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Movement Lawyering Reading Guide

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MOVEMENT LAWYERING READING GUIDE

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Bertha Social Justice Institute, Center for Constitutional Rights***

*Edited by Ellen Yaroshefsky****

SECTION 1: DEFINING “MOVEMENT LAWYERING”

A. Models of Movement Lawyering

Angela Harris, Margaretta Lin & Jeff Selbin, *From “The Art of War” to “Being Peace”: Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CALIF. L. REV. 2073 (2007).

Assesses the value of “mindfulness” in legal practice. “Mindfulness” sets aside typical adversarial and zero-sum approaches and opens up new relationship-based possibilities in the fight for justice. Draws on a case study of a housing development project in West Oakland.

Angelo N. Ancheta, *Community Lawyering*, 81 CALIF. L. REV. 1363 (1993).

Reviews Gerald P. Lopez’s *Rebellious Lawyering*,¹ which contributed significantly to scholarly discussions on how transformative theories can influence the practice of law itself. Examines the process of empowering client communities through advocacy and education, in the context of racial subordination and the distortion of narratives.

Douglas NeJaime, *Cause Lawyers Inside the State*, 81 FORDHAM L. REV. 649 (2012).

Examines the effects of the movement of cause lawyers into the government during the Obama administration. Destabilizes the traditional paradigm of adversarial tension between cause lawyers and

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** The original list is available at https://ccrjustice.org/sites/default/files/attach/2015/06/SJJ_Reading_List.pdf.

*** Professor and Director of the Monroe H. Freedman Institute for Legal Ethics.

1. GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* (Westview Press 1992).

government lawyers. Provides examples with a focus on the Defense of Marriage Act.²

Eduardo R.C. Capulong, *Client Activism in Progressive Lawyering Theory*, 16 CLINICAL L. REV. 109 (2009).

Argues that the goals, contexts, and methods of client activism have been undertheorized in progressive lawyering. Progressive lawyers are likely to misunderstand their own roles in promoting social change. Undertakes a historical inquiry into the ultimate political aims of progressive lawyering, the sociopolitical context, and broader conceptions of activist strategies.

Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. CIV.RTS.-CIV.LIBERTIES L. REV. 297 (1996).

Defines political lawyering as having a “politicized” orientation to the goals, commitments, and relationships of legal work. Calls for a self-conscious and aspirational approach, recognizing that legal practice always involves the exercise of power with systemic consequences.

Lucie White, *Paradox, Piece-Work, and Patience*, 43 HASTINGS L.J. 853 (1992).

Urges academics to constantly question the assumptions that underlie existing theoretical frameworks about poverty lawyering. Theory should not be prepackaged or prescriptive, but rather should emerge from dialogic, situated, open-ended, and ongoing explorations of poverty lawyers’ practices.

Michael Grinthal, *Power With: Practice Models for Social Justice Lawyering*, 15 U. PA. J.L. & SOC. CHANGE 25 (2011).

Argues existing attorney-client models are inadequate to structure such relationships between lawyers and people in the process of organizing because they are designed either for fully formed, established, and hierarchical groups, or for constituents who remain atomized and passive throughout representation. Defines five concrete models of practice for lawyers representing groups in the process of organizing.

Paul R. Tremblay, *Surrogate Lawyering: Legal Guidance, sans Lawyers*, 31 GEO. J. LEGAL ETHICS 377 (2017).

Proposes “surrogate lawyering,” the practice of public interest law firms using scarce lawyer time to train and advise community-based organization staff members to respond to legal issues their constituents encounter as a means to deliver legal services to disadvantaged people. Assesses the ethical implications of the surrogate lawyering venture,

2. Defense of Marriage Act, 28 U.S.C. § 1738 (1996).

including the attorney-client relationship and the unauthorized practice of law.

William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 WASH. U. J.L. & POL'Y 101 (2006).

Calls for “revolutionary lawyering” as a collaborative method of dismantling and radically restructuring our current legally protected systems. Poverty, wealth, racism, materialism, and militarism will not be changed by small revisions or modest reforms. Urges reflective activism.

