

Creating Tomorrow's Change-makers: Using Alternative Media in the 1L Skills Classroom to Connect Students with Real Practice and Enhance Established Methods for Teaching Appellate Advocacy

Marni Goldstein Caputo
Kathleen Luz

Introduction

Appellate advocates are change-makers, and one of their first steps in that journey is the 1L legal skills classroom. That is our domain. Mary Bonauto, currently the Civil Rights Project Director at GLAD¹ and the lawyer who argued the landmark equal marriage cases *Obergefell v. Hodges*² and *Goodridge v. Department of Health*³ in the United States Supreme Court and the Massachusetts Supreme Judicial Court, respectively, said this when asked by Terry Gross, in a *Fresh Air* interview, “Why change the course of history now?”

[O]ne of the things . . . was to go back to the 14th Amendment and how things that we didn't understand in 1868 as wrong and discriminatory we do understand as wrong and discriminatory now. And a great example of that is with gender, where it took over a hundred years for

Marni Goldstein Caputo, Lecturer, Boston University School of Law; **Kathleen Luz**, Lecturer, Boston University School of Law. First, we thank our meticulous research assistants, Tobi Henzer and Jialu Lin, who were invaluable in the process of writing this article. Second, we thank our students, who inspired us to create unique lessons and write about our experiences in the classroom. Third, we are in awe of the courageous journalists who step in when the system fails to shed light on injustices. Fourth, we thank brilliant attorney Paul Rudof, the generous interviewee for the “homemade” podcast we discuss in this article. Fifth, we are grateful for our continued professional partnership, which adds so much value to our time inside and outside of the classroom. Finally, we dedicate this article to our late colleague, Professor Robert Volk, who was instrumental in our careers and who had the heart of a true change-maker.

1 *Mary L. Bonauto*, GLAD LEGAL ADVOCATES & DEFENDERS, <https://www.glad.org/staff/mary-bonauto/> (last visited Mar. 17, 2023).

2 576 U.S. 644 (2015).

3 798 N.E.2d 941 (Mass. 2003).

the court to recognize that there were any gender-based distinctions in love where women were treated . . . so vastly differently from men that were unconstitutional, that were unequal [T]hat's our real reference point.⁴

In her answer to this question, Bonauto drives home the idea that appellate advocacy is one route a lawyer can take to making change.⁵ As legal skills professors who introduce these skills to 1Ls for the first time, we want to make sure we plant that seed.

Fostering that idea of lawyers as change-makers can be difficult in the typical 1L curriculum. The traditional, doctrinal law school classroom typically has a formula comprised of extensive textbook reading, the Socratic classroom, in which that reading is processed in a large group, and, finally, a cumulative, high-stakes exam at the end of the semester.⁶ That formula has largely not changed for decades.⁷ The lawyering skills classroom is often the only outlier from that formula for first-year law students.⁸ Even so, the skills classroom can be formulaic in its own right—introduction of an assignment, classroom instruction regarding needed skills to complete the assignment, a draft, a markup, a conference, additional instruction, and a final written work product.⁹

While creativity certainly abounds in many legal skills classrooms, use of “alternative media” does not necessarily play a significant role. Barring the

4 *From DOMA to Marriage Equality: How the Tide Turned for Gay Marriage*, NPR FRESH AIR, (July 9, 2015), <https://www.npr.org/2015/07/09/421462180/from-doma-to-marriage-equality-how-the-tide-turned-for-gay-marriage> [hereinafter FRESH AIR].

5 See FRESH AIR, *supra* note 4.

6 H. Sam Jacobson, *The Curse of Tradition in the Law School Classroom: What Casebook Professors Can Learn from Those Professors Who Teach Legal Writing*, 61 MERCER L. REV. 899, 905 (2010) (observing the “perpetuation of a nearly century-old pedagogy involving a quasi-Socratic method in the classroom and casebooks for materials and an evaluation of mastery that relies on a single exam at the end of the course”); Cecilia A. Silver, *The Writing's on the Wall: Using Multimedia Presentation Principles from the Museum World to Improve Law School Pedagogy*, 126 DICK. L. REV. 475, 484 (2022) (“Nearly a century and a half after Harvard Law School Dean Christopher Langdell pioneered the case method, the typical first-year doctrinal course remains a predominantly verbal domain, featuring lectures, Socratic dialogue, and final exams.”).

7 Kathleen Elliott Vinson, *What's on Your Playlist? The Power of Podcasts as a Pedagogical Tool*, 405 U. ILL. J.L. TECH. & POL'Y 405, 406 (Fall 2009) (noting that “the basic curriculum of the first year of law school that developed more than 100 years ago has remained mostly the same over the last century”).

8 Jacobson, *supra* note 6, at 905 (“Nothing even close to this traditional law school pedagogy occurs in the legal writing classroom. . .”).

9 See Kirsten Clement & Stephanie Roberts Hartung, *Social Justice and Legal Writing Collaborations: Promoting Student Engagement and Faculty Fulfillment*, 10 DEPAUL J. SOC. JUST. 1, 4 (2017) (explaining that “legal writing curricula are typically focused on developing fundamental lawyering skills, such as legal writing, research and analysis, through frequent formative assessment”).

occasional clip of an appellate argument or a motion hearing, or a quick YouTube video or TED Talk on the periphery of a topic, “alternative media” is often missing from the mainstream skills classroom. For many instructors, there is simply not enough time to incorporate additional, seemingly optional, material because of the limited credits, and limited classroom hours, assigned to these courses.

Accordingly, in Part I of this article we define “alternative media” and provide some examples of ways in which it is already used in the law classroom. In Part II, we argue that, despite the time crunch, using alternative media inside and outside of the traditional classroom benefits law students and increases their skills learning for a variety of reasons supported by learning theory and science. In Part III, we discuss the prevalence of written and oral appellate advocacy instruction in the 1L skills classroom and outline established teaching practices in that area that largely do not involve alternative media.

Finally, in Part IV, we discuss two ways in which to introduce podcasts, our preferred version of alternative media, into legal skills classrooms to enhance appellate advocacy skills and create change-makers. One method involves the creation of a homemade podcast interview with an expert in appellate advocacy that complements traditional instruction, and one involves a professionally made podcast, *In the Dark (Season Two)*, that strengthens the teaching of appellate advocacy skills by taking a deep dive into one compelling case and, specifically, the Supreme Court oral argument that ended over two decades of prosecutorial abuse. In both podcasts, students meet appellate lawyers who are change-makers and who use appellate advocacy as their primary tool in representing their clients.

I. Alternative Media in the Law School Classroom

“Alternative media” refers to formats other than the traditional casebook. Various types of media fall within the broad definition of alternative media. For example, music and videos are popular alternative media sources.¹⁰ The definition can be even broader and thus can include “dash cam videos, cell phone footage, movie and TV clips, historical documents, photos, [and] cartoons.”¹¹ Most relevant to our teaching practices, and to the ideas we outline in Part IV of this article, alternative media also includes podcasts.¹² “A podcast is a digital media file that students can listen to on . . . [a] portable media player, or a personal computer.”¹³

10 Andre Hampton, *Legal Obstacles to Bringing the Twenty-First Century into the Law Classroom: Stop Being Creative, You May Already Be in Trouble*, 28 OKLA. CITY U. L. REV. 223, 226 (2003).

11 Stephen E. Henderson & Joseph Thai, *Teaching Criminal Procedure: Why Socrates Would Use YouTube*, 60 ST. LOUIS U. L.J. 413, 436 (2016).

12 See Sophie M. Sparrow & Margaret Sova McCabe, *Team-Based Learning in Law*, 18 LEGAL WRITING: J. LEGAL WRITING INST. 153, 208 n.113 (2012) (describing podcasts as an “alternative” to reading and writing assignments).

13 Vinson, *supra* note 7, at 409 (citing Yoany Beldarrain, *Distance Education Trends: Integrating*

Some law professors have already created courses, often subject-specific seminars, that incorporate popular culture through use of alternative media. For example, the University of Chicago Greenberg Seminars “offer students the opportunity to engage in informal discussions with Law School faculty members on a range of topics,” and many of the options overtly incorporate alternative media.¹⁴ The titles and/or descriptions of the following Greenwood seminars make it clear they include alternative media: (1) Global Poverty, in which students watch a documentary film for each session; (2) Law and Psychology in Popular Culture, in which students watch a movie for each session; (3) Legal Issues in Game of Thrones, in which students learn contracts, constitutional, ethics, and criminal law by watching the popular HBO television series; and (4) Migration, Labor Mobility, and Economic Development, in which students watch a series of documentary films.¹⁵ Additionally, Stanford Law School has a 1L seminar titled The Central Park Five Cases in which students watch *When They See Us*, a Netflix series about the cases, as a jumping-off point for discussion.¹⁶ Appendix A contains a more comprehensive, but not exhaustive, list of law schools that have incorporated alternative media into the classroom.

Although the use of alternative media in law schools is catching on, it has largely been done in the subject-specific seminar context, as discussed above, which has a less rigid format. Further, podcasts seem to be underutilized. Yet both homemade and professionally created podcasts can be used in the law school classroom for myriad reasons, including to model the critical reading of cases and statutes, review material discussed in class, and complement lectures in 1L doctrinal courses.¹⁷

II. Use of Alternative Media Improves Learning

Alternative media is a flexible tool, has the ability to reach students where they are, and conveys information in a way that improves learning.¹⁸ In general,

New Technologies to Foster Student Interaction and Collaboration, 27 DISTANCE EDUC. 139, 141 (2006); Robert J. Ambrogi, *Attorney Podcasts Range from Substantive to Musings*, TEX. LAW., Jan. 2, 2006, at 21.

14 Robin I. Mordfin, *Learning in the Living Room: The Greenberg Seminars*, U. CHI. L. SCH. (Apr. 3, 2014), <https://www.law.uchicago.edu/news/learning-living-room-greenberg-seminars>.

15 *Supra* note 15; *Complementary, Multi-Disciplinary, and Cross-Listed Courses*, U. CHI. L. SCH., <https://www.law.uchicago.edu/prospective/interdisciplinarycourses> (last visited Aug. 4, 2022).

16 *Discussion (1L): The Central Park Five Case*, STANFORD L. SCH., <https://law.stanford.edu/courses/1l-discussion-the-central-park-five-case/> (last visited Aug. 4, 2022).

