THE PRACTICE AND PEDAGOGY OF CARCERAL ABOLITION IN A CRIMINAL DEFENSE CLINIC

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ABSTRACT

Current social and racial justice movements have helped to advance deeper interest in the long-standing work of carceral abolitionists. Abolitionists understand that the criminal legal process ineffectively uses state-sanctioned violence, surveillance, punishment, and exclusion to address, and counterproductively perpetuate, the underlying problems that produce violence and harmful behavior in our communities. Abolition focuses on dismantling our current carceral systems and finding completely new, restorative, and collaborative ways of addressing harmful social behaviors. While abolitionist thought has long existed in organizing and non-legal academic spaces, law students and legal scholars are increasingly considering how a carceral abolitionist perspective can inform legal education and practice.

This Article examines whether abolitionist ethics fit into the practice and pedagogy of criminal defense clinics. It argues that although the values of abolition and the institutional role of the public defender are an imperfect fit, criminal defense clinics should teach students how to effectively advocate for their clients through a lens of carceral abolition. Clinical law students can be more than participants who either reinforce or merely critique the criminal legal system; rather, they can pursue their work as "fellow travelers" operating to actively shield individual clients from the weight of the state while also supporting the efforts of organizers who are seeking to transform how we deal with social problems. The Article provides a brief introduction to abolitionist thought, explores the challenges and benefits of incorporating an abolitionist framework into defense clinics, and provides an approach for clinicians seeking to inform their teaching and practice with an understanding of carceral abolition.

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I.
INTRODUCTION

Every year in our Defenders Lawyering Seminar and Clinic we prepare students to represent clients in a variety of criminal-related contexts. One area of our practice has been in New York City's criminal courts. As a part of our preparation, we focus on practical lawyering skills such as client interviewing, statutory analysis, and oral advocacy, but we also aim to provide students with contextual fluency. We want students to ask specific questions of the criminal legal system[1]: Who is getting arrested and why? What policy choices go into the system operating as it does? Who are the institutional actors involved and what motivates their actions? Importantly, we also attempt to inculcate students with a sense of their role as change agents rather than enforcers of the status quo. We ask questions and provide skills training in service of the ultimate goal: to have students think critically about how their knowledge of the system will affect their client advocacy.

1. In this article I use the phrase "criminal legal system" to refer to institutions related to the administration of criminal law, and "criminal justice logic" to reference the associated political ideology rooted in white supremacy that animates the criminal legal system.

Within recent years, however, students have pushed to expand the bounds of what it means to be a change agent in the criminal legal system. They have been eager to consider not only how their knowledge of the system impacts their client advocacy, but also how their advocacy impacts the system. One encounter that took place during a guest presentation in our clinic seminar sets this urging in stark relief. We had just completed a series of classes on trial advocacy. Students had been thinking about openings and closings and the different strategies and techniques behind executing an effective cross-examination. We were fortunate to be joined by seasoned public defenders who were there to share their approaches to cross-examination in the trial context. One of the attorneys was discussing how questioning a witness about their prior convictions can be a powerful way of undermining that witness's credibility. A student, visibly disturbed by the conversation, raised their hand to comment: "How in one moment can we abhor the inherently racist ways that people's criminal histories are constantly being used against them, and then in the other moment exploit someone's criminal record in the name of doing justice for our client? Don't we have an obligation not to engage in the racist practices that the criminal legal system thrives on? Shouldn't our advocacy refrain from building up the system we supposedly despise?" The defense attorney, a Black man, responded as perhaps many public defenders who have been practicing for many years would: "I am aware of just how deeply entrenched racism is in the system. However, my obligation is to my client. My job is to effectively defend my client and I will use any means I have available to do so. I will leave taking the system down to the activists and the organizers."

The exchange between student and practitioner left a lasting resonance for many reasons. On a basic level, the discussion revealed the paradox of holding a critical view of the criminal legal system while still trading on its terms, a quandary many young lawyers must confront. The conversation also surfaced the debate that has emerged in criminal defense literature about the potential conflict between cause lawyering and loyalty to the individual client.[2] For me, the interaction raised something many of my students have been pushing for in recent years: a radical redefinition of what change can look like in the criminal legal system and fresh consideration of the public defender's role in bringing it about. How does an

2. Tamar R. Birckhead, *The Racialization of Juvenile Justice and the Role of the Defense Attorney*, 58 B.C. L. REV. 379, 431–33 (2017) (exploring the difference between the views of Professors Anthony Alfieri and Abbe Smith in their debate about the ultimate role of the defense attorney, with Professor Alfieri arguing for a more cause-centered approach and Professor Smith arguing for a more client-centered approach given the obstacles of the modern-day defense lawyer); *see also* Robin Walker Sterling, *Defense Attorney Resistance,* 99 IOWA L. REV. 2245, 2263–65 (2014) (discussing the false binary between the defense lawyer's ethical obligation to her client and her desire to challenge harmful racism: "taking steps to make the criminal justice system more fair for people of color will result in a better system for all criminal defendants, regardless of their race. It will 'frequently be the case' that the client's individual goals and criminal defense counsel's systemic goals will be aligned." (quoting Jonathan A. Rapping, *Implicitly Unjust: How Defenders Can Affect Systemic Racist Assumptions*, 16 N.Y.U. J. LEGIS. & PUB. POL'Y. 999, 1019 (2013))); Margareth Etienne, *The Ethics of Cause Lawyering: An Empirical Examination of Criminal Defense Lawyers as Cause Lawyers*, 95 J. CRIM. L. & CRIMINOLOGY 1195, 1198 (2005).

attorney advocate for their client in an inherently racist criminal legal system without subscribing to that system? Is it possible for defenders to play a role in undoing the system as we know it while representing the urgent needs of the clients who stand before us? What role does carceral abolition[3] play in helping us think about these questions?

Prison abolitionists have long argued that prisons are inherently racist cages of inhumanity that serve to further the conditions of enslavement.[4] Many abolitionists maintain that the prison system and its accompanying law enforcement processes, such as policing and court adjudication, not only fail to address the

3. Although this Article focuses on teaching in criminal defense clinics, the questions raised, as well as the pedagogical and practice ideas proposed, are applicable to many different experiential legal settings. The term "carceral abolition" is used deliberately to emphasize that social control and surveillance extends beyond the prison and penal contexts to other areas such as immigration and family separation. As noted by Professors Justin Piché and Mike Larsen, preceding abolition with the term "carceral" reflects the scope of "systematic and organized deprivation of liberty that takes place in prisons, other sites of confinement and in our communities, as well as the diffusion of penitentiary techniques and disciplinary norms throughout society." Justin Piché & Mike Larsen, *The Moving Targets of Penal Abolitionism: ICOPA, Past, Present and Future*, 13 CONTEMP. JUST. REV. 391, 392 (2010). There is a continued evolution in terminology. "Prison abolition" typically refers to the targeted mission of abolishing prisons; it has been noted that this approach "does not address the laws, ideas, and practices of 'the system' more generally." Mike Larsen, *Considering Abolition*, JUST BLOG (Mar. 30, 2011), https://joanr73.wordpress.com/2011/03/30/considering-abolition [https://perma.cc/6VZV-NJ8J] [hereinafter *Considering Abolition*]. The terms "penal" and "PIC (prison industrial complex) abolition" encompass "the prison as an institutional setting as well as the constellation of ideas and practices that are informed by systematized punitiveness." *Id.* This Article will primarily use the terms abolition and carceral abolition interchangeably and use the more specific terms of prison or penal abolition as relevant.

4. *See* RUTH WILSON GILMORE, GOLDEN GULAG: PRISONS, SURPLUS, CRISIS, AND OPPOSITION IN GLOBALIZING CALIFORNIA 11 (Earl Lewis, George Lipsitz, Peggy Pascoe, George Sánchez & Dana Takag eds., 2007) (describing incarceration as "[t]he practice of putting people in cages for part or all of their lives"); Nathan J. Robinson, *Can Prison Abolition Ever Be Pragmatic?*, CURRENT AFFAIRS (Aug. 3, 2017), https://www.currentaffairs.org/2017/08/can-prison-abolition-ever-be-pragmatic [https://perma.cc/2QSB-R3SV] (characterizing abolitionists as arguing that prisons are "inhuman places" which "in many cases do not operate very differently from conditions of enslavement."); *see generally* ANGELA Y. DAVIS, ARE PRISONS OBSOLETE? (Greg Ruggiero ed., 2003).

historical, social, and economic drivers of crime, but deepen them.[5] Therefore, abolitionists advocate for doing away with prisons and policing and working to drive out the conditions that cause crime. Abolition focuses on finding new, restorative ways of addressing harm and ensuring safety.[6]

While the concept of prison abolition has long existed in organizing spaces, law students and legal scholars are increasingly considering how a carceral abolitionist perspective can be integrated into legal education and practice.[7] Indeed, up until relatively recently, the topic of abolition was essentially relegated to the most left margins of scholarly conversations about transforming the criminal legal system.[8] For many, the abolition movement's goals might once have been considered unrealistic given our prevailing concepts of human nature and the criminal legal process as it currently exists. Then, in March of 2020, COVID-19 took hold of the United States, killing Black people and other people of color at vastly disproportionate rates and ultimately exposing, for those who may have been unable or unwilling to see it earlier, the deep structural racism that persists within every corner

5. Jessi Lee Jackson & Erica R. Meiners, *Feeling Like a Failure: Teaching/Learning Abolition Through the Good, the Bad, and the Innocent*, 88 RADICAL 20, 22 (2010) (noting that the "contemporary prison system" is "[d]irectly connected to the histories of race and oppression in the United States" and that abolitionism "acknowledges that prisons are not a just, efficient, or moral solution to the problems that shape violence in our communities"); Daniel S. Nagin, Francis T. Cullen & Cheryl Lero Jonson, *Imprisonment and Reoffending*, 38 CRIME & JUST. 115, 115, 154 (2009) (concluding that existing research suggests incarceration has a "null or mildly criminogenic effect on future criminal behavior" compared to noncustodial sanctions); Philip Bump, *Over the Past 60 Years, More Spending on Police Hasn't Necessarily Meant Less Crime*, WASH. POST (June 7, 2020, 1:42 PM), https://www.washingtonpost.com/politics/2020/06/07/over-past-60-years-more-spending-police-hasnt-necessarily-meant-less-crime/ [https://perma.cc/S5WC-XUM4] (finding "no significant correlation between changes in spending and overall or violent crime rates"); Marie Gottschalk, *Bring It On: The Future of Penal Reform, the Carceral State, and American Politics*, 12 OHIO ST. J. CRIM. L. 559, 595–98 (2015) (summarizing research into the root causes of violent crime, which generally acknowledges high poverty rates, income inequality, and inequitable access to resources as key factors); TERRY-ANN CRAIGIE, AMES GRAWERT & CAMERON KIMBLE, BRENNAN CTR. FOR JUST., CONVICTION, IMPRISONMENT, AND LOST EARNINGS: HOW INVOLVEMENT WITH THE CRIMINAL JUSTICE SYSTEM DEEPENS INEQUALITY 6, 14–20 (2020), https://www.brennancenter.org/sites/default/files/2020-09/EconomicImpactReport_pdf.pdf [https://perma.cc/S3BE-YF9X] (finding that involvement with the criminal justice system has long-term economic effects, resulting in lower annual and lifetime wages, the entrenchment of poverty, and the deepening of inequalities).

6. *See* John Washington, *What Is Prison Abolition?*, NATION (July 31, 2018), https://www.thenation.com/article/what-is-prison-abolition [https://perma.cc/Q7CE-JZPL] (providing an overview of abolition and processes of accountability that do not involve incarceration).

7. *See, e.g.*, Amna Akbar, *Teaching Penal Abolition*, LPE PROJECT (July 15, 2019), https://lpeblog.org/2019/07/15/teaching-abolition [https://perma.cc/NW76-R7HE]; *see also* Allegra M. McLeod, *Prison Abolition and Grounded Justice*, 62 UCLA L. REV. 1156 (2015) ("introduc[ing] to legal scholarship the first sustained discussion" of what the author calls a "prison abolitionist ethic").

8. Dan Berger, Mariame Kaba & David Stein, *What Abolitionists Do*, JACOBIN MAG. (Aug. 24, 2017), https://www.jacobinmag.com/2017/08/prison-abolition-reform-mass-incarceration [https://perma.cc/BSF2-G3DF] (noting that, historically, "abolitionist movements have unsettled not only conservative critics but liberals, progressives, and even some radicals" and that even recently "[s]ome on the Left" have misunderstood abolition as "a fever-dream demand to destroy all prisons tomorrow").

of the social structure of our country. In the midst of this pandemic, with many still sheltering in place, incidences of police violence captured public attention. People of all races and backgrounds took to the streets to protest the police killing of George Floyd in Minneapolis, resulting in one of "the largest social movement mobilizations in U.S. history."[9] As a result, the protests and the organizing "catapulted abolition into the mainstream and, in the process, unsettled the intellectual foundations of police reform discourse."[10] Once viewed as an impractical and peripheral idea, carceral abolition has become a provocative and ubiquitous theory of social change.