B. Typology/Bibliographies

Catherine Albiston, *The Dark Side of Litigation as a Social Movement Strategy*, 96 IOWA L. REV. BULL. 61 (2010-2011).

Develops, extends, and critiques Douglas NeJaime’s argument that not only litigation, but litigation loss, can bolster and mobilize social movements.³ Considers novel potential negative consequences of litigation strategies for social movements, such as deradicalization and the reshaping of social movements.

Douglas NeJaime, *Winning Through Losing*, 96 IOWA L. REV. 941 (2011).

Locates the productive function of litigation loss in social movements. Reconfigures limitations of litigation within a framework of law and social change. Draws on examples from the LGBT-rights and Christian rights movements.

Gill H. Boehringer, *People’s Lawyering: The Filipino Model - A Preliminary Report* (2005), <http://ebookbrowse.com/gill-h-boehringer-people%E2%80%99s-lawyering-the-filipino-model-a-preliminary-report-docd68415575>.

Reflects on how “people’s lawyers” in the Philippines play a substantial role in combating repression and corrupt practices in a post-colonial context. Calls for further research on lawyers’ roles in people’s struggles.

Gwendolyn M. Leachman, *From Protest to Perry: How Litigation Shaped the LGBT Movement’s Agenda*, 47 U.C. DAVIS L. REV. 1667 (2014).

Empirically examines how litigation shapes the substantive agenda of a social movement. Reexamines critiques of civil rights lawyering through a case study of the movement for LGBT rights. Exposes systemic processes that privilege movement litigation relative to protest.

3. Douglas NeJaime, *Winning Through Losing*, 96 IOWA L. REV. 941 (2011).

Jack M. Balkin & Reva B. Siegel, *Principles, Practices, and Social Movements*, 154 U. PA. L. REV. 927 (2006).

Argues, *inter alia*, that movements, acting alone, are rarely able to destabilize the meaning of constitutional principles. Movements are most successful when taking advantage of broad-based social, economic, or technological changes that unsettle conventional understandings about the about the relationship of constitutional principles.

JoNel Newman, *Re-conceptualizing Poverty Law Clinical Curriculum and Legal Services Practice: The Need for Generalists*, 34 FORDHAM URB. L.J. 1303 (2007).

Argues that specialization in legal services and clinics negatively affects poor clients because lawyers are less able to treat clients' problems in an integrated or holistic manner. The disappearance of neighborhood legal services offices has also made poverty lawyers less accessible. Uses a Miami case study to showcase a "one-stop shopping" service model.

Jules Lobel, *Courts as Forums for Protest*, 52 UCLA L. REV. 477 (2004).

Treats courts as spaces in which political and social movements, supported by progressive attorneys, can agitate for their legal and political agendas. Diminishes the value of winning or losing and circumscribes the role of the judge. Calls for the use of courts to provoke public debate, energize the movement, or expose specific aspects of social justice.

Loretta Price & Melinda Davis, *Seeds of Change: A Bibliographic Introduction to Law and Organizing*, 26 N.Y.U. REV. L. & SOC. CHANGE 615 (2000).

Collects published works on how law and lawyering relate to grassroots organizing. A resource tool for community lawyers, divided into sections.

Paul R. Tremblay, *Counseling Community Groups*, 17 CLINICAL L. REV. 389 (2010).

Argues that lawyers representing the dispossessed, exploited, and powerless need to craft different ethical and practice protocols that accept messy, disorganized, and contentious group representation. Attempts to review community group representation through the lens of a traditional "law of lawyering" perspective.

Paul R. Tremblay, *Critical Legal Ethics*, 20 GEO. J. LEGAL ETHICS 133 (2007) (reviewing *LAWYERS' ETHICS AND THE PURSUIT OF SOCIAL JUSTICE: A CRITICAL READER* (Susan D. Carle ed., NYU Press 2005)).

Reviews Susan D. Carle's introduction to the historical and theoretical background of legal ethics and treatment of lawyer's ethical obligations as regards to social justice.

Rebecca Sharpless, *More Than One Lane Wide: Against Hierarchies of Helping in Progressive Legal Advocacy*, 19 CLINICAL L. REV. 347 (2012).

