58</sup> Moreover, these students' stress levels are likely to increase with the knowledge that because of this rhetoric, some citizens may feel emboldened to harass and carry out acts of violence against persons of color and persons of certain ethnic, religious, and other marginalized identities.<sup>59</sup> The racial violence in Charlottesville provides a prime example of emboldened citizens causing fear, anxiety, and harm.<sup>60</sup> Additional examples include recent racial profiling incidents in

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58. E. J. R. David, *The Psychological Toll Facing Immigrants in Today's America*, PSYCH. TODAY (Sept. 6, 2017), <https://www.psychologytoday.com/us/blog/unseen-and-unheard/201709/the-psychological-toll-facing-immigrants-in-todays-america>; Hina Tai & Winn Periyasamy, *Trump's Islamophobic Rhetoric Means a Public Health Crisis for Muslims*, THE GUARDIAN (Nov. 30, 2016), <https://www.theguardian.com/world/2016/nov/30/donald-trump-muslims-public-health-crisis>; Rebecca A. Clay, *Psychologists are Studying the Impact of Anti-Muslim Sentiments and Exploring Ways to Prevent It*, AM. PSYCHOL. ASS'N (April 2017) <https://www.apa.org/monitor/2017/04/islamophobia>.

59. See Eric Lichtblau, *U.S. Hate Crimes Surge 6% Fueled by Attacks on Muslims*, N.Y. TIMES (Nov. 14, 2016), <https://www.nytimes.com/2016/11/15/us/politics/fbi-hate-crimes-muslims.html> (noting that hate crimes have increased post the 2016 election: "59 percent of the hate crimes that the F.B.I. recorded were based on the victims' race, ethnicity or ancestry. Religious bias accounted for about 20 percent of all attacks, and about 18 percent of attacks were based on sexual orientation."). "[H]ate crime monitors like the Southern Poverty Law Center have reported a rash of verbal or physical abuse targeting minorities and others at schools, mosques and elsewhere." *Id.* See also Ellen Barry, *Officials in U.S. and India Condemn Shooting of Sikh Man in Washington State*, N.Y. TIMES (Mar. 5, 2017), <https://www.nytimes.com/2017/03/05/world/asia/sikh-shooting-washington-state.html>; Jia Tolentino, *Charlottesville and the Effort to Downplay Racism in America*, NEW YORKER (Aug. 13, 2017), <https://www.newyorker.com/culture/jia-tolentino/charlottesville-and-the-effort-to-downplay-racism-in-america>; *Stress in America Part I*, *supra* note 17, at 4 ("Hate crimes as a source of stress are another issue that reveals a significant racial divide: Only around one-quarter (27 percent) of White adults say that hate crimes cause them stress when thinking about our nation, compared with around two-fifths of Hispanic adults (37 percent), Native American adults (38 percent) and Black adults (41 percent), as well as more than one-third of Asian adults (34 percent).").

60. Sabelo Gumedze, Mutuma Ruteere, & Anastasia Crickley, *US Racism On the Rise, UN Experts Warn in Wake of Charlottesville Violence*, U.N. HUMAN RIGHTS (Aug. 16, 2017), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21975> ("Racism and xenophobia are on the rise across the USA, a group of United Nations human rights experts has warned in the wake of the far-right demonstrations and violence in Charlottesville, Virginia."); see Tolentino, *supra* note 59 (describing race relations in Charlottesville prior to the racial clash). "There were blatantly racist incidents at U.V.A. shortly before I arrived and while I was there: two of the richest frats had 'blackface incidents' in 2002; the next year, a [B]lack woman running for student office was attacked near the Rotunda by a [W]hite man who reportedly said, 'No one wants a nigger to be president.' In 2006, a local establishment instituted a dress code with the intended effect of keeping [B]lack people out of the bar. But these things were played down as impolite and anomalous, with the same sort of 'This is not us' language that's circulating today. Charlottesville was a beautiful town full of good [W]hite people who

which some citizens have felt emboldened to call the police on persons of color who were doing nothing more than going about the business of daily living.<sup>61</sup> Prospective students and students attending educational institutions where they are enrolled were also victims of this dangerous form of harassment.<sup>62</sup>

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believed in political progress, and if people of color could just hold tight and respect that, we wouldn't have to make anyone uncomfortable. Everything would be just fine." *Id.*

61. Rachel Martin, *White People Calling the Police on Black People is Not New*, NPR (July 13, 2018), <https://www.npr.org/2018/07/13/628694725/white-people-calling-the-police-on-black-people-is-not-new>. See BUTLER, *supra* note 4, at 2 (noting that there has been a long-standing history of police being called on Black people). See also Matt Stevens, *Starbucks C.E.O. Apologizes After Arrests of 2 Black Men*, N.Y. TIMES (Apr. 15, 2018), <https://www.nytimes.com/2018/04/15/us/starbucks-philadelphia-black-men-arrest.html>); Tony Marco, *A Group of Black Women Say A Golf Course Called the Cops on Them for Playing Too Slow*, CNN (Apr. 25, 2018), <https://www.cnn.com/2018/04/25/us/black-women-golfers-pennsylvania-trnd/index.html>); Daniel Victor, *A Woman Said She Saw Burglars. They Were Just Black Airbnb Guests*, N.Y. TIMES (May 8, 2018), <https://www.nytimes.com/2018/05/08/us/airbnb-black-women-police.html>); Sarah Ruiz-Grossman, *We Need to Talk About White People Calling Cops on People of Color*, HUFFPOST (May 11, 2018), [https://www.huffingtonpost.com/entry/white-people-calling-cops-on-people-of-color\\_us\\_5af5d573e4b032b10bfa7036](https://www.huffingtonpost.com/entry/white-people-calling-cops-on-people-of-color_us_5af5d573e4b032b10bfa7036) (noting the potential harm to persons of color when police are called on them "because of a perceived-but ultimately nonexistent-threat," such as police responding to calls and ultimately shooting 12 year-old Tamar Rice who had a toy gun and 22 year-old Stephon Clark who was holding a cellphone).

62. Didi Martinez & Jareen Imam, *Black Texas College Student Has Police Called on Her by Professor, Prompting Investigation*, NBC NEWS (Nov. 15, 2018), <https://www.nbcnews.com/news/us-news/black-texas-college-student-has-police-called-her-professor-prompting-n936256> (describing and showing footage of the police showing up at the University of Texas at San Antonio in response to a White professor's call, reporting a Black student for putting her feet on the chair); Cleve R. Wootson, Jr., *'All I Did Was be Black': Someone Called the Police on a Student Lying on a Dorm Couch*, WASH. POST (Aug. 5, 2018), [https://www.washingtonpost.com/news/grade-point/wp/2018/08/05/all-i-did-was-be-black-someone-called-the-police-on-a-student-lying-on-a-dorm-couch/?utm\\_term=.74a02e519e0d](https://www.washingtonpost.com/news/grade-point/wp/2018/08/05/all-i-did-was-be-black-someone-called-the-police-on-a-student-lying-on-a-dorm-couch/?utm_term=.74a02e519e0d) (discussing the experience of a Black student at Smith College whom an employee reported to the police because she "looked out of place"); Scott Jaschik, *The Admissions Tour That Went Horribly Wrong*, INSIDE HIGHER ED. (May 7, 2018), <https://www.insidehighered.com/admissions/article/2018/05/07/colorado-state-investigates-why-native-american-students-admissions> (detailing the aftermath from when a Colorado State University prospective student's mother called the police on two Native American young men whom she believed were not part of the campus tour group); Brandon Griggs, *A Black Yale Graduate Student Took a Nap in Her Dorm's Common Room. So A White Student Called Police*, CNN (May 12, 2018), <https://www.cnn.com/2018/05/09/us/yale-student-napping-black-trnd/index.html> (detailing the incident where a White student at Yale called the police on a Black student whom she felt did not belong in the student's lounge). See Paul Butler, *The Policing of Black Americans is Racial Harassment Funded by the State*, THE GUARDIAN (June 6, 2018), <https://www.theguardian.com/us-news/2018/jun/06/america-police-called-on-black->

Large scale negative race-related societal events are macro-stressors, and exposure to these macro-stressors can cause elevated stress levels.<sup>63</sup> A Duke University study on the impact of race-related stressors on the body's stress responses, "Duke Study," showed that Black students experienced extreme fear- and anxiety-induced stress when exposed to race-related macro-stressors even if their exposure was second-hand, such as through news reports.<sup>64</sup> In 2006, a Black woman accused White members of the Duke University Lacrosse team of "racial derogation, rape and violence."<sup>65</sup> The nation at the time was severely divided on the issues of race, class, and gender.<sup>66</sup> Not surprisingly, the incident attracted "considerable racially divisive media coverage and rhetoric."<sup>67</sup> Duke's Black students, and in particular the Black women, "experienced high levels of stress and questioned their sense of belonging and safety" for weeks after the incident.<sup>68</sup> The "Duke Study" showed that Black students, especially Black female students, had higher cortisol levels and were less sharp at responding to an experimental stress task after the incident, suggesting that "recent exposure to race-related stress can have a sustained impact on physiological stress responses."<sup>69</sup>

A situation does not have to be life-threatening to cause stress. Acts of discrimination, even when non-life-threatening, can cause anxiety, fear, and chronic stress.<sup>70</sup> For example, while not life-threatening, a law

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people-everyday-racism (noting that calling the police on persons of color because of racial prejudice is harassment).

63. Williams & Mohammed, *supra* note 16, at 10 (identifying "negative race related events" as macro-stressors, large-scale societal events that can cause stress, and "that lead to adverse changes in health status").

64. Laura Smart Richman & Charles Jonassaint, *The Effects of Race-related Stress on Cortisol Reactivity in the Laboratory: Implications of the Duke Lacrosse Scandal*, NIH PUB. ACCESS 6 (2008), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2763623/pdf/nihms-134598.pdf>.

65. *Id.* at 2.

66. *Id.*

67. Williams & Mohammed, *supra* note 16, at 10.

68. Richman & Jonassaint, *supra* note 64, at 2 (noting that Duke's African-American students and the African-American women in particular experienced high levels of stress and questioned their sense of belonging and safety in the weeks after the alleged incident); *id.* at 1 (explaining that an "experience of specific incidents of racial bias is associated with higher levels of psychological distress, depression, anxiety, and multiple indicators of poor physical health"); *see also* Williams & Mohammed, *supra* note 16, at 10.

69. Richman & Jonassaint, *supra* note 64, at 5.

70. Silverstein, *supra* note 16 (emphasizing that "the anticipation of racism, and not necessarily the act, is enough to trigger a stress response"); Bruce S. McEwen, *Brain on Stress: How the Social Environment Gets Under the Skin*, 109 PNAS 17180, 17180 (2012), [www.pnas.org/cgi/doi/10.1073/pnas.1121254109](http://www.pnas.org/cgi/doi/10.1073/pnas.1121254109) (noting that chronic stress is caused by major life events as well as "the conflicts and pressures of daily life").

student of color may experience prolonged anxiety after learning about the Nextions Leadership Consulting Group study that indicates that law students of color may not be evaluated equally in the workplace because of an unfounded perception that because of their race, they are inferior writers.<sup>71</sup>

In that study, sixty partners from twenty-two law firms were asked to review and rate a memorandum on a scale from 1 to 5, with 5 being the highest score.<sup>72</sup> The partners received the same memorandum, but half were told that Thomas Meyer was Caucasian and the other half were told that he was African American.<sup>73</sup> The memorandum contained twenty-two errors: seven minor spelling errors, six substantive technical writing errors, five factual errors, and four analytical errors.<sup>74</sup> The “Caucasian” Thomas Meyer received a rating of 4.1 out of 5 and favorable comments such as “generally good writer but needs to work on. . .”; “has potential”; and “good analytical skills.”<sup>75</sup> The “African American” Thomas Meyer, on the other hand, received 3.2 out of 5 and negative comments such as “needs lots of work”; “can’t believe he went to NYU”; “average at best.”<sup>76</sup> Considering that a law student’s ultimate goal is to find suitable employment, evidence of racial stereotyping and bias such as this is sufficient to cause anxiety and stress.

Navigating daily situations and the everyday discrimination students of color and of historically marginalized groups face or expect to face can also cause chronic stress.<sup>77</sup> Everyday discrimination includes othering<sup>78</sup> and the related social exclusion,<sup>79</sup> and “interpersonal daily hassles and in-

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71. Arin N. Reeves, *Written in Black & White: Exploring Confirmation Bias in Racialized Perceptions of Writing Skills*, NEXTIONS (2014), <http://nextions.com/wp-content/uploads/2017/05/written-in-black-and-white-yellow-paper-series.pdf>.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. Landrine & Klonoff, *supra* note 16, at 146.