17 Vinson, *supra* note 7, at 417-18 (noting podcasts used to model critical reading of cases and statutes, review material discussed in class, review a sample memorandum, discuss common problems in a poorly written memorandum, and give advice on skills needed to succeed in legal employment); Joyce D. Saltamachia, *Podcasts, PowerPoint, and Pedagogy: Using Technology to Teach the Part-Time Student*, 53 N.Y.L. SCH. L. REV. 893, 895 (2009) (describes successful use of podcasts to deliver torts lectures).

18 Hampton, *supra* note 11, at 226 (“[U]se of multimedia in teaching has the benefit of reaching

it can have the effect of “mak[ing] the classroom more enjoyable and effective, breaking the ice with humor and humanizing those affected.”¹⁹ Below, we discuss the limitations of the traditional law school methods of instruction, and why learning science supports broadening that approach to include alternative media in the legal skills classroom.

A. Why Include Alternative Media?

The traditional methods of law school instruction have their limitations. Despite its many critics, an overwhelming number of professors who teach doctrinal first-year classes use the primarily teacher-centered Socratic or case method of instruction.²⁰ Studies demonstrate, however, that teacher-centered instruction can create barriers to learning.²¹ In teacher-centered education, the teacher actively controls the content and structure of class, typically through a lecture format, acting as the sole source of knowledge while students participate passively.²² Teacher-centered pedagogy impedes success in the classroom because it focuses on how teachers teach, without taking into account how students learn.²³ Instead, teacher-centered learning requires all students to adjust their diverse learning styles to fit the professor’s teaching style.²⁴ In contrast, a student-centered approach gives students more control over their learning.²⁵

Importantly, for many students, reading cases is not the optimal way to learn.²⁶ Reading cases—alone—fails to provide students with important context for the manner in which law is created.²⁷ Such an approach obscures and minimizes the role that people, including lawyers, play in creating the rules that are eventually adopted by the court.²⁸

students in different ways, as opposed to the traditional format of lecture and discussion of reading.”).

19 Henderson & Thai, *supra* note 12, at 449.

20 Rogelio Lasso, *From the Paper Chase to the Digital Chase: Technology and the Challenge of Teaching 21st Century Law Students*, 43 SANTA CLARA L. REV. 1, 17–18 (2002).

21 *Id.*

22 Michael F. Mascolo, *Beyond Student-Centered and Teacher-Centered Pedagogy: Teaching and Learning as Guided Participating*, 1 PEDAGOGY & HUM. SCIS. 3, 4 (2009).

23 Lasso, *supra* note 21, at 17–18.

24 *Id.*

25 Gloria Brown Wright, *Student-Centered Learning in Higher Education*, 23 INT’L J. TEACHING & LEARNING IN HIGHER EDUC. 92, 94 (2011).

26 *See id.* at 94.

27 *See* Laura A. Webb, *Speaking the Truth: Supporting Authentic Advocacy with Professional Identity Formation*, 20 NEV. L.J. 1079, 1103–04 (2020).

28 *Id.* at 1104.

However, alternative media can provide that important context where traditional casebooks are lacking. Further, diversifying material by adding alternative media can enhance student learning because “[e]ntering law students learn better when they receive information through a medium that is more dynamic, interactive, and creative than printed text.”²⁹ For example, alternative media, including podcasts, allow students to “encounter and review material on their own terms,” which in turn “fosters reflection and encourages deeper learning.”³⁰

B. Multiple Learning Theories Support Use of Alternative Media in the Classroom

Learning theories and science suggest that the use of alternative media provides significant benefits. In particular, “learning style” theorists focus on differing ways in which students absorb and process information received in the classroom.³¹ They have identified different learning styles based on how students process information.³² For example, while visual learners learn best through presentation of materials in a visual form (such as charts and graphs), auditory learners process information more efficiently when listening to the material.³³ This theory applies equally in the law school classroom and the undergraduate setting.³⁴ Thus, educators who introduce alternative media within the classroom reach a greater number of students by appealing to

29 *Id.*; Hampton, *supra* note 11, at 226 (“[U]se of multimedia in teaching has the benefit of reaching students in different ways, as opposed to the traditional format of lecture and discussion of reading.”).

30 Silver, *supra* note 7, at 498-99; *see* Vinson, *supra* note 8, at 413 (“Podcasts promote student-centered learning and allow students to listen when they are ready to learn.”).

31 Eric A. DeGross & Kathleen A. McKee, *Learning Like Lawyers: Addressing the Differences in Law Student Learning Styles*, 2006 BYU EDUC. & L.J. 499, 509-10 (2006) (“There seems to be general agreement in the psychological literature that individuals do differ in the ways in which they prefer to gather and absorb data, and in how they process such data. Similarly, there is a measure of agreement that these differences are important and may have consequences for how successfully different students, for example, perform on a variety of educational programs.”)

32 Kate E. Bloch, *Cognition and Star Trek™: Learning and Legal Education*, 42 J. MARSHALL L. REV. 959, 978 (2009).

33 Bloch, *supra* note 32, at 967-68.

34 Robin A. Boyle & Rita Dunn, *Teaching Law Students through Individual Learning Styles*, 62 ALB. L. REV. 213, 216 (1998) (finding that in a study of law students at St. John’s University School of Law, “law students were diverse in their learning styles”).

different learning styles—visual and auditory.³⁵ Podcasts, in particular, appeal to auditory learners.³⁶

In recent years, several researchers have rejected the learning style theory and the idea that students learn more effectively when presented material in a way that conforms to their preferences, positing that there is no scientific basis for this theory.³⁷ These theorists suggest that such an approach in fact hinders learning, as “[e]ducators spend time and money tailoring lessons to certain learning styles for different students even though all students would benefit from learning through various methods.”³⁸ However, there is still some support for learning theory, in addition to some criticism for those who disparage it, and so it is worth including in this article as a possible reason for incorporating more alternative media in the legal skills classroom.³⁹

Additionally, the dual coding theory provides further support for the use of alternative media, especially in the legal writing classroom. The dual coding theory begins with the premise that there are two separate “pathways” in the brain for encoding information into memory—one verbal and one visual.⁴⁰ Researchers have found that use of one type of information can lead to

- 35 Boyle & Dunn, *supra* note 35, at 216 (“Law professors, regardless of their class size, should incorporate methods and materials that complement their students’ learning styles.”); *see also* Vinson, *supra* note 8, at 405, 407 (“Law professors should consider using podcasts for a variety of reasons, but perhaps most importantly, because podcasts can be a powerful teaching tool that enhances their students’ legal education.”).
- 36 Catherine Dunham & Steven I. Friedland, *Portable Learning for the 21st Century Law School: Designing a New Pedagogy for the Modern Global Context*, 26 J. MARSHALL J. COMPUT. & INFO. L. 371, 391 (2009) (“[A]n audio podcast can aid a primarily aural learner, thus providing that student a unique means to create his or her own learning environment.”).
- 37 *See Learning Styles as a Myth*, YALE POORVU CENTER FOR TEACHING AND LEARNING, <https://poorvucenter.yale.edu/LearningStylesMyth> (last visited Aug. 4, 2022) (“[T]he overwhelming consensus among scholars is that no scientific evidence backs this ‘matching’ hypothesis of learning styles”); Joshua Cuevas, *Is Learning Styles-Based Instruction Effective? A Comprehensive Analysis of Recent Research on Learning Styles*, 13 THEORY & RSCH. EDUC. 308, 310 (2015) (“Some researchers, however, have questioned the validity and reliability of various learning styles inventories...They note that according to the learning styles hypothesis, if instruction is matched to the students’ learning preferences, then we should see an increase in learning, yet research does not support this claim.”).
- 38 *Belief in Learning Styles Myth May Be Detrimental*, AM. PSYCH. ASS’N (May 30, 2019), <https://www.apa.org/news/press/releases/2019/05/learning-styles-myth> (last visited Aug. 4, 2022).
- 39 Rory Bahadur & Liyun Shang, *Socratic Teaching and Learning Styles: Exposing the Pervasiveness of Implicit Bias and White Privilege in Legal Pedagogy*, 18 HASTINGS RACE & POVERTY L.J. 114, 117-18 (2021) (supporting learning style theory by pointing out that opponents base their dismissal on implied bias and racism); Louis N. Schulze, *Alternative Justifications for Law School Academic Support Programs: Self-Determination Theory, Autonomy Support, and Humanizing the Law School*, 5 CHARLESTON L. REV. 269, 315 (2011) (using learning style theory to support “teaching students, not subjects”).
- 40 Joshua Cuevas & Bryan L. Dawson, *A Test of Two Alternative Cognitive Processing Models: Learning Styles and Dual Coding*, 16 THEORY & RSCH. EDUC. 40, 43 (2018).

information overload, which then prevents the encoding of that information.⁴¹ However, presenting material visually, in combination with orally, allows for separate storage of these two different types of information, helps alleviate overload associated with verbal stimuli, and thus bolsters greater encoding.⁴² Therefore, using visual stimuli in combination with oral stimuli can lead to greater retention.⁴³ Accordingly, under the dual coding theory, all learners—whether visual or auditory—benefit from receiving information in different formats.⁴⁴

Finally, alternative media, which provides context about the humanity behind cases, can increase transfer of learning, the primary goal of a legal skills classroom. As skills professors, our ultimate goal is transfer of learning, meaning that students take the skills we teach and utilize them in other contexts.⁴⁵ The hope is that students recognize that skills taught in the 1L year apply in future contexts and can later recall those skills and adapt them to new situations, such as 1L summer internships and upper-level clinics and externships.⁴⁶

Podcasts, and alternative media generally, are particularly useful in helping with transfer, based on their substance and format. Storytelling has long been recognized as a tool to enhance transfer, as learners see from the story how skills they are currently learning were used in a real-life context, allowing for greater recall later.⁴⁷ Podcasts typically involve interesting and engaging

41 *Id.*

42 *Id.* at 43-44.

43 *Id.*; Renae Low & John Sweller, *The Modality Principle in Multimedia Learning*, The Cambridge Handbook of Multimedia Learning 227 (Richard E. Mayer ed., 2014) (“[P]resenting some information in visual mode and other information in auditory mode can expand effective working memory capacity,” which “can substantially increase learning.”).

