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“CHASING THE WIND”: PURSUING SOCIAL JUSTICE, OVERCOMING LEGAL MIS-EDUCATION, AND ENGAGING IN PROFESSIONAL RE-SOCIALIZATION

*John O. Calmore**

We believe that a subtle process of professionalization occurs during law school without being addressed or even acknowledged. This learning by inadvertence means that the participants often fail to consider fundamental questions about the identity they are assuming, and its relation to their values.¹

In simple terms, a fully-socialized individual is one who is, does, and believes pretty much what society asks him or her to be, do and believe.²

Lawyers and activists seeking social justice operate within systemic constraints, while seeking to push the boundaries of those constraints.³

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1. ELIZABETH DVORKIN ET AL., BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM 1 (1981).

2. GARY BELLOW & BEA MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY 11 (1978).

3. MARTHA R. MAHONEY, JOHN O. CALMORE, & STEPHANIE M. WILDMAN, SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES, AND LAW 5 (2003).

I. INTRODUCTION

During the fall of 2003, when prospects for the Democratic Party's presidential nominee were relatively open, candidates Howard Dean and John Edwards each promised that if elected, he would hold a summit on social justice within ninety days of taking office.⁴ While I am not suggesting that either candidate is necessarily a role model for social justice, I think the fact that each took the initiative to address this topic is very important.

I think it should be very important to members of the bench and bar. Yet, I wonder if the law students we train would bring from their legal education much to contribute that would be particularly intelligent or insightful. I wonder if their "learning by inadvertence" forces them to adopt a professional identity that unduly limits their way of envisioning and experiencing law and lawyering to something that, more often than not, is divorced from social justice. In their professional socialization, is their perceived role as lawyers distorting their sense of humanity and their own values in ways that would render them mute if such a summit on social justice were to occur?

As we educate them "by inadvertence," far too many students are learning the wrong lessons to become competent social justice lawyers. Those who seek to learn the appropriate lessons must also resist—not assimilate—the efforts to fully socialize them into the legal profession. What I describe, in simple terms, as "the fully socialized individual" will be of no help in seeking social justice for those who are marginalized, subordinated, and underrepresented. Thus, it is important for students to challenge the ways of their (mis)education and to examine their entry into the systems of law, lawyers, and politics—reinforcing systems that will constrain their identity and efforts to give material meaning to the high ideals of this nation's vision of democracy where "[l]ife, [l]iberty, and the [p]ursuit of [h]appiness" really are inalienable rights, where the "consent of the governed" really is the source of legitimated governmental power, and where all of us are not just "created equal" but are enabled to demonstrate it.

4. Holly Ramer, *Edwards, Dean Vow Focus on Social Justice*, HERALD-SUN (Durham, N.C.), Oct. 20, 2003, at C9.

Moreover, I think that students who aspire to engage in social justice advocacy cannot learn all they need to know within the classroom, because “[s]ocial justice lawyering envisions the practice of law both on behalf of and alongside of subordinated peoples, with the efforts and achievements of members of the community [as] a crucial aspect of the work.”⁵ The course in social justice lawyering must try to do primarily two things: (1) increase the *capacity* of students and (2) develop the *inclination* of students to participate in advancing the social justice agenda.

As a final introductory caveat, I have chosen to characterize the legal advocacy to be advanced by this discussion as “social justice lawyering.” I have done so, not only because justice is our primary aspirational norm, but also because I want to step away from the increasingly overinclusive label of “public interest law.” In the early 1970s the prevalent characterization of public interest law was associated with leftist, liberal to progressive advocacy in such areas as poverty law, civil liberties, and civil rights.⁶

Today, however, conservative and reactionary advocates have effectively rearticulated and redeployed the term “public interest.” These advocates now oppose many of the causes that the earlier public interest lawyers sought to advance.⁷ According to Michael Omi and Howard Winant, the term “rearticulation,” as used here, refers both to process and to practice.⁸ First, it refers to redefining political interests and identities through a process of recombining familiar ideas and values in hitherto unrecognized ways. Second, the term “rearticulation” refers to a practice of discursive reorganization or reinterpretation of ideological themes and interests already present in the subjects’ consciousness, such that these elements obtain new

5. MAHONEY ET AL., *supra* note 3, at 5.

6. NAN ARON, *LIBERTY AND JUSTICE FOR ALL: PUBLIC INTEREST LAW IN THE 1980S AND BEYOND* 4 (1989).

7. See, e.g., Deborah M. Weissman, *Law as Largess: Shifting Paradigms of Law for the Poor*, 44 WM. & MARY L. REV. 737, 771–74 (2002) (discussing the mission statements of such conservative public interest law firms as the Washington Legal Foundation, the Mountain States Legal Foundation, the Pacific Legal Foundation, and the National Right to Work Legal Defense Foundation).

8. MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES: FROM THE 1960S TO THE 1990S* 163 n.8 (2d ed. 1994).

meanings or coherence.⁹ Through both this process and practice, the political right has rearticulated the term “public interest law” and it now often resides in a domain that is hostile to the interests of social justice.

Right-wing advocates and legal organizations now effectively block progressive social change and transformation along many fronts.¹⁰ All too often these repressive advocates claim to be public interest lawyers, but their political commitments and professional responsibilities are directed away from the social justice aspirations that are reflected in the work considered throughout this Article. In my activism, scholarship, and teaching, I try to reinforce and advance that work in a way that is clearly identified as social justice lawyering, something that will not be so easily highjacked—rearticulated, if you will—by repressive forces. As we expressed in our textbook on social justice,

While fine work for social justice continues to take place through public interest law firms and public interest organizations, the broad term “public interest law” no longer fully captures either the commitment to work on behalf of marginalized, subordinated, and underrepresented clients and communities or the value placed on transformation that characterizes lawyering for social justice.¹¹

Within this worrisome context, in Part II, I provide some of my reflections on how the formal matriculation process in law school tends not only to sharpen the mind by narrowing it, but also to miseducate students who seek to advance a social justice agenda. Part III examines professional socialization of law students as a constraint to social justice lawyering. I argue that re-socialization is imperative for students to break free of dominant understandings and orientations that channel law students away from the values and orientations that should drive social justice lawyering. In Part IV, I

9. *Id.* at 195 n.11.