78. ENCYCLOPEDIA OF EDUCATION AND HUMAN DEVELOPMENT 290 (Stephen J. Farenga & Daniel Ness eds., 2015) (defining “othering” as a “strategy of symbolic exclusion that is used to create artificial boundaries of race, culture, religion, sexuality, and gender difference”).

79. Elizabeth Brondolo et al., *Racism as a Psychosocial Stressor*, in THE HANDBOOK OF STRESS SCIENCE: BIOLOGY, PSYCHOLOGY, AND HEALTH 167, 168 (Andrew Baum & Richard Contrada eds., 2010) (defining social exclusion as “various different acts in which, for example, individuals are prevented from participating in social interactions, rejected by others, or ignored by service personnel”); *see also id.* at 175 (“For some groups (e.g. American Blacks and Native Americans) race-related ostracism has been accompanied by violence and threats of extermination. Therefore, even relatively mild forms of

sults such as receiving inferior service and being unfairly followed in stores.”<sup>80</sup> These stressors follow the students into the classroom. Discrimination outside of the classroom contributes to a perception of discrimination inside the classroom. A student’s past experiences with discrimination can increase his or her vigilance for incidents of future discrimination.<sup>81</sup> If the evidence of discrimination outside and inside the classroom is ignored, the impact mushrooms, inhibiting the affected student’s ability to learn.<sup>82</sup>

A Northwestern University report further confirmed that race and ethnic-based stressors in the classroom, such as perceived discrimination and stereotype threat, cause stress, impair learning, and result in lower test performance in African-American and Latinx students.<sup>83</sup> Perceived discrimination is “the observation or anticipation of unfair treatment based

interpersonal racism occurring in the absence of physical abuse may be perceived as threatening and harmful, because they may evoke concerns about mortality.”).

80. Dawne M. Mouzon et al., *Everyday Racial Discrimination, Everyday Non-racial Discrimination, and Physical Health Among African Americans*, J. ETHNIC CULTURAL DIVERSITY SOCIAL WORK. 1, 1–2 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5342249/pdf/nihms-801816.pdf> (noting that “[e]veryday discrimination comprises interpersonal daily hassles and insults such as receiving inferior service and being unfairly followed in stores. Everyday discrimination encompasses chronic psychosocial stressors that are important because they serve as ongoing challenges to the emotional well-being of individuals”); *id.* (noting that “[e]xhaustive reviews of the literature find that perceived major and everyday discrimination have deleterious effects on physical and mental health”). See Errin Haines Whack, *Starbucks Incident Highlights Perils of Shopping While Black*, AP (Apr. 18, 2018), <https://www.apnews.com/f574b91b294543c790974b9d6d626e70/Starbucks-incident-highlights-perils-of-shopping-while-black> (detailing the experiences of persons of color with “retail racism,” also known as “shopping while [B]lack” and noting that retail racism “happens when minority customers are treated differently than [W]hite customers through a variety of indignities and slights, such as being refused service, falsely accused of shoplifting or reported to security or police over something mundane”). Whack quotes a Black male who has experienced “shopping while [B]lack”: “I’m hyper-aware of when I’m in these spaces.” *Id.*

81. Heissel et al., *supra* note 16, at 2 (arguing that “[p]ast experiences with discrimination can increase vigilance for potential future racism”); Williams & Mohammed, *supra* note 16, at 10 (pointing out that “recent research reveals that anticipating being a target of discrimination can produce heightened vigilance that can lead to the activation of negative emotional states and increases in blood pressure and sympathetic nervous system activation” (internal citations omitted)).

82. Dorainne J. Levy, Jennifer A. Heissel, Jennifer A. Richeson & Emma K. Adam, *Psychological and Biological Responses to Race-Based Social Stress as Pathways to Disparities in Educational Outcomes*, 71 AM. PSYCHOLOGIST 455, 458 (2016) (“The stress associated with race/ethnicity and other forms of stigma may be particularly profound because it is often pervasive, chronic, and tied to stable components of an individual’s social identity. Both discrimination and stereotype threat alter how individuals view their everyday situations; for instance, people are more likely to appraise situations in which negative group stereotypes are relevant as threatening.”).

83. *Id.* at 455.

on race/ethnicity,”<sup>84</sup> and stereotype threat is “the stress of wanting to perform well to overcome negative expectations of one’s racial/ethnic group.”<sup>85</sup> The report revealed that Black and Latinx students who perceived discrimination, or who anticipated future discrimination by their teachers, experienced more stress, resulting in “lower grades, less academic motivation, lower academic success more generally, and less persistence when encountering an academic challenge.”<sup>86</sup> The report also noted that in trying to dispel the stereotype of academic and intellectual inferiority, Black and Latinx students experienced anxiety, chronic stress, fatigue, and cognitive overload, which adversely impacted their academic performance.<sup>87</sup>

While the Northwestern University report focused on high school students, a study of University of California–Berkeley Law School students<sup>88</sup> showed similar evidence of perceived discrimination and stereotype threat among law students of color and of historically marginalized groups.<sup>89</sup> These law students noted that they experienced “stereotyping, implicit and explicit bias, and prejudice.”<sup>90</sup> They also reported that they felt “their teachers had initially judged their academic capability based on their gender or race,”<sup>91</sup> they “fear[ed] confirming stereotypes,”<sup>92</sup> and they

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84. *Id.*

85. *Id.*; see Williams & Mohammed, *supra* note 16, at 8 (“The term stereotype threat refers to the activation of negative stereotypes among stigmatized groups that creates expectations, anxieties and reactions that can adversely affect social and psychological functioning.”).

86. Levy et al., *supra* note 82, at 457; see also Melinda D. Anderson, *How the Stress of Racism Affects Learning*, THE ATLANTIC (Oct. 11, 2016), <https://www.theatlantic.com/education/archive/2016/10/how-the-stress-of-racism-affects-learning/503567/> (discussing the ways in which race-based stress can impact the learning environment for Black and Latino students).

87. Levy et al., *supra* note 82, at 457.

88. Darling-Hammond & Holmquist, *supra* note 16, at 51 (detailing the results of a survey of 118 JD students from the classes of 2013, 2014, and 2015 at UC Berkley Law School used in “understanding the challenges faced by underrepresented students, improving access to foundational information, introducing law professors to advances in pedagogy, and reducing implicit bias among students and professors alike”).

89. *Id.* at 52. Professors Darling-Hammond and Holmquist noted that based on their review of data from a survey of UC Berkley law students, “low-income, minority, and female students are experiencing law school differently than wealthy, White, and male students.” *Id.* at 56. Many of the law students in the study attributed their “negative performance” to the professors’ teaching styles and “biased treatment” from professors and fellow students. *Id.*

90. *Id.* at 52.

91. *Id.* at 56.

92. *Id.* (noting that fear of prejudgment can lead to “fears of confirming stereotypes” which can hinder learning and academic performance). The Authors also noted that “[w]omen were 50 [percent] more likely than men (41 [percent] vs. 27 [percent]) to indi-

felt othered and alienated by the presumption that “high prestige opportunities (such as clerkships, law review membership, and other academic and non-academic distinctions) are not meant for them.”<sup>93</sup>

Discrimination inside and outside the classroom lead to a similar result—stress. For example, law students are at risk for StressPlus when they anticipate being treated “differently or unfairly because of their race” or ethnicity, and when they anticipate that others expect them to conform to the negative stereotypes that society, their professors, or their peers hold about the law students’ racial or ethnic group.<sup>94</sup> Ultimately, this heightened stress can negatively affect the law student’s ability to learn, their overall academic performance, and their health.<sup>95</sup>

## II. THE BRAIN ON FEAR AND ANXIETY

### A. *How the Brain Learns*

Neuroscientists, cognitive scientists, and educators have recently joined forces to study how the brain learns, with a specific focus on how emotions impact learning.<sup>96</sup> The consensus is that emotions are critical to

cate they worried about confirming stereotypes when they performed academically. Latino and Black students were twice as likely as White students to fear confirming stereotypes (58 [percent], 57 [percent], and 28 [percent] respectively).” *Id.*

93. *Id.* at 52. Professors Darling-Hammond and Holmquist also pointed out that

the fear of confirming stereotypes can even harm the performance of underrepresented students who have everything going for them—except that they believe that if they do not perform well, they will confirm their peers’ suspicions that they, or members of their social group, do not belong. This added pressure can sap focus during lecture and confidence during high stakes exams.

*Id.* at 56.

94. See Danielle Pierre, *Intersectional Counseling: Panthers of Color Provide Vital Service to Students of Color*, PITT NEWS (Apr. 6, 2017), <https://pittnews.com/article/118629/opinions/intersectional-counseling-panthers-of-color/> (“Ebony McGee, an assistant professor of diversity and urban schooling at Vanderbilt University, found students of color in predominantly [W]hite collegiate environments are more subject to high rates of ‘anxiety, stress, depression and thoughts of suicide, as well as . . . physical ailments like hair loss, diabetes and heart disease.’ Black students are devoting huge amounts of time and energy to combat racism at a huge cost to their mental and physical health.”); see also Levy et al., *supra* note 82, at 457.

95. See Pierre, *supra* note 94; see also Levy et al., *supra* note 82, at 457.

96. Gwen C. M. Noteborn & Georgia Earnest García, *Turning MOOCs Around: Increasing Undergraduate Academic Performance by Reducing Test-Anxiety in Flipped Classroom Setting*, in EMOTIONS, TECHNOLOGY, AND LEARNING 3, 7 (Sharon Y. Tettegah & Michael P. McCreery eds., 2015) (noting that there is a “growing recognition that emotions

learning.<sup>97</sup> Positive emotions enhance learning, while negative emotions such as fear and anxiety can cause stress, which inhibits learning.<sup>98</sup> To create learning environments conducive to effective learning, especially when students are affected by psychosocial stressors, it is important to be mindful of the impact of emotions and stress on the brain's ability to learn.<sup>99</sup>

The brain is made up of billions of nerve cells called neurons.<sup>100</sup> Neurons carry information around the brain. Each neuron has tiny tentacles called dendrites, a cell body, and an axon.<sup>101</sup> Dendrites are responsible for receiving information from other neurons and passing it to the cell body.<sup>102</sup> The cell body determines which information should be passed

are central to how students perform within and experience the learning environment”); Luiz Pessoa, *Attention, Motivation, and Emotion*, in *THE OXFORD HANDBOOK OF ATTENTION* 725, 725 (Anna C. Nobre & Sabine Kastner eds., 2014) (stressing that “[d]uring the past decade, we have witnessed a veritable explosion of the research on the effects of emotion and motivation on both perception and cognition”); IMMORDINO-YANG, *supra* note 27, at 18 (describing the recent “revolution in neuroscience” that rejected the notion that emotions interfere with learning and showed instead that emotions and learning are “supported by interdependent neural processes”).

97. Mary Helen Immordino-Yang & Matthias Faeth, *The Role of Emotion and Skilled Intuition in Learning*, in *MIND, BRAIN, & EDUCATION: NEUROSCIENCE IMPLICATIONS FOR THE CLASSROOM* 69, 82 (David A. Sousa ed., 2010) (noting the rich body of research that shows the “interrelatedness of emotions and cognition” and the importance of emotions in learning); IMMORDINO-YANG, *supra* note 27, at 18 (noting that “[i]t is literally neurobiologically impossible to build memories, engage complex thoughts, or make meaningful decisions without emotion. . . . Put succinctly, we only think about things we care about”).

98. PATRICIA WOLFE, *BRAIN MATTERS: TRANSLATING RESEARCH INTO CLASSROOM PRACTICE* 142 (2d ed. 2010) (noting that emotions can “enhance or impede learning”); Noteborn & García, *supra* note 96, at 7; see IMMORDINO-YANG, *supra* note 27, at 36.

99. See David A. Sousa, *How Science Met Pedagogy*, in *MIND, BRAIN, & EDUCATION: NEUROSCIENCE IMPLICATIONS FOR THE CLASSROOM* 9, 15 (David A. Sousa ed., 2010) (noting that teachers need to understand the impact of emotions, “especially stress,” because “students cannot focus on the curriculum unless they feel physically safe (for example, from weapons or violence) and emotionally secure (they perceive that their teachers respect and care about their success”).

100. ANN MCINTOSH HOFFELDER & ROBERT L. HOFFELDER, *HOW THE BRAIN GROWS* (2009); JOSEPH LEDOUX, *THE EMOTIONAL BRAIN: THE MYSTERIOUS UNDERPINNINGS OF EMOTIONAL LIFE* 138 (1996).

101. LEDOUX, *supra* note 100, at 138; ANTONIO DAMASIO, *THE FEELING OF WHAT HAPPENS: BODY AND EMOTION IN THE MAKING OF CONSCIOUSNESS* 324 (1999).