As a clinician and former public defender, I often find myself thinking about the kinds of motivations, philosophies, and character traits that make someone effective at doing the work of a public defender. As I observe many new public defenders pronouncing themselves to be abolitionists and prosecutors beginning to explore what it means to practice with a decarceral perspective,[11] I increasingly wonder whether it is possible or even desirable to reconcile the values of abolition with the institutional role the public defender serves.[12] Ultimately, I conclude that while abolition and criminal defense are hardly a seamless fit, thinking about their relationship to one another has an important place in the clinical pedagogy of a criminal defense clinic and perhaps even the training of new public defenders.

It is unlikely that most criminal defense clinics and new defender trainings meaningfully contemplate whether and how abolitionist principles can be

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9. Amna A. Akbar, *An Abolitionist Horizon for (Police) Reform*, 108 CALIF. L. REV. 1781, 1783 (2020); Larry Buchanan, Quoctrung Bui & Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html [https://perma.cc/PLS8-T3DB].

10. *Id.*

11. *See, e.g.*, Jennifer Gonnerman, *Tiffany Cabán's Rebel Campaign in Queens*, NEW YORKER (June 4, 2019), https://www.newyorker.com/news/news-desk/tiffany-caban-the-public-defender-running-for-queens-district-attorney-and-her-feminist-coalition [https://perma.cc/C3NL-XGEF] (describing how Tiffany Cabán, a public defender who ran for Queens District Attorney, presented herself not merely as a "progressive prosecutor" but as a "decarceral prosecutor"); *see also* Larry Krasner, Opinion, *What Justice Looks Like: Philadelphia's DA Praises Tiffany Cabán's Addition to the Ranks of Reformers*, N.Y. DAILY NEWS (June 30, 2019, 5:00 AM), https://www.nydailynews.com/opinion/ny-oped-what-justice-looks-like-20190630-qs76ddsbjrfk3evikmrbiqxhca-story.html [https://perma.cc/7MQF-DAET]; *see also* Tina Rosenberg, Opinion, *Can Prosecutors Be Taught to Avoid Jail Sentences?*, N.Y. TIMES (Aug. 25, 2020), https://www.nytimes.com/2020/08/25/opinion/prosecutors-sentencing.html [https://perma.cc/A8FL-R7L8]. Despite the turn toward so-called progressive prosecution and the occasional decarceral policies of any individual prosecutor, a long history of racist practices in charging and sentencing and the very basic reliance on policing and prisons—two of the most oppressive features of the carceral system—make me less than optimistic about the lasting effectiveness of the progressive or "decarceral" prosecutor. While the relationship between abolition, decarceration, and the progressive prosecutor is beyond the scope of this Article, for an introduction to strategies to abolish prosecution, see Community Justice Exchange, CourtWatch MA, Families for Justice as Healing, Project NIA & Survived and Punished NY, *Abolitionist Principles & Campaign Strategies for Prosecutor Organizing* (2020), https://www.communityjusticeexchange.org/abolitionist-principles [https://perma.cc/E53P-P63X].

12. *See* Rayza B. Goldsmith, *Is It Possible to Be an Ethical Public Defender?*, 44 N.Y.U. REV. L. & SOC. CHANGE 13 (2019) (discussing the challenges and competing pressures public defenders experience in satisfying their ethical obligations).

integrated into the instructional and experiential aspects of their programs. Macro-level thinking about undoing the criminal legal system has not typically been an area of focus for the practicing public defender. There is so much that new, fledgling practitioners must learn in short order to prepare to represent a client in court that there hardly seems to be sufficient time to focus on what some might consider to be utopian. However, coming up with new conceptions of the world that we are teaching new lawyers to operate in should no longer seem so far out of reach. Public attitudes about the criminal legal system are evolving[13] and many new lawyers are approaching the work with a greater awareness of the system's many shortcomings. Even the concept of public defense is growing. As we move closer to universal representation models in immigration, family, housing, and other civil practice areas, criminal public defender trainings and systems are being looked at for guidance on how to provide legal representation in other legal venues that hasten devastation in the lives of marginalized people.[14] These realities make it all the more urgent for us to thoughtfully consider how we educate students who will represent clients in these contexts.

The clinical classroom is an ideal site for exploring the possibilities and challenges of integrating abolitionist theory into live client representation in the criminal context. Criminal defense clinicians have an opportunity to think critically about their role in preparing students to work within these systems while considering that perhaps teaching the fundamentals of criminal procedure and lawyering skills is only one part of the job. Can we deepen the new public defender's training by encouraging an ideological understanding of, and advancement toward, carceral abolition? Should students be taught to represent clients with abolition as their North Star, and, if so, how might that be accomplished? Perhaps new public

13. Press Release, ACLU, 91 Percent of Americans Support Criminal Justice Reform, ACLU Polling Finds (Nov. 16, 2017), https://www.aclu.org/press-releases/91-percent-americans-support-criminal-justice-reform-aclu-polling-finds [https://perma.cc/W4LL-GWG3]; Nicole Porter, *Top Trends in State Criminal Justice Reform, 2018*, SENT'G PROJECT (Jan. 16, 2019), https://www.sentencingproject.org/publications/top-trends-state-criminal-justice-reform-2018/ [https://perma.cc/5CKR-6HSH] (listing recent state-level reforms "designed to reduce the scale of incarceration and impact of the collateral consequences of a felony conviction").

14. Karen Berberich, Annie Chen, Corey Lazar & Emily Tucker, *Advancing Universal Representation: A Toolkit*, VERA INST. OF JUST. 12–13, (Dec. 2018), https://www.vera.org/advancing-universal-representation-toolkit/the-case-for-universal-representation-1 [https://perma.cc/6HJW-4Y5A]; Amelia Wilson, *Universal Representation Initiatives Gain Ground, Marking a Win for Detained Indigent Respondents*, FED. LAW. 16, (Dec. 2015), https://www.fedbar.org/wp-content/uploads/2015/12/Imm-pdf-1.pdf [https://perma.cc/7ZPR-SXSF]; *see, e.g.*, IOWA CODE ANN. § 13B.13 (West 2020); Ingrid V. Eagly, Gideon*'s Migration*, 122 YALE L.J. 2282, 2288, 2314 (2013) (predicting that "the next half century is likely to witness a gradual migration of the *Gideon* right to appointed counsel into immigration proceedings" and drawing upon "the lessons of *Gideon* and the current public defender system to introduce a framework for evaluating alternative approaches for structuring immigration defense services for the poor"); Talia Peleg & Ruben Loyo, *Transforming Deportation Defense: Lessons Learned from the Nation's First Public Defender Program for Detained Immigrants*, 22 CUNY L. REV. 193, 215–26 (2019) (describing how a new deportation defense practice was informed by the guiding principles of criminal defense practice).

defenders can be taught to keep their eyes on transforming the system while being sure to prioritize their obligations to their clients' cases as paramount.

This Article examines whether an abolitionist framework fits into the practice and pedagogy of a criminal defense clinic. It argues that, although the fit is imperfect, criminal defense clinics should teach students how to effectively advocate for their clients through a lens of carceral abolition. It aims to provide an approach for integrating an abolitionist framework into clinical pedagogy. Part II briefly explores the concept of abolition. It draws from the work of early prison abolitionists and more recent abolition theorists to develop an abolition framework for defenders that applies to both prisons and the criminal legal institutions that are the main conduits for imprisonment. This Part encourages the conceptualization of a social and legal landscape that practitioners could be working toward so that students can begin to consider what is necessary to achieve that vision.[15] Part III makes the case for why a criminal defense clinic should integrate the abolitionist principles identified in Part II into its instructional and experiential program. Public defenders can be highly effective at pushing back against systemic injustice. However, as institutional actors, defenders can also become complicit and play a role in legitimizing the very system they may see as harmful.[16] This Part examines the approach that most criminal defense clinics currently take and explores both the benefits and limitations of teaching students from an abolitionist perspective. Finally, Part IV proposes specific pedagogical strategies for teaching and practicing abolitionist principles. These approaches are designed to be integrated into seminar, case and project selection, skill development, supervision, and rounds.

II.
FRAMING CARCERAL ABOLITION

The contemporary carceral abolitionist movement includes a diverse array of people and groups who use varying approaches to advance profound structural changes in the way our society regards and responds to social, economic, and

15. Robinson, *supra* note 4 ("As Angela Davis says, 'the call for prison abolition urges us to imagine and strive for a very different social landscape.' It's useful because it gets us thinking about big questions, picturing what very different worlds might be like and then beginning to plot how we might get from here to there.").

16. *See, e.g.*, NICOLE GONZALEZ VAN CLEVE, CROOK COUNTY: RACISM AND INJUSTICE IN AMERICA'S LARGEST CRIMINAL COURT 161 (2016) (discussing how Chicago public defenders' "triaging" of cases perpetuates a system akin to modern slave trading).

political challenges.[17] Abolitionist movements seek to deconstruct various "systems, institutions, and practices beyond criminal punishment (such as 'the wage system, animal and earth exploitation, [and] racialized, gendered, and sexualized violence') and forms of oppression beyond white supremacy (such as 'patriarchy, capitalism, heteronormativity, ableism, colonialism,' imperialism, and militarism)."[18] In the contemporary criminal legal context, abolition movements are rooted in the deep and significant historical efforts that have been undertaken to dismantle deeply entrenched racist institutions[19] from human chattel slavery to lynching[20] to segregation to capital punishment to criminal incarceration. The common thread that links these abolition movements is the focus on eliminating state-sanctioned, institutionalized, racist violence and subordination.[21]

It is worth stating from the outset that abolitionist theory eludes narrow definition. As Professor Dorothy E. Roberts has noted, "[a]ctivists engaged in the movement have resisted 'closed definitions of prison abolitionism' and have instead suggested a variety of terms to capture what prison abolitionists think and do—abolition is 'a form of consciousness,' 'a theory of change,' 'a long-term political vision,' and 'a spiritual journey.'"[22] Professor Dylan Rodríguez has

17. Akbar, *supra* note 7 (describing a growing movement of abolitionist organizing and campaigns, including such organizations and initiatives as "Critical Resistance, BYP100, No New Jails Seattle, Mijente, Survived and Punished, INCITE, and more"). Abolitionist movements are also taking on systems that extend beyond the criminal legal context, such as sexism, homophobia, ableism, xenophobia, capitalist exploitation, environmental injustice, inequitable health systems, and educational inequality. *See, e.g.*, *Statement on Gender Violence and the Prison Industrial Complex*, INCITE! (2001), https://incite-national.org/incite-critical-resistance-statement [https://perma.cc/6R56-KSAQ] (calling upon PIC abolitionists and other social justice movements to "develop strategies and analysis that address both state AND interpersonal violence, particularly violence against women"); Eric A. Stanley, Dean Spade & Queer (In)Justice, *Queering Prison Abolition, Now?*, 64 AM. Q. 115 (2012).

18. Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 7 (2019) (citations omitted).

19. DAVIS, *supra* note 4, at 24; Washington, *supra* note 6; *see also* Rachel Kushner, *Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind*, N.Y. TIMES MAG. (Apr. 17, 2019), https://www.nytimes.com/2019/04/17/magazine/prison-abolition-ruth-wilson-gilmore.html [https://perma.cc/2BJ8-5LTL] (describing how "[c]ritics have been asking whether prisons themselves were the best solutions to social problems since the birth of the penitentiary system" and citing Clarence Darrow as an early example).

20. *See* David Garland, *Penal Excess and Surplus Meaning: Public Torture Lynchings in Twentieth-Century America*, 39 LAW & SOC'Y REV. 793, 810–11 (2005) (providing a summary of the supportive role of law enforcement in public lynchings); *see also* GILBERT KING, DEVIL IN THE GROVE (2012). Attempts to pass federal anti-lynching legislation, including a bill that would have punished police encouragement of lynchings, were unsuccessful. *See* Anelise R. Codrington, *Bitter Fruit, Lynching, and the Legislative Reform to End It: A Timeline of Lynching, and Its Transformation into the Contemporary Era*, 11 S.J. POL'Y & JUST. 32, 38–40 (2017).