10. Many of these legal organizations are well-funded and wedded in their advocacy to think tanks and foundations that push a conservative-reactionary agenda. JEAN STEFANCIC & RICHARD DELGADO, *NO MERCY: HOW CONSERVATIVE THINK TANKS AND FOUNDATIONS CHANGED AMERICA'S SOCIAL AGENDA*, at ix, 3–5 (1996).

11. MAHONEY ET AL., *supra* note 3, at 4–5.

briefly sketch a political map from progressive to reactionary terrain to explore the interplay between politics and social justice lawyering. There, I suggest that progressive social justice lawyers must simultaneously struggle with the liberal left, pushing its envelope and effectively operating within its constraints when necessary, and vigorously oppose the right-wing politics of conservatives and reactionaries. Moreover, social justice lawyers must pay strategic attention to the political center, pulling it left and keeping it from falling to the right. Part V looks at social justice lawyering as a movement that can reverse the phenomenon of preservation-through-transformation¹² by engaging in “third-dimension lawyering”¹³ and by filing “think complaints” in federal court.¹⁴ Finally, Part VI addresses the challenges and opportunities of lawyering with social movements, a critical aspect of transformative change.

II. REFLECTIONS ON SOCIAL JUSTICE AND THE MIS-EDUCATION OF LAW STUDENTS¹⁵

As Donald Schön has argued convincingly, the best practitioners in various professions develop their skills through continual reflection about the uncertainties, complexity, and value conflicts that confront them in practice situations.¹⁶ Schön calls this having “a

12. See Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1113 (1997).

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

14. See Herbert A. Eastman, *Speaking Truth to Power: The Language of Civil Rights Litigators*, 104 YALE L.J. 763, 836–49 (1995).

15. My teaching, scholarship, and advocacy have sharpened my ability to engage in reflection which may not necessarily demonstrate either critical or creative thinking, but which enables me to probe beneath the surface of problems, to think more deeply about issues, and, at the end of the day, to know myself better. So the word “reflections” here is deliberate.

16. See DONALD A. SCHÖN, *THE REFLECTIVE PRACTITIONER: HOW PROFESSIONALS THINK IN ACTION* (1993) [hereinafter SCHÖN, *HOW PROFESSIONALS THINK*]; DONALD A. SCHÖN, *EDUCATING THE REFLECTIVE PRACTITIONER* (1987); Donald A. Schön, *Educating the Reflective Legal Practitioner*, 2 CLINICAL L. REV. 231 (1995). Richard Neumann reviews Schön’s works in Richard K. Neumann, *Donald Schon, the Reflective Practitioner, and the Comparative Failures of Legal Education*, 6 CLINICAL L. REV. 401 (2000).

'reflective conversation with the situation.'"¹⁷ Such a conversation is not detached, away from the action; it is not time-out meditation. Rather, "the reflection . . . takes place in the midst of action, . . . and it need not employ the medium of words The term *conversation* is, in this usage, metaphorical. It does not refer to a literal conversation *about* the situation, but to an inquirer's conversation-like transaction with the materials at hand."¹⁸

Moreover, as Richard Neumann observes, "[p]art or all of this [reflection] might be unconscious."¹⁹ I try, however, to develop an ability to conscientiously, deliberately converse with the situation of social injustice as I try to develop a teaching and learning style that counters it. An *effective* professional must do this. How? According to Schön: "Much reflection-in-action hinges on the experience of surprise. When intuitive, spontaneous performance yields nothing more than the results expected for it, then we tend not to think about it. But when intuitive performance leads to surprises, pleasing and promising or unwanted, we may respond by reflecting-in-action."²⁰

Relatedly, J.P. Ogilvy urges students to adopt a more reflective attitude to assist them in developing "reflective judgment," which is "a process of critical inquiry and evaluation that recognizes our knowledge of reality is subject to our own perceptions and interpretations, but that nevertheless permits us to determine that some judgments are more correct than others."²¹ I believe this is true, but I do not intend to speak with any self-righteousness or undue arrogance. I simply write to share with you a few insights and experiences as I reflect on social justice lawyering.

Students can become both overwhelmed and depressed by the current prospects for viable social justice lawyering. I emphasize acknowledging the constraints, operating realistically within those constraints when one must, but transgressing them whenever possible. The students constantly wrestle with questions about the

17. Neumann, *supra* note 16, at 406 (quoting SCHÖN, HOW PROFESSIONALS THINK, *supra* note 16, at 268).

18. *Id.* (omissions in original).

19. *Id.*

20. *Id.* at 406-07 (quoting SCHÖN, HOW PROFESSIONALS THINK, *supra* note 16, at 56).

21. J.P. Ogilvy, *The Use of Journals in Legal Education: A Tool for Reflection*, 3 CLINICAL L. REV. 55, 76 (1996).

need to re-socialize and step outside the box of the conventional matriculation process as they learn of the difficulty of framing demands for social justice as claims for legal rights; as they face the challenges of joining community struggles of marginalized, subordinated, and underrepresented individuals and groups; as they are challenged to somehow overcome their privilege and connect on a human level with others unlike themselves in many regards; as they learn to accept a less heroic role than they may have imagined—well you get the idea: This teaching and learning—this work—ain't easy.

Yet, I am gratified beyond literal description by how students firm up their commitment during the course I teach, by how they become so sophisticated and walk away thinking that they simply know more than the students who are limiting themselves to the traditional curriculum or who are preoccupied with taking all the bar courses. It confirms for me Schön's argument that professional education must be developed through what he calls "deviant traditions of education for practice—traditions that stand outside or alongside the normative (regular) curricula."²² The regular courses, primarily focused on doctrinal analysis, provide information but fail to develop professional thinking, skills, and sensibilities.

Thus, Fran Quigley observes that as law students engage in learning opportunities that emphasize the importance of the social setting that shapes the practice of law and issues of justice, they move away from the Langdellian model of legal instruction, one that views the concept of law as "reason based, abstract, and value free, and thus best studied in a detached and scientific method."²³ This form of legal instruction ignores the impact of social and political factors on law and provides a picture of the legal system and the lawyer's role within it as naïve, or worse, very misleading. In order to have a more sophisticated adult learning experience, one must consider social and political context.