102. LEDOUX, *supra* note 100, at 242 (explaining that “[d]endrites are the parts of the neurons that receive incoming inputs and that are responsible, in large part, for the initial phase of long-term potentiation and memory formation”); JEFFREY M. SCHWARTZ & SHARON BEGLEY, *THE MIND AND THE BRAIN* 103-104 (2009) (“The dendrites’ chief function in life is to receive incoming electrochemical messages from other neurons and carry the message to the cell they’re part of.”).

on and sends that information to the axon.<sup>103</sup> The axon is a wire-like extension that carries information via electrical impulses “toward the dendrites of neighboring neurons.”<sup>104</sup> The axon of the sending neuron never touches the dendrites of the receiving neuron.<sup>105</sup> Instead, the axon passes the information on to other neurons via chemicals called neurotransmitters,<sup>106</sup> which travel through a small gap between the neurons called a synapse.<sup>107</sup> The synapse is referred to as the communication point of the neurons.<sup>108</sup> Learning and memory take place at the synapses.<sup>109</sup>

When a neuron transmits information to another neuron, it can cause the receiving neuron to fire.<sup>110</sup> This means that the receiving neuron discharges an electric signal, causing the axon to produce neurotransmitters that allow it to successfully send the information to another neuron.<sup>111</sup> A neuron will not fire if it is damaged or if the cell body does not think the information is worth passing on. When a neuron causes another neuron to fire, or a set of neurons fire at the same time, they forge strong connections or networks.<sup>112</sup> As a result, when one neuron in the network becomes activated, the other neurons in the network also become activated.<sup>113</sup> Information passing to one neuron in the network will pass to the other neurons in that network.<sup>114</sup>

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103. DAMASIO, *supra* note 101, at 324.

104. NORMAN DOIDGE, *THE BRAIN'S WAY OF HEALING: REMARKABLE DISCOVERIES AND RECOVERIES FROM THE FRONTIERS OF NEUROPLASTICITY* 7 (2015) [hereinafter DOIDGE, *THE BRAIN'S WAY OF HEALING*].

105. DAMASIO, *supra* note 101, at 324–35; CATHERINE M. PITTMAN & ELIZABETH M. KARLE, *REWIRE YOUR ANXIOUS BRAIN: HOW TO USE THE NEUROSCIENCE OF FEAR TO END ANXIETY, PANIC, AND WORRY* 27 (2015).

106. LEDOUX, *supra* note 100, at 154 (stating that “neurotransmitters are manufactured in the cell body and then transported down the axon to the terminal regions where they are used in communication across synapses”); PITTMAN & KARLE, *supra* note 105, at 27 (“Examples of neurotransmitters include adrenaline, dopamine, and serotonin.”).

107. LEDOUX, *supra* note 100, at 214 (defining synapses as “the tiny spaces formed by the adjoinment of two neurons at the points where these neurons exchange information”).

108. PITTMAN & KARLE, *supra* note 105, at 28 (noting that communication between the neurons occurs at the synapse).

109. *See* LEDOUX, *supra* note 100, at 213–24 (discussing how the “neurons and their synapses contribute to learning and memory functions”).

110. PITTMAN & KARLE, *supra* note 105, at 29.

111. *Id.*; DOIDGE, *THE BRAIN'S WAY OF HEALING*, *supra* note 104, at 7.

112. PITTMAN & KARLE, *supra* note 105, at 30.

113. *Id.*

114. *Id.*

The neurons in our brain connect, or wire together, based on our genes and experiences.<sup>115</sup> New experiences cause the neurons to forge new neural connections,<sup>116</sup> and repeated experiences strengthen existing connections.<sup>117</sup> Conversely, “[w]hen a person stops [having a particular experience or] performing an activity for an extended period, those [neural] connections are weakened, and over time are lost.”<sup>118</sup>

Learning happens when the brain receives, processes, effectively stores new information, connects new information to previously stored information, and can later efficiently retrieve previously stored information. The brain receives an influx of new information each day from thousands of stimuli in the environment,<sup>119</sup> some of which come from the brain’s constant scanning of the environment for information that would threaten our safety.<sup>120</sup> The brain then sorts and decides if the information is useless and should be discarded or if it is important and worth keeping or storing.<sup>121</sup> This process is called encoding.

Encoding is the first stage of learning and memory.<sup>122</sup> Encoding begins with perception.<sup>123</sup> Perception is the meaning we attach to infor-

115. *See id.* at 31 (noting that “each of us has uniquely formed brain circuits based on our own experiences”). This explains why some students may be hyper-vigilant about being considered academically inferior while others do not share that concern.

116. DANIEL SIEGEL, *MINDSIGHT* 84 (2010) (noting that experience causes neural firings that allows the neurons to form new connections); DOIDGE, *THE BRAIN’S WAY OF HEALING*, *supra* note 104, at 8 (noting that when a person has a new experience, or learns something new, “different groups of neurons get wired together”); PITTMAN & KARLE, *supra* note 105, at 31 (noting that “[c]hanges in the brain, or learning, can occur as a result of neurons establishing new connections and circuitry”).

117. NORMAN DOIDGE, *THE BRAIN THAT CHANGES ITSELF: STORIES OF PERSONAL TRIUMPH FROM THE FRONTIERS OF BRAIN SCIENCE* 46–47 (2007) [hereinafter *DOIDGE, THE BRAIN THAT CHANGES ITSELF*].

118. DOIDGE, *THE BRAIN’S WAY OF HEALING*, *supra* note 104, at 7–8.

119. WOLFE, *supra* note 98, at 25 (noting that each day the brain filters the “thousands of stimuli constantly bombarding the sensory receptors”); *id.* at 122 (noting that “[t]he brain is constantly taking in sensory stimuli from the outside world, assembling and sorting the stimuli, discarding much of the information, and directing only some of it to our conscious attention”).

120. *Id.* at 114.

121. *Id.* at 112 (noting that the initial sorting of information is an automatic unconscious process that happens quickly to prevent the brain from overloading). The brain filters out approximately 99 percent of all sensory information immediately as it enters the brain. *Id.*

122. AKBAR HUSSAIN, *EXPERIMENTS IN PSYCHOLOGY* 141 (2014) (noting that encoding occurs at the time of learning; it is the process through which various forms of stimulus received by the sense organs are changed so that they are placed into the memory in coded form); JAMES P. BYRNES, *MINDS, BRAINS, AND LEARNING: UNDERSTANDING THE PSYCHOLOGICAL AND EDUCATIONAL RELEVANCE OF NEUROSCIENTIFIC RESEARCH* 55 (2001) (“*Encoding* is the general term for the process of taking sensory information and transforming it into a permanent record.”).

mation from incoming stimuli and is based on our prior knowledge, experiences, and associations.<sup>124</sup> When the brain perceives stimulus, it sends the information simultaneously to the cortex and to the amygdala for further processing.<sup>125</sup> The cortex, known as the rational brain, uses a contextual frame to rationally analyze the incoming information and then determines how to proceed, including whether to store the information into conscious memory.<sup>126</sup> The amygdala takes the opposite course of action. Tasked with “determin[ing] the emotional relevance of incoming stimuli;”<sup>127</sup> processing emotions, including fear and anxiety;<sup>128</sup> and ensuring our overall safety; the amygdala is hardwired to instinctively initiate the body’s stress response in the face of a perceived dangerous situation or a threat.<sup>129</sup>

Assuming the brain does not perceive a threat or danger, the information moves to phase two—storage into memory. Learning is impossible without memory.<sup>130</sup> Memory is the ability to effectively store and recall information.<sup>131</sup> For the brain to effectively store information in conscious memory, the information has to be carefully and consciously attended to at encoding.<sup>132</sup> This makes attention critical to learning.<sup>133</sup>

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123. RONALD THOMAS KELLOGG, *FUNDAMENTALS OF COGNITIVE PSYCHOLOGY* 94 (2007) (“Encoding concerns perceiving, recognizing, and further processing an object or event so that it can be remembered later.”).

124. WOLFE, *supra* note 98, at 113-114 (noting that “[p]erception refers to the meaning we attach to information as it is received through the senses”). “The assignment of meaning to incoming stimuli, therefore, depends on prior knowledge and on what we expect to see. In a sense, the brain checks existing neural networks of information to see if the new information is something that activates a previously stored neural network.” *Id.*

125. *Id.* at 29; LEDOUX, *supra* note 100, at 163-165 (explaining that information reaches the amygdala before it reaches the cortex).

126. WOLFE, *supra* note 98, at 120 (noting that the cortex “places the information in context to make sense of it and decide on a course of action”).

127. *Id.*

128. Sousa, *supra* note 99, at 19; WOLFE, *supra* note 98, at 29 (“The amygdala could also be called the psychological sentinel of the brain because it plays a major role in the control of emotions.”). See LEDOUX, *supra* note 100, at 168 (referring to the amygdala as the fear hub); but see Judy Willis, *The Current Impact of Neuroscience*, in *MIND, BRAIN, & EDUCATION: NEUROSCIENCE IMPLICATIONS FOR THE CLASSROOM* 45, 53 (David A. Sousa ed., 2010) (“Until recently it was thought the amygdala responded primarily to danger, fear, or anger. But neuroimaging studies show that it also responds to positive emotional influences.”).

129. PITTMAN & KARLE, *supra* note 105, at 26.

130. DUANE F. SHELL ET AL., *THE UNIFIED LEARNING MODEL: HOW MOTIVATIONAL, COGNITIVE, AND NEUROBIOLOGICAL SCIENCES INFORM BEST TEACHING PRACTICES* 13 (2010).

131. WOLFE, *supra* note 98, at 148.

132. See LEDOUX, *supra* note 100, at 271.

The brain processes, and is largely preoccupied with, the information to which it attends.<sup>134</sup> Therefore, the level of attention given to a stimulus or stimuli at encoding influences if and how the information is processed.<sup>135</sup>

Attention at encoding also influences what information moves into short-term or long-term memory, how long the information is stored, and how easily that information can be retrieved and recalled.<sup>136</sup> The brain stores information consciously attended to in short-term memory, also known as working memory.<sup>137</sup> Short-term memory has a limited storage capacity and is only able to store approximately seven items for approximately one minute.<sup>138</sup> Information carefully attended to at encoding generally moves into long-term memory which has no storage limit, allowing the brain to store large quantities of information for long periods of time or sometimes indefinitely.<sup>139</sup>

The brain relies on the hippocampus to transfer information from short-term memory, stored in the prefrontal cortex, into long-term memory.<sup>140</sup> This transfer becomes easier and more efficient if there is a high level of interest in a stimulus that results in focused-attention being paid to that stimulus at encoding.<sup>141</sup> The hippocampus compares previously-stored information and experiences with new information and experiences to determine the appropriate long-term storage for the new

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133. RONALD A. COHEN, *THE NEUROPSYCHOLOGY OF ATTENTION* 212 (2013) (noting that “[b]oth attention and associative formation are fundamental components of learning”); SHELL ET AL., *supra* note 130, at 15 (noting that learning depends on “how students are attending (allocating) working memory”).

134. SHELL ET AL., *supra* note 130, at 12 (noting that we can only “attend to one thing at a time” because of working memory’s limited capacity). *But see id.* at 29 (explaining that we are not always able to consciously control our attention). For example, a student who felt that she was treated unfairly in a store on her way to school and that the treatment was based solely on her race may want to pay attention and focus on her lesson, but her attention may repeatedly revert to the incident in the store. *See* Godsil & Richardson, *supra* note 7, at 2242 (“A common response to feelings of threat is to pay more attention to the phenomena that give rise to them.”).

135. Brice A. Kuhl & Marvin M. Chun, *Memory and Attention*, in *THE OXFORD HANDBOOK OF ATTENTION* 806, 807 (Anna C. Nobre & Sabine Kastner eds., 2014) (noting that “attention at encoding profoundly influences what we remember”); COHEN, *supra* note 133, at 212 (noting that “[a]ttention increases the likelihood that processed information will result in memory”).

136. NELSON COWAN, *ATTENTION AND MEMORY: AN INTEGRATED FRAMEWORK* 243 (1998) (noting that “[m]ore deliberate recall is possible when attention is present at the time of encoding and retrieval”).

137. LEDOUX, *supra* note 100, at 270; WOLFE, *supra* note 98, at 122–24.

138. DAVID G. MYERS, *EXPLORING PSYCHOLOGY* 266 (2004).

139. WOLFE, *supra* note 98, at 143–44.

140. WOLFE, *supra* note 98, at 94 (noting that “the hippocampus is involved in the storage, consolidation, and retrieval of information”).

141. MARILEE SPRENGER, *LEARNING AND MEMORY: THE BRAIN IN ACTION* 51 (1999).

factual information.<sup>142</sup> The ability to connect new information to previously-stored information makes the hippocampus vital to forming new long-term factual memories.<sup>143</sup> The hippocampus also transfers the information, when needed, from long-term memory back to short-term memory, making it available for immediate recall.<sup>144</sup> Law students are able to recall information for a test, during oral argument, or when writing a document because of this communication between the hippocampus and the prefrontal cortex.