21. César Cuauhtémoc García Hernández, *Abolish Immigration Prisons*, 97 B.U. L. REV. 245, 262 (2017).

22. Roberts, *supra* note 18, at 6.

identified it as "an infrastructure in the making," "a pedagogy and curriculum" and "an alleged possibility that is furtively present."[23]

Professor Brendan Roediger cogently encapsulates abolitionist law practice into four distinct approaches:

> *Demystifying*: Explaining what a legal system or apparatus actually does (as opposed to what it says it does).
>
> *Delegitimizing*: Explaining why it does what it does (as opposed to why it says it does what it does).
>
> *Disempowering/Dismantling*: Collectively implementing interventions that move us closer to the elimination of the system or apparatus—interventions that ideally diminish suffering while weakening the system or apparatus.
>
> *Dreaming*: Imagining (not reimagining) ways of collective existence.[24]

What is critical about abolition is that it involves work to unsettle the notion that the institutions we have come to accept as "inextricably woven into our society"[25] must always remain that way. Abolition draws from a historic, moral, social, and political framework to not only call for the eradication of racist, unjust systems, but also to encourage the redesigning of social institutions.[26] This Part will provide background for understanding the abolitionist ethic in the criminal legal context.

A. Understanding Abolition

A central feature of the abolitionist approach involves influencing societal attitudes. Abolitionist movements impact the public consciousness by highlighting engrained assumptions and promoting alternative narratives about the kinds of societal norms that are possible.[27] How we think about crime and punishment, for example, has developed from a set of historical and social forces that frequently go unexamined by those practicing within the criminal legal system. We tend to

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23. *Id.* at 6–7 (quoting Dylan Rodríguez, *Abolition as Praxis of Human Being: A Foreword, in Developments in the Law – Prison Abolition*, 132 HARV. L. REV. 1575, 1578 (2019)).

24. Brendan Roediger, *Abolish Municipal Courts: A Response to Professor Natapoff,* 134 HARV. L. REV. F. 213, 215 (2021) (emphasis added).

25. Washington, *supra* note 6.

26. McLeod, *supra* note 7, at 1162–63 (noting that prison abolition "draws on earlier abolitionist ideas" and summarizing W.E.B. Du Bois' view that abolishing slavery "required the creation of new democratic forms in which the institutions and ideas previously implicated in slavery would be remade to incorporate those persons formerly enslaved and to enable a different future for all members of the polity. To be meaningful, the abolition of slavery required fundamentally reconstructing social, economic and political arrangements.").

27. *See* Washington, *supra* note 6 (noting that abolitionists work to "change broad cultural attitudes" and that "the philosophical ethic of abolitionism" can be characterized as "an alternative way of thinking about society."); *see also* McLeod, *supra* note 7, at 1197–98 ("Multiple studies have confirmed the implicit, often immediate, and at times unconscious associations made between African Americans, criminality, and threat.").

blindly accept the idea that committing a harm makes someone a criminal and that the appropriate response to human wrongdoing is incapacitation and punishment.[28] We rely on a vast system of police, courts, and prisons as the necessary response to deep-rooted individual and societal challenges. This reliance short-circuits our ability to interrogate the deep structural inequities that promote violence, deprivation, and further inequity. Academic disciplines such as criminal justice, criminology, and criminal law produce theories that serve to affirm the "criminal justice logic," or the view that the criminal justice system is objective and rooted in neutral standards which serve to further the causes of public safety and justice.[29] This criminal justice logic is deeply embedded in our thinking and pervades our politics, social policy, media, entertainment, and public dialogue.[30]

An abolitionist ethic highlights the way race and social control animate our approach to criminal legal systems in the United States. It recognizes that we cannot isolate the criminal legal process from its historical and social context. It also acknowledges that while misconduct is both human and pervasive, our responses as a society are often quite selective.[31] Abolition names white supremacy as one of the core principles of the American social order.[32] The influence of white supremacy and the domination of nonwhite groups is particularly evident in the way institutions regulated the lives of Black Americans over the 19th and 20th centuries.[33] The slave patrol roots of policing in the south; Black Codes, which were the "vaguely defined vagrancy laws" targeting the newly emancipated; the convict leasing system; and Jim Crow laws are just some of the historical examples of institutionalized mechanisms of Black repression.[34]

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28. *See* Michael J. Coyle & Judah Schept, *Penal Abolition Praxis*, 26 CRITICAL CRIMINOLOGY 319, 319 (2018) (noting the "dominant discourse that collectively is understood as the paradigm of 'criminal justice'"—a paradigm that "recognizes a trifle of the transgressions humans complete, labels these chosen transgressions 'crimes,' and names their chosen actors 'criminals'" (citations omitted)).

29. *Id.* at 320. ("Essential to the ideological work underwriting the growing carceral state have been the intellectual disciplines rationalizing and promoting theories of 'crime' (criminology) and responses to it (criminal justice).").

30. *Id.*

31. *See* Michael J. Coyle, *Penal Abolition as the End of Criminal Behavior*, 6 J. SOC. JUST. 1, 18 (2016) ("In the face of a world infused with transgressive actors and transgressive acts, the penal system (the so-called 'criminal justice system') daily functions to label only some transgression as 'criminal behavior' and only some transgressors as 'criminals.'").

32. *See, e.g.*, Colleen Hackett & Ben Turk, *Shifting Carceral Landscapes: Decarceration and the Reconfiguration of White Supremacy*, ABOLITION J. (Aug. 24, 2017), https://abolitionjournal.org/shifting-carceral-landscapes/ [https://perma.cc/H2NR-WPFB] (noting that, in the United States, carcerality "has always been a function of a social order founded on white supremacy"); *see also* Anne Bonds & Joshua Inwood, *Beyond White Privilege: Geographies of White Supremacy and Settler Colonialism*, 40 PROGRESS HUMAN GEO. 715, 719–20 (2016) ("Most simply defined, white supremacy is the presumed superiority of white racial identities, however problematically defined, in support of the cultural, political, and economic domination of non-white groups.").

33. Hackett & Turk, *supra* note 32.

34. *Id.*

The civil rights victories of the 1960s, along with the legislative boost of the Civil Rights Act, created optimism that the legalized racially oppressive practices of the past could effectively be challenged. But the changes ushered in by the Civil Rights era did not diminish the influence of white supremacy. Rather, they hastened its transformation.[35] The War on Drugs, the War on Poverty, mass criminalization, and mass imprisonment facilitated a more covert way to "rearticulate and repackage racialized social control" in the name of reform.[36] Indeed, many view today's "order-maintenance" policing policies as directly descended from the Black Codes and slave patrols, which were designed to control the movement of Black people in public spaces and enforce the security of white property-holders.[37]

An abolitionist ethic provides a constant reminder that "history lives in the present, in that white supremacy, settler colonialism and racial capitalism are inextricable from the origins, logic and practices of 'criminal justice.'"[38] Carceral abolition emphasizes white supremacy's enduring hold on our legal institutions.[39] The carceral abolitionist ethic extends to all institutions, systems, and schools of thought that reduce people to objects and "confines, entraps, and incapacitates" them.[40] This broad ethos encompasses the criminal legal system from beginning to end: from policing through the court process to sentencing and reentry.

Abolition does not suggest that interpersonal violence and wrongdoing will cease to exist. Rather, it recognizes that concentrated poverty and social and economic deprivation encourage the conditions which lead to interpersonal violence

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35. *Id.* ("[A]lthough the much-lauded Civil Rights Act inspired hope among many that the country might move toward racial equity, it is now clear that the legislation forced white supremacy to shift and to become more subtle in effect.").

36. *Id.* (noting that prison reform efforts have historically exhibited this tendency to reconfigure the mechanisms of social control (citing DAVIS, *supra* note 4; ANGELA Y. DAVIS, FREEDOM IS A CONSTANT STRUGGLE: FERGUSON, PALESTINE, AND THE FORMATION OF A MOVEMENT (Frank Barat ed., 2016))).

37. *See, e.g.*, Roberts, *supra* note 18, at 27.

38. Coyle & Schept, *supra* note 28, at 320 (citing GILMORE, *supra* note 4; ANGELA Y. DAVIS, ABOLITION DEMOCRACY: BEYOND EMPIRE, PRISONS, AND TORTURE (Greg Ruggiero ed., 2005)). Racial capitalism, or the accumulation of social or economic value from the racial identity of another, is particularly relevant to the history of Black subjugation in the United States. *See* Brandon M. Terry, *MLK Now*, BOS. REV. (Sept. 10, 2018), http://bostonreview.net/forum/mlk-now/andrew-douglas-diagnosing-racial-capitalism [https://perma.cc/6K45-TVTT] ("[A]ny prospect for collective life, any chance for authentic and racially integrated human and democratic interaction, is routinely delimited by territorialization, ghettoization, incarceration, various modes of racialized partition that condition the possibility of 'world-systems of profit and governance.'"); *Racial Capitalism and Prison Abolition* (Oct. 14, 2020), https://issuu.com/racialcapitalism/docs/racial_capitalism__prison_abolition_lr. [https://perma.cc/KPX3-HXNK] (highlighting the specific ways that capitalism relies on racial categorization).

39. Jonathan Simon, *Racing Abnormality, Normalizing Race: The Origins of America's Peculiar Carceral State and Its Prospects for Democratic Transformation Today*, 111 NW. U. L. REV. 1625, 1626–30 (2017) (discussing the U.S. carceral state's relationship to the nation's history of enslavement, colonialism, and white supremacy).

40. Hackett & Turk, *supra* note 32 (referring to the definition of "carcerality" employed by philosopher Michel Foucault).

and other kinds of harm. Abolition calls for considerable investments in social and community-oriented networks, which would help to diminish adverse social behaviors, while also reframing the way we deal with harm when it does occur.[41] Yet instead of investing in social systems, we invest in carceral systems. The criminal legal process, as it currently exists, ineffectively uses criminalization, state-sanctioned violence, and imprisonment to address, and counterproductively perpetuate, the underlying "problems that shape violence in our communities."[42]

Abolition encourages us to consider what we would need in order to reduce our reliance on penal systems and build alternatives to the current criminal legal process. Mass criminalization and mass imprisonment have created a number of fiscal and social ramifications that have caused many from across the political spectrum to recognize that the criminal legal system is in need of attention.[43] However, there is a wide spectrum of opinion on what exactly the issues in the criminal legal system are and what needs to be done to address them.[44]

B. Why Abolition and Not Reform?

The conversation around change in the criminal legal system largely focuses on the idea of reform. While reform and abolition are related, understanding the distinction between the two is vital. Reform seeks to improve some of the techniques and procedures by which "criminal justice" is administered. Abolition seeks to transform both "the techniques for addressing 'crime'" and "the social and economic conditions" that drive so many people into carceral systems.[45] As one scholar has noted, "[reform] deals with pain management and [abolitionism]

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41. John Clegg & Adaner Usmani, *The Economic Origins of Mass Incarceration*, CATALYST (2019), https://catalyst-journal.com/vol3/no3/the-economic-origins-of-mass-incarceration [https://perma.cc/FS8U-DZ5X] (arguing that "the overdevelopment of American penal policy at the local level is the result of the underdevelopment of American social policy at the federal level"); Gottschalk, *supra* note 5, at 595 (arguing that the most effective way to reduce violent crime would involve "an infusion of resources and new policies and programs to address persistent residential segregation, inadequate investments in good housing, and disparate access to equitable residential loans and quality public education").

42. Jackson & Meiners, *supra* note 5, at 22 ("Prisons have been used, as Davis writes, as 'a way of disappearing people in the false hope of disappearing the underlying social problems they represent.'" (quoting DAVIS, *supra* note 38, at 41)).

43. Jennifer Bellamy, Dan Zeidman & Amshula Jayaram, *Promising Beginnings: Bipartisan Criminal Justice Reform in Key States,* ACLU 5 (Feb. 2012), https://www.aclu.org/sites/default/files/field_document/promising_beginnings_-_bipartisan_criminal_justice_reform_in_key_states.pdf [https://perma.cc/5CSB-WUF3] ("The convergence of societal and budgetary impacts of over-incarceration has carved out a window of opportunity for substantive reforms which prioritize efficiency and fairness over partisan politics.").

44. *See* CRITICAL RESISTANCE, A WORLD "WITHOUT" WALLS: THE CR ABOLITION ORGANIZING TOOLKIT 32–33 (2004), http://criticalresistance.org/wp-content/uploads/2012/06/CR-Abolitionist-Toolkit-online.pdf [https://perma.cc/2C5W-W2JK] [hereinafter "CR TOOLKIT"] (contrasting abolitionist and reformist approaches and noting that even within abolitionism there is "no one path to a world without prisons and policing").