There, however, especially if the context is one of social injustice, a student is likely to experience a disorienting moment "in which prior conceptions of social reality and justice are unable to

22. Neumann, *supra* note 16, at 414 (quoting SCHÖN, EDUCATING THE REFLECTIVE PRACTITIONER, *supra* note 16, at 15).

23. Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 39 (1995).

explain the clients' situations, thus providing what adult learning theory holds is the beginning stage of real transformation."²⁴ Most importantly, critical reflection is an important tool to help professionals focus on justice. Students can become informed that beyond thinking like a lawyer in the narrow legal sense, they must also engage in creative, reflective, and strategic thinking. Hence, Jane Aiken suggests a way to gain insight and knowledge from disorienting moments by identifying and exposing various assumptions that she characterizes as paradigmatic, prescriptive, and causal.²⁵

While I am no longer an attorney who represents clients, I liken my critical pedagogy to that of a reflective practitioner. As a social justice worker, I sense I am not alone and that our time is coming. In the preface to our book, we state that the book is born of its historic context, and in truth its time has come: "Community activists and lawyers across the nation have worked together for transformative social change. Members of the legal academy—in classrooms and clinics—have sought to teach about social justice in law schools because students want to know how they can work with people who most need them."²⁶ As I reflect on my interaction with students, I see that this is indeed correct. I see that students in my social justice lawyering class and critical race theory seminar—even in my torts classes—have a serious interest in, if not yet a commitment to, social justice.

In my social justice lawyering class I tell my students that what they are learning puts them ahead of the curve. The concern for social justice is real and it is growing and spreading. Indicative of this, I did a Westlaw search at the end of the year 2003. My query was the term "social justice." My database was TP-All, primarily legal journals. I found 49 entries before 1970, 85 before 1980, and 785 before 1990. After 1990, there were 6,705 entries. In writing

24. *Id.* at 46.

25. Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287, 298–99 (2001). According to Aiken: "[P]aradigmatic assumptions are perhaps the most difficult to pin down because they are the very structural assumptions we use to put our experience into fundamental categories. Many times we see these assumptions as merely facts, the way things are." *Id.* at 299. If we identify paradigmatic assumptions, we can more easily remedy resistance to clients and assist in the development of case theories.

26. MAHONEY ET AL., *supra* note 3, at iii.

the book with Stephanie and Marnie, I was amazed at how much really good material there was that directly addressed social justice issues by name. I think one of the values of the book is that it may help to develop a concentrated study of social justice—not as part of abstract jurisprudence, but, rather, as serious work to transform the lives of marginalized, subordinated, and underrepresented people.

Iris Young views social justice as deriving from “the institutional conditions for promoting self-development and self-determination of a society’s members.”²⁷ While there is no one vision of social justice, I would add that it promotes the collective self-development and self-determination for many of our communities that experience oppression, exploitation, exclusion, and the denial of human dignity.

For the New World Foundation (“NWF”), the task is to build social movements that shift the balance of power toward democracy and justice.²⁸ I believe that social justice addresses both the issues of identity politics and of the political economy. Yet, however we address group rights and subordination, we must always keep our eyes on the prize of improving material conditions, dismantling structural inequality, disrupting systemic oppressions, and redistributing wealth. We must create more egalitarian institutions and we must erode illegitimately held privilege. We must stop considering today and tomorrow as the same time.

I think that Judith Shklar is absolutely correct that only by understanding the face of injustice can we understand its counterpart, justice.²⁹ As I reflect on my professional life over the last 30 years—as Legal Services attorney, law professor and legal scholar, program officer at the Ford Foundation—I think that social justice work must primarily alter the opportunity-denying circumstances, systems, and structures of oppression and inequality. Thus redress will go beyond justice in general or basic rights claims. It will evoke substantive rather than merely formal equality. It will go beyond merely issues of just distribution and issues of allocation, however important they

27. IRIS MARION YOUNG, INCLUSION AND DEMOCRACY 33 (2000).

28. See *infra* notes 125–27 and accompanying text.

29. See JUDITH N. SHKLAR, THE FACES OF INJUSTICE 15–16 (1990).

may be. It is important to think of "social justice" as "simultaneously distributional and relational."³⁰

As I think about injustice and fight for social justice I am most worried about those who are nakedly oppressed, who are at risk of living out their lives as "static, limited, and expendable."³¹ Beyond exploiting people, our nation is writing people off with no more concern than the tax accountant writes off a business loss. Ira Goldenberg argues that under these circumstances, the oppressed person and society may be spatially connected but psychologically separate, living in worlds that are parallel but not reciprocal.³²

Oppression, in short, is a condition of being in which one's past and future meet in the present—and go no further. To be oppressed is to be rendered obsolete almost from the moment of birth, so that one's experience of oneself is always contingent on an awareness of just how poorly one approximates the images that currently dominate society.³³

We must intervene to alter these circumstances of containment and expendability. The social justice plate is full and the tent is big. Hence we must, as Mari Matsuda teaches, keep our eyes open to opportunities to activate coalition building, collaboration initiatives, and inclusion strategies.³⁴ Matsuda explains:

The way I try to understand the interconnection of all forms of subordination is through a method I call "ask the other

30. According to David Smith,

The term social justice is taken to embrace both fairness and equity in the distribution of a wide range of attributes, which need not be confined to material things. Although the primary focus is on attributes which have an immediate bearing on people's lives, our conception of social justice goes beyond patterns of distribution, general and spatial, to incorporate attributes relevant to how these come about. While fairness is sometimes applied to procedures and justice to outcomes, we are concerned with both. Preference for the term social justice rather than justice in general is explained not by preoccupation with the distribution of attributes which might be labeled as social, but by concern with something which happens socially, among people in a society.

DAVID SMITH, *GEOGRAPHY AND SOCIAL JUSTICE* 26 (1994).