Emotions are also critical to learning because emotions influence attention.<sup>145</sup> During encoding, the brain determines where to focus its attention based on the emotional content of the new information and our prior knowledge and experiences. The brain will give priority to emotional-based information over factual information, because the brain attends first and longer to information and experiences with strong emotional content, whether those emotions are negative or positive.<sup>146</sup>

Take, for example, John, a Black male first-year law student trying to learn torts, contracts, and other legal rules and principles required in the first year. John experiences negative emotions such as fear and anxiety from being exposed repeatedly to psychosocial stressors outside and inside the classroom including racist, hateful, and discriminatory rhetoric and practices. Although John never misses lectures, it is highly likely that the repeated exposure to the psychosocial stressors will hinder his ability to effectively learn the legal rules and principles because his brain will attend first and longer to the psychosocial stressors given their emotional content.

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142. Heissel et al., *supra* note 16, at 4 (noting that “[s]uccessful learning requires both forming new memories and making connections to old ones”); DAVID SOUSA, *HOW THE BRAIN LEARNS* 17 (4th ed. 2011) (The hippocampus constantly “checks information relayed to working memory and compares it to stored experiences. This process is essential for the creating of meaning.”).

143. SPRENGER, *supra* note 141, at 37 (“Without a hippocampus you cannot form new long-term factual memories.”). Memory consolidation occurs when new memories are integrated with “past experience and knowledge.” Heissel et al., *supra* note 16, at 4.

144. Heissel et al., *supra* note 16, at 4 (noting that learning “involves both memory consolidation and retrieval”). SPRENGER, *supra* note 141, at 37 (likening the hippocampus to a “filing cabinet for factual memories”); WOLFE, *supra* note 98, at 30 (noting that without the hippocampus “you would not be able to remember where you parked your car, or anything else in your immediate past, as soon as you stopped giving it your attention”).

145. WOLFE, *supra* note 98, at 119 (referring to Robert Sylwester’s statement that “emotion drives attention, and attention drives learning”); E. Scott Fruehwald, *How to Help Students from Disadvantaged Backgrounds Succeed in Law School*, 1 TEX. A&M L. REV. 83, 91 (2013) (noting that emotions drive motivation to learn).

146. WOLFE, *supra* note 98, at 120 (noting that the “brain is biologically programmed to attend to information that has strong emotional content first” and to “remember this information longer”).

Emotions also affect memory. While a law student has to consciously pay attention and try to remember rules of law and facts, the same does not apply to remembering emotions, especially negative ones such as fear and anxiety. Unlike factual information that needs to be consciously attended to at encoding to enter long-term memory, the brain remembers emotional content even if it is not consciously attended to at encoding.<sup>147</sup> The amygdala has a separate memory system that stores emotional memories and can unconsciously form and store new emotional memories.<sup>148</sup> Research suggests that amygdala-based memory lasts longer than cortex-based memory; therefore, it is easier to remember and recall emotionally-based information and experiences for longer periods of time.<sup>149</sup>

#### B. *Negative Emotions: Fear, Anxiety and the Body's Stress Response*

Fear and anxiety are negative emotions that can cause stress.<sup>150</sup> It is important that law professors and law school administrators develop a working understanding of how fear and anxiety affect the body's stress response. This is especially important because they are responsible for designing learning environments that facilitate learning and because law students experience varying degrees of fear- and anxiety-induced stress, including law students who are impacted by psychosocial stressors that put them at risk for StressPlus.

Fear and anxiety are often used interchangeably because they have the same root cause—threat or danger—and because they initiate the body's stress response.<sup>151</sup> They differ, however, in the intensity and the duration of the stress response.<sup>152</sup> Fear is a reaction to a tangible, concrete, external threat that has a real or perceived potential to cause harm.<sup>153</sup> Anxiety, on the other hand, is abstract—it is a reaction to an internal

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147. LEDOUX, *supra* note 100, at 209, 239.

148. PITTMAN & KARLE, *supra* note 105, at 21 (“The amygdala both forms and recalls emotional memories.”); LEDOUX, *supra* note 100, at 239; DANIEL GOLEMAN, *EMOTIONAL INTELLIGENCE: WHY IT CAN MATTER MORE THAN IQ* 18 (2012).

149. WOLFE, *supra* note 98, at 120; *see* MCEWEN & LASEY, *supra* note 21, at 36 (acknowledging that “[t]he human brain is particularly good at storing memories with strong emotional content, positive or negative”).

150. RACHMAN, *supra* note 20, at 6. Stress is a biological and physiological response to a threatening or harmful situation. *See* IRVING B. WEINER, *HANDBOOK OF PSYCHOLOGY, BIOLOGICAL PSYCHOLOGY* 442 (2003).

151. RACHMAN, *supra* note 20, at 3.

152. *Id.*

153. LEDOUX, *supra* note 100, at 228 (“Anxiety and fear are closely related. Both are reactions to harmful or potentially harmful situations. Anxiety is usually distinguished from fear by the lack of an external stimulus that elicits the reaction—*anxiety comes from within us, fear from the outside world.*”).

thought, anticipation, or expectation that something feared will, or is likely to, occur.<sup>154</sup> Fear generally causes an intense stress response that has a limited duration, ceasing when the threat is removed or is no longer perceived as having the potential to cause harm.<sup>155</sup> Anxiety can cause a less intense stress response than fear, but the effects can be similarly damaging because feelings of anxiety can be pervasive and can continue for extended periods, including days or even months.<sup>156</sup> A constant state of anxiety can generate fear,<sup>157</sup> and generally “it is probably impossible to feel fear without also being anxious.”<sup>158</sup>

A student can experience fear and anxiety about objects or in situations that seem non-threatening, because the brain can be conditioned to experience fear and anxiety about seemingly non-threatening objects or situations.<sup>159</sup> Similarly, a student may also experience fear and anxiety when exposed to objects or situations that he or she had never previously encountered or is unlikely to encounter because of an inherent predisposition to fear or anxiety caused by those objects or situations.<sup>160</sup> This predisposition is unconscious and can be passed down from generation to generation.<sup>161</sup>

A threat or danger, whether consciously or unconsciously perceived, can cause fear and anxiety and as a result initiate the body’s stress response.<sup>162</sup> Therefore, it is not necessary for a student to be consciously

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154. JOSEPH LEDOUX, *ANXIOUS: USING THE BRAIN TO UNDERSTAND AND TREAT FEAR AND ANXIETY* 7 (2015) [hereinafter LEDOUX, *ANXIOUS*].

155. RACHMAN, *supra* note 20, at 3–4.

156. *Id.* (noting that in many instances anxiety is “more difficult to tolerate than fear” because it is “persistent, pervasive, and draining”).

157. *Id.* at 5 (adding that “repeated experiences of anxiety can in turn generate fears”).

158. LEDOUX, *ANXIOUS*, *supra* note 154, at 10; *see also* RACHMAN, *supra* note 20, at 5 (“Anxiety often follows fear . . .”).

159. *See* LEDOUX, *supra* note 100, at 141–147.

160. RACHMAN, *supra* note 20, at 5 (explaining that “people might be inherently predisposed to fear certain objects”). This inherent predisposition to feel fear or become anxious in certain situations, and even in situations that have not been previously encountered, occur because the brain builds networks based on genes as well experiences.

161. Fear and anxiety resulting from historical trauma can be passed down from generation to generation. *See* Teresa Evans–Campbell et al., *Race and Mental Health: Past Debates, New Opportunities*, in *MENTAL HEALTH, SOCIAL MIRROR* (William R. Avison et al. eds., 2007) (defining historical trauma as “the trauma that arises in response to numerous traumatic events experienced by a community over several generations” and noting that “a key facet of historical trauma is that it is passed on from generation to the next, as descendants continue to emotionally identify with their ancestral suffering and pain”). Inter-generational trauma includes slavery, segregation, and political oppression. *Id.*

162. Joseph E. LeDoux, *The Amygdala is not the Brain’s Fear Center: Separating Findings from Conclusions*, *PSYCH. TODAY* (Aug. 10, 2015), <https://www.psychologytoday.com/blog/i-got-mind-tell-you/201508/the-amygdala-is-not-the-brains-fear-center>.

aware that a danger or threat is present, or consciously feel fear or anxiety, to feel the effects of the body's engaged stress response. Leading neuroscientist on the impact of fear and anxiety on the brain, Joseph LeDoux, posits that threatening stimuli can engage the body's stress response even in instances where those "stimuli are presented subliminally."<sup>163</sup> This has far reaching implications for law schools designing learning environments because stereotype threat, microaggressions, and other threatening stimuli consciously or subliminally perceived can continuously engage a student's stress response.

### 1. Stress

During encoding, if the brain perceives a threat or danger, which are the root causes of fear and anxiety, the body automatically prepares for survival.<sup>164</sup> The neurons in the amygdala immediately begin to fire, causing stress and initiating the "fight, flight, or freeze" stress response.<sup>165</sup> The stress response causes the body to produce stress hormones, including adrenaline and cortisol, which increase alertness and boost the body's energy levels to escape the danger or otherwise handle the threat.<sup>166</sup> This explains why some stress is good for learning. Mild to moderate short-term intrinsic stress increases alertness and motivation which facilitate learning.<sup>167</sup> An intense or sustained stress response, however, can harm the body and disrupt learning by damaging or remodeling the neurons in the brain.<sup>168</sup>

The brain can turn off or quiet the stress response before it disrupts learning and harms the body. For this to happen, the cortex has to ration-

163. *Id.*

164. Heissel et al., *supra* note 16, at 3 (noting that stressors, real or perceived, can engage the stress response).

165. PITTMAN & KARLE, *supra* note 105, at 15, 25 (noting that if the amygdala detects danger, it causes the body to respond in one of three ways: fight, flight, or freeze).

166. McEWEN & LASEY, *supra* note 21, at 4.

167. Franklin Stein, *Stress Management Questionnaire*, in ASSESSMENTS IN OCCUPATIONAL THERAPY MENTAL HEALTH: AN INTEGRATIVE APPROACH 293, 294 (Barbara J. Hemphill-Pearson ed., 2008) ("Not all stress is bad; mild to moderate amounts of stress can be a motivating force in an individual."). *But see* Heissel et al., *supra* note 16, at 5 (noting that intrinsic stress, like stress related to a test, is more likely to help recall whereas extrinsic stress, stress from external sources, is more likely to hinder recall).

168. McEwen, *supra* note 70, at 17180; Stein, *supra* note 167, at 296 ("Specific symptoms and problems resulting from stress": 1) "*Physiological*: such as headaches, tremors, neck/low back pain"; 2) "*Cognitive*: such as difficulty concentrating, remembering, decision making"; 3. "*Emotional*: such as feeling angry, hopeless, tense, and sad"; and 4) "*Behavioral*: such as difficulty sleeping, eating, and speaking."); Heissel et al., *supra* note 16, at 6 (noting that elevated cortisol levels can impair cognitive performance).

ally evaluate the incoming information and tell the amygdala whether there is a real threat or danger or whether it is overacting.<sup>169</sup> Based on the cortex's assessment of the level of threat or danger, the brain may turn off the body's stress response where there is no threat or danger, or quiet the stress response where there is minimal threat or danger.<sup>170</sup>

The cortex, however, does not always get to regulate the stress response before it disrupts learning. New information reaches the amygdala before it reaches the cortex.<sup>171</sup> Therefore, when responding to a new experience or information perceived to be threatening or dangerous, the amygdala sometimes hijacks the brain,<sup>172</sup> disables the functions of the cortex, and keeps the stress response engaged.<sup>173</sup> Inflammatory rhetoric that is perceived to be threatening and dangerous, including disparaging remarks about race, ethnicity, and gender, whether assimilated via the media or personal contacts, can cause the amygdala to hijack the brain.<sup>174</sup> Perceived discrimination and continuous thoughts of dealing with negative stereotypes about one's race, gender, ethnicity, and religion produce a similar result.<sup>175</sup>

The degree to which stress impacts learning and memory formation depends on several factors including the duration and intensity of the stress,<sup>176</sup> and whether the stressor is intrinsic or extrinsic.<sup>177</sup> Stress is cate-

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169. PITTMAN & KARLE, *supra* note 105, at 17 (noting that the cortex evaluates and can “contribute to changing your response to threatening situations”).

170. *Id.*

171. LEDOUX, *supra* note 100, at 163–65 (noting that the amygdala is able to act faster because information reaches the amygdala before it reaches the cortex).