45. DAVIS, *supra* note 4, at 20–21.

with the actual source of the pain."[46] Abolition can be viewed as existing "in productive tension with efforts to reform the penal system."[47] While an abolitionist agenda seeks to dismantle the system and create a social order that doesn't rely on prisons and carceral systems, abolitionists also recognize that certain reforms have the potential to bring immediate relief to the individuals currently suffering under the oppressive weight of the criminal legal process.[48]

Even as an abolitionist ethic recognizes the importance of engaging with reform work, it must be noted that not all reforms are created equally. There are many efforts labeled as reforms that work against the primary goals of abolition.[49] The nature of the reform itself must be examined to determine whether it is working in service of transforming the system or rather is supporting the carceral agenda. An establishment reform ultimately endorses and affirms the value of the legal-penal system and seeks to enhance its functioning by simply correcting identified failings. Establishment reforms seek some change to improve the performance of the institution by, for example, making it less overtly brutal in its punitiveness. Importantly, the primary objective is to maintain the core, fundamental identity of the criminal justice logic, albeit through kinder, gentler means. By contrast, a non-reformist or abolition-serving reform seeks to reduce or diminish the procedures and institutions by which state violence is administered and distributed.[50] These are reforms that "reduce the power of an oppressive system while illuminating the system's inability to solve the crises it creates."[51]

Pursuing an abolitionist agenda as opposed to simply reforming the system may seem extreme until one considers the unique entrenchment of race in the American system of justice. America's centuries of slavery and legalized segregation, "enforced in large measure through criminal law administration," makes the United States far "less amenable" to the reforms witnessed in Scandinavian countries, "which have more substantially humanized their prisons."[52] Addressing the

46. Washington, *supra* note 6.

47. Julia Sudbury, *Reform or Abolition? Using Popular Mobilisations to Dismantle the 'Prison-Industrial Complex,'* 102 CRIM. JUST. MATTERS 17, 18 (2015).

48. *Id.*

49. Some groups that support abolitionist approaches will use strategies that seem to emphasize reform, "like providing better health care and education to prisoners, making parole and probation accessible to more prisoners, supporting prisoner work stoppages and strikes—all things that don't necessarily abolish the system itself." CR TOOLKIT, *supra* note 44, at 33. But there are other strategies that are viewed as "undercut[ting] the work that abolitionists do," including "the trade off between 'violent' and 'non-violent' prisoners" and "constructing new jails and prisons to create better conditions." *Id.*

50. Sudbury, *supra* note 47, at 18 ("Described by Angela Y. Davis as 'non-reformist reforms,' these efforts are assessed first in terms of whether they contribute toward decreasing or increasing prison budgets and the reach of the criminal justice system.").

51. Berger, Kaba & Stein, *supra* note 8. *Reformist Reforms vs. Abolitionist Steps in Policing*, CRITICAL RESISTANCE (Aug. 2020), http://criticalresistance.org/wp-content/uploads/2020/08/CR_NoCops_reform_vs_abolition_REV2020.pdf [https://perma.cc/G367-V3KS] (providing examples to illuminate the distinction between traditional and non-reformist reforms in policing).

52. McLeod, *supra* note 7, at 1184.

issues in our criminal legal system requires more than tackling "implementation failures"[53] or fine-tuning around the margins. History has demonstrated that overlaying reforms onto an existing infrastructure does nothing to eradicate the underpinnings of racism and social control that simply mutate over time.

C. The Abolitionist Blueprint

Abolition recognizes that criminal justice logic works to maintain white supremacy.[54] It is an approach that prompts us to reframe our desire for safety by emphasizing adequate provision of basic human needs rather than a reliance on incarceration.[55] It also challenges the idea that the criminal legal system has produced practices that are effective in responding to offenses. An abolitionist ethic urges us to reach beyond our imaginations.[56] It encourages a commitment to ending the use of pro-carceral criminal punishment strategies to confine and control human beings through violent means.[57] Marking, punishing, and excluding are the only modes for addressing harmful social behavior that American society knows, but not the only ones that might exist. Abolition encourages us to consider that perhaps "wrongdoing, injury, difference, and culturally ingrained prejudice" can be addressed in other ways.[58] Abolition provides those who recognize the dangers of criminal justice logic with a North Star, an orienting point that grounds deeply held values and serves to guide decision-making.[59] Abolition is both a "goal" and a "framework" for "eliminating our reliance on the penal system and building truly democratic capacities grounded in decarceration, a robust social wage, and distributive and transformative justice."[60]

Abolitionist movements have also set out a blueprint to systematically strip down racist institutions and construct a new social order. An abolitionist ethic

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53. Hernández, *supra* note 21, at 262 ("Instead of merely creating disparate impacts on racial groups as a result of implementation failures, [institutions such as slavery and criminal incarceration] have been critiqued for their racist underpinnings. Reform simply cannot address this immoral root.").

54. *See* Coyle & Schept, *supra* note 28, at 320 (noting that "[p]enal abolition insists on the central importance of 'criminal justice' to the ongoing work of white supremacy").

55. *See* Ruth Wilson Gilmore & James Kilgore, *The Case for Abolition*, MARSHALL PROJECT (June 19, 2019, 6:00 AM), https://www.themarshallproject.org/2019/06/19/the-case-for-abolition [https://perma.cc/ZQ2Q-4MQJ].

56. Coyle & Schept, *supra* note 28, at 320 ("Against this society stands another imagined one, the post or non-carceral society, which much like the slave-free society of antebellum America that existed only in imagination before the abolition of slavery was accomplished, is neither formed nor known. It is still emerging and displaying its commitments." (citations omitted)).

57. McLeod, *supra* note 7, at 1161–62.

58. Washington, *supra* note 6.

59. Coyle & Schept, *supra* note 28, at 321 ("In addition, abolition is both the horizon toward which we work and a framework within which steps toward that horizon can be analyzed, evaluated and then taken or discarded. As the abolitionist Rose Braz argued, 'Abolition defines both the goal we seek and the way we do our work today.'" (quoting Hans Bennett, *Organizing to Abolish the Prison-Industrial Complex*, DISSIDENT VOICE (July 11, 2008), https://dissidentvoice.org/2008/07/organizing-to-abolish-the-prison-industrial-complex/ [https://perma.cc/P99H-RM3Q])).

60. *Id.*

provides not only the philosophy needed to move away from carceral logic, but also the practical steps. "The three pillars of abolitionism—or the 'Attrition Model' as the Prison Research Education Action Project called it in their 1976 pamphlet, 'Instead of Prisons: A Handbook for Abolitionists'—are: moratorium, decarceration, and excarceration."[61] The first step is moratorium, which means halting the construction of new prisons.[62] The second step, decarceration, means "finding ways to get people out of prison" and reduce the prison population.[63] The third step, excarceration, involves "finding ways to divert people away from the prison-industrial complex in the first place."[64] According to abolitionists, the criminal legal system uses a blunt tool instead of a more informed approach to deal with many of the social issues that bring people into the system. Addressing issues such as mental health, homelessness, and substance abuse, along with providing meaningful access to quality education and economic stability, will help to ameliorate some of the behaviors and conditions that currently lead to criminal legal involvement.

With this basic understanding of the abolitionist ethic, reform versus abolition, and the practical steps available to move closer to a new social order, the next Part will explore why criminal defense clinics are an important space for integrating this approach in pedagogy and practice.

III.
TEACHING CARCERAL ABOLITION IN CRIMINAL DEFENSE CLINICS

A. What Do Criminal Defense Clinics Currently Teach?

Criminal defense clinics are a staple clinical education offering in law schools across the country.[65] Criminal practice offers students a substantively accessible and engaging area of law as an entry point to the profession. Criminal cases provide students with the ability to engage in individual client representation in a very discrete process where they are often able to see the case through from beginning to end. Criminal defense clinics are often rich with substantive law and practical lawyering skills: client interviewing, oral advocacy in court, ethical decision-making, investigation, pretrial procedures, plea negotiation, client counseling, hearing,

61. Washington, *supra* note 6 (citing FAY HONEY KNOPP, BARBARA BOWARD, MARY JO BRACH, SCOTT CHRISTIANSON, MARY ANN LARGEN, JULIE LEWIN, JANET LUGO, MARK MORRIS & WENDY NEWTON, INSTEAD OF PRISONS: A HANDBOOK FOR ABOLITIONISTS ch. 3 (Mark Morris ed., 1976), https://www.prisonpolicy.org/scans/instead_of_prisons/chapter3.shtml [https://perma.cc/9A3K-DEMR]).

62. *Id.*

63. *Id.*

64. *Id.*

65. M. Chris Fabricant, *Rethinking Criminal Defense Clinics in "Zero-Tolerance" Policing Regimes*, 36 N.Y.U. REV. L. & SOC. CHANGE 351, 355 (2012) ("[T]he criminal defense clinic is a staple of law school clinical programs."); *see, e.g.*, Ian Weinstein, *Teaching Reflective Lawyering in a Small Case Litigation Clinic: A Love Letter to My Clinic*, 13 CLINICAL L. REV. 573 (2006) (describing a direct client representation criminal defense clinic in New York City).

and trial.[66] A well-designed and executed clinical program allows students to provide comprehensive representation of clients accused of crimes. Students focus on a small number of clients under the close supervision of an experienced criminal defense clinician. They are often able to go above and beyond what the overburdened public defender is able to provide by conducting extensive legal research and engaging in far-reaching investigations.[67] Many clinics pride themselves on giving students the resources, substance, and skills needed to provide vigorous client representation.

Clinics often seek to dig deeper by encouraging students to help their clients navigate the collateral consequences that arise from the criminal case. This will often demand that students assist clients with related issues "such as public benefits, employment, or housing issues, and, of course, the potential immigration consequences of a criminal conviction."[68] Criminal clinics take on clients in post-conviction cases dealing with all kinds of concerns, including parole, clemency, reentry, and appellate issues. Additionally, many criminal defense clinicians seek to educate students on the social and political realities that exist within the criminal context. Some clinics take on criminal-related projects that go beyond individual case representation in order to give students a broader sense of the kinds of issues and advocacy that exist. These clinics have been called "combined advocacy clinics" for their efforts to balance individual representation with "initiatives designed to effect larger-scale change, such as impact litigation, legislative advocacy, community lawyering, and organizing."[69] In sum, the criminal defense clinic model is varied, but it frequently seeks to focus on individual representation as well as educating about and responding to systemic injustice.

B. Should Criminal Defense and Abolition Be Taught Together?

It is certainly fair to ask whether criminal defense work can legitimately espouse an abolitionist ethic. There are many reasons one could articulate to resist bringing an abolitionist perspective to criminal defense work: the defender should be singularly focused on the plight of the individual client, which is already a heavy enough responsibility; "activists outside the courtroom" and outside the criminal legal system are better suited to advance abolitionist efforts; and most

66. *See* Fabricant, *supra* note 65, at 356 (describing the range of new skills that students participating in a criminal defense clinic must "continually learn and employ").

67. *See* Jenny Roberts, *Crashing the Misdemeanor System*, 70 WASH. & LEE L. REV. 1089, 1103–04 (2013) (describing how law school clinic students are able to offer "high-quality representation" and noting that "a busy public defender cannot devote the same amount of time or resources that a clinic student devotes to each client.").

68. Fabricant, *supra* note 65, at 356.

69. *Id.* at 357; *see also* Beth A. Colgan, *Lessons from Ferguson on Individual Defense Representation as a Tool of Systemic Reform*, 58 WM. & MARY L. REV. 1171, 1229–30 (2017) (describing how the St. Louis University Criminal Defense Clinic helped initiate a class action lawsuit in response to the Ferguson uprisings in 2014, demonstrating that "individual defense counsel can collaborate or inspire other forms of civil rights litigation, which also can force the government to acknowledge its behavior.").

defenders "have not been incarcerated and are not people of color," and therefore they are not well poised to take on "systemic racial inequities."[70]

Defenders are tasked with protecting rights, exposing deficiencies in evidence, sharing mitigating information, and negotiating over the types and lengths of punishment a client will face. These are very specific tasks that require complete devotion to the client's particular goals and preferences. In order to carry out those responsibilities, criminal defense practitioners generally have to work within the parameters established by the criminal legal system.[71] While some of the most effective defenders are committed to challenging the process at every opportunity, ultimately the defender's job involves helping the client navigate within what is usually a limited and undesirable set of options.

Some may argue that the defense function, situated within the machinery of the criminal legal system, is too entrenched in the process to legitimately embrace the principles of abolition. Indeed, the role of the defender is contemplated by and fits perfectly within the criminal justice logic. The public defender is just one player in the vast system of police, prosecutors, judges, court administrators, and corrections officials who operate under the prevailing view that the criminal legal system is based on objective, neutral standards which serve to further the causes of public safety and justice. Simply put, public defenders play by the rules of a system that is built on the criminal justice logic.