31. IRA GOLDENBERG, *OPPRESSION AND SOCIAL INTERVENTION* 2 (1978).

32. *Id.*

33. *Id.*

34. Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 *STAN. L. REV.* 1183 (1991).

question.” When I see something that looks racist, I ask, “Where is the patriarchy in this?” When I see something that looks sexist, I ask, “Where is the heterosexism in this?” When I see something that looks homophobic, I ask, “Where are the class interests in this?” Working in coalition forces us to look for both the obvious and non-obvious relationships of domination, helping us to realize that no form of subordination ever stands alone. If this is true, . . . then isn’t it also true that dismantling any one form of subordination is impossible without dismantling every other?³⁵

III. PROFESSIONAL SOCIALIZATION AS A CONSTRAINT ON SOCIAL JUSTICE LAWYERING

Law students and advocates committed to social justice lawyering often need to question, if not challenge, the dominant understandings that drive their professional socialization, a process that begins immediately upon entering law school. Many law students fail to recognize that this socialization and the values that it inculcates are part of a system of laws, lawyers, and politics: “We are generally not socialized to understand systems as systems, to analyze how they actually work and their consequences. Instead, we come to understand systems as a taken-for-granted reality that is simply as it seems to be.”³⁶ But to me, things—“taken-for-granted reality”—are not as they should seem. There is too much injustice in the world and too little effort, especially by lawyers, to correct it.

Traditional law study, both in terms of course offerings and teaching methodology, may detract from learning the lessons of social justice. Because law school is part of the socialization process for the legal profession, developing a commitment to social justice requires a re-socialization. Gary Bellow and Bea Moulton focus on these interrelated concepts to explain socialization:

[R]ole—a socially generated set of expectations about one’s behavior in specific situations; *reference group*—the audience (or audiences) to whom one looks for approval,

35. *Id.* at 1189.

36. ALLAN G. JOHNSON, THE BLACKWELL DICTIONARY OF SOCIOLOGY: A USER’S GUIDE TO SOCIOLOGICAL UNDERSTANDING 267 (1995).

support, acceptance, reward and sanction; and *ideology*—the constellation of beliefs, knowledge, and ideas which, in a given situation, serve to justify, legitimate and explain both role definitions and the allocation of reward and sanction power among reference groups.³⁷

For those students who are unwilling to go along with program, they must conscientiously interrogate all three of these concepts—role definitions, reference groups, and ideology—as they contribute to the development of a distinct legal subculture that influences the “professionalization” of students becoming lawyers.

Like every social system, the system of lawyers depends upon people who are motivated to perform the various roles that it encompasses. Thus, professional socialization describes a process by which we learn to become members of our profession through internalizing the norms and values of the profession, and also by learning what our roles are and how to perform those roles. Because professional socialization is not fixed, however, but continues throughout our professional lives, it is therefore possible to carve out norms, values, roles, and behaviors that are well suited to working to secure justice. This is the great opportunity to save the fireboat before it sinks.

Conceptually, as Aiken suggests, for instance, educators can work to cultivate among students “a justice readiness” and to ensure that the future lawyers we are training have an appreciation for justice.³⁸ In teaching social justice lawyering, I hope to inspire law students to use their legal skills to bring about a more just society. As Elizabeth Dvorkin and colleagues point out, “the search for competence can lead lawyers and law students to become constricted by the roles and patterns of thinking they have adopted and unable to move beyond these confines when they work.”³⁹

37. BELLOW & MOULTON, *supra* note 2, at 11–12.

38. Aiken, *supra* note 25, at 289.

39. DVORKIN ET AL., *supra* note 1, at 2. Accordingly,

We become acculturated to an unnecessarily limiting way of seeing and experiencing law and lawyering, a way which can separate lawyers (as well as the other actors in the legal system) from their sense of humanity and their own values. When that separation occurs, the profession easily becomes experienced as only a job or role, and human problems as only legal issues. Care and responsibility yield to

Re-socialization is necessary to militate against students becoming cut off from their own sense of humanity, aspirations and values, and from their responsibilities to themselves and others. The goal of legal education must be broadened and include “the goal of bringing together technical mastery with aspiration, intellect with experience, rigor with value, pragmatism with idealism, competence and skill with caring and a sense of meaning.”⁴⁰ Thus, in class, we constantly reiterate the need for students to reconcile role and identity in a way that permits learning the craft of lawyering in a way that is holistically tied to larger societal questions of who we are as a people.

Although Aiken and Quigley’s scholarship address challenges that are associated with teaching clinical law students, their observations pertain to the broader lessons of social justice lawyering. They also introduce working concepts that recur throughout the course, those of “becoming justice ready” and learning from “disorienting moments.” Often becoming justice ready entails the adult learning techniques of seizing the disorienting moment to learn lessons of social justice. Through clinical programs students gain experience as lawyers working toward social justice, but Aiken questions whether we are teaching enough about social justice simply by ensuring that students are engaged in the fight for it. Hence, she analogizes “a justice experience” to taking a trip to Paris: “It makes me interesting but not a Parisian. Mere exposure to substance is insufficient to train good lawyers.”⁴¹ Helping students to become justice ready entails determining the skills and subject matter content that will enable them to identify injustice, and developing teaching interventions to enhance the probability that they will acquire those skills. Aiken summarizes the developmental process as follows:

Students come to us at varying stages in the development of critical thinking skills that require different interventions.

exigencies and stratagems; and legal education, instead of reflecting the aspiration and searching that embody law and lawyering, can all too easily become an exercise in attempted mastery and growing cynicism.

Id.

40. *Id.* at 3.