172. GOLEMAN, *supra* note 148, at 17–18.

173. Amy F. T. Arnsten, *Stress Signalling Pathways that Impair Prefrontal Cortex Structure and Function*, NIH PUB. ACCESS 9 (2010) (noting that chronic stress strengthens the amygdala's stress response functions, while at the same time weakening the pre-frontal cortex's ability to temper the stress response).

174. Strauss, *supra* note 19 (“The author Daniel Goleman has coined the term “amygdala hijacking” to describe what inflammatory rhetoric and imagery are designed to do: trigger the emotional brain before the logical brain has a chance to stop it. This is what both the right and the left believe their opponent's media are doing to people.”). See GOLEMAN, *supra* note 148, at 17, 203.

175. See MCEWEN & LASEY, *supra* note 21, at 9–10 (arguing that merely anticipating a threatening situation is sufficient to engage the body's stress response because “the connections between perception and physiological response [is] so strong, that we can set off the fight-or-flight response by just imagining ourselves in a threatening situation”).

176. Heissel et al., *supra* note 16, at 4 (identifying several important factors that influence how stress affects learning, including “learning type (e.g., spatial learning), whether the stress is intrinsic (related to the cognitive task) or extrinsic (originating from the outside world and unrelated to the cognitive task), duration (acute or chronic), stressor intensity, and timing relative to the memory phase (e.g., during memory acquisition, storage, or retrieval”).

177. Heissel et al., *supra* note 16, at 4.

gorized based on duration as acute, episodic acute, or chronic,<sup>178</sup> and on intensity as mild, moderate, extreme, or severe.<sup>179</sup> Acute stress is temporary, short-term, and lasts for up to one day.<sup>180</sup> Episodic acute stress is a series of acute stresses that occurs over a short period of time, while chronic stress is long-term and occurs when one thinks they are unable to control or change a threatening or harmful situation.<sup>181</sup> Discrimination is known to cause chronic stress.<sup>182</sup>

A law student undergoing chronic stress cannot learn optimally. The capacity to learn, retain, and recall information is directly linked to the number and health of the neurons. Healthy neurons are better able to receive, transmit, store, and retrieve information in the brain, maintain old neural network connections, and create new neural connections. Chronic stress remodels or damages the neurons in the brain.<sup>183</sup>

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178. Stress: The Different Kinds of Stress, AM. PSYCHOLOGICAL ASS'N, <https://www.apa.org/helpcenter/stress-kinds> [hereinafter APA, *Different Kinds of Stress*]. The American Psychological Association categorizes stress as: acute stress, episodic acute stress, and chronic stress. *Id.* Researchers suggest that categorizing stress based solely on its duration ignores the dimensions and is insufficient to properly understand and manage stress. They suggest that “for a more complete characterization and understanding of stress,” stressor frequency and intensity should also be considered. Gail L. McCormick, Katriona Shea & Tracy Langkilde, *How Do Duration, Frequency, and Intensity of Exogenous CORT Elevation Affect Immune Outcomes of Stress?*, 222 GEN. & COMP. ENDOCRINOLOGY 81, 82 (2015).

179. Stein, *supra* note 167, at 294 (“Stress can be experienced as mild, moderate, or severe. Mild stress can be experienced driving in light traffic. Moderate stress may be experienced while taking a weekly examination, and high stress may be experienced when losing a job.”).

180. Yuncai Chen et al., *Correlated Memory Defects and Hippocampal Dendritic Spine Loss After Acute Stress Involve Corticotropin-Releasing Hormone Signaling*, 107 PNAS 13123, 13123 (2010) [www.pnas.org/cgi/doi/10.1073/pnas.1003825107](http://www.pnas.org/cgi/doi/10.1073/pnas.1003825107) [hereinafter Chen et al., *Hippocampal Dendritic Spine Loss*]; SEAWARD, *supra* note 12, at 9 (noting that examples of acute stress include losing your car keys and being pulled over by the police who issues a warning for speeding and then drives off; the intensity of the stress may be high, but the duration is short); *see also* Marian Joëls & Tallie Z. Baram, *The Neuro-Symphony of Stress*, 10 NATURE REV. NEUROSCIENCE 459, 459 (2009), <https://www.nature.com/articles/nrn2632.pdf> (detailing the effects of acute stressors as causing “a rapid surge of neurotransmission, neuronal activation and hormone release,” which “is followed by rapid return to baseline levels”).

181. APA, *Different Kinds of Stress*, *supra* note 178.

182. Landrine & Klonoff, *supra* note 16, at 145–46; *see* Gilbert C. Gee et al., *A Nationwide Study of Discrimination and Chronic Health Conditions Among Asian Americans*, 97 AM. J. PUBLIC HEALTH 1275, 1275 (2007) (noting that “[o]ngoing, routine discrimination may represent a type of chronic stressor that can be especially toxic to ethnic minorities”). *See also* Mouzon et al., *supra* note 80, at 6 (noting that everyday discrimination is a psychosocial stressor that “is likely to precipitate the continued release of stress hormones” that can cause “physical health problems”).

183. McEwen, *supra* note 70, at 171–82.

Chronic stress remodels the dendrites in the amygdala, causing them to increase and expand. As a result, the amygdala constantly engages the stress response and floods the body with stress hormones.<sup>184</sup> Elevated levels of stress hormones can cause the amygdala to shut down the cortex's ability to process information, which hinders learning, and can prevent the cortex from regulating the body's stress response, which keeps the body in a state of high alert and generates increased anxiety.<sup>185</sup> Over time, the increased anxiety can lead to anxiety disorder.<sup>186</sup>

Chronic stress has an opposite, but equally damaging impact on the neurons in the prefrontal cortex and in the hippocampus. Chronic stress causes the dendrites in the prefrontal cortex and in the hippocampus to degenerate and, in extreme cases, shrivel and die.<sup>187</sup> Damage to the dendrites in the prefrontal cortex disrupts working memory and diminishes the ability to focus, reason, problem solve, think and respond accurately, prioritize, and perform critical analysis.<sup>188</sup> Similarly, damage to the dendrites in the hippocampus affects new memory formation and recall.<sup>189</sup> Temporary damage impairs memory formation and consolidation, as well as the ability to retrieve and recall information.<sup>190</sup> Permanent damage leads to memory loss.<sup>191</sup>

Chronic stress also diminishes the brain's ability to focus on factual information and stymies interest and the motivation to learn. Fear- and anxiety-induced stress inside and outside of the classroom prompt the

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184. Arnsten, *supra* note 173, at 3.

185. *Id.*; MCEWEN & LASEY, *supra* note 21, at 63.

186. McEwen, *supra* note 70, at 17182; see LEDOUX, *supra* note 100, at 239-247. Dr. LeDoux also notes that excess stress causes depression. *Id.* at 243.

187. LEDOUX, *supra* note 100, at 242 (noting that temporary stress causes the dendrites in the hippocampus to shrivel while chronic stress causes them to degenerate); see Arnsten, *supra* note 173, at 9 (noting that the prefrontal cortex quickly responds to stress exposure and suffers structural changes after a week or possibly a single exposure while the dendrites in the hippocampus are remodeled or become damaged after weeks of stress exposure). See also C. Liston et al., *Psychosocial Stress Reversibly Disrupts Prefrontal Processing and Attentional Control*, 106.3 PROC. NAT'L ACAD. SCI. U.S. 912, 912-14 (2009) (reporting the results of their study which demonstrate that psychosocial stress induces changes in human prefrontal cortex and disrupts the prefrontal cortex circuitry).

188. Liston et al., *supra* note 187, at 912 (noting that in healthy persons, chronic stress "disrupts creativity, flexible problem solving, working memory, and other [prefrontal cortex]-dependent processes"). See Willis, *supra* note 128, at 53 (noting that the prefrontal cortex regulates "cognitive and executive functions, such as judgment, organization, prioritization, risk assessment, critical analysis, concept development, and creative problem solving").

189. MCEWEN & LASEY, *supra* note 21, at 62.

190. LEDOUX, *supra* note 100, at 242.

191. *Id.* (noting also that when the stress ends, the damage to the hippocampus can be reversed).

brain to release trimethylamine which retards brain cell development and after an extended time, reduces motivation.<sup>192</sup> Likewise, the brain overwhelmed by stress is unable to focus and engage in cognitive processes necessary for successful learning.<sup>193</sup>

In addition to chronic stress, research shows that acute stress also impairs learning and memory.<sup>194</sup> Stress researcher Tallie Baram and her team found that acute stress lasting for only a few hours<sup>195</sup> causes the dendrites to degenerate and weakens the synapses' ability to "collect and store memories."<sup>196</sup> Similarly, acute and chronic stress hinder learning and memory by preventing the neurotransmitters from efficiently transporting information among neurons.<sup>197</sup>

Stress contributes to the academic achievement gap among different groups of students.<sup>198</sup> Researchers investigating the impact of stress exposure on academic achievement have concluded that the difference in stress exposure, both inside and outside the classroom, and the difference in stress response "may explain why two students with the same level of knowledge may have different results on the same standardized tests—or why one student does not accumulate the same level of knowledge in the first place."<sup>199</sup> They argue that students exposed to extrinsic stress in the classroom, such as perceived discrimination and stereotype threats, are at a learning and test-taking disadvantage because they tend to form more

192. WILLIS, RESEARCH-BASED STRATEGIES, *supra* note 29, at 58. See also Levy et al., *supra* note 82, at 455 (noting that stress negatively impacts motivation).

193. Levy et al., *supra* note 82, at 455 (noting that stress negatively impacts "cognitive processes such as attention, memory, and executive functioning").

194. Chen et al., *Hippocampal Dendritic Spine Loss*, *supra* note 180, at 13123–28; Arnsten, *supra* note 173, at 2–3 (noting that acute mild stress impairs prefrontal functions, such as working memory, and severe acute stress impairs the functions of the hippocampus).

195. Chen et al., *Hippocampal Dendritic Spine Loss*, *supra* note 180, at 13123–24 (noting that acute stress, lasting minutes to hours, affects memory and learning); Yuncai Chen et al., *Rapid Loss of Dendritic Spines after Stress Involves Derangement of Spine Dynamics by Corticotropin-Releasing Hormone*, 28 J. NEUROSCIENCE 2903, 2909 (2008) (noting that there was significant dendritic deterioration within five hours in adult mice exposed to stress) [hereinafter Chen et al., *Rapid Loss After Stress*].

196. UNIV. CAL.–IRVINE, *Short-term Stress Can Affect Learning and Memory*, SCIEDAILY (Mar. 13, 2008), [www.sciencedaily.com/releases/2008/03/080311182434.htm](http://www.sciencedaily.com/releases/2008/03/080311182434.htm) (explaining that Dr. Tallie Baram and her research team found that "rather than involving the widely known stress hormone cortisol, which circulates throughout the body, acute stress activated selective molecules called corticotropin releasing hormones, which disrupted the process by which the brain collects and stores memories"); Chen et al., *Rapid Loss After Stress*, *supra* note 195, at 2903; Chen et al., *Hippocampal Dendritic Spine Loss*, *supra* note 180, at 13123–24.

197. SPRENGER, *supra* note 141, at 40 ("Stress chemicals can block the neurotransmitters that are trying to make logical connections in your brain.").

198. Heissel et al., *supra* note 16, at 1; see Levy et al., *supra* note 82, at 455.

199. Heissel et al., *supra* note 16, at 10.

rigid habit-based memory “rather than more flexible memories that connect concepts together.”<sup>200</sup> They also argue that exposure to chronic extrinsic stress “out-of-school,”<sup>201</sup> and in particular “psychological stress associated with being a member of a racial/ethnic minority group,”<sup>202</sup> reduces the students’ ability to learn and to respond optimally on tests.<sup>203</sup>

## 2. Healing the Brain on Stress

Although stress is known to hinder successful learning, there is good news. Students who have difficulty learning because of their stress exposure can heal and rewire their brain to learn optimally through processes called neurogenesis and neuroplasticity.<sup>204</sup> Neurogenesis enables the brain to perpetually generate new neurons and heal existing ones that are damaged or remodeled by stress.<sup>205</sup> Similarly, neuroplasticity allows the brain to perpetually prune, strengthen, or rewire old neural connections and create new ones based on new information and experiences.<sup>206</sup> As a result, the brain is better able to successfully learn new information and experiences;<sup>207</sup> this includes the brain whose functions are impaired by stress. To further increase the opportunities for successful learning, new information and experiences should be repeated because repetition enhances learning and retention by strengthening neural connections.<sup>208</sup> However, the

200. *Id.* at 4.

201. *Id.* at 6.

202. Levy et al., *supra* note 82, at 455 (arguing that the difference in stress exposure and response “may also contribute to the achievement gap found between Whites and racial/ethnic minorities”).

203. Heissel et al., *supra* note 16, at 6; Levy et al., *supra* note 82, at 455.

204. See MCEWEN & LASEY, *supra* note 21, at 120–121 (explaining that neurogenesis and neuroplasticity facilitates learning); Sousa, *supra* note 99, at 16–17.