Discusses how hierarchies within social justice lawyering cause serious harm by devaluing direct service work performed primarily by women. Critiques the rhetoric of hierarchy as representative of binary male thinking. Offers a historical account of this devaluation and proposes a more inclusive vision of progressive lawyering.

Scott L. Cummings, *Law and Social Movements: Reimagining the Progressive Canon*, 2018 WIS. L. REV. 441 (2018).

Examines iconic legal campaigns to advance progressive causes and explores the implications of their construction and critique for the study of lawyers and social movements. Synthesizes examples of significant contemporary campaigns that respond to concerns about lawyering in progressive movements, concluding that critiques of such lawyering have been misplaced.

Scott L. Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV. 1645 (2017).

Explores the rise of movement lawyering over the past decade. Explains why movement lawyering has gained prominence, defines its essential features, and explores what it reveals about efforts to work out an empirically grounded and normatively appealing vision of the lawyer's role in social change.

Scott L. Cumming & Susan Carle, *Reflections on the Ethics of Movement Lawyering*, 31 GEO. J. LEGAL ETHICS 447 (2018).

Takes a look at ethics issues particularly relevant to movement lawyers by providing a historical overview of the movement lawyer. Argues for development of legal ethics literature.

Scott L. Cummings, *Rethinking the Foundational Critiques of Lawyers in Social Movements*, 85 FORDHAM L. REV. 1987 (2017).

Argues that the often critical account of the role that lawyers played in past progressive social movements should be reconsidered. The analysis locates lawyers next to nonlegal actors, who have to confront their own challenges, such as leadership struggles and debates of the pace of change. Asks how the evaluation of lawyers in social movements

might change if the same analytical tools used to highlight the limits of legal advocacy were applied to nonlegal strategies.

Susan D. Carle, *How Myth-Busting About the Historical Goals of Civil Rights Activism Can Illuminate Paths for the Future*, 7 STAN. J. CIV. RTS. & CIV. LIBERTIES 167 (2011).

Considers myths about the history of civil rights activism that have tended to cloud assessments about current civil rights law and its future direction. Argues that correcting those myths can help illuminate promising paths for the future.

SUSAN D. CARLE, *LAWYERS' ETHICS AND THE PURSUIT OF SOCIAL JUSTICE: A CRITICAL READER* (NYU Press 2005)

Introduces the historical and theoretical background of legal ethics, then connects it to real world issues while addressing lawyer's ethical obligations as regards social justice. Provides concrete examples of cases and social movements.

William N. Eskridge, Jr., *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100 MICH. L. REV. 2062 (2002).

Surveys, *inter alia*, the deployment of constitutional doctrine from the perspective of constitutional litigators acting on behalf of social movements. Relies heavily on the litigators' words and ideas and focuses on how the litigators translated the problems and aspirations of women and minorities.

SECTION 2: BEYOND THE BLACK LETTER: THEORETICAL UNDERPINNINGS OF MOVEMENT LAWYERING

A. Critical Race Theory & LatCrit

Alice G. Abreu, *Lessons from LatCrit: Insiders and Outsiders, All at the Same Time*, 53 U. MIAMI L. REV. 787 (1999).

Calls for legal scholars to draw on LatCrit scholarship in order to move beyond the simplicity of binary paradigms, especially the outsider/insider dichotomy. Uses the author's own story, in narrative form, to discuss how individuals can simultaneously hold outsider and insider positions. Urges us to move beyond paradigms that essentialize one aspect of identity.

Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709 (1993).

Reflects on how rights in property are contingent on, intertwined with, and conflated with race. Examines the emergence of whiteness as property and its persistence over time. Offers preliminary thoughts on how to reconstruct affirmative action to challenge these developments.

Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980).

Suggests that the principle of “interest convergence” explains the decision in *Brown v. Board of Education*⁴ and the subsequent development of school desegregation law. *Brown* must be understood at least in part in terms of its pragmatic value to whites. Subsequent divergences in the interests of blacks and whites point to the need to focus on improving the quality of existing schools.

Neil Gotanda, *A Critique of “Our Constitution is Color-Blind”*, 44 STAN. L. REV. 1 (1991).