41. Aiken, *supra* note 25, at 287.

Educational theorists have identified several developmental stages for adult learners, which I present in a legal context. First, the learner manifests right-wrong dualist thinking. At this stage, students still hang on to the idea that there is a right and wrong answer to every legal problem. The lawyer's job is to find that answer. In the second stage of development, critical thinking, the learner recognizes that there are very few or no absolute answers to legal problems. Law students at this stage believe that there is absolutely no certainty in the law. The lawyer's job is to figure out what the decision-maker wants and pitch legal arguments that appeal to the decision-maker. These students understand the important developmental step that the law is "constructed," but they feel powerless in their ability to make change. In the final stage of a lawyer's development toward "justice readiness," the lawyer demonstrates an appreciation for context, understands that legal decision-making reflects the value system in which it operates, and can adapt, evaluate, and support her own analysis. At this stage, the "justice ready" lawyer can become proactive in shaping legal disputes with an eye toward social justice.⁴²

At bottom, becoming justice ready entails developing a value orientation: "At a minimum, . . . those of us who dedicate ourselves to social justice must ask ourselves if our proposed action as a lawyer will support and increase human dignity."⁴³ As indicated above, moreover, Aiken also emphasizes the importance of context: "We must also educate our students about the obstacles they are likely to face while seeking social justice. Therefore, understanding how oppression manifests itself in the law is critical to the educational process. I assume . . . that oppression is pervasive, restricting, hierarchical, complex, and internalized."⁴⁴

Understanding how oppression operates assists Aiken's students to make sense of many of the phenomena that they experience. Aiken says, "Many of the students in the clinic have given little or no thought to these ideas. Soon enough they will encounter evidence of

42. *Id.* at 290–291.

43. *Id.* at 296.

44. *Id.* at 297.

the effects of oppression in their case handling.”⁴⁵ It is helpful to focus our students on such questions as: “‘Where do you see resistance to the solution you seek for your client?’ and ‘Who benefits if this solution is denied?’”⁴⁶ Finally, Aiken’s justice ready orientation implores one to go beyond individual cases and evaluate the bigger picture, evaluating whether legal options offered to clients merely “reduce the intensity of [their particular] injustice or . . . assist in a long-term strategy of social transformation.”⁴⁷

Beyond clinical instruction, James Elkins and Richard Wasserstrom, respectively, introduce two concepts that help define the lawyer *qua* professional: the “[l]egal [p]ersona”⁴⁸ and “role differentiated behavior.”⁴⁹ Elkins focuses on how being a lawyer affects one’s world view through the lens of “legalism,” “the ethical attitude that holds moral conduct to be a matter of rule following, and moral relationships to consist of duties and rights determined by rules.”⁵⁰ From this perspective, which is virtually at war with a social justice lawyering orientation, one sees the world primarily in terms of rights and obligations, liabilities, and causes of action: “‘When we accuse someone of being legalistic, we suggest an excessive zeal for purely formal details which becloud rather than clarify the *real* issue. The legalist is someone who is lost among the trees and cannot *or will not* consider the overall shape of the forest.”⁵¹ The legal persona is tied closely to the notion of “thinking like a lawyer,”⁵² which the venerable Harvard Law School Dean Erwin Griswold likened to sharpening the mind by narrowing it.⁵³

45. *Id.*

46. *Id.*

47. *Id.* at 305.

48. James R. Elkins, *The Legal Persona: An Essay of the Professional Mask*, 64 VA. L. REV. 735 (1978).

49. Richard Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 HUM. RTS. Q. 1 (1975).

50. Elkins, *supra* note 48, at 740 (quoting JUDITH N. SHKLAR, LEGALISM 9 (1964)).

51. *Id.* at 741 (quoting STUART A. SCHEINGOLD, THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE 153 (1974)).

52. Elkins, *supra* note 48, at 741.

53. As Elkins explains,

Simply stated, the lawyer considers himself a neutral, rational, and objective problem solver. As a rational thinker, the lawyer perceives client problems, clients, and self through the mist of legal rules and

As indicated earlier, this involves a professional socialization process that fairly well directs one, influences one to think like a lawyer and become a lawyer, to do and believe what society asks him or her to be, do, and believe.

Wasserstrom's classic article focuses on the role-differentiated amorality of the lawyer's professional role. He responds to Deborah Rhode and David Luban's basic inquiry, "To what extent can the idea that lawyers have a *role morality* different from ordinary morality be justified?"⁵⁴ Students have a big problem joining their professional roles with their personal values because they have bought into the idea that lawyers are part of a simplified moral universe that is often amoral. Personal moral values are baggage or distractions that overcomplicate the task of representing clients—of just doing their jobs.

It is convenient for lawyers and law students to inhabit a simplified moral world that cultivates professionals who are at best amoral technicians.⁵⁵ For the system to work, "the lawyer *qua* lawyer will be encouraged to be competitive rather than cooperative; aggressive rather than accommodating; ruthless rather than compassionate; and pragmatic rather than principled."⁵⁶ In Wasserstrom's view, this encouraged orientation is not only part of the logic of role-differentiated behavior of lawyers, but also, to a lesser degree, of professionals in general.⁵⁷ However, the problem seems to be more acute among lawyers. There are personal and social costs to be paid as result. To become a lawyer we invest so much time and effort, experience so much stress and pressure, become so immersed, really, in becoming a lawyer that the legal

legal problems. In essence, a lawyer's way of thinking and representing certain events in the world consists of a dislike of vague generalities, the structuring of all possible human relations into the form of claims and counterclaims, and the belief that human conflicts can be settled under established rules in a judicial proceeding.

Id. at 739–40 (citations omitted).

54. DEBORAH RHODE & DAVID LUBAN, LEGAL ETHICS 137 (1992).

55. In adapting to the professional world, "the lawyer . . . comes to inhabit a simplified universe which is strikingly amoral—which regards as morally irrelevant any number of factors which nonprofessional citizens might take to be important, if not decisive, in their everyday lives." Wasserstrom, *supra* note 49, at 2.

56. *Id.* at 13.

57. *Id.* at 18.

persona literally takes over and, in important respects, our professional role becomes our dominant role. It dominates the roles of spouse, father, mother, sibling, friend, and partner.

Recognizing this in 1975, Wasserstrom observed,

This is at a minimum a heavy price to pay for the professions as we know them in our culture, and especially so for lawyers. Whether it is an inevitable price is, I think, an open question, largely because the problem has not begun to be fully perceived as such by the professionals in general, the legal profession in particular, or by the educational institutions that train professionals.⁵⁸

I firmly believe that this observation still pertains thirty years later.