Many defenders who work within the system on a regular basis may develop a critique of the process based on their firsthand interactions with court actors and observations about how poorly their clients are treated. However, mere critique of the system only goes so far. No matter how much a defender may be ideologically opposed to the criminal legal system, the simple act of carrying out defense representation can provide a veneer of legitimacy to the entire process.[72] Once a case is resolved, all the parties involved can feel justified that the accused had representation, so due process was achieved. The idea that legal representation—even free legal representation—will help to reduce this country's overreliance on

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70. Lindsey Webb, *Slave Narratives and the Sentencing Court*, 42 N.Y.U. REV. L. & SOC. CHANGE 125, 149 (2018).

71. GONZALEZ VAN CLEVE, *supra* note 16, at 104 ("To fight this racialized culture, you have to work within in it. You must be versed in its logic and rules, even if it means getting your hands dirty in the process. Defense attorneys can hate the game, but they have to be players.").

72. Paul Butler, *Poor People Lose:* Gideon *and the Critique of Rights*, 122 YALE L.J. 2176, 2197 (2013) ("*Gideon* also provides a legitimation of the status quo. . . . It creates a formal equality between the rich and the poor because now they both have lawyers. The vast overrepresentation of the poor in America's prisons appears more like a narrative about personal responsibility than an indictment of criminal justice. In the words of one commentator, 'Procedural fairness not only produces faith in the outcome of individual trials; it reinforces faith in the legal system as a whole.'" (quoting Michael O'Donnell, *Crime and Punishment: On William Stuntz*, NATION (Jan. 10, 2012), http://www.thenation.com/article/165569/crime-and-punishment-william-stuntz [https://perma.cc/XVK3-28AP])).

criminalization and incarceration is simply a myth.[73] The criminal defense function, as vital as it is, exists as a part of the criminal justice logic.

While the work that many defenders do is valiant and critical, the process encourages participants to subscribe to the most racist or otherwise harmful aspects of court culture. This may impact a defense attorney's advocacy both consciously and unconsciously. Defenders often play to the perceived biases of judges, prosecutors, and jurors by promoting harmful narratives about race, culture, gender, sexual orientation, or ability if it presents the clearest path to a positive legal outcome for their client. Moreover, far too often defenders become blind to the "ordinary injustice" that their clients experience. This happens when attorneys "become[] so accustomed to a pattern of lapses that they can no longer see their role in them."[74] Defenders are rarely encouraged to acknowledge and confront their own implicit and explicit beliefs about clients, which are often based on understandings about class and race learned from their work within the court system.[75] Racial bias can impact the way a defender will manage their cases—specifically, how much time they will spend on the case, how they will evaluate evidence, and how they will advise clients about their options.[76]

Defense attorneys often serve as "ambassadors of racialized justice," "translators who 'warn[]'" the accused about the culture of the court, "thereby conditioning them into compliance."[77] The criminal legal process depends on the fact that defenders will take on the role of conditioning clients into acquiescence. Despite the immediate and important function that public defenders play, without conscious consideration of the vulnerabilities of the institutional role and the defender's own biases and potential for complicity there is a danger that defenders provide a conduit for sustaining the harms the system creates. Using the language of abolition without this critical introspection of one's own personal and

73. *See id.* at 2191 ("[S]ince *Gideon*, rates of incarceration (which, in the United States, applies mainly to the poor) and racial disparities have multiplied. The right to have a lawyer, at trial or even during the plea bargaining stage, has little impact on either of those central problems. What poor people, and black people, need from criminal justice is to be stopped less, arrested less, prosecuted less, incarcerated less.").

74. AMY BACH, ORDINARY INJUSTICE: HOW AMERICA HOLDS COURT 2 (2009).

75. GONZALEZ VAN CLEVE, *supra* note 16, at 161 ("This triage of gauging capital or 'goodwill' of the courts and the moral pricing of the defendant requires seeing your clients through the racialized lenses of the Cook County Courts, much like placing a price on slaves and gauging their worth. Each defendant had a going rate, and part of defending was knowing that value in the market of the court.").

76. L. Song Richardson & Phillip Atiba Goff, *Implicit Racial Bias in Public Defender Triage,* 122 YALE L.J. 2626, 2635–36 (2013) (describing how implicit biases may influence critical "early appraisals of cases," including the evaluation of evidence).

77. GONZALEZ VAN CLEVE, *supra* note 16, at 169–73.

institutional limitations will undoubtedly result in an empty co-option of the principles of abolition.[78]

While all of these concerns warrant serious exploration, it also bears noting that there are many roles that need to be played on the path toward abolition. However complicated the institutional role of the defender may be, the truth remains that for the people currently ensnared in the criminal legal system, effective, skilled, and tenacious representation is vital. Because of this, a defender's primary responsibility must always be to prioritize the urgent, life-saving work of helping to mitigate the impact of the system on a client's life. "[A]bolitionists must treat prison like a 'social cancer: we should fight to eradicate it but never stop treating those affected by it.'"[79] Abolition is about working in solidarity with those who are most impacted and those who seek to dismantle systems of oppression. Accordingly, public defenders should not merely professionalize and legitimize the system reflexively; rather, they should practice in solidarity with the people they represent, who are directly affected by the "social cancer" of the carceral state right now.

Abolition is both a philosophy and a practice, and conscientious defenders can contribute to advancing the long-term, practical work of abolition by standing on the front lines and working with their clients to resist the infliction of

78. There is a concern that abolitionist frames cannot be fully integrated into professions that have been "central conduit[s]" for institutionalized violence. Beyond law, this conversation is also happening among professional urban and environmental planners. *See, e.g.*, Deshonay Dozier, *No Room for Planners in Abolition,* PN: PLANNERS NETWORK: THE ORGANIZATION OF PROGRESSIVE PLANNING (Aug. 9, 2018), http://www.plannersnetwork.org/2018/08/response-to-abolitionist-planning [https://perma.cc/382N-RKRV] (discussing the need to "foreclose the use of abolition as rhetoric for bolstering the institution of planning").

79. Roberts, *supra* note 18, at 118 (quoting "law student, activist, and former prisoner" Angel E. Sanchez, *In Spite of Prison, in Developments in the Law — Prison Abolition*, 132 HARV. L. REV. 1650, 1652 (2019)).

institutional harm.[80] Every case for which a defender advocates vigorously and thoughtfully serves as harm reduction, moving a client out of systemic ensnarement. Defenders observe firsthand the ways in which criminalizing and incarcerating people does not ultimately increase safety in our communities or resolve issues of inadequate employment, housing, and mental health treatment. They see through police paperwork and examinations of police officers in court how the reality of policing practices falls far beneath the ideal of policing that our society holds. Defenders contribute to the work that abolitionists do when they highlight engrained assumptions, expose the failures of policing, overload the system's functioning, and illustrate the social and economic unsustainability of carceral approaches.[81]

In the wake of the killings of George Floyd, Breonna Taylor, Trayvon Martin, Michael Brown, Eric Garner, and many others, discussions of police and vigilante violence that occurs without legal consequence, along with critiques of mass incarceration, suggest that perhaps there is some measure of societal will to shift away from overly punitive and police-reliant approaches. Experiential teaching within the criminal legal context demands that clinicians and practitioners think more expansively about what ideological principles are core to our teaching. Educating clinic students in and orienting case work around an abolitionist ethic will allow students to be aware of and subvert both the criminal legal system and the

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80. Some public defender offices have already begun to grapple with the institutional role they play within the carceral system. For example, the Bronx Defenders, an innovative public defender office in New York City that emphasizes holistic defense, has discussed this role definition within a revised public statement on the closing of Rikers Island and proposed construction of smaller, borough-based jails:

> As public defenders . . . our role is to prevent our clients from being caged and minimize the harm caused by the carceral state . . . . Our mission is to transform the way low-income people are represented in the legal system and our vision is to transform the system itself . . . . With respect to our criminal legal system, our mission and vision come from a deep awareness of the fundamental cruelty of the carceral system and the social, financial, and political forces that keep it in place as well as an acknowledgement that it is our clients and their families who bear the brunt of that cruelty. The transformation we seek is not easy. It is not incremental. And it is not small. It is bold, radical, and ambitious. When it comes to the problem of mass incarceration, what we are seeking is total liberty.

Bronx Defenders' Revised Statement on the Closing of Rikers Island and the Creation of Borough-Based Jails, BRONX DEFENDERS (Sept. 4, 2019), https://www.bronxdefenders.org/bronx-defenders-revised-statement-on-the-closing-of-rikers-island-and-the-creation-of-borough-based-jails [https://perma.cc/9JN9-GT57]. For further information on the holistic defense model, which emphasizes an interdisciplinary, community oriented approach to lawyering, see generally *Holistic Defense, Defined*, BRONX DEFENDERS, https://www.bronxdefenders.org/holistic-defense/ [https://perma.cc/Y88M-MC9E] (last visited Mar. 30, 2020).

81. *See, e.g.*, Roberts, *supra* note 67, at 1099–100 (proposing that "zealous attention to misdemeanor representation—in addition to being one way of dealing directly with the misdemeanor crisis—may advance other methods of dealing with the misdemeanor crisis," such as forcing prosecutors and law enforcement to target fewer individuals in order to conserve resources, as well as incentivizing legislators "to decriminalize and to refrain from creating more minor criminal offenses").

limitations of the profession. Abolition requires small steps by many different players, all leading to a radically new vision of how we define and address harmful social behaviors. Law in and of itself is not a tool that will fundamentally change systems of oppression. At most, the law can be used to engage with state systems to mitigate the damage caused to individuals, families, and communities. As lawyers with abolitionist vision, public defenders can contest the power of the state by moving people out of immediate harm, and they can often do so in a way that does not continue to build up carceral ideologies. While public defense practice does not completely square with carceral abolition, defenders can offer support to the abolitionist movement.

C. Why Should Law Students in Defense Clinics Be Exposed to Abolition?

There are so many things that criminal defense clinicians are trying to achieve with students for the brief period of time that they are in clinic. We try to impart context and skills. We focus on making sure they are giving their clients the highest quality of representation possible. Of course, not all of our students will go on to become public defenders. Many of them will enter the private sector or go on to do other kinds of public interest or policy work. Thus, we aim to cultivate skills and develop substantive knowledge that students will be able to transfer to the many other areas in which they will find themselves practicing. Clinicians also aim to provide exposure to the critical values, such as client-centeredness, cultural awareness, and basic respect for humanity, that are so inextricably linked to lawyering.[82] Given these many goals and the limited time frame, it may seem overly ambitious, and perhaps even a bit off track, to try to incorporate an abolition framework into the clinical pedagogy.

The criminal context provides an ideal space to see and understand how the legal system uses race and poverty to mark, punish, and exclude. But it is not enough to simply point out the system's failures and engage in representation and projects that seek to address them. Anyone who has engaged in criminal defense-oriented practice for more than a moment has borne witness to the way that the entire process, from arrest through reentry, devalues the lives of those who stand accused. Through our "small case" misdemeanor docket, we meet the young person with emergent mental health concerns arrested for disruptive behavior; the parent arrested for shoplifting basic necessities for their family; the frustrated and stressed veteran living in homeless shelters arrested for getting into a fight. Through our post-conviction work, we see how our clients who have served sentences for excessive periods of time languish in prison because our society has a default response of punitiveness and lacks the will to reckon with the human

82. What clinic students see firsthand in terms of their clients' experiences provides them with a meaningful, lasting perspective regardless of the work they later pursue. *See, e.g.*, Abbe Smith, *In Praise of the Guilty Project: A Criminal Defense Lawyer's Growing Anxiety About Innocence Projects*, 13 U. PA. J.L. & SOC. CHANGE 315, 326 (2010) (noting that students in clinic come away recognizing that their clients' imperfections are not so different from their own).

capacity for growth and redemption. Through our reentry work we see how people who have criminal convictions are denied the opportunity to use the skills they have learned to secure stable and gainful employment. We see firsthand how clients are trapped in a process that seeks to sink resources into endless civil and criminal punishment rather than basic human structures such as housing, health, education, family care support, and employment. Clinicians cannot allow students to observe these injustices without having them confront their role in the system, as well as their responsibility for exposing the system's shortcomings and envisioning a different way of responding to social challenges.[83]

Abolition, particularly with its emphasis on excarceration, encourages students to envision a more transformative approach to dealing with many of the social issues that lead to criminal legal involvement. Teaching clinic students to consider their fieldwork through an abolitionist lens urges them to develop a critical consciousness about the system in which they are being trained to operate, and it exposes them to the environment of "institutional routines" they will work within.[84] We must aim to "effectively and radically displace the normalized misery, everyday suffering, and mundane state violence" that can be replicated or "passively condoned" by both the criminal system and the practitioners who are critical of it.[85] As teachers focused on criminal defense, our goal should be to separate the work we are doing from the maintenance roles of other institutional actors, such as police officers, prosecutors, and judges.