44 Cuevas & Dawson, *supra* note 40, at 44 (“In this way, dual coding makes a contradictory prediction to that of the learning styles hypothesis,” which suggests that “auditory learners will perform best when presented with verbal-linguistic instruction while visual learners will perform best when presented with visually oriented instruction.”).

45 Marni Goldstein Caputo & Kathleen Luz, *A Book Club with No Books: Using Podcasts, Movies, and Documentaries to Increase Transfer of Learning, Incorporate Social Justice Themes, Create Community, and Bolster Traditional and Character-Based Legal Skills During a Pandemic*, 20 SEATTLE J. SOC. JUST. 635, 638 (“Our ultimate goal is to enable students to transfer these skills beyond the 1L classroom to upper-level internships and post-graduate jobs.”).

46 See Mary Nicol Bowman & Lisa Brodoff, *Cracking Student Silos: Linking Legal Writing and Clinical Learning Through Transference*, 25 CLINICAL L. REV. 269, 271-72 (2019) (“The ability to transfer learning is essential to practicing law; for example, lawyers use transfer when doing formal legal analysis by applying rules and analogies from precedent cases to new legal problems.”); Shaun Archer et al., *Reaching Backward and Stretching Forward: Teaching for Transfer in Law School Clinics*, 64 J. LEGAL EDUC. 258, 269 (2014) (“We aim to teach doctrine, skills, and critical reasoning and expect that students will readily apply them in the workplace.”).

47 Caputo & Luz, *supra* note 46, at 655-56 (“The more opportunities the students have to observe any skill in different contexts, the better able students will be to recall that information later on in a totally unrelated context. Thus, providing numerous examples for students

stories, which, again, help with transfer, as students are more likely to recall the skills when they are interested and engaged in the material.⁴⁸ Finally, podcasts follow a recognizable structure, typically with a traditional story broken into smaller pieces, which allow students to more easily encode the information, again allowing for greater transfer.⁴⁹

Therefore, there is evidence that material presented in multiple formats—verbal, visual, and other kinds of alternative media—“provide[s] richer representations than can a single medium.”⁵⁰ Thus, both learning theories and the science behind transfer of learning provide support for use of alternative media in the legal writing classroom.⁵¹

can actually improve student learning.”); Archer et al., *supra* note 47, at 273 (“[W]ithout continued challenges to match that learning to increasingly varied contexts, it will tend to be ignored as germane only to its original, limited context. When the mind searches for relevant knowledge and skills to apply in a new situation, it will pass over the contextually limited knowledge unless the schema is broad enough and strong enough to signal that the information is relevant.”).

48 Caputo & Luz, *supra* note 46, at 657 (“Stories are also engaging, and students more readily absorb information when interested and thus engaged. Because stories are memorable, students are likely to draw upon them and analogize them to other contexts in the future—the basis of transfer.”); Bloch, *supra* note 33, at 984–85 (Stories are “a common means of engaging students in understanding concepts, principles, or theories” and stories are memorable and remain with students, allowing learners to “draw upon their experience with the story to remember how their pre-existing knowledge was modified or solidified by application to a new context.”); Lea B. Vaughn, *Feeling at Home: Law, Cognitive Science, and Narrative*, 43 MCGEORGE L. REV. 999, 1003 (2012) (“Emotionally charged events are more likely to capture our attention and be remembered. A beneficial consequence of this emotional fixation is that it focuses attention on the content, context, and meaning of a story. This context is the platform that allows later and successive integration of the details. Thus, stories work because they focus attention and provide a context for learning the details, that is, the law.”); Joshua A. Douglas, *Enlivening Election Law*, 56 ST. LOUIS U. L.J. 767, 768 (2012) (use of alternative media can “help to electrify the material, improve class discussion, and enhance overall learning”).

49 Caputo & Luz, *supra* note 46, at 656 (“Stories provide a recognizable structure for students—a beginning, middle, and end—with easily digestible chunks by which students can encode information.”); Scott DeVito, *The Power of Stories and Images in Law School*, 53 WASHBURN L.J. 51, 53 (2013) (“The value of stories for first-year law students is consistent with the recognition that people learn better and can absorb more when the material can be put into a recognizable structure. Stories provide that structure for first-year law students.”); Vaughn, *supra* note 49, at 1013 (hypothesizing that “the use of stories enables the law student to develop bigger ‘chunks’ of memory during the typical class”).

50 JOHN HATTIE, *VISIBLE LEARNING FOR TEACHERS: MAXIMIZING IMPACT ON LEARNING* 101 (2012).

51 Rosa Kim, *Lightening the Cognitive Load: Maximizing Learning in the Legal Writing Classroom*, 21 PERSPECTIVES: TEACHING LEGAL RES. & WRITING 101 (2013).

C. Supplemental Podcasts Can Be Used to Improve Student Performance

Supplemental podcasts, in particular, can be used to enhance skills learning and improve student performance.⁵² Podcasts, for example, provide an avenue to reach tech-savvy students.⁵³ Generation Z students, the majority of our current students, have had consistent access to alternative media formats in a way that previous generations have not.⁵⁴ Using different modalities, including podcasts, helps capture the attention of these Gen Z students by presenting material in bite-sized increments in a format to which they are accustomed.⁵⁵

Moreover, podcasts offer an interesting story in a nonwritten format, which helps stimulate student interest.⁵⁶ Many podcasts highlight the experiences of real-world lawyers engaged in complicated legal stories.⁵⁷ Along those lines, skills professors have proposed using these stories as the basis for legal research and writing assignments, to teach students necessary legal skills, provide them with context for the assignment, and show that the skills are practical and useful in real-world cases.⁵⁸ Accordingly, assigning podcasts provides an excellent opportunity for educators to demonstrate to students that they are learning skills utilized by practicing lawyers in the real-world stories that inspire them.

52 Dunham & Friedland, *supra* note 36, at 390.

53 Vinson, *supra* note 7 (explaining that “professors can use podcasts as a teaching tool to reach today’s multi-tasking, technology-savvy students in a different way than traditional classroom teaching methods”).

54 See Robert Minarcin, *OK Boomer—The Approaching DiZruption of Legal Education by Generation Z*, 39 QUINNIPIAC L. REV. 29, 58–60 (2020).

55 *Id.* at 58–60; see also Laura A. Webb, *Why Legal Writers Should Think Like Teachers*, 67 J. LEGAL EDUC. 315, 326 (2017) (explaining that “chunking” material into “smaller, manageable pieces” promotes learning).

56 E. Scott Fruehwald, *How to Help Students from Disadvantaged Backgrounds Succeed in Law School*, 1 TEX. A&M L. REV. 83, 99 (2013) (“Teachers should create situational interest in the classroom. Methods of creating situational interest include...multimedia.”); Bernard R. Robin, *Digital Storytelling: A Powerful Technology Tool for the 21st Century Classroom*, 47 THEORY INTO PRACT. 220, 226 (2008).

57 See, e.g., Pro Say, *Inside the Women’s Soccer Equal Pay Win*, LAW360, at 17:06 (Feb. 26, 2022), <https://podcasts.apple.com/us/podcast/inside-the-womens-soccer-equal-pay-win/id1240435608?i=1000552268689> (interviewing lawyer who represented soccer players in equal-pay lawsuit); see generally Jonah Perlin, *Episodes*, HOW I LAWYER PODCAST WITH JONAH PERLIN, <https://www.howilawyer.com/episodes/> (interviewing practicing attorneys in each episode about what they do).

58 Jeanna Kaiser & Myra Orlen, *Using a Literary Case Study to Teach Lawyering Skills: How We Used Damages by Barry Werth in the First-Year Legal Writing Curriculum*, 12 LEGAL WRITING: J. LEGAL WRITING INST. 59, 60 (2006).

III. The Prevalence and Importance of Teaching Appellate Advocacy and Established, Nonalternative Methods for Accomplishing This Goal

Podcasts are not part of the traditional toolbox of skills professors who teach appellate advocacy, which is not fatal to the mission. Even epic change-maker appellate lawyers use traditional, foundational lawyering skills to get the job done. However, they do so with an eye toward something bigger and with the belief that they can use their tools to simultaneously represent their client and make change.

Take, for example, Bryan Stevenson, founder and executive director of Equal Justice Initiative,⁵⁹ who has argued myriad landmark Supreme Court cases, including *Miller v. Alabama*,⁶⁰ which banned sentences of mandatory life imprisonment without parole for children. In his 2021 commencement address at Tufts University, Stevenson said: “Don’t let the challenges of this pandemic, don’t let the uncertainty of our economy, don’t let the division, don’t let climate change, don’t let any issue make you believe that you cannot change the world. Your hope is your superpower.”⁶¹ He urged graduates to “. . . do uncomfortable things, inconvenient things, because we cannot change the world, we cannot increase justice, we cannot make a difference across the planet if we only do the things that are comfortable and convenient.”⁶² Therefore, while podcasts are not a traditional tool, they can contribute to students’ understanding of appellate lawyers as change-makers.

As legal skills professors, we want to instill that kind of inspiration while at the same time teaching the traditional, foundational skills students need to do those uncomfortable things mentioned by Bryan Stevenson. Toward that end, in this section we first discuss the prevalence and importance of teaching appellate advocacy in the 1L skills classroom. Next, we discuss mainstream, established methods of teaching foundational appellate advocacy skills and how they usually do not include alternative media. Later, in Part IV, we explain two strategies for incorporating alternative media into appellate advocacy instruction to both enhance skills and inject the change-maker mentality.

A. The Prevalence and Importance of Traditional Appellate Advocacy Instruction for 1Ls

Nearly every lawyering skills professor teaches persuasive advocacy of some kind, and most 1L lawyering skills professors teach appellate advocacy.⁶³ The

59 Brian Stevenson, EQUAL JUSTICE INITIATIVE, <https://eji.org/bryan-stevenson/> (last visited Apr. 4, 2023).

60 567 U.S. 460 (2012).