Within many law schools, our most fully socialized individuals, those who uncritically accept their professional roles as encouraged by the system, tend to be among the highest achieving students. They tend to aspire to the most elite positions, working for large law firms and serving as federal judicial clerks. I am not suggesting that those who accept these jobs and positions of influence are enemies to social justice, but they do tend to have a harder time being supporters. Both law school and law practice are full of rude awakenings. Those most rudely awakened after law school are those who were fully socialized while attending law school. A course in social justice lawyering should be preemptive, should help students to reduce their naivety and gain some better sense of the complicated world they are about to enter, looking carefully at both the challenges and opportunities.

Patrick Schiltz, a former law firm partner and current law professor, has written a harsh critique of large law-firm practice that helps in that effort.⁵⁹ In discussing practice in large law firms, Schiltz discusses why lawyers give up a healthy, happy, well-balanced life for a less healthy, less happy life dominated by work.

58. *Id.* at 15.

59. See Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999). Lawyers generally experience disproportionately high rates of depression, anxiety and other mental illness, alcoholism and drug abuse, divorce, suicide, and poor physical health, including ulcers, coronary artery disease, and hypertension. *Id.* at 874-81 (citing N.C. BAR ASS'N, REPORT OF THE QUALITY OF LIFE TASK FORCE AND RECOMMENDATIONS 4 (1991)).

After describing the craziness of the life style as affected by work, he observes that lawyers do not see their lives as crazy: "Lawyers don't see any of this. Lawyers don't sit down and think logically about why they are leading the lives they are leading any more than buffalo sit down and think logically about why they are stampeding."⁶⁰ Writing directly to law students, he says, "I hope that you *will* sit down and think about the life that you want to lead before you get caught up in the stampede."⁶¹

As mentioned, along with federal judicial clerkships, working for a large law firm is the prize that most law students seek, especially those attending top law schools.⁶² The rewards of status and money await those who land a job in such a firm. Many students who go to large firms adopt the legal persona that Elkins critiques, and reduce the process of "thinking like a lawyer" to its narrowest parameters in order to eliminate any basis for critically analyzing and assessing the assumptions underlying the lawyer's peculiar view of the world. These students are "fully socialized" and successful in their law school matriculation. Many of these same students want to engage in some degree of social justice lawyering, primarily through pro bono practice while at the firm. Schiltz presents a pretty straightforward glimpse of the traps of large-firm practice and invites students to "[m]ake the decision now that *you* will be the one who defines success for you."⁶³ That same invitation issues to those who aspire to be social justice lawyers.

In my class a number of questions arise: Do students think prestige, more than money, motivates people to exercise the option to work for a large firm? Are social justice lawyers made to feel like leftover lawyers—that one practices this type of law by default? What commitments motivate one to practice social justice

60. *Id.* at 905.

61. *Id.*

62. According to Brian Leiter, from the 1991 through the 2001 Supreme Court terms, the following law schools placed the most Supreme Court clerks: Harvard (93), Yale (75), Chicago (50), Stanford (29), Columbia (25), Michigan (16), Virginia (14), NYU (9), Texas (9), Duke (7), Northwestern (7), and Berkeley (7). Supreme Court Clerkship Placements, at <http://www.utexas.edu/law/faculty/bleiter/rankings02/clerkships.html>. These schools also supply a significant number of law professors who have clerked or worked for large law firms. Most of these people are fully socialized.

63. Schiltz, *supra* note 59, at 924.

lawyering? Do students think that in not working for a large law firm they forego opportunities to have the most meaningful and exciting law practice? How might the assessment of the large-firm career choice be affected by one's identity as someone other than a male WASP? Is there polarization between students who seek a job in a large law firm and those who seek social justice lawyering jobs? What is the institutional culture's support for social justice lawyering? How effectively does the law school's placement office support those students who want to pursue social justice lawyering? Is the placement office preoccupied with facilitating large law-firm interviewing and hiring?

Finally, I do not refer to Schiltz's article to indict large-firm law practice or to make students feel uncomfortable about exercising that option. The observations that Schiltz makes regarding the difficulties that large-firm practice poses to maintaining a balanced life are not restricted to those jobs. Derrick Bell has recently written of similar difficulties in the context of social justice lawyering. He notes tellingly:

Although I spent substantial amounts of time with my sons as they were growing up, I was also away a great deal, particularly in their early years. Even when I was at home, the long hours I spent at my desk effectively . . . deterred them from considering careers in law. Whenever I suggested it, their response was, "No, Dad. You work too hard."

You work too hard. Four small words, but they packed a punch I didn't even know I was feeling at the time. As someone dedicated to the work of social reform and social change, I have found it difficult to say no to more projects; the no I didn't say usually translated into the sacrifice of time with my family. Such trade-offs become habit. Almost everyone on the trail of success knows the complaint about "living to work, rather than working to live." What is commonly called "workaholism" can become a serious neurosis, and yet those of us afflicted by it tend to see it as a virtue—we certainly do not view it as unethical conduct! Unfortunately, our passion for our work may be real, but carried to extremes it can result in our neglecting the people we care about most passionately.

This, as Patrick J. Schiltz maintains, is both wrong *and* unethical.⁶⁴

It is important to tell this cautionary tale. It militates against social justice students adopting a certain self-righteousness; it warns them to conscientiously work for balance in their own lives; it emphasizes the need to form and advance meaningful relationships within and without work. Bell advises,

Our relationships serve as our ethical barometers, and the ability to participate in meaningful personal relationships, intimate relationships, and relationships with family, friends, and colleagues is the cornerstone of ethical living. After all, what binds us is not blood, marriage, license, or formal commitment, but pleasure, caring, and the trust that ethical behavior has earned."⁶⁵

How has law school affected students' relationships? How much time and attention have students devoted to advancing meaningful relationships? How one answers these questions will help one to see how much professional re-socialization he or she must undertake.

IV. THE POLITICAL CARTOGRAPHY OF SOCIAL JUSTICE LAWYERING: FINDING YOUR PLACE

Social justice lawyering is more often than not a matter of discovery or invention, rather than of following a clear, well-developed route. To get from here to there in social justice lawyering, there is seldom a "super highway." More often, one must travel back roads and neighborhood alleys. Yet, if we do not take "mapping" too literally, I think it is helpful to map the system of politics at play in social justice lawyering. With or without maps, those of us who seek to connect theory and practice in progressive ways must figure out how to (1) countervail the right, (2) struggle with the liberal left even as we operate within its constraints, and (3) work to break free of those constraints without being quixotic or Sisyphean as we attempt to realize social justice for the marginalized, subordinated, and underrepresented. We are indeed chasing the wind.