Challenges the notion of color blind constitutionalism, as used by the Supreme Court. Analyzes the ways in which white racial domination is supported, protected, or disguised by themes related to color blind constitutionalism. Suggests an alternate model for constitutional consideration of race, derived from First Amendment doctrine on religion.

Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. CIV. RTS.-CIV. LIBERTIES L. REV. 401 (1987).

Critiques the rejection of rights-based theory in Critical Legal Studies (“CLS”), as it applies to the black struggle for civil rights. CLS has ignored the value of rights-assertion and the benefits of rights. Examines contradictory social understandings between blacks and whites on the degree to which rights-assertion is experienced as (dis)empowering.

B. Intersectionality & Race/Class/Gender/Post-colonial Analysis

Angela P. Harris, *From Stonewall to the Suburbs?: Toward a Political Economy of Sexuality*, 14 WM. & MARY BILL RTS. J. 1539 (2006).

Examines three U.S. court cases on civil rights and sexual rights (*Brown*,⁵ *Goodridge*,⁶ and *Lawrence*⁷) through the lens of political

4. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

5. *Id.*

6. *Goodridge v. Dept. of Public Health*, 440 Mass. 309 (Mass. Super. Ct. 2002).

economy, to tell a cautionary story of how lessons may be drawn from these cases. The outcomes of these ostensible victories must be seen in the context of the success of neoliberalism and the rise of structural liberalism.

Alan D. Freeman, *Race and Class: The Dilemma of Liberal Reform*, 90 YALE L.J. 1880 (1981).

Critiques Derrick Bell's *Race, Racism and American Law*.⁸ Bell takes a critical and instrumentalist approach in examining whether doctrinal developments have improved, worsened, or left unchanged the actual lives of American blacks. It is a challenge to adopt teaching strategies in this area that avoid the myths of liberal reform.

Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

Identifies how identity politics tend to conflate or ignore intragroup differences, such that the intersectional identity of women of color becomes virtually invisible. Explores the race and gender dimensions of violence against women of color, focusing on battering and rape.

Makau Mutua, *Critical Race Theory and International Law: The View of an Insider-Outsider*, 45 VILL. L. REV. 841 (2000).

Deploys critical race theory ("CRT") to challenge the universality and neutrality of international law. Highlights the emancipatory potential of CRT as a project of "outsider" jurisprudence, despite its particularized origins, through the use of multidimensionality and intersectionality.

Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 WOMEN'S RTS. L. REP. 297 (1992).

Considers women of color as a paradigm group for the utilization of multiple consciousness as jurisprudential method. Urges lawyers to make a deliberate choice to see the world from the standpoint of the oppressed.

Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365 (1991).

Draws on a case about the prohibition of wearing braided hairstyles in the workplace to discuss personal encounters with the intersection of racism and sexism in American culture. Examines limitations in how the courts have treated race- and sex-based claims in antidiscrimination law.

7. *Lawrence v. Texas*, 539 U.S. 558 (2003).

8. DERRICK BELL, *RACE, RACISM AND AMERICAN LAW* (Little, Brown and Co. 2d ed. 1980).

Rickke Mananzala & Dean Spade, *The Nonprofit Industrial Complex and Trans Resistance*, 5 SEXUALITY RES. & SOC. POL'Y 53 (2008).

Explores how trans politics and emerging trans organizations can benefit from critical analyses of the nonprofit industrial complex and of neoliberalism's cooptation of activism. Seeks to build trans resistance through meaningful engagement with antiracist and anticapitalist politics.

C. Client & Community "Voice"

Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 HASTINGS L.J. 861 (1992).

Adopts a critical storytelling approach to examine the contextual constraints of poverty law practice. Seeks to build a typology of how clients, lawyers, and legal decision makers all tell, receive, and translate stories. Advises on establishing ethical dialectic interactions with clients.

Herbert A. Eastman, *Speaking Truth to Power: The Language of Civil Rights Litigators*, 104 YALE L.J. 763 (1995).

Problematizes the "sterile" pleadings typically drafted by lawyers, which obscure the client's identity, lived experience, and the root causes of systemic injustice. Draws on journalists' and historians' narrative framing and literary techniques to reimagine persuasive "thicker pleading."

Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1988).

