



**TO:** BERKELEY LAW CURRICULUM COMMITTEE

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**SUBJECT:** STUDENTS' REQUEST FOR A MANDATORY 1L CRITICAL RACE THEORY COURSE

**DATE:** APRIL 1, 2021

Dear Berkeley Law Curriculum Committee:

Thank you for the invitation to provide comments on how Berkeley Law's curriculum might "better explore the ways in which law and the legal profession shape and are shaped by race, racism, and other hierarchies of power."<sup>1</sup> The East Bay Community Law Center supports the students' call to Berkeley Law to institute a 1L critical race theory course requirement.

**I. Why Critical Race Theory in Legal Education Matters to the East Bay Community Law Center (EBCLC).**

The East Bay Community Law Center (EBCLC or Law Center) was founded in 1988 (then, as the Berkeley Community Law Center) by Berkeley Law students who sought to bridge a divide between the way they were being taught, and the rapid decline in state and public funding for free legal services that otherwise aided low-income communities of color in and throughout the East Bay. EBCLC now comprises Berkeley Law's eight (8) community-based clinics: Community Economic Justice; Consumer Justice & General Clinic; Clean Slate; Education Advocacy; Youth Defender; Housing; Health & Welfare; and Immigration.

EBCLC boasts a dual mission: to promote justice and build a community that is more secure, productive, healthy, and hopeful by providing 1) legal services and policy advocacy that are responsive to the needs of low-income communities; and 2) law training that prepares future attorneys to be skilled and principled advocates who are committed to addressing the causes and conditions of racial and economic injustice and poverty. To achieve these goals, we rely at once on institutional support and also on the support and participation of Berkeley Law clinical students who assist in providing these critical legal services.

Berkeley Law students' call for Berkeley Law to institute a mandatory 1L critical race theory course is not only timely, it also gives Berkeley Law a singular opportunity to rise to this sociopolitical moment, heed the call of organizers and advocates—including the Movement

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<sup>1</sup> Email to select Berkeley Law faculty/staff from Molly Shaffer van Houweling dated March 24, 2021 ("Subject Line: Curriculum Committee request for input due Thursday").



for Black Lives—that have drafted a clear blueprint for change,<sup>2</sup> and set an example for our peer public law schools on how to concretely bend the arc of legal education more toward justice, thereby producing more of the “skilled and principled advocates” that EBCLC and Berkeley Law train.

As the students note in their August 2020 Memo to the Curriculum Committee (“August 2020 Memo”), the call to add a foundational course requirement is not brand new. The post-Ferguson convening of an Equity and Inclusion Committee at Berkeley Law and the resulting recommendations to the administration called for, among other things, “discussions of race, gender, and power integrated into the [Berkeley Law] curriculum.”<sup>3</sup> As the students underscore, the crux of that call for concrete change has gone unanswered.<sup>4</sup> At EBCLC, we regularly welcome second- and third-year Berkeley Law students who arrive hungry and eager for deep-seated clinical training—and accompanying doctrinal, seminar teaching—that is rooted in race, equity, and inclusion. And EBCLC administers and provides just that. This is the bread and butter of the Law Center’s work, and arguably of clinical legal education as a whole. But of course clinical education is only one part of the longer-term effort to train emerging social justice lawyers. The need for critical race theory to be included in students’ doctrinal study alongside their experiential learning is mission-critical.

As one of the largest providers in the Bay Area of free legal services, EBCLC also relies heavily on a continuously replenishing pool of social justice lawyers that we can hire to help serve the community (and continue to train the subsequent generations of social justice/public interest lawyers). As a nonprofit organizational employer ourselves, the Law Center seeks to employ attorneys whose own understanding of and orientation toward the law is steeped in anti-racist principles. We therefore have a unique interest in the way doctrinal legal education is taught at all law schools, and especially at our longtime partner institution, Berkeley Law.