205. MCEWEN & LASEY, *supra* note 21, at 121; SIEGEL, *supra* note 116, at 42, 110.

206. MCEWEN & LASEY, *supra* note 21, at 120; Willis, *supra* note 128, at 55 (defining neuroplasticity as “the ability of neural networks to extend, prune, reorganize, correct or strengthen themselves on acquiring new information, obtaining corrective feedback, and recognizing associations between new and prior knowledge”). See Sousa, *supra* note 99, at 17 (adding that researchers created computer programs and protocols that rewired the brains of young students who struggled to read properly so that they performed like those of the students who were good readers).

207. PITTMAN & KARLE, *supra* note 105, at 31 (noting that “learning can occur as a result of neurons establishing new connections and circuitry”).

208. See WOLFE, *supra* note 98, at 133 (noting repeated exposure to information increases the likelihood that the information will be stored in long-term memory); see DOIDGE, THE BRAIN THAT CHANGES ITSELF, *supra* note 117, at 60 (explaining that our brain is plastic and “plasticity is competitive” therefore when we learn and repeat bad habits or experiences, they are difficult to unlearn because repetition causes them to take

converse is also true. It is easier to forget information and experiences that are not repeated or used.<sup>209</sup>

Neurogenesis and neuroplasticity also stimulate “new thinking, coping, and relating skills.”<sup>210</sup> This is critical information for educators and administrators whose students live in a constant state of fear and anxiety. Exposing these students to new information and experiences, which is most successfully learned when repeated, can guide their brain toward new thoughts and relating skills that will improve their ability to handle adverse situations. As a result, this can reduce fear and anxiety.

While neurogenesis and neuroplasticity are necessary for successful learning, learning also encourages neurogenesis and neuroplasticity. Postmortem studies on the human brain show that learning promotes neurogenesis and neuroplasticity.<sup>211</sup> Law schools can intentionally stimulate neurogenesis and neuroplasticity by creating learning environments that are non-stressful, engaging, inclusive, and inspire positive emotions.<sup>212</sup> This will signal a positive step toward engaging and motivating all students to learn successfully.

### 3. Preventing Stress by Altering One’s Perception of Control and Refusing to Internalize Psychosocial Stressors

Research shows that the stress impact of psychosocial stressors is based on an individual’s perception of control over the stressors, and the tendency to internalize the stress stimulus.<sup>213</sup> The perception of control over a stressor affects the duration and intensity of the stress response.<sup>214</sup> Based on the level of perceived control, the cortex analyzes the situation and tells the amygdala that there is no, or little need, to engage the stress response. For example, law students of color affected by racism or ethnic discrimination are more likely to experience chronic stress, and feel demotivated and hopeless if they perceive an inability to control or address

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more control of the brain map consequently reducing the available space to learn and store good habits or experiences).

209. DOIDGE, *THE BRAIN THAT CHANGES ITSELF*, *supra* note 117, at 60.

210. Debra Austin & Rob Durr, *Emotion Regulation for Lawyers: A Mind Is a Challenging Thing to Tame*, 16 WYO. L. REV. 387, 408 (2016).

211. DOIDGE, *THE BRAIN THAT CHANGES ITSELF*, *supra* note 117, at 43.

212. See SIEGEL, *supra* note 116, at 84 (noting that focused attention, “aerobic exercise, novelty, and emotional arousal” increase neuroplasticity); see also MCEWEN & LASEY, *supra* note 21, at 121 (noting that stress stifles neurogenesis and neuroplasticity).

213. See David H. Chae et al., *Discrimination, Racial Bias, and Telomere Length in African American Men*, 46 AM. J. PREV. MED. 103, 103 (2014); Segerstrom, *supra* note 14, at 598–99.

214. See BERNSTEIN, *supra* note 36, at 407 (noting that [s]imply believing that a stressor is controllable (even if it isn’t) can also reduce its impact”).

the discrimination.<sup>215</sup> The same cohort of law students, however, are less likely to feel stressed or feel the same degree of stress if they think they can control the discriminatory situation.<sup>216</sup> The students' perception of control is enhanced when they are trained and feel prepared and empowered to address discrimination and similar psychosocial stressors.<sup>217</sup>

Psychosocial stressors hinder learning and cause the most damage to the body when internalized. Dr. David Chae concluded in a 2013 study that Black males who experienced high levels of racism, such as driving or shopping while Black, and who internalized strong "anti-[B]lack bias" were more likely to suffer from adverse health consequences than those who experienced similarly high levels of racism but who did not internalize the "anti-[B]lack bias."<sup>218</sup>

Given that the "act of internalization" may be conscious or unconscious,<sup>219</sup> discrimination can engage the stress response, inhibit learning, and cause physical harm to law students of color and of historically marginalized groups even if the students do not consciously focus on the discriminatory situation.

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215. Baum et. al., *supra* note 36, at 14. (explaining that "perceptions of control, or the degree to which a stressor is seen as being under an individual's control, are also important in the appraisal of threat" and noting that the threat seems to be amplified "[w]hen control is not perceived as feasible or when a stressor is seen as unpredictable"); see BERNSTEIN, *supra* note 36, at 407 ("People who feel they have no control over negative events appear especially prone to physical and psychological problems. They often experience feelings of helplessness and hopelessness that in turn may promote depression or other mental disorders.").

216. See BERNSTEIN, *supra* note 36, at 407 (suggesting that a perception of control over a stressor reduces its impact).

217. See RUSSEL SWANSBURG & RICHARD SWANSBURG, INTRODUCTION TO MANAGEMENT AND LEADERSHIP FOR NURSE MANAGERS 322 (2002) (positing that workers perceived greater control when they are "educated, trained, motivated, stable, and empowered").

218. Chae et al., *supra* note 213, at 104-05; Melanie Haiken, *Racism May Speed Aging in African American Men*, FORBES (Jan. 7, 2014), <https://www.forbes.com/sites/melaniehaiken/2014/01/07/racism-may-speed-up-aging-in-african-american-men/#588f4c357127> ("Stop-and-frisk policies and other forms of criminal profiling such as 'driving or shopping while Black' are inherently stressful and have a real impact on the health of African Americans.").

219. VIRGINIA M. BRABENDER & JONI L. MIHURA, *The Construction of Gender and Sex, and Their Implications for Psychological Assessment*, in HANDBOOK OF GENDER AND SEXUALITY IN PSYCHOLOGICAL ASSESSMENT 1, 11 (Virginia M. Brabender & Joni L. Mihura eds., 2016).

C. *Turning the Tides: Using Positive Emotions to Help the Brain to Learn*

Positive emotions such as confidence, interest, and joy contribute to effective learning and are especially important when students are undergoing stress. The brain learns best in a safe, non-threatening, and stress-free or low-stress environment where incoming information can flow uninterrupted to the prefrontal cortex. Positive emotions help to make this happen. Positive emotions enhance learning by making it easier, and possible in cases of chronic stress, for new information to reach the prefrontal cortex where it can be consciously processed, stored, and retrieved.<sup>220</sup> Positive emotions also facilitate learning by tempering negative emotions, and prompting the brain to turn off or turn down the body's stress response. This reduces, or at best totally stops, the flow of stress hormones that prevents the neural connections required for effective learning.

Positive emotions also facilitate learning by increasing the brain's production of dopamine.<sup>221</sup> Dopamine is a neurotransmitter that carries information between neurons and across the synapses.<sup>222</sup> High levels of dopamine in the brain increase "focus, memory, and motivation."<sup>223</sup>

Psychologist Barbara Fredrickson suggests that positive emotions encourage learning and also make it easier to manage and cope with stressors.<sup>224</sup> Dr. Fredrickson's "broaden-and-build" theory of positive emotions posits that positive emotions, such as joy and interest, lead to open-mindedness and increased awareness, which make it possible to learn new information and new skills.<sup>225</sup> For example, joy inspires creativity,<sup>226</sup> and interest increases attention and motivates students to learn new information and attempt new experiences.<sup>227</sup> The broaden-and-build theory also posits that positive emotions help to "build enduring personal resources," including intellectual, physical, social, and psychological resources that make it possible to manage current and future threats and

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220. Willis, *supra* note 128, at 49.

221. DONALD VICKERY, LARRY MATSON & CAROL VICKERY, *LIVE YOUNG, THINK YOUNG, BE YOUNG: AT ANY AGE* 193 (2012) (noting that positive emotions increase dopamine production while negative emotions has the opposite effect).

222. Willis, *supra* note 128, at 54.

223. *Id.*

224. BARBARA FREDRICKSON, *POSITIVITY: TOP-NOTCH RESEARCH REVEALS THE 3-TO-1 RATIO THAT WILL CHANGE YOUR LIFE* 43, 61 (2009).

225. *Id.* at 24.

226. Barbara L. Fredrickson, *The Broaden-and-Build Theory of Positive Emotions*, 359 *PHIL. TRANSACTIONS ROYAL SOC'Y B: BIOLOGICAL SCI.* 1367, 1369 (2004) [hereinafter Fredrickson, *Broaden-and-Build Theory*].

227. *Id.* at 1367, 1369.

enhance problem solving skills, resilience, confidence, and motivation.<sup>228</sup> In addition, positive emotions alter worldviews and reinforce the ability to handle stressors, which in turn increase the perception of control over psychosocial stressors and curb the tendency to internalize them.<sup>229</sup>

### III. EMPOWERING AND MOTIVATING STUDENTS TO LEARN BY INCORPORATING SOCIAL JUSTICE ISSUES INTO THE FIRST-YEAR LEGAL WRITING CURRICULUM

Law schools may not have the power to eliminate the stressors that cause law students of color and of historically marginalized groups to experience StressPlus, but they can create learning environments to help this cohort of students prevent or reduce the stress impact that is known to hinder effective learning. Incorporating social justice issues into the first-year law school curriculum,<sup>230</sup> and especially into the first-year legal writing course, will contribute to such a learning environment. Besides, incorporating social justice issues into the law school curriculum facilitates learning for all law students<sup>231</sup> and has the added benefits of building positive emotions in law students of color and of historically marginalized groups, empowering them, and motivating them to learn more effectively.<sup>232</sup>

The American Bar Association (ABA) requires law schools to prepare law students to pass the bar exam and to become effective members of the legal profession.<sup>233</sup> The ABA also expects law schools to demonstrate their intent to realize these goals through established learning outcomes that must include competency in knowledge and understanding of the law, legal analysis and reasoning, problem-solving, legal research, and legal writing.<sup>234</sup> Even if a law school has the most rigorous of legal educa-

228. *Id.* at 1369.

229. *Id.*

230. See generally Sophie M. Sparrow, *Teaching and Assessing Soft Skills*, 67 J. LEGAL EDUC. 553, 557 (2018) (arguing that incorporating “the top ten lawyering foundations throughout the law school curriculum” would “create and support an institutional culture conveying the foundations’ importance”).

231. Edwards & Vance, *supra* note 32, at 68.

232. *Id.* at 67.

233. ABA STANDARDS, *supra* note 25. (“A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.”); see also Sarah O’Rourke Schrup, *The Clinical Divide: Overcoming Barriers to Collaboration Between Clinics and Legal Writing Programs*, 14 CLINICAL L. REV. 301, 308 (2007) (noting the MacCrate Report also require law schools teach the profession’s goals of “justice, fairness, and morality”).

234. ABA STANDARDS, *supra* note 25, at 15.

tion programs, it will fall short of fulfilling this obligation to the ABA if a cohort of law students cannot learn because they are too stressed.

Law students of color and of historically marginalized groups who are fearful and anxious because they feel constantly surveilled, threatened, mistreated, or unfairly treated, regardless of whether this comes from outside or inside the classroom, cannot effectively engage in the higher cognitive functions required to learn the law. Stress compromises their ability to focus, process, consolidate and remember new information, and recall old information. Simply put, without careful intervention starting in their first year of law school, stress can prevent law students of color and of historically marginalized groups from effectively learning the skills necessary for them to pass the bar and to become effective members of the legal profession.<sup>235</sup>

*A. Incorporating Social Justice into the  
First-Year Law School Curriculum to Help Students Learn*

Professors Pamela Edwards and Sheilah Vance define social justice as “the process of remedying oppression, which includes ‘exploitation, marginalization, powerlessness, cultural imperialism, and violence.’”<sup>236</sup> Further, they define issues of social justice to include problems involving race, ethnicity, and interracial conflict, “class conflict, gender distinctions, . . . , religious differences,” and sexual orientation conflicts.<sup>237</sup> Social justice is at the core of real-world issues that directly or indirectly affect law students of color and of historically marginalized groups, their families, and members of their communities.<sup>238</sup> Real-world issues involving social justice are pervasive and pernicious and are often sources of psychosocial stressors known to cause chronic stress. A lawyer, at some point in his or her career, may be asked to address problems based on issues of social justice that will force some to question their belief in the fundamental right to equality before the law.