Through clinical education we can attempt to understand how we are a part of furthering the carceral system and how we might be a part of abolishing it.[86] Students and clinicians need to have a grounding ideology that will provide a counter-analysis to the dominant criminal justice logic that pervades legal education and practice. "Abolitionism often operates as a sensitizing theory, exposing the uninitiated to radically alternative approaches to questions of justice and conflict resolution."[87] As students leave law school and go down different professional pathways, they enter jobs with demanding caseloads waiting for them and training that focuses primarily on the practice. The pace of practice in legal

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83. Clinicians have recognized this imperative for over a decade:

> If we simply expose our students to injustice without addressing it explicitly, we are complicit in their desensitization, and fail in carrying out our responsibilities as teachers. We may even become a part of the problem because it is not possible to be a neutral observer of injustice. We want to leave our students with the sense that they can make change.

Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997, 1009 (2004).

84. Dylan Rodríguez, *The Disorientation of the Teaching Act: Abolition as Pedagogical Position,* 88 RADICAL TCHR. 1, 7–8 (Summer 2010) (discussing how the routines of the carceral state "revise while sustaining the everyday practices of genocidal racial slavery").

85. *Id.* at 8.

86. *Id.* at 13.

87. *Considering Abolition*, *supra* note 3.

services and public defense offices typically means that there is no culture of, and very little space for, raising questions about the larger implications of the work that young attorneys are doing. Explicitly providing space for students to question and investigate the role of their clinical work can encourage them to create opportunities for these conversations and alternative approaches in the offices they will enter as practitioners. It may also help to impart a sense of social responsibility for students who ultimately enter private practice.

Undoubtedly, students in the criminal defense clinic classroom will embody the full cross section of experiences and ideological perspectives that people bring to the work. Many of the students we teach are what might be called criminal justice logic believers, and they will likely resist the notion that the criminal legal system is inherently racist or needs undoing. They may be even more resistant to the idea that they as lawyers should play any part in that process. Other students might identify as proponents of a decarceral approach. These students recognize that the criminal legal system is significantly flawed, but they don't fully embrace abolition as the answer.[88] The decarceral proponent might view reforms that reduce the size and scope of the criminal legal system as the appropriate response. Perhaps these students fixate on the lack of a concrete, clearly defined vision of an alternative system without police and prisons. They ultimately question how harmful social behaviors can be adequately addressed without the systems that currently embody the criminal justice logic. Many students who fall into these first two categories may view a clinical experience in criminal defense as a stepping stone to a career as a prosecutor. Finally, another grouping of students may come to the clinic classroom already embracing a strong sense of abolitionist values. These abolition-minded students may have a well-developed ideological perspective, but they may be challenged by the idea of reconciling their principles with their actual practice. These students are drawn to the idea that criminal defense work is the front line of individual liberation, but they might be concerned about becoming disillusioned by the ways the defender often has to trade on the system's terms.

Integrating an abolitionist perspective into clinical pedagogy and practice is valuable for each of these "types" of criminal defense clinical student.

1. Abolitionist Clinical Pedagogy Explicitly Grounds Criminal Practice in a Historical Context

The disproportionate representation of people of color and poor people in criminal courts and jails and prisons across the United States is something that

88. One such critique of penal abolitionism comes from Máximo Langer, who aligns himself instead with "criminal law minimalism." Máximo Langer, *Penal Abolitionism and Criminal Law Minimalism: Here and There, Now and Then*, 134 HARV. L. REV. F. 42, 57 (2020). Under this theory, "there is still a penal system that has armed public law enforcement, punishment, and, for the time being, imprisonment as tools to deal with social harm," but these tools are used on a drastically reduced scale and "only when no other tool could advance the goal of preventing or reducing harm." *Id.*

defense clinic students must directly confront and grapple with. Much of the narrative that grows out of the criminal justice logic is that lack of personal responsibility, deficiencies in cultural values, and poor life choices are the main drivers for the overrepresentation of people of color and the poor in the criminal legal system. Providing students with a race- and class-conscious historical context, particularly as it relates to anti-Black sentiment, allows them to explore the ways in which criminal law enforcement is a direct outgrowth of slavery and Jim Crow policies. The historical and social underpinnings of an abolitionist ethic encourage students to consider how deliberate deprivation of economic and social opportunities, along with law enforcement policies targeting communities of color, continue to contribute to the imbalances they observe. By imparting an abolitionist ethic into student learning, clinicians enable students to think about their clients' cases with greater depth and complexity. Students are also able to take a more wide-ranging view of the criminal legal system's progression over time and of their future roles within it. They are also able to see how a history of surveillance, punitiveness, exclusion, and carcerality informs other legal systems that are ancillary to the criminal legal process.

2. Abolitionist Clinical Pedagogy Acknowledges How Public Defenders Often Legitimize the System

The criminal legal system functions through the actions of various institutional actors who work to maintain the status quo. Undeniably, police officers, prosecutors, and judges wield a tremendous amount of power and discretion when it comes to the functioning of the system. Many public defenders express an awareness of the ways these players consciously and unconsciously engage with race as they exercise their discretion. Public defenders are often left in a reactive mode, forced to respond to and mitigate the actions of these other actors. This can make it seem as though defenders are powerless players in the system.

Yet, even in this difficult posture, public defenders do have agency and decision-making power in how they manage their cases, and harm can occur when defenders play into racialized ideas about their clients.[89] The high volume and fast pace of most criminal courts results in a triage-style approach where defense lawyers must assess which cases are worthy of their scarce time and attention.[90]

Research on the ways implicit bias may affect public defender triage suggests that when clients are Black "or otherwise criminally stereotyped," those biases "can influence evidence evaluation," which may lead public defenders to

89. *See, e.g.*, GONZALEZ VAN CLEVE, *supra* note 16, at 161–62 (describing how court actors' racial biases affect defense attorneys' evaluations of their clients' chances of success: "Similar to the way prosecutors and judges use the performance of whiteness to distinguish a rare deserving white defendant, defense attorneys use a similar measure . . . to decide whether to invest capital in a client"); *see also* discussion *infra* Section II B.

90. *Id.* at 158–59.

"unintentionally interpret information as more probative of guilt."[91] The racialized culture of the criminal court process may lead defenders to unwittingly contribute to the structural violence their client is experiencing, despite their own conscious contempt for it.[92]

Teaching an abolitionist perspective to law students in a criminal defense clinic provides an early and essential way for students to acknowledge and address their role in legitimizing the racism that animates the criminal legal system.[93] In this way, clinicians may be able to help prevent students from merely repeating patterns of institutional violence.

3. Abolitionist Clinical Pedagogy Informs Professional Values

We can teach students to develop values that will guide their professional work. For too long law schools have encouraged the education of lawyers in an ostensibly value-neutral way.[94] Abolition presents a clear set of values. Of course, whether students embrace abolition as a philosophy for their own professional practice will ultimately be their own choice. However, teaching from this perspective provides a "common set of ideals" that can offer professional guidance no matter the student's career choices.[95] Eradicating systems of oppression ought to be a core lawyering value, and "we must keep in mind and work toward the ultimate objective of radically changing a system that tolerates (or requires) the existence of extreme deprivation and inequality with respect to the essentials of human existence."[96]

One key value that also arises from an abolitionist framework is the centering of the experience and perspectives of people who are most impacted. Traditional literature about lawyer professionalism highlights the lawyer's role as the trained expert and authority.[97] Lawyering that is rooted in more radical strategies, such as

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91. Richardson & Goff, *supra* note 76, at 2636.

92. GONZALEZ VAN CLEVE, *supra* note 16, at 157 (noting that despite defense attorneys' "awareness of" and "disdain for" the "racialized culture of the courts . . . culture is a complex toolkit and one's perspectives can contradict one's practices").

93. Andrea D. Lyon, *Race Bias and the Importance of Consciousness for Criminal Defense Attorneys*, 35 SEATTLE U. L. REV. 755, 757–58 (2012) ("We must not take a 'color-blind' approach to our representation because it is in the very recognition of color that we can recognize our own biases and ensure that they do not inhibit our ability to represent our clients.").

94. Jonathan A. Rapping, *Grooming Tomorrow's Change Agents: The Role of Law Schools in Helping to Create a Just Society,* 12 OHIO ST. J. CRIM. L. 465, 491–92 (2015) (describing a "growing sentiment" that law schools "should not produce 'values-neutral' lawyers, but instead should promote in their curricula values fundamental to the profession").

95. *Id.* at 492.

96. Florence Wagman Roisman, *The Lawyer as Abolitionist: Ending Homelessness and Poverty in Our Time*, 19 ST. LOUIS U. PUB. L. REV. 237, 250 (2000).

97. Beverly Balos, *The Bounds of Professionalism: Challenging Our Students; Challenging Ourselves,* 4 CLINICAL L. REV. 129, 130 (1997) (discussing "the prevailing 'myth' of the lawyer as expert 'who can and should determine, in a detached and rational manner, and with minimal client input, what solution is best'" (quoting DAVID A. BINDER, PAUL BERGMAN & SUSAN C. PRICE, LAWYERS AS COUNSELORS 17–18 (1991))).

movement lawyering and rebellious lawyering, emphasizes the idea that those most impacted by the systems we are fighting against are in the best position to lead and set the representation goals.[98] Likewise, an abolitionist ethic underscores for young lawyers that clients and impacted people should not play a secondary role in their own cases and campaigns.

For many students who embark on careers as social justice lawyers, it can be easy to get lost in the pressures of the day-to-day tasks of the job if they lack a clear and deliberate set of values. The literature on sustaining work as a public defender explores how public defense jobs overwhelm new attorneys with demanding caseloads, long odds, emotionally taxing issues, and seemingly inevitable burnout.[99]

Those who write on public defense values, such as Charles Ogletree and Abbe Smith, explore personal motivations for doing the work, such as empathy, heroism, and pride in professional craft.[100] While many of these motivations likely still hold true, for many clinic students coming of professional age following the tragic killings of Floyd, Martin, Brown, and Garner, as well as the uprisings in Ferguson, Baltimore, Minneapolis, and cities across the nation, the direct impact of public defender work is linked to a broader vision of individual and collective liberation. For these students, and for many students of color seeking to develop their own senses of professional identity in social justice legal settings, the traditional values that law school teaches—motivations aligned with upholding the political

98. *See, e.g.*, Betty Hung, *Movement Lawyering as Rebellious Lawyering: Advocating with Humility, Love and Courage*, 23 CLINICAL L. REV. 663, 664 (2017) ("I am . . . convinced that social movements are the key to positive social change and that an essential role of rebellious lawyers is movement lawyering in service of the leadership and organizing of those most directly impacted.").

99. Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239, 1240–41 (1993) (describing how idealistic new lawyers succumb to the various institutional pressures of public defender offices, becoming "jaded, disillusioned, or cynical, usually leaving the public defender's office for another career or, alternatively, settling for a routine existence of administering plea-bargained justice with little fervor for the cases or the clients" (citations omitted)).

100. *Id.* at 1268 (emphasizing empathy and heroism); Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathic, Heroic Public Defender,* 37 U.C. DAVIS L. REV. 1203, 1208 (2004) (proposing, as "an alternative to the two-pronged model of empathy and heroism," a "three-pronged model" focused on "respect for client, pride in craft, and a sense of outrage about inequality, injustice, and the routine abuse of power by those in a position to wield it.").

philosophy of the legal system—have never been sufficient.[101] Exposure to abolitionism in the clinical legal setting creates space for what Professor Mari J. Matsuda calls "multiple consciousness," which allows students "to detach law and to see it as a system that makes sense only from a particular viewpoint."[102] It allows students to stop trying to "understand law as necessary, logical, and coextensive with reality" when their and their clients' life experiences have demonstrated otherwise.[103] An abolitionist ethic will allow them to see and honor real-life understandings while still strategically utilizing the law. It allows students not only to see the world through the lens of traditional legal values, but also to intentionally "see the world from the standpoint of the oppressed."[104]

IV.
PRINCIPLES FOR PRACTICING AND EVALUATING CARCERAL ABOLITION

Ultimately, there is no single set of tools or strategies that will seamlessly implement the ideas of abolition in a criminal defense clinic. However, a strong desire to understand and move away from "the assumptive necessity, integrity, and taken-for-grantedness of prisons, policing, and the normalized state violence they reproduce"[105] can serve as a strong foundation. Clinical legal education should not focus on training "foot soldiers" and "middle managers"[106] of the criminal legal system, but rather focus on how to arm law students with the perspective and skills necessary to diminish the power and scope of the carceral state. Teaching students to contemplate the valorization of our criminal legal institutions and

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101. Professor Julia Hernandez captures the isolation that many law students who have been directly impacted by state violence in their own lives feel when in law school, as well as the responsibility that law professors have to respond to needs of these students:

> Today, I see students struggling in many of the same ways that I struggled: to reconcile the trauma they inhabit as a result of chronic—if not generational—state violence, with their roles as professionals in a system beholden to white supremacy; to find meaningful roles as lawyers in struggles for social justice and to work toward a vision of a world we actually want to live in. As teachers and mentors, our opportunity is both precious and precarious: if we fail to respond to these students' experiences and nurture their visions for transformative change, we isolate them and obscure their potentially unique contributions for reimagining the state along with their communities.