EBCLC has long been apprised of calls from Berkeley Law students that there is a need for more and deeper race-based doctrinal coursework at Berkeley Law. During Spring semesters, several EBCLC clinical supervising attorneys don additional hats (in addition to

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<sup>2</sup> The Movement for Black Lives is a coalition of 50+ Black-led organizations that came together to author the Vision for Black Lives. See A Vision for Black Lives: Policy Demands for Black Power, Freedom & Justice, MOVEMENT FOR BLACK LIVES, <https://policy.m4bl.org/>.

<sup>3</sup> See, e.g., Berkeley Law 2016 EIW Report at 1-2; see also Memorandum from Post-Ferguson Working Group 1L Curriculum Subcommittee to Dean Sujit Choudhry, Survey of 1L Curriculum at Peer Schools and Recommendations (June 17, 2015) (hereinafter “PFWG 1L Curriculum Memo”).

<sup>4</sup> See August 2020 Memo to the Curriculum Committee (“August 2020 Memo”) (p. 3), discussing options that the committee proposed to the faculty. “The seminar would ‘provide students an opportunity to engage with issues of social, racial, and economic inequality,’ the doctrinal lab would help students develop cultural competency by using ‘sample cases that raise issues of social, economic, or racial inequality,’ and the faculty-led reading groups that would ‘introduce students to the legal literature surrounding issues of social change.’



their work as clinical supervising attorneys) and teach 1-unit doctrinal seminars that do just this—go deeper into the racial equity underpinnings of many of the legal issues we work on (including, but not limited to, transgender rights and law; juvenile fines and fees; decriminalization of poverty; mass incarceration; and consumer justice). We hear repeatedly from law students how important those doctrinal classes are in not only surfacing the structural racism that underlies their legal training, but in providing students with the analytical tools to engage with race, class, and systemic oppression, as part of their training as emerging lawyers. Because law students come and go in three-year cycles, their limited presence on campus understandably time-limits their ability to organize functionally beyond a two-year cycle. We therefore interpret this iteration of Berkeley law students’ call as a continuation of a longer-standing missive to Berkeley Law faculty to take action on this request and mandate a critical race theory course during the first year.

## II. Why Critical Race Theory and Why During 1L Year?

- a. Structural racism not only persists, but it thrives, flourishes, and replicates within the traditional legal education system. This is in part because—as we reckon is by now common knowledge among lawyers and in legal academia—the American legal system is “steeped in white supremacy and founded on rationalizations of genocide, settler colonialism, categorizing Black people as property, disenfranchising women, race-based exclusion from citizenship, and other violence visited on whole groups of people.”<sup>5</sup>
- b. There is a deep and longstanding need for many of us in the legal profession and in legal academia to in fact unlearn much of what undergirds our legal education. In a legal system, the values and practices of which quite literally and constructively denied and continue to deny certain rights to whole groups of people—Black, brown, indigenous, and other communities of color—the only way to “course-correct,” as the students note, is to address the root of the problem: transform legal education itself or, in this case, alter it ever so slightly by including a critical race theory course requirement for all incoming Berkeley Law students. Just as we at EBCLC instill race, equity, and inclusion education in our Berkeley Law/EBCLC students’ clinical training (and our client work), so do we aspire for Berkeley Law to do the same in students’ doctrinal education.

Much of what EBCLC does in the way of our foundational outward work for clients and our inward-facing work as an organization (including training law students) might be classified as “justice work.” This constitutes much of what EBCLC’s distinct version of free legal services aims to do. EBCLC not only provides direct, free legal services to the East Bay community (and we have dramatically increased the volume of these services over the years), we simultaneously bring Berkeley Law clinical students, emerging lawyers, into that work—impart that important lawyering education—by including them in the provision of services, training them in our deep-seated, race- and class-conscious methodologies, and thereby affect their development as socially conscious lawyers. But

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<sup>5</sup> See August 2020 Memo, p. 2 (citing Cheryl Harris, Whiteness as Property, 106 HARV. L. REV. 1707, 1721 (1993)).



while clinical legal training with an emphasis on race, equity, and inclusion is critical to developing the emerging lawyers that we wish to see more of in the profession, it is only one part of the broader equation.