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235. See Darling-Hammond & Holmquist, *supra* note 16, at 57 (noting that many students from unrepresented groups who have done “amazingly well in law school” and have earned “great grades,” have attributed their success to “transformative teachers” who taught them foundational principles to bridge the preparation gap, “the legal approach, and allay[ed] fears that they did not belong”).

236. Edwards & Vance, *supra* note 32, at 64; see also William P. Quigley, *Letter to A Law Student Interested in Social Justice*, 1 DEPAUL J. SOC. JUST. 7, 13–14 (2007) (defining social justice as “commitment to act with and on behalf of those who are suffering because of social neglect, social decisions or social structures and institutions”).

237. Edwards & Vance, *supra* note 32, at 64; See also Miki Felsenburg & Luellen Curry, *Incorporating Social Justice Issues into the LRW Classroom*, 11 PERSP. 75 (2003) (adding that issues of social justice also include rights of persons with disabilities and the elderly).

238. See Edwards & Vance, *supra* note 32, at 68.

Teaching law students the skills to address social justice issues empowers them to view the law as a vehicle for change<sup>239</sup> and shows them that they have a role in effecting both legal and social change. According to Professor M. Kwoka, “teaching social justice concepts empower students to critically examine the way the law operates in society, rather than uncritically accepting legal outcomes—even legally compelled ones—as just outcomes.”<sup>240</sup> Instead of feeling powerless and accepting of social injustices, law students taught to address issues of social justice are more likely to feel confident that they can use their skills to influence legal and social change<sup>241</sup> that will improve the current social environment and benefit real people.

Furthermore, teaching law students the skills to address social justice issues that impact real lives builds interest and motivates the students to learn.<sup>242</sup> In a survey of legal writing programs and professors,<sup>243</sup> “survey responders commonly reported that incorporating social justice into the legal writing classroom or curriculum, even on a small scale, helps spark student interest and motivation.”<sup>244</sup> This is especially true for law students of color and of historically marginalized groups.<sup>245</sup> Interest affects motiva-

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239. Margaret B. Kwoka, *Intersecting Experiential Education and Social Justice Teaching*, 6 NE. U. L.J. 111, 116 (2013).

240. *Id.* at 118.

241. *Id.* at 118, 123.

242. IMMORDINO-YANG, *supra* note 27, at 19; Edwards & Vance, *supra* note 32, at 69 (noting that “incorporating issues of social justice into legal writing assignments is more likely to increase student interest in the writing assignment, especially when problems are based on current events”). See also Gail S. Stephenson & Linda C. Fowler, *Keeping It Real: Developing a Culturally and Personally Relevant Legal Writing Curriculum*, 10 J. GENDER RACE & JUST. 67, 79–80 (2006) (noting that incorporating topics with a diversity of perspectives increases the “likelihood of academic success for all students”). Professors Stephenson and Fowler further noted that students are unlikely to do well in law school if they feel alienated. *Id.* at 79. In a typical law school classroom, historically marginalized students—“minority, female, and gay and lesbian students”—can feel alienated and “feel like outsiders to an education system and legal profession with vestiges of [W]hite, heterosexual male traditions.” *Id.* Similarly, non-Black students can also feel like outsiders in historically Black law schools. *Id.* at 80. The authors suggest that incorporating exercises with a broad range of racial and cultural contexts can allow students to take turns “enjoying the status of ‘insiders.’” *Id.*

243. Clement & Hartung, *supra* note 31, at 4–6.

244. *Id.* at 16.

245. Edwards & Vance, *supra* note 32, at 68–69; Stephenson & Fowler, *supra* note 242, at 80, 86 (finding that it is necessary to use a variety of problems with a diverse group of students, including problems with racial and cultural contexts, in light of a comment from a Black student indicating “that she had done better on the assignments related to the civil rights cases than on assignments in any other part of the class” while the opposite was true for her White male study partner).

tion. Motivation builds emotional resilience and enables learning and cognition.<sup>246</sup>

Additionally, teaching law students the skills to address issues of social justice empowers them to alter their perception of, and ultimately their perception of control over, experiences and situations that are known sources of psychosocial stressors. A student's perception of control over psychosocial stressors determines his or her stress response, which then dictates the release of stress hormones. Given that stress hormones adversely impact learning, cognition, and memory, students who feel capable and equipped to address issues of social justice are more likely to feel confident and empowered which make them better able to focus, process new information, and store and recall old information, which overall enhance their ability to learn successfully.<sup>247</sup> Confidence alters the perception of control over psychosocial stressors; consequently, the students will most likely choose not to internalize the stressors, and if they do, it allows them to turn off or limit the duration of the stress response.<sup>248</sup>

The benefits of mitigating stress and facilitating learning are important reasons why law schools should introduce issues of social justice early, and ideally in the first-year curriculum. Enrollment in law school does not shield law students from the various psychosocial stressors, including racial, ethnic, and religious discrimination, nor does it automatically shield them from the stressors' potential to cause chronic stress.<sup>249</sup> Given the wealth of research that demonstrates that stress inhibits learning, it is safe to say that law students of color and of historically marginalized groups who are at risk for StressPlus will start out at a learning and performance deficit if law schools do not intentionally create learning environments where law students are taught in the first year how to change their perception of the psychosocial stressors, thus eliminating or reducing the stress impact. The first year of law school is a critical preparatory

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246. WILLIS, RESEARCH BASED STRATEGIES, *supra* note 29, at 57; see Fruehwald, *supra* note 145, at 90 (describing how "motivation drives the effort needed for learning" and working memory is allocated).

247. See LINDA DARLING-HAMMOND, KIM AUSTIN, SUZANNE ORCUTT & JIM ROSSO, STANFORD UNIV. SCH. EDUC., *How People Learn: Introduction to Learning Theories*, in THE LEARNING CLASSROOM: THEORY INTO PRACTICE, A TELECOURSE FOR TEACHER EDUCATION AND PROFESSIONAL DEVELOPMENT 12 (2001), <https://web.stanford.edu/class/ed269/hplintrochapter.pdf> (explaining how "[p]ositive emotions—feelings of confidence and willingness to exert effort—help students to think, perform a learning task, and process new knowledge").

248. See FREDRICKSON, *supra* note 224, at 127 (detailing findings on how positivity changes perception and increases resiliency).

249. See Darling-Hammond & Holmquist, *supra* note 16, at 74-75.

time for law students;<sup>250</sup> their ability to effectively learn the law and relative legal concepts in their first year will determine if they are promoted to the second year and generally influences their academic performance throughout law school.<sup>251</sup>

First-year law students should not have to wait until their second or third year to be able to take a clinic or an upper-level writing course that incorporates social justice issues. Waiting beyond the first year may be too late. By then, the stress exposure may have already taken its toll and impeded learning, putting law students of color and of historically marginalized groups at risk for poorer academic performance. Besides, it is possible that unless courses that incorporate social justice issues are mandatory in the second or third years of law school, students may not take them or may not have the opportunity to take them.

B. *Incorporating Social Justice as a Mandatory Component of the First-Year Legal Writing Curriculum*

The first-year legal writing course is an ideal place to incorporate issues of social justice for several reasons. First, legal writing has a long and proven history of creating social change.<sup>252</sup> Lawyers have used, and continue to successfully use, legal writing to remedy social injustices. For example, lawyers have used appellate and amicus curiae briefs to persuade the Supreme Court to end unjust practices such as racial segregation, employment and religious discrimination, and marriage inequality.<sup>253</sup> Law-

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250. See Johanna K. P. Dennis, *Ensuring a Multicultural Educational Experience in Legal Education: Start with the Legal Writing Classroom*, 16 TEX. WESLEYAN L. REV. 613, 614 (2010) (stating that the first-year curriculum provides students with the foundational knowledge and skills necessary to practice law).

251. See Kylie Thomas & Tiffane Cochran, *ABA Data Reveals Minority Students are Disproportionately Represented in Attrition Figures*, ACCESSLEX (Sept. 18, 2018), <https://www.accesslex.org/xblog/aba-data-reveals-minority-students-are-disproportionately-represented-in-attrition-figures> (discussing new ABA data that shows “historically underrepresented law students—those identifying as American Indian, Asian, Black, Hispanic, Native Hawaiian, and two or more races—are disproportionately represented among students who do not persist beyond the first year”). For example, “[i]n 2016, [W]hite students comprised 62 percent of 1L enrollment and 49 percent of 1L non-transfer attrition. In contrast, minority students made up 30 percent of 1L enrollment but accounted for 44 percent of 1L non-transfer attrition. This disproportionate representation of minority students among those who did not advance to the second year of law school is largely driven by the overrepresentation of Hispanic and [B]lack students in 1L non-transfer attrition figures.” *Id.*

252. Clement & Hartung, *supra* note 31, at 1 (noting that “[l]egal writing has played a critical role in an array of modern social justice movements”).

253. *Id.*; Stephanie Roberts Hartung, *Legal Writing Matters: Using Legal Writing to Overturn Wrongful Convictions*, SUFFOLK UNIV. BOS. (Aug. 25, 2016), <s://sites.suffolk.edu/>

yers also use legal writing to persuade trial courts to grant justice to the marginalized, and to advocate for social policies that address social injustices in areas including access to health care and education reform.

Second, the first-year legal writing course is an ideal place to introduce issues of social justice because of its focus on teaching oral and written skills necessary for the practice of law.<sup>254</sup> A typical legal writing course teaches students how to “think like a lawyer” and the legal reasoning, research, writing analysis, and problem-solving skills lawyers need to effectively practice law.<sup>255</sup> Unlike traditional lecture courses that primarily use the case method, legal writing courses emphasize learning by doing<sup>256</sup> and are designed to give students the opportunity to put these skills into practice.

Typically, legal writing classes provide students with opportunities for active hands-on learning.<sup>257</sup> In the first-year legal writing course, students are introduced to the types of writing that attorneys use in advocating on behalf of their clients<sup>258</sup> and they are taught how to effectively model these types of writing to address legal problems. Legal problems involving social justice inspire students to want to do a good job.<sup>259</sup> For example, when a law student learns how to write a letter advocating for a student who has been unfairly dismissed from school and knows that that letter may get the student reinstated in school, the law student becomes motivated to learn and works harder at producing a good work-product.<sup>260</sup> Similarly, when a law student sees the impact that a well-written summary judgment motion has in moving the court to allow a case to advance so that the plaintiff who brings a social justice issue can have her day in court, and the law student knows that he or she is being taught to create similar summary judgment motions, the law student is

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legalwritingmatters/2016/08/25/legal-writing-matters-using-legal-writing-to-overturn-wrongful-convictions/.

254. See Dennis, *supra* note 250, at 614 (noting that “[t]he legal writing classroom, with its small size and skill-based instruction format, particularly lends itself to the introduction of multiple issues in law and culture”).

255. Edwards & Vance, *supra* note 32, at 65; Kathryn M. Stanchi, *Exploring the Law of Law Teaching: A Feminist Process*, 34 J. MARSHALL L. REV. 193, 193 (2000); Clement & Hartung, *supra* note 31, at 4.

256. Stanchi, *supra* note 255, at 194.

257. See *id.*

258. Edwards & Vance, *supra* note 32, at 70.

259. Clement & Hartung, *supra* note 31, at 16.

260. See *id.* (explaining that incorporating social justice issues into legal writing problems encourages students to “care enough about their writing to pay attention to details and to try all that much harder at improving their writing”).

likely to be excited and motivated to learn.<sup>261</sup> Research shows that perceived impact and interest are strongly correlated.<sup>262</sup> The more impact individuals think they have, the more interested they become.<sup>263</sup> This means that the more impact law students think they have through their writing, the more interested they will be in learning.

Third, by incorporating social justice issues into the first-year legal writing course, the students learn that their legal writing skills are transferable. During the legal writing course, students learn legal writing skills which are reinforced by strategic repetition, timely feedback, and practice. While the students hone their legal writing skills, they also learn that they are able to transfer these skills to address new situations.<sup>264</sup> For example, a law student who learns to write a memorandum assessing whether a person's Fourth Amendment rights were violated has the skills to write a letter challenging an unfair lease. To make this happen, the student must transfer the skills used to write the memorandum from one context, writing the memorandum, to another context, writing the letter.<sup>265</sup> The transfer of skills and the transfer of learning depend on the brain's capacity to retrieve and connect previously stored information to new situations.<sup>266</sup> Transfer of learning is described as a "core concept in learning" and a foundation of "other cognitive activities."<sup>267</sup> Effective transfers, however, can be difficult for students<sup>268</sup> especially if the brain is unable to make efficient neural connections because of stress. A first-year legal writing course that includes legal problems based on social justice issues and transfer-friendly teaching techniques<sup>269</sup> can enable effective transfers. The ability to transfer newly acquired legal writing skills to dif-

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261. See *id.* (quoting a professor who found that a social justice-based writing assignment "energizes students to put in the effort to do top-notch work").