64. DERRICK BELL, *ETHICAL AMBITION: LIVING A LIFE OF MEANING AND WORTH* 112 (2002).

65. *Id.*

In an early description of critical race theory, Kim Crenshaw stated, “the normative stance of critical race theory is that massive social transformation is a necessary precondition of racial justice.”⁶⁶ As a normative stance, however difficult it may be to translate into practice, this distances us from liberal fallacies that “ensure that the steps toward justice will be small, halting, and self limiting.”⁶⁷ In Richard Abel’s view, the basic fallacy of liberalism is “the belief that it is possible to achieve equality in one circumscribed realm without addressing other structural inequalities.”⁶⁸

A principal challenge to social justice lawyering, as political lawyering and community lawyering, is to develop an advocacy model that is both clever and adroit, one that can effectively operate not only within the constraints of liberalism when necessary, but also beyond the limits of liberalism and its fallacies when possible. At the same time, active resistance to the pressures of reactionary and conservative forces remains the greatest challenge. Too often progressives have failed to respond to those forces, because we have been so diligent—overzealous, really—in critiquing liberalism.

As Peggy Davis noted at a critical race theory workshop in the mid 1990s, this effort is daunting because when we try to say something in our scholarship that advocates and client communities can really use, we often find ourselves limited to “trying to solidify an optimism about limited transformation.”⁶⁹ I sense a lot of frustration among critical, progressive scholars and those with whom we collaborate. That frustration, in significant part, reflects impatience with solidifying “an optimism about limited transformation” even though we are frequently unable to offer more.

I associate social justice lawyering with leftist, progressive advocacy to promote individual and collective well being, enhance human dignity, and correct imbalances of power and wealth.

66. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Critique of Antidiscrimination Doctrine, Feminist Theory & Politics*, 1989 U. CHI. LEGAL F. 139 (1989).

67. Richard Abel, *Big Lies and Small Steps: A Critique of Deborah Rhode’s Too Much Law, Too Little Justice: Too Much Rhetoric, Too Little Reform*, 11 GEO. J. LEGAL ETHICS 1019, 1024 (1998).

68. *Id.*

69. Peggy Davis, Comments at the Panel Discussion on the Application of Critical Race Theory to Progressive Practice, Critical Race Theory Workshop, Philadelphia, Pa. (June 1995) (on file with author).

Moving beyond the resolution of mere private disputes and in order to advance group rights and attack structures and systems of oppression and domination, social justice lawyering is, to a large degree, political lawyering. What is the political stance and orientation that animates such lawyering?

Students must determine where they are and where they want to be on the basic political map that, traveling from left to right, includes: (1) progressive-radical; (2) liberal; (3) centrist; (4) conservative (including neo-conservative); and (5) reactionary sites, causes, and collective orientations. Mapping here is a fluid process rather than making a static terrain, however. It is always a contested work in process, which makes locating oneself difficult. Moreover, one's location on the map may vary depending on the time and context of one's activities, as well as on relationships of collaboration. Political contestation revolves around the positioning and contentions of (1) and (2) vs. (4) and (5).⁷⁰ People in category (3) tend to be influential (like swing voters in electoral politics), but not true believers of either left or right propositions, values, etc. In class we begin with basic mapping simply to put the categories on the table.

A. Progressive

Webster's Dictionary defines "progressive" as "of, relating to, or characterized by progress (advancement): devoted to or evincing continuous improvement: making use of or interested in new ideas, inventions, or opportunities,"⁷¹ and "one holding political convictions based on a belief in [moderate] change designed to improve the condition of a majority of the people and willing to use governmental power to bring about change: one believing in change as a desirable means of achieving specified goals."⁷²

70. See generally ROBERT B. REICH, REASON: WHY LIBERALS WILL WIN THE BATTLE FOR AMERICA (2004); JOHN MICKLETHWAIT & ADRIAN WOOLDRIDGE, THE RIGHT NATION: CONSERVATIVE POWER IN AMERICA (2004); GEORGE LAKOFF, MORAL POLITICS: HOW LIBERALS AND CONSERVATIVES THINK (2d ed. 2000).

71. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE 1813 (unabr. 1993) [hereinafter WEBSTER'S DICTIONARY].

72. *Id.*

It is virtually impossible to be a progressive lawyer in the purest sense.⁷³ Progressive lawyers may be viewed as part of the “lunatic fringe,” marginalized within the profession. Often they must compromise their ideals and settle for a less radical way of doing business than their progressive instincts would suggest. As left-activist lawyers, progressive lawyers “do not simply choose sides; they aspire to politicize legal practice.”⁷⁴ According to Stuart Scheingold, “they are committed both to a transformative politics and to a fusion of their political lives and their legal practices.”⁷⁵ The commitments go beyond do-good advocacy; “[t]he two things that distinguish the left-activist project are its fundamental challenges to the society and to the profession.”⁷⁶

Few law students are ready, coming to law school or graduating from law school, to take up these challenges. They need to see, hear from, and work with lawyers who are. During the spring of 2003, Michael Avery, President of the National Lawyers Guild, spoke to my social justice lawyering class. His visit was important not only for sharing his work, but also for humanizing and legitimating the “lunatic fringe.” He discussed early advocacy efforts on behalf of the Black Panthers while he was law student at Yale. His visit was a highlight of the course.

Many lawyers view the National Lawyers Guild as a stronghold of progressive lawyering. Consider the preamble to the NLG constitution:

The National Lawyers Guild is an association dedicated to the need for basic change in the structure of our political and economic system. We seek to unite the lawyers, law students, legal workers, and jailhouse lawyers of America in an organization which shall function as an effective political and social force in the service of the people, to the

73. Richard Wasserstrom, *Lawyers and Revolution*, 30 U. PITT. L. REV. 125 (1968).

74. Stuart Scheingold, *The Struggle to Politicize Legal Practice: A Case Study of Left-Activist Lawyering in Seattle*, in *CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES* 118 (Austin Sarat & Stuart Scheingold eds., 1998).