As Chuck Lawrence recently underscored, critical race theory teaches us that “[a]ll race reform, all racial justice, is achieved through the work of people who join together in justice movements to disrupt systems and institutions of plunder and to contest the racialized narratives that justify that plunder.”<sup>6</sup>

Dean Chemerinsky recently wrote “We must confront and recognize the long history of racism in the United States, which permeates the law and legal institutions, and we must be aggressive in helping to find solutions to making this a more equal and just society.” In the spirit of this statement, Berkeley Law students must be given an opportunity to engage with this foundational doctrinal training early on in their law school careers. Indeed, law school requires students to commit to and complete various forms of legal ethics and professionalism training; experiential education; certain doctrinal courses – against the backdrop of these requirements, how can we as law teachers ignore the long-towering and looming necessity of our students critically engaging with the very annals of the law that continue to oppress, and continue to uphold systems of oppression? Without such foundational institutional commitment in students’ 1L year, the chances of Berkeley Law’s emerging lawyers perpetuating the structural racism that defaults in our legal system—and therefore, in our students’ eventual legal practice(s)—will not only continue, but worsen. Berkeley Law faculty has an opportunity to rise up and effectuate a small change that will have long-lasting, positive effects for our school, the community, the legal profession, and society.

c. A Growing Movement Across Law Schools.

While Berkeley Law will not be the first law school to institute a 1L critical race theory requirement (or something similar), we have the opportunity to be the first public law school in California, the first UC law school, and the first in the U.S. News and World Report’s “top tiered” law schools to do so.<sup>7</sup> By our count, so far Penn State’s Dickinson School of Law, USC Gould School of Law, and Rutgers University School of Law have all either committed to providing required critical race theory (or substantially similar) doctrinal courses to law students, or the respective law school faculty and administrations are in the process of finalizing such an institutional change. There is

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<sup>6</sup> Charles R. Lawrence III, *The Fire This Time: Black Lives Matter, Abolitionist Pedagogy and the Law*, 65 J. LEGAL EDUC. 381, 387 (2015).

<sup>7</sup> EBCLC understands that UCI School of Law may be adopting a race and the law elective requirement that will launch in Spring 2022 (we do not believe however that UCI Law’s change involves instituting a 1L course requirement, but rather an elective requirement).



therefore some precedent and, perhaps more importantly, a great opportunity for Berkeley Law to lead the way in this regard.

### III. Conclusion.

What is at risk for law students and legal institutions if Berkeley Law does not provide for such doctrinal education is far overshadowed by the longer-term consequences of maintaining the status quo. Our country is experiencing another reckoning, and with it there have been multiple calls and commitments by large institutions to join in the movement for change. But commitments are meaningless without concrete action.

As Dean Chemerinsky recognizes, “[o]ur knowledge, our tools, and our privilege impose on us an obligation to study and learn, but also to act.”<sup>8</sup> EBCLC shares the Dean’s position. Further, we believe that commitments without change will result in the continuation of harm to communities of color across the board. Harm at the hands of perhaps even well-meaning lawyers whose legal training prepared them to enforce, for example, a foreclosure on a family home, but without mind to the longstanding structural racism that upholds the racial wealth gap in this country. EBCLC will continue to train lawyers who are versed in the contours of police power but without mind to the continuously proven and perpetuating harms that those regulations inflict on Black community members. Until we address the root cause of systemic harm and structural racism—which are baked into the American legal system and therefore into doctrinal legal education—we will not achieve the very calls for justice that we keep making. Therefore, the East Bay Community Law Center resoundingly supports the students’ request that the Berkeley Law faculty institute a critical race theory (or substantially similar) course requirement for incoming 1L students.

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<sup>8</sup> <https://www.law.berkeley.edu/article/diversity-and-inclusion-erwin-chemerinsky-racial-justice/>