Reviews the history of impact litigation in the 1960s-1970s, its successes in advancing systemic reforms, and the conditions that led poverty lawyers to explore alternative litigation strategies in the 1980s. Discusses the value of clients participating in public events "parallel" to litigation.

Lucie E. White, *Subordination, Rhetorical Survival Skills and Sunday Shoes: Notes on the Hearing of Mrs. G*, 38 BUFF. L. REV. 1 (1990).

Recounts the story of an attempt by a poor woman to participate meaningfully in an administrative hearing at a welfare office. Explores the ways that gender, race, and class subordination have systematically devalued the speech of subordinated groups in procedural legal rituals.

Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989).

Assesses the role of storytelling as a means for destroying the prevailing mindset of the dominant group. Illustrates how stories structure reality and examines the use of storytelling in the struggle for racial reform.

Ruth Anne Robbins, *Harry Potter, Ruby Slippers and Merlin: Telling the Client's Story Using the Characters and Paradigm of the Archetypal Hero's Journey*, 29 SEATTLE U. L. REV. 767 (2006).

Asserts that lawyers should use storytelling techniques to more effectively characterize their client, the judge, and the role of the lawsuit in the client's story. Discusses how to develop persuasive narrative themes framing the client as a hero on a transformative life journey.

SECTION 3: MOVEMENT LAWYERING AND INTERNATIONAL HUMAN RIGHTS

Balakrishnan Rajagopal, *International Law and Social Movements: Challenges of Theorizing Resistance*, 41 COLUM. J. TRANSNAT'L L. 397 (2003).

Proposes that international law needs to have a theory of resistance in order to remain relevant to contemporary events and cosmopolitan values. Such a theory should reframe international law through the lens of social movements, rather than states or individuals. International lawyers should strive to overcome their reluctance or inability to seriously consider Third World social movements.

David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101 (2002).

Raises questions for human rights practitioners about whether the international human rights movement has serious drawbacks despite its accomplishments. Urges legal professionals to adopt a pragmatic attitude toward human rights by weighing the costs and benefits of invoking, institutionalizing, and enforcing rights.

Dina Francesca Haynes, *Client-Centered Human Rights Advocacy*, 13 CLINICAL L. REV. 379 (2006).

Examines whether human rights advocacy can be enhanced through awareness of the dangers of essentializing, otherizing, and revictimizing the subjects of such advocacy. Argues that law school clinics should teach a client-centered model of human rights lawyering in order to ameliorate some of these concerns.

Makau Mutua, *What Is TWAIL?*, 94 AM. SOC'Y INT'L L. PROC. 31 (2000).

Presents Third World Approaches to International Law (“TWAIL”) as standing in opposition to the international legal regime. Asserts that international law is an imperial project and traces the historical evolution of TWAIL as a discipline.

Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the “Native” Subject in International/Post-Colonial Feminist Legal Politics*, 15 HARV. HUM. RTS. J. 1 (2002).

Critiques the international women’s rights movement for reinforcing the image of women in postcolonial contexts as victim subjects, particularly through violence against women campaigns. Looks at India as a case study to critique “feminist” positions that do not embrace an emancipatory politics for women.

Sameer M. Ashar, *Book Review: The Global Clinical Movement: Educating Lawyers for Social Justice*, 62 J. LEGAL EDUC. 193 (2012).

Discusses the global development of clinical legal education, the importance of comparative analysis, and the meaning of the spread of clinical legal education as a contingent and contested phenomenon. Clinical legal education should be worked critically into broader theoretical frameworks about globalization, in terms of whether it creates or shuts down opportunities for social change.

SECTION 4: LAW SCHOOL AND MOVEMENT LAWYERING

A. Finding Your Place in the Dislocating Law School Experience

Betty Hung, *Letter to a Young Public Interest Attorney*, 1 L.A. PUB. INT. L.J. 319 (2009).

Describes one public interest attorney’s legal education and early career, focusing on how critical race theory and small acts of resistance helped her to counter disempowerment and intimidation at law school.

Duncan Kennedy, *Legal Education as Training for Hierarchy, in THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* (David Kairys ed., Basic Books 3d ed. 1998).