61 Laura Ferguson, *Bryan Stevenson to Graduates: Create New Era of Truth and Justice*, TUFTSNOW (May 23, 2021), <https://now.tufts.edu/2021/05/23/bryan-stevenson-graduates-create-new-era-truth-and-justice#:~:text=%E2%80%9CCommencement%20is%20a%20hopeful%20time,you%20cannot%20change%20the%20world.>

62 Id.

63 C.J. Williams, *Advocating Altering Advocacy Academics: A Proposal to Change the Pedagogical Approach to Legal Advocacy*, 25 SUFFOLK J. TRIAL & APP. ADVOC. 203, 207 (2019-2020) (“Moot court

majority of law schools have established 1L moot court programs that serve as capstone experiences in the spring semester and are the ultimate persuasive writing experience for 1Ls.⁶⁴ Our law school is no exception.

Appellate advocacy provides learning benefits for 1L students and is an important part of the 1L experience. Specifically, given the structure and format that combines extensive written persuasion with formal oral arguments, 1L moot court programs have value because they prepare students to argue in any type of legal setting.⁶⁵ Indeed, junior attorneys often do not have ample opportunity to argue in real court, and so simulating this experience in the 1L legal skills class can provide that rare opportunity early on in their professional development.⁶⁶ Further, moot court is a capstone experience because it brings everything taught during the first year together in a culminating manner—oral skills, writing skills, understanding of complex doctrinal material, and more.⁶⁷

Traditional 1L moot court programs provide a basic overview of appellate advocacy for 1L law students. At BU School of Law, 1L students spend the second half of spring semester drafting an appellate brief and conducting an oral moot court argument.⁶⁸ Because it is the last assignment of the year, we expect students to have more ability than they did in the fall. We also want to instill confidence in them as we send them into their 1L summer jobs. Therefore, we tend to take away some of the teaching scaffolding available in earlier assignments, and we do not read full drafts or allow our teaching

programs can also accurately be described as appellate advocacy programs because they invariably are set in a mock appellate court.”); Richard E. Finneran, *Wherefore Moot Court*, 53 WASH. U. J.L. & POL’Y 121, 125 (2017) (“For most law students, moot court serves as their singular introduction to the art of appellate advocacy during their time in law school.”).

64 Lucia Ann Silecchia, *Legal Skills Training in the First Year of Law School: Research? Writing? Analysis? Or More*, 100 DICK. L. REV. 245, 257 n. 41 (1996) (“62.1% of law schools report that moot court is part of the first year legal research and writing course.”); John. T. Gaubatz, *Moot Court in the Modern Law School*, 31 J. LEGAL EDUC. 87, 87 (1981) (“... most schools have some moot court in their research and writing program....”); Williams, *supra* note 63, at 207 (“Today, most, if not all, law schools have moot court programs as part of their curriculum.”).

65 Williams, *supra* note 64, at 215.

66 *Id.* at 233 (“Indeed, teaching these skills in law school is, perhaps, even more critical because young attorneys will get so little practical experience in real courts. These courses teach students how to research, reason, and write; how to identify and present admissible evidence; and how to formulate and make coherent and persuasive arguments.”).

67 Lisa T. McElory, *From Grimm to Glory: Simulated Oral Argument as a Component of Legal Education’s Signature Pedagogy*, 84 IND. L.J. 598, 600 (2009) (“Using oral advocacy exercises to teach legal analysis in the doctrinal classroom will advance several coexisting goals—it will allow students to develop oral communication skills even as they learn substantive law; it will promote interaction between skills and doctrinal faculties; and it will require integration of skills and doctrinal pedagogies. Best Practices even anticipated the use of simulation exercises in the Socratic classroom.”).

68 *Lawyering Skills Class: Esdaile Appellate Moot Court*, BOSTON UNIVERSITY SCHOOL OF LAW, <https://www.bu.edu/law/about/offices/legal-writing-appellate-advocacy-programs/legal-writing-appellate-advocacy-programs/first-year-writing-program/> (last visited Aug. 4, 2022).

fellows to give detailed assistance on the substantive analysis. Thus, moot court allows students to take near-total responsibility for their own work and performance, a valuable steppingstone before starting their 1L summer jobs and embarking on the next two years of law school.⁶⁹

B. Established Nonalternative Methods for Teaching Appellate Advocacy

In teaching appellate advocacy, which in our program comes immediately after students draft and argue a motion to dismiss, skills professors build upon the foundational skills taught in motion practice, including the CREAC method of organization and persuasive word choice, and practical lessons about appellate practice.⁷⁰ As do many programs, we teach basic skills relevant to appellate brief writing, including: (1) components of an appellate brief; (2) use of theme and theory in the summary of the argument and throughout the brief; (3) structure of arguments; (3) persuasive word choice and ordering of arguments; and (4) utilizing policy considerations to advance arguments.⁷¹ By teaching appellate advocacy on the heels of motion practice, we are able to walk students through the whole life of a case, explaining the nuanced and significant differences in the stages.⁷²

Before oral arguments, we typically spend one class session instructing students on the basics of oral arguments. In class, we discuss: (1) the structure of an oral argument; (2) the substance and organization of an oral argument, including the importance of the introduction; (3) the flow of the argument, including being interrupted repeatedly for questions; (4) how to get back on track after being interrupted; and (5) concluding the argument. Students spend time in class thinking about the “theme” they want to include as part of their introduction as well as brainstorming potential questions they may be asked by the panel.

Like many skills professors, we use real-world samples in class. For brief writing, we deconstruct different parts of briefs to show how sections are structured and interrelated. For oral argument, we play snippets of Supreme Court and other appellate oral arguments. Supplementing with actual examples helps students visualize how these skills apply in real-world

69 Jonathan K. Van Patten, *Skills for Law Students*, 61 S.D. L. REV. 165, 190 (2016) (“Students need to take responsibility for their own education and their development in learning the craft of being a lawyer.”).

70 William H. Kenety, *Observation on Teaching Appellate Advocacy*, 45 J. LEGAL EDUC. 582, 585 (1995) (“In addition to lectures on brief-writing and oral arguments, an appellate advocacy course should contain information about appellate practice.”).

71 Williams, *supra* note 63, at 209 (indicating that an appellate advocacy class should involve an appellate brief and a corresponding oral argument).

72 Williams, *supra* note 63, at 233 (“The ideal advocacy program, then, would address the stages of advocacy in the order in which they occur in litigation. This would help students understand the differences and comprehend how decisions and developments at one stage of litigation directly affects later stages of litigation.”).

scenarios.⁷³ In addition, we often pair oral arguments played in class with their corresponding written briefs, specifically to demonstrate how the oral argument introduction can mirror themes written in the summary of the argument. In this way, students not only hear an oral argument but are able to see the relationship between the oral and written components of appellate advocacy.⁷⁴ While we feel these techniques are effective, we do not believe they are original. Rather, they are established methods for teaching appellate advocacy that work in the traditional sense.⁷⁵

In our classes, there is little room within these established methods, apart from around the edges with brief clips or quotes from their work, to fully explore Mary Bonauto- and Bryan Stevenson-type examples, and to help the students see law, through their eyes and stories, as a change agent. Therefore, in the next section of this article, we explore ways to push beyond these established methods for teaching appellate advocacy by incorporating alternative media. Though the time crunch for most skills classes makes adding material—during class time—difficult, our proposals below involve light homework and listening rather than reading; the idea is that these extra alternative media sources will strengthen established teaching methods.

IV. Two Different Approaches to Using Podcasts to Supplement Teaching Appellate Advocacy Skills

In this section we merge the two main topics of this article to discuss the use of alternative media in the skills classroom as an enhancement to teaching appellate advocacy. We explain two types of podcasts that we use in our

- 73 Elizabeth A. Shaver, *LRW's The Real World: Using Real Cases to Teach Persuasive Writing*, 38 *NOVA. L. REV.* 277, 278 (“With a drive to acquire skills needed to succeed in the real world of lawyering, students highly value work done by real lawyers on behalf of real clients. Law professors who teach persuasive writing can leverage this interest by using materials from real cases to teach important persuasive writing techniques.”); Caputo & Luz, *supra* note 45, at 662 (“Injecting real life social justice stories into the 1L skills curriculum serves the added benefit of increasing transfer of learning.”).
- 74 See John P. Cronan, *Is Any of This Making Sense? Reflecting on Guilty Pleas to Aid Criminal Juror Comprehension*, 39 *AM. CRIM. L. REV.* 1187, 1211 (2002) (emphasizing increase in comprehension and retention of information by jurors when oral delivery is supplemented by written materials).
- 75 See Michael Vitiello, *Teaching Effective Oral Argument Skills: Forget about the Drama Coach*, 75 *MISS. L.J.* 869, 903-04 (2006) (“A significant majority of all law schools have moot court programs.”) (“Motivated professors can introduce oral advocacy into their classes through the use of simulation exercises.”); Cara Cunningham & Michelle Streicher, *The Methodology of Persuasion: A Process-Based Approach to Persuasive Writing*, 13 *LEGAL WRITING* 159, 160 (2007) (stating that most professors apply learn-by-example technique by reviewing high-profile case briefs and oral argument transcripts); Shaver, *supra* note 73, at 279 (indicating that law professors try to add real-world elements by using briefs and judicial opinions from real cases); Adam Lamparello & Charles E. MacLean, *A Proposal to the ABA: Integrating the Legal Writing and Experiential Learning into a Required Six-Semester Curriculum that Trains Students in Core Competencies, ‘Soft’ Skills and Real-World Judgment*, 43 *CAP. U.L. REV.* 59, 83 (2015) (“Instructors....can choose actual cases pending before the Supreme Court or dividing the circuit courts of appeal.”).

classes—internally created and professionally produced. These methods can be applied to any skill and can be utilized beyond appellate advocacy. However, for purposes of this article, both examples offer students fuller, more soulful, real-life examples of appellate lawyers who use their skills to be change-makers.

A. Creation and Use of “Homemade” Podcasts to Supplement Specific Skill Development

As discussed above, using alternative media, and particularly podcasts, has many unique benefits to student learning.⁷⁶ To enhance skill development at our law school, we taped podcast interviews of our own to make sure they precisely complement our skills teaching. By creating our own content, we are able to choose our interviewees, topics, and questions, and the impact on our classroom has been positive.