262. See *id.*

263. Matthew M. Martin, Jacob L. Cayanus, Keith Weber & Alan K. Goodboy, *College Students' Stress and Its Impact on Their Motivation and Communication with Their Instructors*, in STRESS AND MENTAL HEALTH OF COLLEGE STUDENTS 153 (Mery V. Landow ed., 2006).

264. See Tonya Kowalski, *Toward a Pedagogy for Teaching Legal Writing in Law School Clinics*, 17 CLINICAL L. REV. 285, 291 (2010) (explaining that based on the "transfer of learning" theory, learners can be taught to "connect prior learning to new contexts" by "recognizing that existing skills apply in a new situation, recalling those skills, and then judging how to use them appropriately for the change in circumstances").

265. See SARAH LEBERMAN, LEX McDONALD & STEPHANIE DOYLE, THE TRANSFER OF LEARNING: PARTICIPANTS' PERSPECTIVES OF ADULT EDUCATION AND TRAINING 1 (2006).

266. *Id.* at 2.

267. *Id.* at 3.

268. Kowalski, *supra* note 264, at 291.

269. See *id.* at 291-94 (discussing transfer of learning and the benefits of using transfer-friendly techniques).

ferent situations helps to build positive emotions, increases confidence, and facilitates learning.

Fourth, the first-year legal writing course typically has a smaller class size and is one of the few courses in law school where the students receive individualized, “immediate or direct feedback on their work.”<sup>270</sup> Feedback is important in reducing stress, building confidence, and enhancing learning.<sup>271</sup> Also, corrective feedback is important to learning because it encourages neuroplasticity, promotes long-term memory, and enhances the brain’s ability to reason and perform analysis.<sup>272</sup> Law students have identified the lack of feedback, and in particular a lack of positive feedback, as a primary stressor in law school.<sup>273</sup> Conversely, students displayed an increase in self-confidence after receiving frequent corrective feedback and being taught to use the feedback to produce a better work product.<sup>274</sup>

Fifth, legal-writing is a mandatory first-year course at most law schools.<sup>275</sup> Incorporating issues of social justice into a mandatory first-year course ensures that all students are directly exposed to real-world issues that affect real people of diverse backgrounds.<sup>276</sup> This enhances diversity awareness, which is an important step toward creating an inclusive learning environment for all students; one that decreases the stereotype threats and perceived discrimination that prevent some students from learning.<sup>277</sup>

Contrary to the belief that teaching social justice issues to first-year legal writing students is too difficult to undertake in the first year, the positive impact on learning makes it a necessary addition to the first-year law school curriculum.<sup>278</sup> Social justice issues can be introduced into the first-year legal writing course through discrete tasks such as client letters

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270. Bartholomew & Oreskovic, *supra* note 15, at 371.

271. *See id.* at 377-78 (noting that the legal writing class can decrease student anxiety and prepare them for the practice of law by “normaliz[ing] anxiety over receiving feedback” and showing students how feedback is necessary to produce a better work product).

272. Willis, *supra* note 128, at 55-56 (“Frequent formative assessment and corrective feedback are powerful tools to promote long-term memory and develop the executive functions of reasoning and analysis.”).

273. Segerstrom, *supra* note 14, at 602-03.

274. *See* Peterson & Peterson, *supra* note 37, at 407-08 (highlighting several studies that found improved results where individuals were given positive, strengths-based feedback); Segerstrom, *supra* note 14, at 603.

275. Andrew J. McClurg, *Poetry in Commotion: Katko v. Briney and the Bards of First-Year Torts*, 74 OR. L. REV. 823, 832 (1995).

276. Edwards & Vance, *supra* note 32, at 66-67.

277. *Id.* at 68-69.

278. *See id.* at 82 (arguing that unfamiliarity or inexperience with social justice issues is not a viable excuse for neglecting to incorporate them into the legal writing course because the professor “will have to bring themselves up to speed, but that is true of any issue with which they are unfamiliar”).

or closed memoranda. Additionally, simulations based on real-life social justice issues may be modified for the pedagogical purpose of making them more manageable and accessible to the first-year students.

While there is a trend toward incorporating social justice into the legal writing curriculum, some teachers continue to hesitate to do so, claiming that their experiences and training did not equip them with the skills to handle legal problems involving diversity and social justice.<sup>279</sup> However, according to Howard University's Associate Provost, Okianer Christian Dark, teachers do not need "special tools and skills to effectively" incorporate issues of social justice into their teaching.<sup>280</sup> The teachers need to "be willing to engage in some risk taking to enhance and enrich the students' learning experience."<sup>281</sup> Just as it is possible to write and assign a hypothetical assignment about whether a landlord is liable for injuries caused by a tenant's dog, it is also possible to write and assign a hypothetical involving a social justice issue such as whether a school will be held liable for gender discrimination if the school bans a female transgender student from the school's female swimming team.

*C. Incorporating Issues of Social Justice into the  
First-Year Legal Writing Curriculum at Howard Law*

Howard University School of Law includes social justice issues into the first-year legal writing course because social justice is at the core of Howard's mission. Furthermore, we have discovered that introducing the students to issues of social justice early in the law school program builds their confidence, stimulates their interest, motivates them to learn, and empowers them to think of, and use, the law as a vehicle for social change.

Former Howard University School of Law Professor Richard Thornell described Howard as integral in addressing "the societal problems of African-Americans and other peoples oppressed by social circumstances."<sup>282</sup> Professor Thornell noted that Howard's legacy<sup>283</sup> demands

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279. Okianer Christian Dark, *Incorporating Issues of Race, Gender, Class, Sexual Orientation, and Disability into Law School Teaching*, 32 WILLAMETTE L. REV. 541, 543 (1996).

280. *Id.*

281. *Id.*

282. Richard Paul Thornell, *A Modest Faculty Initiative of Renewal and Recommitment to One of Howard's Historic Missions As an Indispensable University in the Struggle for Human Rights and Social Justice: A Contemporaneous Account of the Law School's Silver Forum and the University-Wide Interdisciplinary Collaboration for Human Rights and Social Justice (2001-2003)*, 6 HOW. SCROLL 1, 4 (2003).

that it stands as “the vanguard for social justice” and that it addresses “the systemic problems confronting the struggle for human rights and social justice.”<sup>284</sup> Alumnus Judge Damon Keith credits his legal training at Howard University School of Law for teaching him resilience, empowering him, and imbuing him with the confidence that notwithstanding the social climate, he could make a difference because he knew how to use the law to effect social change.<sup>285</sup> This enhanced his perception of control over prevailing psychosocial stressors. Judge Keith became “one of the most respected judges in America”<sup>286</sup> and a champion for civil and human rights and social justice,<sup>287</sup> albeit having endured racial profiling and insults, police harassment, professional prejudice, and other forms of racial discrimination throughout his life.<sup>288</sup>

Given the ongoing societal challenges to diversity, the evidence of pernicious and pervasive discrimination, and Howard’s highly diverse student population, incorporating issues of social justice into the first-year legal writing curriculum and teaching the students how to use their written and oral advocacy skills to address social injustices empowers the students to view the law as a vehicle for social change. It also gives them the confidence that they can use the law to make changes that will remedy social injustices. This knowledge helps to rewire their brains and leads them to alter their perception of control over psychosocial stressors that directly or indirectly affect them and cause stress that generally hinders learning.

Incorporating issues of social justice into the first-year legal writing curriculum not only sparks interest, but it also motivates students to learn. As their teachers, we are able to gauge their interest and motivation to learn from their engagement with the materials and cases throughout the legal writing course.

We introduce the students to social justice issues at the beginning of the legal writing course. The students work from a problem packet that simulates a real-life problem involving social justice issues that is, or re-

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283. *See id.* at 9 (“In the 1930s Howard Law School’s faculty, led by Professor Charles Houston and Howard law students, including Thurgood Marshall, helped to initiate the modern-day civil rights movement.”).

284. *Id.* at 3, 9. Professor Thornell and the most senior members of Howard Law School’s faculty at the time, Professors Spencer H. Boyer, Henry H. Jones, Warner Lawson, Michael D. Newsom and Isiah Leggett, organized the Silver Forum to remind Howard of its duty to protect human rights and social justice. *Id.* at 8-12.

285. *See* PETER J. HAMMER & TREVOR W. COLEMAN, CRUSADER FOR JUSTICE: FEDERAL JUDGE DAMON J. KEITH 36-40 (2014) (describing Judge Keith’s tenure at Howard University).

286. *Id.* at xiv.

287. *See generally id.*

288. *Id.* at 275.

cently has been, highlighted in the news. In the first semester, the students work on building the rule that governs their situation. Taking into consideration our pedagogical goals and knowing that the students are new to legal reasoning, research, and writing, we give the students a set of relevant legal authority and teach them how to extract a rule, build a rule synthesis, and write a memorandum analyzing the issue.

The next assignment asks the students to write an objective closed memorandum to the senior lawyer educating him or her about the law and explaining the legal issues. They receive extensive written and oral feedback on the closed memorandum before they hand in their next assignment, a re-write of the closed memorandum. By the time the students are asked to write the open memorandum, they have sufficiently mastered legal research to conduct their own research.

In the second semester of their first year, the students focus on persuading the judges that justice is best served by deciding in favor of their client. They work on a client letter, a motion brief, a motion brief re-write, and an oral argument. The students receive timely and frequent feedback on their work.

Over the years, the students have worked on issues including racial and religious discrimination, workplace harassment, sex discrimination, racial profiling, illegal search and seizure, mass incarceration, discrimination based on gender identity, and immigration.<sup>289</sup> We have found that the students are engaged and motivated to learn because the issues are familiar to them, have impacted their lives directly or indirectly, or are likely to impact their future clients. We also find that the students worked hard at producing an excellent work product because they are concerned about seeking justice for their “clients” whose legal problems simulate those of real people.

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289. In order to further expose our students to the real-world issues of social justice and to bolster their understanding of how to address these issues, we invite speakers who are expert practitioners in the various areas to address the students. *See* LETHA BARNES, *MASTER EDUCATOR* 105 (3d ed. 2013) (noting that guest speakers “can be extremely motivating for learners” and “can provide a great learning opportunity for students”); *see also* BARBARA GROSS DAVIS, *TOOLS FOR TEACHING* 251 (2d ed. 2009) (highlighting benefits of using guest speakers as adding “interest, expertise, variety, and multiple perspectives to many types of course”). Our guest speakers have included Sia Sanneh and Anthony Ray Hinton of the Equal Justice Institute who spoke about their work in the area of mass incarceration. Anthony Ray Hinton was falsely accused of murdering two people in Alabama and spent close to 30 years on death row before he was released and exonerated in 2015. Our legal writing problem that year focused on mass incarceration and the Eight Amendment. Sergeant Louis Jones and K-9 Boss of the Baltimore MTA Police Headquarters also presented to the class on presentation on “The Protocol of Using Police Dogs to Conduct Searches.” Our legal writing problem that year focused on using K-9s during a routine traffic stop and the Fourth Amendment.

As the students progress in the course, they become more confident that they are learning transferrable skills that will enable them to address social justice issues in a real-world setting. This sparks a change from powerless to empowered. The students who may have felt angry, anxious, alienated, and powerless when directly or indirectly faced with psychosocial stressors caused by social injustices begin to feel that they are learning how to address these injustices, and find a sense of power and control. This builds their confidence and resilience.

In my first-year legal writing course, over the years, I notice the biggest change when the students start to work on their open memorandum. By this time, they have received feedback on their rule statement, closed memorandum, and closed memorandum re-write. They are confident that they are closer toward mastering skills that lawyers have used for centuries to advocate for their clients in all realms, including clients who have suffered from social injustices. It is gratifying to watch the students' focus sharpen toward a deeper understanding of the law and legal skills they are learning.

## CONCLUSION

The ABA expects law schools to create opportunities for all law students to learn effectively so that they can pass the bar and become competent lawyers. However, law students are stressed. And, adding even more cause for concern, law students of color and of historically marginalized groups are exposed to an additional layer of stress solely because they belong to a historically marginalized group. Given our current social environment fraught with racial divisiveness and attacks on diversity, it is unlikely that the psychosocial stressors affecting law students of color and of historically marginalized groups will abate.

Stress inhibits learning. The developments in neuroscience and cognitive science show learning environments that address real-life issues and build positive emotions enhance learning. By incorporating issues of social justice into the law school curriculum, starting with the first-year legal writing course, law schools can create a learning environment that facilitates and enhances successful learning for all students.