Asserts that law schools are intensely political places which provide ideological training for willing service in the hierarchies of the corporate welfare state. Students are co-opted into acting affirmatively within the channels cut for them, creating the appearance of consent and complicity. Progressive law students should strive to avoid being demobilized.

Kathryn M. Stanchi, *Resistance is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices*, 103 DICK. L. REV. 7 (1998).

Law students are “socialized” through legal writing pedagogy, such that the voices of those who have already been historically marginalized by legal language remain suppressed. Law constitutes a “language of power” which compels marginalized persons to translate or encode their experiences, rather than expressing themselves in their own terms.

Rachel Anderson et al., *Toward a New Student Insurgency: A Critical Epistolary*, 94 CALIF. L. REV. 1879 (2006).

An exercise in collective storytelling, describing three law students’ social justice activism in law school and identifying the revolutionary potential of the “new student insurgency.” Calls for the creative fusion of critical legal study with clinical practice and coalitional interventions within law schools.

Richard Delgado, *Rodrigo's Chronicle*, 101 YALE L.J. 1357 (1992) (reviewing DINESH D'SOUZA, *ILLIBERAL EDUCATION: THE POLITICS OF RACE AND SEX ON CAMPUS* (New York Free Press 1991)).

A dialogue between a professor and “Rodrigo” which explores issues of bias and discrimination against people of color in the LSAT, the law school hiring market, and academic publishing. Discusses potential avenues for destabilizing the current dominant culture.

William Quigley, *Letter to a Law Student Interested in Social Justice*, 1 DEPAUL J. FOR SOC. JUST. 7 (2007).

B. Clinics and Movement Lawyering

Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through the Lens of Critical Theory: Lessons for Pedagogy and Practice*, 18 GEO. J. POVERTY L. & POL'Y 337 (2011).

Reflects on how critical theory offers opportunities for advancing legal strategies in the field of human rights. Identifies dilemmas that remain and examines them through case studies drawn from law clinics. Explores how clinics can address the structural origins of human rights violations.

Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333 (2009).

Advocates for law clinics to return to a neighborhood-based approach, based on its pedagogical and service values. Uses a case study in East Palo Alto. Highlights how to be responsive to community needs

by being physically proximate to the client community and how to enhance the student experience using diverse, flexible methods on a range of issues.

Karen Tokarz et al., *Conversations on “Community Lawyering”:* *The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL’Y 359 (2008).

Explores the pedagogical and professional challenges and rewards of community lawyering and clinical legal education. Provides a broad overview of community lawyering practices based on notions of place, engagement, and connectivity.

Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355 (2008).

Envisions an innovative progressive model for law clinics. Cognizant of neoliberal globalization, urges clinics to stop privileging pedagogy over social justice and instead, to focus on movement-building and law reform. Highlights the importance of accounting for political, racial, and cultural contexts.

SECTION 5: LAWYERING AND ORGANIZING

A. Working with Community Organizations & Movements

Amy Kapczynski & Jonathan M. Berger, *The Story of the TAC Case: The Potential and Limits of Socio-Economic Rights Litigation in South Africa*, in HUMAN RIGHTS ADVOCACY STORIES (Deena R. Hurwitz & Margaret L. Satterthwaite eds., Foundation Press 2009).

Tells the story of a community-based AIDS activist organization in South Africa. Examines their success in court in securing a ruling on access to treatment for the prevention of mother-to-child transmission of HIV and sets it in the context of an organized movement with strengths and limits.

Michael McCann & Helena Silverstein, *Rethinking Law’s ‘Allurements’: A Relational Analysis of Social Movement Lawyers in the United States*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES (Austin Sarat & Stuart Scheingold eds., Oxford Univ. Press 1998).

Uses case studies on gender-based pay equity and animal rights to critique assumptions about the role of cause lawyers in advancing movement reform goals. Suggests lawyers tend to be aware of the pitfalls of litigation strategies and instead offer creative, critical, and sophisticated approaches to legal strategies in coordination with non-

legal tactics. Calls for a more nuanced relational analysis of factors that shape legal roles.

Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001).

Reviews the historical evolution of law and organizing from the mid-twentieth century to the present and identifies opportunities for innovation in advocacy strategies for social justice. Examines structural tensions, practical barriers, and ethical issues inherent in law and organizing.

Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-based Lawyering*, 9 CLINICAL L. REV. 195 (2002).

Argues that law students should be taught skills beyond the mainstream curriculum in order to be effective community-based lawyers. Such skills include collaboration with community members; acknowledgement of identity, race, and emotion; and adoption of a community perspective on legal problems. Includes concrete examples of techniques and exercises.

Victor Narro, *Finding the Synergy between Law and Organizing: Experiences from the Streets of Los Angeles*, 35 FORDHAM URB. L.J. 339 (2008).

Case study of worker's centers in Los Angeles, demonstrating the importance of communication, participation, and coordination in effective collaborations between lawyers and organizers.

William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1994).

Provides observations and reflections of three community organizers, evaluating the role of lawyers in community organizations. Critiques lawyers for playing a technical role, exerting authority and expertise, and creating dependency within the communities they seek to serve.

B. Balancing Lawyering and Organizing

Betty Hung, *Law and Organizing from the Perspective of Organizers: Finding a Shared Theory of Social Change*, 1 L.A. PUB. INT. L.J. 4 (2008).

Examines tensions in law and organizing and how organizers evaluate whether lawyers will add value to campaigns. Concludes that a shared theory of social change, based on the primacy of affected community members is key to effective partnerships in social justice movements.

Interview by Joseph Phelan with Purvi Shah and Chuck Elsesser, Community Justice Project in Miami, FL (Apr. 2010), <http://archive.organizingupgrade.com/index.php/modules-menu/community-organizing/item/71-purvi-amp-chuck-community-lawyering> (discussing community lawyering).

Discusses the role of lawyers in grassroots organizing, social movements, and building a new world based on an alternative progressive vision. Aims to establish community lawyers as tacticians, rather than saviors or gatekeepers, and views poverty as a symptom of systemic inequality.

E. Tammy Kim, *Lawyers as Resource Allies in Workers' Struggles for Social Change*, 13 N.Y.C. L. REV. 213 (2009).

Discusses the merits of a “resource-ally” model of community-based workers’ rights lawyering, exemplified by the Urban Justice Center. Lawyers engage in client partnerships but are not directly involved in extralegal activism. Separates roles, ethics, and resource allocation.

SECTION 6: CASE STUDIES ON MOVEMENT LAWYERING

A. National Context

Charles Elsesser, *Community Lawyering – The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375 (2013).

Discusses the practices of social justice lawyers. Calls for social justice lawyers to “reflect on their own practice, determine to what extent the principles that we describe are relevant and/or helpful, and to further refine and develop those principles.”

Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557 (1999).

Discusses the challenges of lawyering within indigenous communities. Calls for the establishment of an ethic of non-exploitation founded on cultural autonomy, self-determination, building trust, and respecting boundaries. Urges lawyers to appreciate the cross-cultural nature of work.

David Dominguez, *Getting Beyond Yes to Collaborative Justice: The Role of Negotiation in Community Lawyering*, 12 GEO. J. POVERTY L. & POL’Y 55 (2005).

Envisions an innovative model of collaborative justice, in which lawyers equip community residents to form grassroots advocacy groups and to negotiate among themselves and with officials. Uses a case

study to show how to train community residents in integrative bargaining skills.

Jennifer Gordon, *Law, Lawyers, and Labor: The United Farm Workers' Legal Strategy in the 1960s and 1970s and the Role of Law in Union Organizing Today*, 8 U. PA. J. LAB. & EMP. L. 1 (2005).

In depth analysis of United Farm Workers' legal strategy at the peak of its influence and power, taking a "long view" to ask what law offers labor organizing. Suggests that lawyers can offer creative and experimental legal strategies even without legislative reforms.

Sameer M. Ashar, *Movement Lawyers in the Fight for Immigrant Rights*, 64 UCLA L. REV. 1464 (2017).

Describes the mobilization of movement-centered organizations and formations of undocumented youth against the federal-local immigration enforcement regime of the Bush and Obama administrations. Focuses in particular on the range of roles played by lawyers and the implications of those roles as regards lawyering in social movement activism.

Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CALIF. L. REV. 1879 (2007).