1. Planning, Taping, and Assigning Our Homemade Podcasts

We created five homemade podcasts for our legal skills classes that we use, in conjunction with teaching specific skills, across the fall and spring semesters. The five podcasts feature interviews with practicing lawyers on client interviews, client counseling, presenting to a supervisor, motion practice, and appellate practice. For purposes of this article, we will focus on one podcast, its content, and how it was used in class—our podcast about appellate practice.⁷⁷

In our initial invitation to our interviewee for this podcast, we described our course, the purpose of the podcast, and the specific topic of the potential interview. The text of our e-mail was similar for each invitation.⁷⁸ We also assured the interviewees that we did not anticipate their participation taking longer than thirty minutes, in recognition of their busy schedules. The response was overwhelmingly positive.

Once we secured interviewees and set taping dates, we sent questions to each interviewee. Our strategy for drafting questions was to guarantee that certain topics would be covered, suggest certain areas that could be touched upon, and allow for creativity and authenticity on the part of the interviewee.

⁷⁶ See *supra* Part II.

⁷⁷ *Appellate Practice Podcast* (2017) (on file with authors) (interviewing a senior Massachusetts public defender about his extensive experience practicing in the appellate courts).

⁷⁸ Here is the relevant portion of the text of our e-mail invitation for our appellate advocacy podcast, the one on which we focus in this article: “The Lawyering Program is a required year-long course for all 1Ls which focuses on teaching students core skills so they become more practice ready. To complement our assignments and classes, we hope to create interesting online resources for our students by illustrating the kinds of careers and work they can do if they master the core skills we are teaching. By interviewing a lawyer like you, and highlighting your career and how you use a particular skill, we hope to inspire them. We would appreciate it if you would consider taping our podcast on Appellate Practice. As an experienced public defender who has extensively practiced in both trial and appellate courts for seventeen years, you have undoubtedly mastered the skill of writing appellate briefs and then arguing your appeal in court. Our students are engaging in both of these skills, and your wisdom on this topic would be helpful. We do not anticipate it taking more than thirty total minutes to complete the podcast.”

All interviews followed the same trajectory, so students could notice a pattern as they listened to the podcast interviews throughout the year: introduction of the podcast topic, introduction of the interviewee (by the interviewee) including education and practice backgrounds, a “101”-level explanation of their practice area, several detailed questions about the particular skill being discussed, a question about common mistakes by lawyers when doing that skill, and a request for advice for students.

Finally, we did not edit these podcasts after taping. While we could have, and would have, if absolutely necessary, we wanted them to have an organic, homemade feel. Therefore, sneezes and throat clearings were captured, as were thoughtful pauses and re-phrasings. Our hope was to drive home the message we had been delivering all along—that lawyers are real people, no one is perfect, and our students could easily become one of these lawyers one day.

Once podcast interviews were taped and posted, we worked them into our course syllabi. Before introducing a new skill, we assigned the podcast for homework and then opened the class with guided reflections on the podcast. After discussing the podcast and the skill during class, the students then prepared for and executed the skill.

2. Spotlight on the Appellate Practice Podcast

For our appellate practice podcast, we interviewed a particularly experienced public defender. Students were working on their appellate brief when they were assigned to listen. The content of the podcast forced them to consider not only their written brief, still in progress, but the way in which they would eventually handle their oral argument.

a. Questions Asked in the Appellate Practice Podcast

Questions, and suggestions for the kinds of topics that would be useful in the answers, were provided to the interviewee in advance. For example, the following question was listed, in bold, meaning it would definitely be asked: **“When drafting an appellate brief, what strategies do you use to communicate your best arguments? What are some of the characteristics of the best appellate briefs you have written or read?”** Underneath the bolded question, the following suggestions were made to help the interviewee prep an answer in a way that would dovetail with our in-class instruction on this particular skill: “Storytelling? Conciseness? Argument and counterargument? Do you always raise every issue in your brief? Do you pay the same attention (give the same space within the brief) to all issues or do you prioritize? Are there persuasive writing styles or strategies that you feel are more effective than others? Editing? Anything you want to add about writing a brief and what students should know.”

Please see Appendix B to this article for a full list of questions and suggestions for this podcast. We also welcome readers to contact us for the full list of questions and suggestions for other podcasts we taped.

b. Interviewee's Answers—the Heart of the Appellate Practice Podcast

In the podcast, the interviewee shared, right at the outset, that he became interested in criminal law during his third year of law school, worked at a small firm for a while, and had been a public defender for seventeen years.⁷⁹ He also explained that he now mentored other public defenders handling complex cases, and also defended his own murder cases.⁸⁰ Thus, students got the clear impression that he was an expert and were open to receiving his advice.

He also took the time to give specific examples of how he recently had used his appellate advocacy skills, which made his later advice more vivid and accessible. He shared that he handled the more complex interlocutory appeals and appeals for extraordinary relief—the urgent cases that required specialized analysis.⁸¹ He then gave a few examples, one of which he had argued the week before taping the podcast in our state's highest court.⁸² The case involved a client who had been charged with murder twenty-three years earlier, but the case never progressed beyond a charge because the defendant was incompetent to stand trial.⁸³ He discussed the difficulties of trying to get the charge dismissed, given that his client would never be competent, had lived in a prison hospital for over two decades, and was by then a 72-year-old man who could not cause harm.⁸⁴ Through this attorney's generous introduction of what he does, explanation of how long he has done it, and provision of specific, compelling examples of how he uses his skills, the foundation was laid for his role as a change agent.

During the course of a twenty-seven-minute interview, the following gems were imparted to our students regarding how to prepare an appellate brief and oral argument. They all directly complement lessons we teach in class and clips from real appellate briefs and oral arguments we review with our students. Yet these pieces of advice came from a warm, live voice—one that was taped exclusively for these students by their professors, with questions tailored to the subject matter the students were receiving in class:

79 *Appellate Practice Podcast*, *supra* note 78, at 01:21–01:58.

80 *Id.* at 03:04–03:41.

81 *Id.* at 04:41–06:16.

82 *Id.* at 06:21–07:28.

83 *Id.*

84 *Id.* at 06:21–07:28.

- **General Advice re Appellate Advocacy**

- **Storytelling is a Critical Appellate Advocacy Tool:** “One of the things I have come to appreciate . . . is that the thing that persuades people more than anything else—and this is true of people in every situation, whether we are talking about a jury, whether we are talking about a judge . . . is being compelled by a story . . . that touches the emotions of the person that is making the decision.”⁸⁵

- **Advice re Appellate Brief Writing**

- **Judges are Human Beings Who Can Be Persuaded:** “We tend to think of [a judge] as somebody who is mechanically applying logic and reason, mechanically applying the law to the facts. But they’re human beings who go home and have families and have lives and who are still susceptible to the normal influences that influence people who make decisions.”⁸⁶

- **A Good Brief Does Not Ignore the Facts:** “[A]ppeals can be won in the facts section So the best appellate briefs are the ones where you know . . . before you start reading the argument section, you are leaning heavily in one direction.”⁸⁷

- **Frame the Issue Statement of Your Brief Persuasively:** “Those issues should be framed in a way that leads the reader to say . . . there is an obvious answer to this question.”⁸⁸

- **Advice re Appellate Oral Arguments**

- **Thoroughly Prepare:** “I begin by going back and rereading all of the briefs—my brief, the other side’s brief, any amicus briefs that were filed—and, as I am reading through them, taking notes on what I think are important points that I want to make, hard questions that I think are going to arise from various issues or arguments. So, I will reread the briefs, I will reread the record and the appendix in the case, making sure I am familiar with important pieces of the record, and I will also take notes on where exactly important pieces of the record are located, so I . . . am not sitting there flipping through the record in front of the justices.”⁸⁹

- **Limit the Number of Notes You Bring to the Argument:** “Ultimately, I try to boil down my notes to no more than two pages that I have typed out as an outline. These are the things that I know I am going to have to

85 *Id.* at 11:40–12:15.

86 *Id.* at 12:19–12:47.

87 *Id.* at 13:14–14:06.

88 *Id.* at 14:48–15:02.

89 *Id.* at 17:09–18:11.

address, or that I want to address, with bullet points with key cases, [and] key points that I want to make.”⁹⁰

- **The Opening and Closing Lines Are Important:** “It is important to craft an opening sentence or two—brief but to the point—that really encapsulate your argument in a powerful way, because the justices will usually let you say your opening before they launch in with their questions.”⁹¹ “And I also want to have a sit-down line—again, some way to finish the argument—because you see that red light come on and you know you’re out of time—and [you want to] end with something powerful that □ hopefully makes an impression.”⁹²
- **Analogies Really Work:** “One way that we help people answer questions is by coming up with stories that work as analogies that they can relate to. So, I had an argument several years ago and the issue was whether or not . . . passing around a joint or sharing marijuana in a social setting constituted the crime of distribution So, I tried to think of an analogy that the justices would be more inclined to connect to. So, I said to them, look, imagine if all of us went out to dinner, and at the end of the meal we were pretty full, but somebody said, ‘I am going to order dessert, I am going to order crème brûlée’ and they passed around crème brûlée to the other justices and the rest of us eating dinner together, and we all had a taste. I don’t think anybody would say that that justice had distributed crème brûlée, they would say they shared it, and there is a difference between distribution and sharing. And that got a laugh from the justices.”⁹³
- **Answer the Question Asked:** “The easiest way to annoy them is to not answer their question. I understand that you have an agenda and you want to make your points, but if a judge asks you a question, they want an answer to that question.”⁹⁴

c. Use in the Classroom

After listening to a homemade podcast interview with an attorney they admire, close in time to learning and executing on a particular skill, students arrive in class and are asked to reflect. We offered the following questions to guide the discussion on the appellate practice podcast discussed above:

⁹⁰ *Id.* at 18:19–18:41.

⁹¹ *Id.* at 20:00–20:30.

⁹² *Id.* at 20:42–21:09.

⁹³ *Id.* at 22:33–23:55.

⁹⁴ *Id.* at 24:46–25:02.

- What stood out to you in the podcast?
- What specific lessons did you learn here about how to write an appellate brief?
- How did this lawyer prepare for oral arguments?
- What specific tidbits or pieces of advice are you inclined to use from this podcast?
- How did this lawyer use the law to make change and to affect people's lives?

Students then shared their reflections on the podcast. Anecdotally, our impression was that the clear examples of cases and vignettes shared in the podcast—which directly related to skills students were learning at that moment—made the strongest impression.