Julia Hernandez, *Lawyering Close to Home*, 27 CLINICAL L. REV. 131, 135 (2020). *See also* Shaun Ossei-Owusu, *For Minority Law Students, Learning the Law Can be Intellectually Violent*, ABA J. (Oct. 15, 2020; 11:23 AM), https://www.abajournal.com/voice/article/for_minority_law_students_learning_the_law_can_be_intellectually_violent [https://perma.cc/S7FQ-TKN3] (discussing the disconnect many students of color experience when examining racial inequality through the "sanitized" approach of legal education).

102. Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method,* 11 WOMEN'S RTS. L. REP. 7, 9 (1989).

103. *Id.*

104. *Id.*

105. *See* Rodríguez, *supra* note 84, at 9.

106. *Id.* at 10.

their own role in either furthering or dismantling these structures is of critical importance, no matter the student's ideological perspective or future career goals.[107] A clinician committed to this effort must be willing to experiment, to be creative, to be flexible, and—of course—to reflect. Teaching abolition in a practice context exposes students to the benefits and challenges that come with practicing from a particular philosophical viewpoint.

An abolitionist ethic can be included in various aspects of the clinical method, from seminar, case/project selection, and skill development to supervision and rounds. The pedagogical approaches and principles that follow are suggestions for implementing and evaluating the incorporation of abolitionist principles into a criminal defense clinic.

A. Clinical Seminar

The clinical seminar provides an ideal and relatively low-stakes site for exposing students to theory and skills training through an abolitionist lens. It is useful to state explicitly in class and in the syllabus or other course materials that one of the learning goals of the clinic is to explore the possibilities for carceral abolition through clinical practice. While teaching students about how abolition fits within the larger context of the criminal legal system could (and certainly should) be its own prerequisite seminar over the course of a semester, many clinical programs are not designed with this latitude. [108] In the typical one-semester clinic, a minimum of at least one class session at the beginning of the semester should be dedicated to establishing a foundational understanding of the concepts of carceral abolition within the context of the criminal legal system.

Students should be provided with readings and materials that present the historical framing of abolition, examine the roots of racial capitalism, and expand on the distinctions between reformist and non-reformist reforms. There are countless resources, from books and articles to films and podcasts, that could provide students with an engaging and accessible foundation for the theoretical and practical perspectives that will guide the course.[109] Students should be given an opportunity to grapple with the concept of abolition and the role that an abolitionist ethic can and should play in shaping professional norms. Certainly, clinicians should be

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107. *See id.* at 13.

108. The Defenders Clinic at CUNY Law has a unique design. Students participate in a mandatory 4-credit lawyering seminar prerequisite for a semester and return the following semester for a 10- to 12-credit capstone clinical experience. Institutional commitment to an allocation of greater credit hour resources in clinical courses allows for more robust substantive exploration.

109. *See* Akbar, *supra* note 7 (listing various abolition-focused resources to assign to students in Criminal Law and Procedure courses); *see also Abolition Resources — Learning List*, RISE MAG. (Sept. 14, 2020), https://www.risemagazine.org/2020/09/abolition-resources-learning-list/ [https://perma.cc/DU66-SXXC]; *Resources: Dismantling the Prison Industrial Complex*, 8TOABOLITION, https://www.8toabolition.com/resources [https://perma.cc/QYZ2-23YZ] (last visited Mar. 30, 2021); Dan Berger, Garrett Felber, Kali Gross, Elizabeth Hinton & Anyabwile Love, *Prison Abolition Syllabus 2.0*, AFR. AM. INTELL. HIST. SOC'Y: BLACK PERSPS. (Sept. 8, 2018), https://www.aaihs.org/prison-abolition-syllabus-2-0 [https://perma.cc/X8GE-BZMM].

transparent about the challenges of integrating abolitionist theory into the deeply entrenched roles and operating modes of criminal practice. Nonetheless, clinic students must appreciate that abolitionist inquiries will be made at each stage of the education and practice endeavor—from case/project selection to skill development, supervision, and rounds.

B. Case and Project Selection

Case and project selection in a criminal defense clinic should, to the extent possible, expose students to more than one stage of the criminal legal process and more than one mode of advocacy. The stages of the work related to the criminal legal process are varied, but they roughly fall into a few broad categories: working on trial-level, appellate, and post-conviction cases;[110] holding government actors accountable for conditions in policing, courts, and prisons; and addressing the civil consequences of involvement with the criminal legal system. Modes of advocacy might include direct client representation, impact litigation, community education and resource provision, law and organizing support,[111] and legislative and policy advocacy. Admittedly, many clinics face resource limitations and cannot do everything. Difficult and strategic choices must be made so that clinicians prioritize advocacy and experiences that will create the greatest depth of exposure for students and support the work of those advancing abolitionist change.

Exposing students to clinic work that interfaces with both the "front end"—what happens when people enter the system—and the "back end"—what happens when people are imprisoned or leaving the system (reentering), as well as how institutional actors can be held accountable for the failures of the process—provides a broad view of the criminal legal process. Rooting clinical practice in only one stage of the process makes it difficult for students to draw connections between reforms in one area and their practical effects in other areas. Having an understanding of how various parts of the system relate to one another helps to concretize the way reforms made in isolation may serve to reinforce the carceral system.

Additionally, diversifying the clinical practice experience gives students a perspective that will enrich their advocacy by allowing them to actively apply the values of abolition. For example, working on issues related to misdemeanor trial-level work, as well as public education with incarcerated clients seeking changes to parole policy, deepens a student's understanding of the system in meaningful ways. Many new and not-so-new attorneys enter criminal practice with very little

110. While not an exhaustive list, these cases might involve misdemeanor or felony level offenses on the state or federal level, capital punishment, wrongful convictions, parole or clemency matters.

111. Although it is often difficult for clinics to be quickly responsive in any given moment, providing legal support for protestors and movement organizers through jail support, running bail funds, or acting as legal observers may provide meaningful opportunities for students to use their skills in support of individuals seeking institutional change.

concept of how a conviction or time in prison impacts the lives of their clients, which tends to show in their representation. It is not difficult to be morally outraged at a system that criminalizes quality-of-life offenses, but having students engage with individuals who are serving lengthy prison sentences for what are often considered serious offenses compels students to process the complex individual and structural circumstances their incarcerated clients face. It forces them to confront and expand the bounds of their empathy in different legal contexts. It also encourages an appreciation for that fact that while the lived experiences of their clients will be varied, privileging client voice should always be prioritized. This kind of practice allows students to explore both the potential for and the challenges of applying abolitionist principles in practice.

A lawyer may engage in direct representation while employing strategies and perspectives that are mindful of an abolitionist ethic; nonetheless, the goals and objectives of the case are driven by the client. Other types of advocacy and project work, on the other hand, do not present this tension with abolitionism. Taking on other modes of work beyond trial practice and litigation, such as policy advocacy or community education, allows clinicians to expressly bring abolitionist strategies into the clinical practice without the specific constraints of individual representation. It also lets students see the many different tactics that can be used to dismantle the system. In incorporating these modes of advocacy, clinicians should seek opportunities that will allow students to engage with organizers and individuals directly impacted by the criminal legal system. Those working toward abolition of the carceral system do so with guidance from people who are the most directly impacted by the system. Adhering to this approach helps students begin to decentralize the role that lawyers play in supporting movements and creating structural change.

In combined advocacy efforts, clinicians should strive to build connections between project work and individual case representation. There are many topics that directly relate to criminal work, are spearheaded by impacted individuals or groups, and help to support a non-reformist reform agenda. While each area must be evaluated on an individualized basis, non-reformist reform projects might involve: "abolishing solitary confinement and capital punishment"; "moratoriums on prison construction or expansion"; "ending cash bail"; "abolishing electronic monitoring, broken windows policing, and the criminalization of poverty";[112] eradicating criminal court-related fines and fees; and expanding "Ban the Box"[113] initiatives. Projects that follow the more traditional reform model, and which

112. Garrett Felber, *The Struggle to Abolish the Police is Not New*, BOS. REV. (June 9, 2020), http://bostonreview.net/race/garrett-felber-struggle-abolish-police-not-new [https://perma.cc/GQ4M-P5E5].

113. "The [Ban the Box] Campaign asks employers to remove questions regarding conviction histories from their employment applications and to adopt hiring practices that give applicants [with criminal convictions] a fair chance." *FAQ's for Ban the Box Campaign*, BAN THE BOX CAMPAIGN (Jan. 2013), http://bantheboxcampaign.org/wp-content/uploads/2013/01/FAQ-PDF-for-site.pdf [https://perma.cc/Z29S-KFPB].

increase the power of the carceral state, might include efforts to expand the use of body cameras, push for independent prosecutors, improve police training, or relocate and modernize jail facilities.[114]

It is often not easy to parse the nature of these projects. Students should be allowed to see firsthand the difficult tensions that can arise when engaging in reform work with an abolitionist agenda. There will inevitably be moments when, for example, a course of action that might bring immediate relief to individuals currently experiencing the weight of the system conflicts with a longer-term abolitionist goal. Some of the most challenging tensions exist when those who are most directly impacted disagree on the best approach, or when efforts led by directly impacted people become influenced or dominated by the priorities of well-funded non-profit organizations and donors.[115] But clinicians can sort through some of this complexity by involving students in the process of identifying what the reform being sought is and whether the outcome being pursued is an establishment reform or a non-reformist reform.

In order to evaluate the efforts to be undertaken, clinicians can be guided by many of the key questions that organizers offer to evaluate where a certain type of work is situated: Is the outcome sought going to ultimately endorse and affirm the legal-penal system by enhancing its functioning, or will it diminish the procedures and institutions by which state violence is administered and distributed? Will the outcome increase access to liberty, or will it increase punitiveness? Is this an initiative that creates more space for abolitionist possibilities? Will the effort contribute to "illuminating the system's inability to solve the crises it creates?"[116] Who is motivating and spearheading the objectives being undertaken? Are we informed and led by people most directly impacted? "Who benefits from this campaign, initiative, reform, form of resistance? Who doesn't, and why?" "Who is

114. For example, the "8 Can't Wait" campaign focused on advocating for modifications to existing law enforcement department policies on the use of force. *#8cantwait*, CAMPAIGN ZERO, https://8cantwait.org/ [https://perma.cc/B2JL-WP2W] (last visited Mar. 30, 2021); Olivia Murray, *Why 8 Won't Work: The Failings of the 8 Can't Wait Campaign and the Obstacle Police Reform Efforts Pose to Police Abolition*, HARV. C.R.-C.L. L. REV. AMICUS BLOG (June 17, 2020), https://harvardcrcl.org/why-8-wont-work/ [https://perma.cc/9T5H-8B8D] (detailing how the 8 Can't Wait campaign takes a reformist position in seeking to reduce racist policing rather than eliminate it); John Duda, *Toward the Horizon of Abolition: A Conversation with Mariame Kaba*, NEXT SYSTEM PROJECT (Nov. 9, 2017), https://thenextsystem.org/learn/stories/towards-horizon-abolition-conversation-mariame-kaba [https://perma.cc/F8MR-RSGC] (discussing the limitations of more traditional "reformist" reforms).

115. *See, e.g.*, Raven Rakia & Ashoka Jegroo, *How the Push to Close Rikers Went from No Jails to New Jails,* APPEAL (May 29, 2018), https://theappeal.org/how-the-push-to-close-rikers-went-from-no-jails-to-new-jails [https://perma.cc/TT2G-89LK] (describing conflicts between advocacy groups over whether additional jails should have a place in the plans to shut down Rikers Island).