Offers a study of a campaign in which lawyers collaborated with a resistance movement to negotiate a comprehensive settlement agreement between immigrant workers in New York and a corporate chain of high-end restaurants. Examines the dangers and promises of this approach to public interest lawyering.

SCOTT L. CUMMINGS, *BLUE AND GREEN: THE DRIVE FOR JUSTICE AT AMERICA'S PORT* (MIT Univ. Press, 2018).

Examines a campaign by the labor and environmental movements to transform trucking in America's largest port. Shows how an unprecedented alliance mobilized to improve working conditions for low-income drivers and air quality in nearby communities. Argues that the campaign teaches much about how social movements can utilize the law.

Zenobia Lai et al., *The Lessons of the Parcel C Struggle: Reflections on Community Lawyering*, 6 UCLA ASIAN PAC. AM. L.J. 1 (2000).

Relates the story of community lawyers' involvement in a struggle over land development in Boston's Chinatown. Advises about how to build trust, translate legal concepts to the community, manage community expectations, and respect community choices about legal strategies.

B. International Context

Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699 (1988).

Tells the story of efforts by residents of a black village in South Africa to resist attempts by the state to destroy the village and displace residents. Examines the exemplary efforts of a lawyer and an organizer as “outsiders” who contributed by educating and empowering villagers.

Meena Jagannath et al., *A Rights-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti*, 10 NW. U. J. INT’L HUM. RTS. 7 (2011).

Describes a rights-based community lawyering response to the 2010 earthquake in Haiti. By bringing individual cases of human rights violations to Haitian courts, human rights lawyers strengthened the ability of the judiciary to respond to the needs of directly affected communities. Organizing and community engagement, operating alongside legal representation, provides valuable openings for communities to claim rights.

Neta Ziv, *Lawyers Talking Rights and Clients Breaking Rules: Between Legal Positivism and Distributive Justice in Israeli Poverty Lawyering*, 11 CLINICAL L. REV. 209 (2004).

Discusses advocating on behalf of poor clients who break laws in order to secure their basic needs. Uses a case study in Tel Aviv, Israel, of ethical dilemmas posed by client squatters who have been evicted from their homes. Looks at how lawyers work within the legal system and simultaneously contests its underlying structure, language, and assumptions.

Stuart Wilson, *Litigating Housing Rights in Johannesburg’s Inner City: 2004-2008*, 27 S. AFR. J. HUM. RTS. 127 (2011).

Uses a case study of housing rights in Johannesburg, South Africa, to examine the role of litigation in a rights-based strategy for social change. Litigation is an incremental and medium-to-long-term strategy of pro-poor change. The poor must become “repeat players” as active participants in the legal system in order to progressively shape legal norms.

SECTION 7: ADDITIONAL READING

MUMIA ABU-JAMAL, *JAILHOUSE LAWYERS: PRISONERS DEFENDING PRISONERS V. THE U.S.A.* (City Lights Publishers 2009).

GIORGIO AGAMBEN, *HOMO SACER: SOVEREIGN POWER AND BARE LIFE* (Daniel Heller-Roazen trans., Stanford Univ. Press 1998).

***The Decline of the Nation-State and the End of the Rights of Man, in* HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* (Schocken Books, 1968).**

MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (The New Press 2012).

DERRICK BELL, *FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM* (Basic Books 1993).

AUSTIN SARAT ET AL., *CAUSE LAWYERS AND SOCIAL MOVEMENTS* (Austin Sarat & Stuart A. Sheingold eds., 2006).

COSTAS DOUZINAS, *THE END OF HUMAN RIGHTS* (Hart Publishing 2000).

PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (Myra Bergman Ramos trans., Continuum 30th ed. 1970).

INCITE!, *THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON-PROFIT INDUSTRIAL COMPLEX* (Duke Univ. Press 2017).

ARTHUR KINOY, *RIGHTS ON TRIAL: THE ODYSSEY OF A PEOPLE'S LAWYER* (Harvard Univ. Press 1983).

GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (Westview Press 1992).

MICHAEL TIGAR & MADELINE R. LEVY, *LAW AND THE RISE OF CAPITALISM* (2000).