For example, after students listened to the appellate practice podcast, we noticed an increase in familiar analogies in our students' oral arguments—not about crème brûlée, of course, but in the same theme—that showed students understood the advice and had bought into its value. We also noticed an increase in well-crafted, rehearsed opening lines, often appealing to emotion, which seemed to stem from the podcast as well. We taught this same skill when working on motion arguments earlier in the semester, but only some students tried catchy openers at that point in the year. After listening to the appellate practice podcast, the students were more motivated to try it.

In conclusion, while we have no data to quantify the impact of the homemade podcasts on our students, our impressions as experienced educators were that they made a difference, personalized the skills, gave inspiration for mastering the skills, and increased student buy-in. While they added to student homework and took some time in an already packed class, we have concluded that it was worth it to include this type of customized alternative media in our classrooms.

B. Enhancing Established Methods through Use of a Professionally Made Podcast

In addition to homemade podcasts described above, professional podcasts provide significant fodder for supplementing the law school classroom and providing students access to change-making appellate lawyers. Podcasts highlighting real-world legal cases—such as the *Serial* podcast⁹⁵—have captured the interest of lawyers and nonlawyers by profiling the real-life stories of individuals engaged with the criminal legal system.⁹⁶ In addition to the gripping stories, these podcasts often delve into the lawyers litigating these cases. Professional podcasts, therefore, are uniquely equipped to supplement

95 SERIAL PODCAST, <https://serialpodcast.org>.

96 See Todd Spangler, 'Serial' Season 3 Podcast Premiere Date, VARIETY (Sept. 5, 2018, 3:15 AM), <https://variety.com/2018/digital/news/serial-season-3-premiere-date-podcast-1202927015/> (noting that the *Serial* podcast has been downloaded over 340 million times).

learning in the legal skills classroom. In this section, we describe using one particular professional podcast—Season 2 of *In the Dark*—to supplement the teaching of appellate advocacy skills.

1. What Is *In the Dark* and Why Did We Choose This Podcast?

In the Dark is a podcast series produced by American Public Media (APM).⁹⁷ Season 2 of *In the Dark* profiles the story of Curtis Flowers, a Black man who was convicted of the execution-style murders of four furniture store employees in Winona, Mississippi, in 1996.⁹⁸ What makes this story unique is the fact that Flowers was tried for the same crimes six separate times over the course of twenty-one years.⁹⁹

The podcast series explores the six trials of Curtis Flowers, all prosecuted by District Attorney—Doug Evans.¹⁰⁰ Flowers was initially tried and convicted in 1997, and subsequently sentenced to death.¹⁰¹ However, Flowers' initial conviction was reversed after the Mississippi Supreme Court found it was tainted by inadmissible evidence introduced by the prosecution.¹⁰² Over the course of the next thirteen years, Flowers was tried five more times.¹⁰³ Two of those trials ended in a mistrial, and the same prosecutor kept trying the case again and again.¹⁰⁴

However, three additional convictions were overturned due to prosecutorial misconduct, one of which was the result of the prosecutor's discrimination against Black prospective jurors in violation of *Batson v. Kentucky*, 476 U.S. 79 (1986).¹⁰⁵ Specifically, as to the *Batson* violation, a review of court records conducted by APM reporters revealed that, over the course of the six trials, prosecutor Evans had struck forty-one of the forty-two or forty-three (the

97 *In the Dark: Season Two*, APM REPORTS, <https://features.apmreports.org/in-the-dark/season-two/> (last visited Apr. 3, 2023).

98 *In the Dark, July 16, 1996*, APM REPORTS, at 01:03 (May 1, 2018), <https://www.apmreports.org/episode/2018/05/01/in-the-dark-s2e1>.

99 Brief for Petitioner at 2, *Flowers v. Mississippi*, 139 S. Ct. 2228 (2019) (No. 17-9572).

100 *Id.* at 3.

101 *Id.* at 2-3.

102 *Id.* at 5; *Flowers v. State*, 773 So. 2d 309, 327 (Miss. 2000) (“The numerous instances of prosecutorial misconduct here (including but not limited to the introduction of matters totally unsupported by any evidence) resulted in a denial of Flowers’s right to a fair trial.”).

103 The sixth Flowers trial took place in 2010, approximately thirteen years after the first. *See* Brief for Petitioner, *supra* note 99, at 13.

104 *Id.* at 3 (noting the fourth Flowers trial and fifth Flowers trial both ended in mistrial).

105 *Id.* (explaining that the first three Flowers trials were reversed: two for prosecutorial misconduct and one for racially motivated use of peremptory strikes).

Supreme Court opinion and briefs provide different numbers)¹⁰⁶ Black jurors during voir dire.¹⁰⁷

Ultimately, the sixth trial was appealed to the United States Supreme Court.¹⁰⁸ On June 21, 2019, the Supreme Court overturned Flowers' conviction as a result of the prosecution's pervasive discriminatory use of peremptory strikes against Black jurors over the course of six trials.¹⁰⁹ The Mississippi Attorney General's office, which subsequently took over prosecution of the case, declined to prosecute further and dismissed the case.¹¹⁰ After twenty-two years in prison—many of them spent on death row—Flowers was finally released.¹¹¹

The podcast, while long, provides a unique and thorough look into the many trials and appeals in the Flowers case. APM reporters spent a year in Winona exploring the specifics of Flowers' trials and appeals.¹¹² Among other things, the reporters: (1) reviewed court transcripts and pleadings;¹¹³ (2) interviewed witnesses, friends, and family members of both Flowers and the victims;¹¹⁴ (3) spoke with some of the lawyers involved in different phases of the litigation;¹¹⁵ and (4) parsed through the evidence presented both at the trial stage and the

106 *Id.* (noting that “Evans faced a total of 43 black prospective jurors” and “struck 41 of them”); *Flowers v. Mississippi*, 139 S.Ct. 2228, 2235 (2019) (“in the six trials combined, the State employed its peremptory challenges to strike 41 of the 42 black prospective jurors that it could have struck—a statistic that the State acknowledged at oral argument in this Court.”).

107 Brief for NAACP Legal Defense & Educational Fund, Inc. as Amicus Curiae Supporting Petitioner, *Flowers v. Mississippi*, 139 S. Ct. 2228 (2019) (No. 17-9572), at 30 (pointing to APM's statistical analysis demonstrating “Doug Evans and the office he runs have systematically denied African Americans the right to serve as jurors”); see WILL CRAFT, PEREMPTORY STRIKES IN MISSISSIPPI'S FIFTH CIRCUIT COURT DISTRICT, https://features.apmreports.org/files/peremptory_strike_methodology.pdf (last visited Apr. 3, 2023).

108 *Flowers*, 139 S. Ct. at 2238.

109 *Flowers*, 139 S. Ct. at 2235.

110 Parker Yesko, *It's Over: Charges against Curtis Flowers are dropped*, APM REPORTS (Sept. 4, 2020), <https://www.apmreports.org/episode/2020/09/04/charges-against-curtis-flowers-are-dropped>.

111 *Id.*

112 See *In the Dark, Curtis Flowers*, APM REPORTS, at 00:14 (Oct. 14, 2020), <https://www.apmreports.org/episode/2020/10/14/in-the-dark-s2e20> (explaining that APM reporters moved to Mississippi, interviewed hundreds of people, examined every piece of evidence).

113 See, e.g., *In the Dark, The D.A.*, APM REPORTS, at 32:07-37:07 (June 12, 2018), <https://www.apmreports.org/episode/2018/06/12/in-the-dark-s2e8> (describing process of reviewing criminal trial records to find data on jury selection).

114 See, e.g., *In the Dark, Punishment*, APM REPORTS, at 05:00-14:48 (May 29, 2018), <https://www.apmreports.org/episode/2018/05/29/in-the-dark-s2e6> (interviewing Odell Hallmon, a key witness in the state's case against Curtis Flowers).

115 See, e.g., *In the Dark, Oral Argument*, APM REPORTS, at 06:46-07:25, (Mar. 26, 2019), <https://www.apmreports.org/episode/2019/03/26/in-the-dark-s2e13> (interviewing Tucker Carrington, one of the lawyers working on Curtis' post-conviction).

appellate stage of the litigation.¹¹⁶ The podcast allows listeners to review the evidence in depth to get a comprehensive view of the scope of the litigation.

Thus, Season 2 of *In the Dark* provides a rich legal story involving both trial and appellate litigation. It would be extremely difficult to require already overburdened 1L students to listen to the entire podcast because of its length, over seventeen hours. As discussed below, we used a targeted episode to enhance the teaching of appellate advocacy skills.

2. Assigning *In the Dark* to Supplement the Teaching of Appellate Advocacy Skills

In the past, we have used both the oral arguments and written appellate briefs from *Flowers v. Mississippi* as “samples” when we introduce oral advocacy, playing snippets of the oral arguments in class and supplementing with portions of the briefs to show the relationship between the two. Given time constraints in our class, however, we are forced to give an abbreviated summary of the case to students to provide context for what they are hearing and reading. Thus, our instruction lacked context and nuance, which would provide a richer experience for students listening to the argument. Recently, therefore, we assigned Episode 13 of Season 2 of *In the Dark* to supplement our oral advocacy class.

Skipping straight to Episode 13 actually works because the approximately hour-long episode provides a summary of the oral arguments in *Flowers v. Mississippi*.¹¹⁷ Two APM journalists attended the argument, held on March 20, 2019.¹¹⁸ The episode includes long snippets of the actual arguments, some of which we already use in our class, but also includes interviews with some of the attorneys working on the case, important background information that provides context, and vivid descriptions of the courtroom and the attorneys; it also provides listeners a sense of the feeling inside and outside the courtroom.¹¹⁹ Through these descriptions, listeners are given a more holistic view of the argument and the attorneys, which cannot be gleaned from listening to the audio of the argument alone. Specifically, the episode includes the following information, which helped supplement our oral advocacy skills training:

- **Excitement outside the courtroom:** The journalist describes the excitement outside of the courtroom, as 400 people wait outdoors, overnight in the cold weather, for the opportunity to obtain one of the limited spots within

116 See e.g., *In the Dark, The Gun*, APM REPORTS (May 8, 2018), <https://www.apmreports.org/episode/2018/05/08/in-the-dark-s2e3> (examining state expert’s opinion testimony matching bullet to a particular gun).