116. Berger, Kaba & Stein, *supra* note 8.

working on this initiative? Who is not? Why us? Why now?" "Is this something that we, or others, will be organizing to undo" in the near future?[117]

Diversifying substantive work and advocacy modes helps to provide critical lessons for students. First, it teaches students that deliberately carving out space for a more radical enterprise than what you can do through direct representation[118] poses an inherent but necessary challenge for lawyers seeking to assist in the dismantling of entrenched systems. Lawyers can take on varied responsibilities, "personally and professionally"; we can "function as counselors or as advocates" in legal settings,[119] and we can also simultaneously work to support others who are striving for radical advances. For a lawyer guided by abolition, there will be "times to stand outside the courtroom door and say 'this procedure is a farce, the legal system is corrupt, justice will never prevail in this land as long as privilege rules in the courtroom,'" and there will also be moments to "stand inside the courtroom and say 'this is a nation of laws, laws recognizing fundamental values of rights, equality and personhood.'"[120]

Second, exposing students to the complexity of abolitionist project advocacy shows, in a very tangible way, why critically analyzing the impact of the reforms being sought is so necessary, particularly for those who are accustomed to analyzing the system in a detached or abstract way. Many advocates who ostensibly want to "bring about change" for those impacted by the criminal legal system will uncritically support traditional reforms, such as body-worn cameras or the construction of newer, smaller jails, which only serve to augment the system. Advocates may find themselves attempting to "do good without undermining a system that has treated them well."[121] Encouraging students to identify and struggle with the lines between different types of reform project work lays bare the ways that an abolitionist ethic requires us to recognize and relinquish the familiarity, privilege, and security that oppressive systems bestow upon a select few. Lawyers in the criminal legal system have to confront the ways carceral ideologies inform all aspects of their perspective and advocacy.

Third, a diversified, abolitionist approach emphasizes that abolition is a long-term project, with various roles and efforts contributing to it. While the immediate individual client work that many defenders do does not always perfectly square with abolition, students and new practitioners should contemplate how their

117. Rachel Herzing, Erica R. Meiners & Nuri Nusrat, *Abolitionist Practices, Reformist Moments*, 19 UPPING ANTI (Aug. 2, 2017), https://uppingtheanti.org/journal/article/19-abolitionist-practices-reformist-moments [https://perma.cc/57YB-M3WQ].

118. I borrow this phrase from a presentation by my colleague Professor Tarek Ismail in August of 2020, during CUNY Law's annual cross-clinical Race and Privilege Panel discussion addressing various forms of racism and oppression in interpersonal, institutional, and systemic contexts.

119. Wagman Roisman, *supra* note 96, at 248.

120. Matsuda, *supra* note 102, at 8. As Professor Matsuda reflects, Angela Davis recognized the need to engage in both types of approaches, sometimes in the same day. *Id.*

121. Wagman Roisman, *supra* note 96, at 250–51.

efforts can serve to reduce harm and support structural change rather than encouraging further investment and entrenchment of the criminal justice logic. Clinics can begin to incorporate this kind of longer-term professional development by choosing work and providing representation that seeks to reduce harm in service of structural change. There are central considerations that clinicians and students can explore and reflect on before and in the midst of taking on a particular kind of substantive work or advocacy. For ongoing case and project work, rounds and supervision provide an ideal space for this evaluation.

C. Skill Development, Rounds, and Supervision

Many clinicians may be concerned that litigation-focused practice, such as direct, individual client representation at the trial and appellate levels, may limit engagement with an abolitionist framework because of critical ethical obligations to individual clients. However, skill development, rounds, and supervision provide a space for students to explore unique ways for practitioners to impact the consciousness of key decision makers during the course of their advocacy.

1. Skill Development

There are thoughtful approaches, such as trauma-informed practice, which might provide mechanisms to illuminate abolitionist principles even in individual client representation. The criminal legal system often emphasizes personal responsibility and fails to acknowledge the extent to which our society's failure to invest in collective issues—such as meaningful access to quality education, health care, and economic stability—results in criminal involvement. The sources of trauma that clients in the criminal context present with are often deeply connected to the kind of social divestment that abolitionists seek to change, and students can be trained to incorporate information about the pervasive impact of trauma on clients in any part of their representation that requires a contextualization of their client's personal experiences and environment.[122] Plea negotiation, motions to dismiss in

122. Miriam S. Gohara, interpreting Tupac Shakur's 1993 song *Keep Ya Head Up*, has suggested "the link between trauma and incarceration is obvious to the people who live with both. Yet, the actors in the justice system responsible for defending and judging those people when they transgress the law have mostly been [unaware of] it." Miriam S. Gohara, *In Defense of the Injured: How Trauma-Informed Criminal Defense Can Reform Sentencing*, 45 AM. J. CRIM. L. 1, 52 (2018). Gohara argues:

> [Defense lawyers] must make persuasive arguments locating their clients' actions in the cipher of impoverished, brutal homes and neighborhoods over which they had no choice of occupation, mitigating their blameworthiness, and explaining what treatments they need to heal. Then, the urgent imperative for social investment will become clear, and a new dawn of rehabilitation, compassion, and mutual safety will gain a chance to take hold.

Id. at 53.

the interest of justice,[123] sentencing, and post-conviction written advocacy may provide opportunities for students to situate broader arguments about individual clients and the trauma they have experienced within the context of devalued educational, health, and economic systems.

Further in the course of their advocacy, students can be encouraged to move away from the use of language that oversimplifies the histories of their clients, as the law often encourages practitioners to do: "The law inscribes oversimplified binaries, and once we enter that system, it is nearly impossible to escape legal categories of guilt and innocence, perpetrator and victim, and so forth, and yet we know . . . that these categories are inadequate. People who commit harm also experience harm."[124] In their advocacy, students can urge greater consideration for the nuance and complexity of how their clients' lives intersect with trauma and structural influences by resisting the use of language and narratives that tend to distort client experiences.

2. Rounds and Supervision

Further, there is a great deal of reflective work that can be encouraged through rounds and supervision for individual and combined advocacy fieldwork. One aspect of teaching from an abolitionist perspective is encouraging students not to become agents of the status quo or middle managers of the criminal legal system. In order to do that, clinicians can provide space within classroom rounds, supervision, or even independent journals for students to consider many questions related to their engagement with and understanding of their role as new lawyer.

It is vital that they develop a sense of self-awareness that they will continue to rely on as they enter the profession. At the beginning of work on a case or project, students can be asked to do an assessment of the assumptions they have about the people they'll be working with before meeting their clients. This is particularly valuable in helping students become aware of some of the biases they may have already internalized that will impact their communications. In surfacing issues related to the attorney-client relationship, students should be encouraged to consider what a collaborative dynamic of learning from and supporting one another might look like, all with a goal of not reifying traditional professional norms. When preparing for hearing or trial advocacy, students should be urged to question whether particular case theories and trial strategies serve to further deeply entrenched racial and cultural stereotypes and consider what alternate strategies may

123. *See* Anna Roberts, *Dismissals as Justice*, 69 ALA. L. REV. 327, 329 (2017) (arguing that judges' powers to dismiss prosecutions "in furtherance of justice" give them an opportunity to contribute to "a vision of a very different criminal justice system: one in which an alleged criminal act is viewed not in isolation, but within a broader context"). According to Roberts, in some dismissal cases, "one can detect an expansive vision, which rejects the notion that justice can be achieved by judging an alleged act in isolation from the context—including the context of social deprivation—that may surround it." *Id.* at 371.

124. Herzing, Meiners & Nusrat, *supra* note 117.

or may not be appropriate.[125] In instances where clients are not incarcerated, students might be prompted to make observations about what carceral control looks like outside of the literal prison walls. Students should be encouraged to critique and comment on the ways that alternatives to incarceration—such as electronic monitoring, probation, and court-ordered programming—may serve to grow rather than diminish the power and reach of the carceral system.[126] For appellate or post-conviction cases where clients remain incarcerated, students might be asked to reflect on what an alternative, abolition-guided outcome might look like given a particular client's full history and experience.

Additionally, students might be introduced to and asked to reflect upon participatory defense organizing, where people who face criminal charges, along with their support networks, "transform themselves from service recipients to change agents" through mutual support.[127] Families and communities use their power to assist defense attorneys on behalf of a criminally accused loved one[128] by working on mitigation efforts and "build[ing] a sustained community presence in the courtroom."[129] Such an approach follows a mutual assistance model where "people take responsibility for caring for one another and changing political conditions, not just through symbolic acts or putting pressure on their representatives in

125. The scenario at the beginning of this paper regarding the cross-examination of a witness's prior criminal history provides students with a basic introduction to these considerations. Many who have long practiced in criminal courts will likely side with the presenter in the scenario and would not hesitate to question the witness on their record. The concrete and immediate benefits to the client certainly seem to outweigh the more abstract harm that comes from reinforcing ideas about criminal records. While this scenario provides a starting place for discussions about the tensions that lawyers with an abolitionist ethic might face in practice, there are other more challenging scenarios that students can also consider. Narratives that lawyers use in their case theories, such as characterizing a witness as a "thug"; exposing or calling into a question a witness's sexual orientation; or "trying down" a case, which involves admitting guilt to a lesser included offense, which may carry a mandatory period of incarceration, all provide useful discussion points for students. There is not always a simple or easy choice between "yes, this approach is harmful, and we should try to do something else" and "no, this strategy is harmless." Rather, students must weigh the degree of impact, the costs and benefits of the strategy, and, after consultation and counseling, the client's own wishes. Having students explore these considerations during rounds and supervision, particularly in relation to overall abolitionist practice ethics, provides a beneficial approach.

126. For more on electronic monitoring, see generally Chaz Arnett, *From Decarceration to E-carceration*, 41 CARDOZO L. REV. 641 (2019).

127. Janet Moore, Marla Sandys & Raj Jayadev, *Make Them Hear You: Participatory Defense and the Struggle for Criminal Justice Reform,* 78 ALB. L. REV. 1281, 1282 (2014).

128. *See id.* at 1283 ("These core principles and strategies of participatory defense . . . allow people facing charges, their families, and their communities to reciprocate and strengthen efforts of client-centered, holistic, and community-oriented defenders."); Maura Ewing, *How Prisoners' Family Members Can Assist Overworked Public Defenders,* ATLANTIC (July 5, 2017), https://www.theatlantic.com/politics/archive/2017/07/a-replacement-for-overworked-public-defenders/532476 [https://perma.cc/7ZXS-K6SL] (describing a participatory defense program in Pennsylvania).

129. Moore, Sandys & Jayadev, *supra* note 127, at 1285–86.

government, but by actually building new social relations that are more survivable."[130]

Influencing societal attitudes is a core strategy of the abolitionist approach. Supervision or rounds may serve as a space for students and teacher to examine whether and how defenders should play a role in shifting the public consciousness about the way the criminal justice logic practically plays out. Students might explore ethically appropriate ways to engage clients in sharing their experiences to provide the individual context necessary to help change the narrative and influence a shift in public consciousness.[131]

In the rounds and supervision, students should be given space to crystalize the learning that is happening within the clinical experience.[132] Rounds can provide a site for students to develop and reflect on the professional norms that will serve them in their post-law school endeavors.[133] Theories about lawyering get tested and applied to case work and students are encouraged to remain focused on the core question: "*What did you learn about lawyering from this conversation?*"[134] Here, clinicians can encourage students to reflect on how theories of abolition intersect with their lawyering. They should be urged to consider critical questions, such as: Have we succeeded or failed at subverting the limitations of our role as lawyer? And how has the racialized culture of the criminal process played out in this particular case?

V.
CONCLUSION

There continue to be significant changes in how our society thinks about punishment and harmful social behavior. While abolition and criminal defense are not a seamless fit, it is useful to consider their relationship to one another in the clinical pedagogy of defense clinics. Lawyers who are just entering the profession should be trained to understand the history of criminal legal punishment in the United States, how the system impacts people's lives, and how it might be replaced by a model that emphasizes collective well-being. Clinicians can prepare students to engage in an abolition-inspired practice, which calls for attorneys to actively shield clients from the power of the carceral state while also supporting the work

130. Community Justice Exchange, CourtWatch MA, Families for Justice as Healing, Project NIA & Survived and Punished NY, *supra* note 11, at 6 (quoting *What is Mutual Aid?*, BIG DOOR BRIGADE, http://bigdoorbrigade.com/what-is-mutual-aid [https://perma.cc/85W4-H3YB] (last visited Dec. 24, 2020)).

131. *See* Nicole Smith Futrell, *Please Tweet Responsibly: The Social and Professional Ethics of Public Defenders Using Client Experiences in Social Media Advocacy*, CHAMPION, Dec. 2019, at 12 (offering "practical guidance [for public defenders] on how to ethically and responsibly draw from their specialized knowledge and the experiences of their clients in order to expose systemic injustice").

132. *See generally* Susan Bryant & Elliott S. Milstein, *Rounds: A "Signature Pedagogy" for Clinical Education?*, 14 CLINICAL L. REV. 195 (2007).

133. *Id.* at 212–13.

134. *Id.* at 250.

of organizers who are seeking to transform how we deal with social problems. Law students must be taught how not to just be passive observers who reinforce the system, or mere critics who fail to meaningfully challenge it; rather, they can pursue their work as "fellow travelers"[135] operating in solidarity to support abolition without co-opting its values. Indeed, as universal public defender models proliferate outside of the criminal context, the need to think critically about the role of defenders in abolishing the carceral state becomes an even greater imperative.

135. *Considering Abolition*, *supra* note 3.