117 *In the Dark, Oral Argument*, *supra* note 116.

118 *In the Dark, Oral Argument*, *supra* note 116.

119 *In the Dark, Oral Argument*, *supra* note 116, at 06:46–07:25 (interviewing Tucker Carrington, one of the lawyers working on Curtis’ post-conviction); *Id.* at 07:47–08:25 (describing the courtroom); *Id.* at 08:57–44:31 (actual argument combined with necessary background information).

the courtroom.¹²⁰ Through interviews with various individuals waiting in line, listeners feel the excitement as people describe coming from all over the country and the world—including one individual who flew from Japan—to hear the argument.¹²¹ The journalist describes the signs various people held up, including one held by a teenage girl named Lily who was holding a sign and wearing a T-shirt that said “Free Curtis.”¹²² When asked why she came to the argument, Lily explains, “Well, I’ve been writing to Curtis since June, and when you guys announced the trial would be here, I was like, oh, you know I want to show my support for him cause he can’t be here.”¹²³ Another spectator explained her reason for attending the argument, stating, “Just the injustice of it all. Come on, it’s crazy. When do they say stop?”¹²⁴ These descriptions underscore the importance of appellate courts generally, and the Supreme Court specifically, which decide cases that can have far-reaching impacts given their precedential value. They show that nonlawyers understand that appellate advocates are change-makers and they are there to witness that change.

- **Layout of the courtroom:** The journalist describes a layout of the courtroom. Specifically, she notes: “The room where the Supreme Court hears cases is small. It’s all one level. There are floor-to-ceiling windows on two sides. Up at the front, there are nine high-backed leather chairs. And behind them, four big marble pillars and thick red velvet curtains with gold fringe. And an American flag on either side.”¹²⁵ As to the size of the room, she notes the courtroom was so small that from where the journalist was sitting, she was only forty feet from Justice Gorsuch.¹²⁶

120 See *In the Dark, Oral Argument, supra* note 116, at 04:36–04:45; *In the Dark* transcript. Season 2, Episode 13: Oral Arguments [hereinafter *Transcription of Episode 13: Oral Arguments*] 2, <https://s3.documentcloud.org/documents/6006382/In-the-Dark-transcript-Season-2-Episode-13-Oral.pdf> (“When we got to the Supreme Court, there were already more than 100 people in line. And more people kept showing up, hundreds of people. More than 400 in all.”).

121 *In the Dark, Oral Argument, supra* note 116, at 02:21–07:25; *Transcription of Episode 13: Oral Arguments, supra* note 121, at 1–4.

122 *In the Dark, Oral Argument, supra* note 116, at 05:15–05:55; *Transcription of Episode 13: Oral Arguments, supra* note 121, at 3 (“So there’s a picture of Curtis, and under the picture it says, ‘Free Curtis.’ . . . My dad made it the other day, so we decided to bring it up. And we also made T-shirts that also say, ‘Free Curtis,’ to give it out to anyone that wants one. I’m wearing one.”).

123 *In the Dark, Oral Argument, supra* note 116, at 04:11–04:35; *Transcription of Episode 13: Oral Arguments, supra* note 121, at 2.

124 *In the Dark, Oral Argument, supra* note 116, at 04:11–04:35; *Transcription of Episode 13: Oral Arguments, supra* note 121, at 2.

125 *In the Dark, Oral Argument, supra* note 116, at 07:47–08:25; *Transcription of Episode 13: Oral Arguments, supra* note 121, at 4.

126 *In the Dark, Oral Argument, supra* note 116, at 08:51–08:57; *Transcription of Episode 13: Oral Arguments, supra* note 121, at 4 (“The courtroom was so small that from where I was sitting I was probably no more than 40 feet from Justice Gorsuch.”).

She further describes the justices and where they are seated; she states that Justice Ginsburg's seat is so low "you could only see the part in her hair."¹²⁷ Through these descriptions, listeners are able to visualize the Supreme Court gallery and get a feel for the rarefied air breathed by change-maker lawyers who appear there.

- **Demeanor of the attorneys:** Through interviews and observations of the attorneys arguing, the journalists describe their demeanor both before and during the argument. Before the argument, the journalist interviewed one of the law students working with Sheri Lynn Johnson, the assistant director of the Cornell Death Penalty project, who argued the case before the Supreme Court on behalf of Flowers.¹²⁸ The law student describes his interactions with Johnson before the argument, saying Johnson "knows it's a big deal."¹²⁹ He further explains that it is "humbling" to see someone as accomplished as Johnson act a little bit nervous before the argument.¹³⁰

The journalist also provides descriptions of the attorneys' demeanor while arguing—something that is impossible to glean from simply listening to the audio of the arguments alone. While she describes Flowers' attorney, Johnson, as "composed" when she approached the podium, she describes the Mississippi Assistant Attorney General who argued on behalf of the state as a "tall guy, over six feet" who was "slumped over a bit."¹³¹ The description of these attorneys' demeanor tracks the depth of the questioning for each side. While Flowers' attorney faced difficult questioning, the toughest questions were reserved for the state's attorney.

These descriptions humanize the attorneys, showing that even attorneys arguing at the highest levels can face nerves or can be discouraged under tough questioning.

127 See In the Dark, *Oral Argument*, *supra* note 116, at 08:26–08:50; Transcription of Episode 13: Oral Arguments, *supra* note 121, at 4 (describing that Chief Justice John Roberts sat in the middle seat and there were four liberal justices—Sonia Sotomayor, Elena Kagan, Stephen Breyer and Ruth Bader Ginsburg—and four conservative justices: Clarence Thomas, Samuel Alito, Brett Kavanaugh and Neil Gorsuch).

128 Transcription of Episode 13: Oral Arguments, *supra* note 121, at 2 ("Alex Bransford is a law student. And one of his professors is Sheri Johnson, the lawyer for Curtis who was going to be arguing in front of the court today.").

129 Transcription of Episode 13: Oral Arguments, *supra* note 121, at 2 ("It feels like a...you can tell she knows it's a big deal.").

130 Transcription of Episode 13: Oral Arguments, *supra* note 121, at 2 ("You see this person who's so intimidating and seems to know everything and see her act a little bit nervous. It's kind of humbling.").

131 Transcription of Episode 13: Oral Arguments, *supra* note 121, at 5, 10 ("Sheri Johnson approached the podium. She had a precise manner about her. Her posture was straight. She didn't move around a lot. She looked, in a word, composed.... Jason Davis got up and stood at the podium. He's a tall guy, well over six feet, but as he stood at the podium, he slumped forward a bit.").

- **Optimism of lawyers:** Outside of the Supreme Court building, while waiting to enter, the journalist interviewed one of Flowers' attorneys, Tucker Carrington, who worked on Flowers' post-conviction appeal.¹³² Carrington expresses his optimism at Flowers' chances of success on appeal, stating, "I think we'll be all right. I'm hoping that we win it here—it would be easier that way. But . . . I feel confident, one way or the other. One of these days."¹³³ Carrington's optimism demonstrates a character-based skill we try to instill in our students—determination even in the face of adversity. To do the type of change-making work at issue in *Flowers*—death penalty work, which is notoriously steeped in racial inequities—requires determination and optimism in the face of overwhelming odds.
- **Mood in the courtroom:** The journalists discuss a change in mood in the courtroom when Justice Breyer asks questions comparing two specific jurors—a Black juror who was struck by the prosecution, and a white juror who was not struck, although the two were seemingly similar.¹³⁴ She states that up until that point, observers were not reacting to what the attorney said, but "people started stirring in their seats and glancing at each other, like something was about to happen."¹³⁵
- **Context for the argument:** Finally, throughout the argument, the journalist provides important context regarding questioning by the justices. She explains important background on *Batson* challenges, provides details about specific jurors who are the subject of the justices' questions, and provides some background on disparate questioning.¹³⁶ While listeners could glean some of this information by poring through the appellate papers and by conducting outside research, such a task would be extremely tedious

¹³² Transcription of Episode 13: Oral Arguments, *supra* note 121, at 3 ("While we were outside, we ran into Tucker Carrington, one of the lawyers working on Curtis' post-conviction.").

¹³³ Transcription of Episode 13: Oral Arguments, *supra* note 121, at 4 ("I'm feeling good. I think we'll be all right. That's what I'm hoping. One way or the other, we'll win this case, somehow. . . . I'm hoping that we win it here. It'd be easier that way. But I, you know, I feel confident, one way or the other. One of these days.").

¹³⁴ Transcription of Episode 13: Oral Arguments, *supra* note 121, at 12–13 (stating that Justice Breyer interrupted Jason Davis by asking that if there are two potential jurors, one Black and one white, both are women, both in their mid-40s, both have some college education and both are in strong favor of death penalty, under such background, what the difference was as to why the state could strike the potential Black juror, who was actually Number 4, while preserving the white juror, Number 17).

¹³⁵ Transcription of Episode 13: Oral Arguments, *supra* note 121, at 12 ("It wasn't a surprise that Justice Breyer would say something like this given that he is one of the more liberal justices on the Court. But it had an effect. People started stirring in their seats and glancing at each other, like something was about to happen.").

¹³⁶ Transcription of Episode 13: Oral Arguments, *supra* note 121, at 5 ("Here, Sheri Johnson was referring to the two times Doug Evans had been caught striking black prospective jurors because of their race in Curtis' earlier trials. This is called a *Batson* violation. It's named after a Supreme Court case called *Batson v. Kentucky*. Curtis Flower's third conviction was actually overturned because Doug Evans committed a *Batson* violation.").

and time-consuming for law students, in particular. This information provides listeners with a greater understanding of the depth of the justices' questioning. Specifically with respect to the fact-based questions, listeners understand that attorneys facing questioning must have a good grasp of the facts and summon those facts instantaneously to be able to answer the justices' questions.

3. Use in the Classroom

Similarly to the way we discussed our homemade podcast in the classroom, we also debriefed our students after they listened to Episode 13 for homework. We offered the following questions to guide the discussion:

- What character-based skills did you see on display by the lawyers involved in this appellate argument before the Supreme Court?
- What did you learn about the mechanics and the humanity involved in an appellate argument?
- How will this podcast change your preparation for, and expectations around, your moot court oral arguments?
- How did these lawyers use their skills to make change?

Students respond strongly to this podcast and discuss topics ranging from character-based skills they admire, like tenacity and optimism; prosecutorial misconduct, which disappoints and shocks them; racism in the criminal legal system, which scares and enrages them; and imposter syndrome, which shakes them, because Sheri Lynn Johnson's skill level seems unattainable; and more. In summary, students attained a stronger understanding of appellate advocacy through the context provided in the podcast.

Conclusion

In conclusion, alternative media enhances traditional methods of teaching appellate advocacy and gives our students a small taste of what it means to use their newly acquired tools for change. We teach with the assumption that the next change-maker—the next Mary Bonauto or Bryan Stevenson—is sitting in our classrooms, and we want them to know, in their 1L spring, that the dream building in their hearts and brains can be realized, in part, by starting with what we teach.

We presented two concrete ideas for using alternative media here, but the possibilities are limitless. Additionally, while we used appellate advocacy as the template for this article, especially because it comes last in our year-long curriculum and thus provides more room for creativity, alternative media can be used to bolster any type of skills teaching. We encourage our fellow skills professors to try injecting alternative media into their courses, to provide students with a richer and more varied experience. As podcasters might say, thanks for tuning in.

APPENDIX A

The following chart shows several examples of law school classes that appear to at least partially involve alternative media.

Law School	Course Name	Course Description
Yale Law School	Comparative Criminal Procedure ¹³⁷	The course makes use of films from different countries to offer unique insights into the cultural context of differing criminal procedures.
Stanford Law School	Writing Workshop: Law and Creativity ¹³⁸	Students will discuss creative treatments of legal issues in film, fiction, and nonfiction.
	Wrongful Convictions: Causes, Preventions and Remedies ¹³⁹	Students will watch a film involving a wrongful conviction and will engage in conversation about the particular case involved.

¹³⁷ Yale Law School, *Comparative Criminal Procedure*, YLS COURSES, <https://courses.law.yale.edu/courses/course/3794> (last visited July 18, 2022).

¹³⁸ *Writing Workshop: Law and Creativity*, STANFORD LAW SCHOOL COURSE CATALOG, <https://law.stanford.edu/courses/writing-workshop-law-and-creativity/> (last visited July 18, 2022).

¹³⁹ *Wrongful Convictions: Causes, Preventions and Remedies*, STANFORD LAW SCHOOL COURSE CATALOG, <https://law.stanford.edu/courses/wrongful-convictions-causes-preventions-and-remedies/> (last visited July 18, 2022).

University of Pennsylvania Carey Law School	Documentaries & the Law ¹⁴⁰	We will explore the range of existing uses of visual or video legal advocacy in various legal proceedings or contexts. Each unit involves two to three films. For example, the introduction unit contains <i>The Things That Put Powelton on the Map</i> (2006) by the Powelton Village Civic Association and <i>Pride of the Hill</i> (2006) by the Cramer Hill Residents Association.
	Law and Society in Japan ¹⁴¹	Students will view several films that offer a valuable perspective on Japanese law and society.
	Law and Candidacy ¹⁴²	The course is taught with a variety of weekly materials from case law to podcasts and films.
UC Berkeley School of Law	Environmental Health Law Through Film ¹⁴³	Films are likely to include <i>The China Syndrome</i> (nuclear reactor accidents), <i>Erin Brokovich</i> (toxic air emissions), <i>Dark Waters</i> (contaminated drinking water), <i>Not So Pretty HBO Max series</i> (hazardous cosmetics and personal care products), and various Native American and other Indigenous shorts (addressing, for example, pollution impacts on wild rice harvests).

140 Penn Program on Documentaries & the Law, *Courses and Seminars: Documentaries & the Law*, UNIVERSITY OF PENNSYLVANIA CAREY LAW SCHOOL, <https://www.law.upenn.edu/institutes/documentaries/courses-seminars.php> (click on “Documentaries & the Law”) (last visited July 18, 2022); Documentaries & the Law Spring 2007 Syllabus (Tentative), <https://www.law.upenn.edu/live/files/495-docs-syllabus> (last visited July 18, 2022).

141 University of Pennsylvania Carey Law School Course Details, Law and Society in Japan, <https://goat.law.upenn.edu/cf/coursefinder/course-details/?course=law-and-society-in-japan&sec=LAW%20712001&term=2021A&page=1> (last visited July 18, 2022).

142 University of Pennsylvania Carey Law School Course Details, *Law and Candidacy*, <https://goat.law.upenn.edu/cf/coursefinder/course-details/?course=law-and-candidacy&sec=LAW%20968001&term=2021A&page=1> (last visited July 18, 2022).

143 272.33 sec. 001 - *Environmental Health Law Through Film (Fall 2022)*, BERKELEY LAW: SCHEDULE OF CLASSES, <https://www.law.berkeley.edu/php-programs/courses/coursePage.php?cID=31429&termCode=D&termYear=2022> (last visited July 18, 2022).

<p>University of Michigan Law School</p>	<p>International Human Rights in Film¹⁴⁴</p>	<p>Each week, we'll watch and discuss a different film with a human rights focus. Possible films include <i>The Act of Killing</i> (Joshua Oppenheimer); <i>Death and the Maiden</i> (Ariel Dorfman); and <i>The Battle of Algiers</i> (Gilberto Pontecorvo).</p>
<p>Duke University School of Law</p>	<p>Law and Literature: Race & Gender¹⁴⁵</p>	<p>Through literature and film, the seminar examines the role of law in the structure of personal relationships, social hierarchy and social change, with attention to privilege, perspective, and voice.</p>
<p>The University of Texas at Austin School of Law</p>	<p>Contemporary Issues in Policing, Prosecution, and Punishment through Law and Film¹⁴⁶</p>	<p>This course examines a range of contemporary issues in policing, prosecution, and punishment through the lens of a series of documentary films and related short reading assignments.</p>
<p>Boston College Law School</p>	<p>Food and Drug Law</p>	<p>Teaching methodology is a combination of lecture, discussion, videos, and Socratic dialogue.</p>

¹⁴⁴ Michigan Law Office of Student Records, Winter Upper Class Mini-Seminars, MINI SEMINARS, <https://docs.google.com/document/d/1HCJgucvCoJXMepUVCavcDhFtHXiakYQ619bnQMdoh-A/edit#heading=h.4bsnetxctini> (search destination field for “International Human Rights in Film”) (last visited July 18, 2022).

¹⁴⁵ *753 Law and Literature: Race & Gender*, DUKE LAW: STUDY, <https://law.duke.edu/academics/course/753> (last visited July 18, 2022).

¹⁴⁶ *Contemporary Issues in Policing, Prosecution, and Punishment through Law and Film*, UNIV. OF TEXAS, SCHOOL OF LAW: CLASS DETAILS, <https://law.utexas.edu/courses/class-details/2022g/29400/> (last visited Apr. 3, 2023).

APPENDIX B**Memo to Interviewee Before Taping the Podcast**

To: Interviewee
From: BU Lawyering Program
Re: Invitation & Logistics; Podcast re Appellate Practice
Date: DATE

Introduction

Thank you for participating in the BU Lawyering Program's Podcast Series, a collection of taped interviews aimed at teaching our 1L students the critical tools needed for practicing law. These podcasts will complement our Program's course materials and serve as examples for how the skills we teach are used in practice. Your podcast interview will focus on written and oral appellate practice.

Our interview will take no longer than 30 minutes total, and the ideal length of the podcast itself is 15-20 minutes. Additionally, this podcast will be password-protected and will be made available to all 1L students enrolled in BU's Lawyering Program course.

Questions:

Below you will find the list of questions I will ask when we are "on air" during our podcast taping. While we are recording, I will primarily ask the questions in bold, and perhaps a few brief follow-ups, and will not routinely mention the material listed in the bullet points below each question. I offer those bulleted topics as suggestions for material you may want to include in your answers as you prepare. I will not do a lot of extra talking while we tape; the purpose is for students to learn from you and your rich set of experiences in practice.

1. **Brief introduction of the podcast series, the topic, and the guest.**
2. **Please briefly introduce yourself—explain your educational background and your career trajectory.**
 - Undergraduate institution and major (brief)
 - Law school, summer internships, law school activities, and clinical work (brief)
 - Postgraduate career trajectory (specific jobs, practice areas)
3. **Can you give a brief "101" intro-level explanation of the type of law you practice and the types of clients/cases you handle?**
 - Overarching area of law and specific area of expertise
 - Typical types of cases and clients
4. **Now that we have discussed your own personal background and the kind of work you do, let's move on to the main topic for discussion today—appellate advocacy. To start, can you explain how you use**

appellate advocacy in your work? Do you appeal all cases? How do you decide which cases, and issues within cases, are worth appealing?

- Typical appeals of a criminal conviction v. the kinds of issues that go all the way up to the SJC?
 - Appeals of preliminary decisions (e.g. motion to suppress)?
 - Do you ever decide not to appeal?
 - Who decides—you or the client? Both?
5. **When drafting an appellate brief, what strategies do you use to communicate your best arguments? What are some of the characteristics of the best appellate briefs you have written or read?**
- Storytelling?
 - Conciseness?
 - Argument and counterargument?
 - Do you always raise every issue in your brief?
 - Do you pay the same attention (give the same space within the brief) to all issues or do you prioritize?
 - Are there persuasive writing styles or strategies that you feel are more effective than others?
 - Editing?
 - Anything you want to add about writing a brief and what students should know.
6. **How do you prepare for an oral argument?**
- Do you prepare as if you will be uninterrupted?
 - Do you anticipate questions the judges will ask?
 - Do you time yourself?
 - Do you ask a colleague to do a mock argument with you?
 - Do you prepare the same way for every argument?
7. **Can you provide a particular example of an appellate argument in which your preparation allowed you to succeed? Or perhaps just a good story about an appeal that our students will appreciate? Or both?**
8. **Are there any familiar traps lawyers fall into when engaging in appellate advocacy?**
- Please provide real-life examples and the impact of the errors.
9. **Do you have any additional advice for our students before we conclude?**
- Courses to take? Advice for clinic work or summer internships? Grit? Work ethic?

Thank you very much for your time.