75. *Id.* at 119

76. *Id.* (citations omitted).

ends that human rights shall be regarded as more sacred than property interests.⁷⁷

B. Liberal

Both the reality and the illusion of the law's transformative power are topics of debate as we both celebrate and lament the progress that has been made since *Brown*.⁷⁸ One legacy of the Warren Court is an activation of "legal liberalism," which according to Laura Kalman refers to "trust in the potential of courts, particularly the Supreme Court, to bring about 'those specific social reforms that affect large groups of people such as blacks, workers, or women, or partisans of a particular persuasion; in other words, *policy change with nationwide impact*.'" ⁷⁹

Most leftist lawyers are probably liberals, not progressives. In part this may represent professional common sense. Many students

77. *Id.* (citations omitted).

78. See generally WHAT BROWN V. BOARD OF EDUCATION SHOULD HAVE SAID: THE NATION'S TOP LEGAL EXPERTS REWRITE AMERICA'S LANDMARK CIVIL RIGHTS DECISION (Jack M. Balkin ed., 2002) [hereinafter WHAT BROWN] (including "opinions" by Bruce Ackerman, Jack M. Balkin, Derrick A. Bell, Drew S. Days III, John Hart Ely, Catharine A. MacKinnon, Michael W. McConnell, Frank Michaelman, and Cass R. Sunstein). *Brown v. Board of Education*, 347 U.S. 483 (1954), represents the grandest gesture of legal liberalism, raising issues about whether it is legitimate for the judiciary to push for transformative social change, and what is the role of the law in advancing a social justice agenda. In "Justice" Bell's dissenting opinion, he sharply critiques the limits of liberal reform:

I dissent today from the majority's decision in these cases because the detestable segregation in the public schools that the majority finds unconstitutional is a manifestation of the evil of racism the depths and pervasiveness of which this court fails even to acknowledge, much less address and attempt to correct.

For reasons that I will explain in some detail, I cannot join in a decision that, while serving well the nation's foreign policy and domestic concerns, provides petitioners with no more than a semblance of the racial equality that they and theirs have sought for so long. The Court's long-overdue findings that Negroes are harmed by racial segregation is, regrettably, unaccompanied by an understanding of the economic, political, and psychological advantages whites gain because of them.

WHAT BROWN, *supra* note 78, at 185.

79. LAURA KALMAN, THE STRANGE CAREER OF LEGAL LIBERALISM 2 (1996).

uncritically accept liberalism as the end point of leftist lawyering. They see the identity of “progressive lawyer” as an oxymoron. Indeed, Scheingold observes, “The central political contradiction of [progressive] lawyering is that it seeks transformative goals while working within legal processes that are wedded to the established order.”⁸⁰

Richard Abel considers advocacy on behalf of the poor and asks: “What can we do to promote ‘equal justice under law’ within the constraints of liberalism?”⁸¹ One of the things that distinguishes a progressive from a liberal is the former’s goal of transformation, as opposed to the latter’s goal of reform within the imperatives of the system. Stephanie Wildman writes that the framework of democratic liberalism, in which social justice study and practice take place, emphasizes the individual over the community. Within that framework, “[w]e think in terms of individual rights, individual achievement, individual merit, rarely of connection, community, and responsibility.”⁸²

Can one practice social justice within this liberal framework? This question plagues liberal attorneys. Charles Lawrence addresses how a progressive solution to the affirmative action debate would involve a re-conceptualization of merit. The liberal defense of affirmative action is to justify it on the basis of diversity rather than as redress for historic wrongs. Lawrence suggests that progressive and liberal theories are reconcilable only if activism is directed toward transformation.⁸³ Carolyn Oh focuses on the liberal defense of the adversary system: “The legal system’s focus on the protection of individual rights and personal liberties reflects the essential and pervasive cultural value of individualism. The American values of free-market competition, decentralized and minimized government intervention, and laissez-faire economics are mirrored in the

80. Scheingold, *supra* note 74, at 124.

81. Abel, *supra* note 67 at 1024.

82. STEPHANIE WILDMAN ET AL., *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* 159 (1996).

83. Charles R. Lawrence III, *Two Views of the River: A Critique of the Liberal Defense of Affirmative Action*, 101 COLUM. L. REV. 928, 960 (2001).

adversary process.”⁸⁴ The adversary process is a hybrid of liberal pretensions and conservative values.

Liberals and progressives share a freedom from that which is orthodox. It is matter of degree: “Progressive implies an opposition to the reactionary or backward, a willingness to forsake past methods or beliefs in the interests of improvement or amelioration.”⁸⁵ Liberals are reform oriented, gradualist, defending principles of civil liberties and moderate state intervention. They tend not to favor transformation and broad scale fundamental change. They tend to favor inclusion rather than systemic change on a deeper level.

Focusing on individual rights and freedoms from arbitrary authority, the ACLU is a paradigm liberal advocacy group that nonetheless does progressive advocacy as well. In the presidential race between Michael Dukakis and George Bush Sr., Governor Dukakis was characterized as a card-carrying member of the ACLU—an attack on his liberal politics.⁸⁶ I think the ACLU is a social justice enterprise, but with contradictions. In defense of the principle of free speech, it would represent Nazis⁸⁷ and KKK members.⁸⁸ On the other hand, in Florida it represents black felons who have been permanently disenfranchised,⁸⁹ and it seeks to protect civil liberties from the post 9-11 assault of the Patriot Act and John Ashcroft.⁹⁰

84. Carolyn Jin-Myung Oh, *Questioning the Cultural and Gender-Based Assumptions of the Adversary System: Voices of Asian-American Law Students*, 7 BERKELEY WOMEN’S L.J. 125 (1992).

85. WEBSTER’S DICTIONARY, *supra* note 71, at 1303.

86. *E.g.*, David A. Harris, *Using Race or Ethnicity as a Factor in Assessing the Reasonableness of Fourth Amendment Activity: Description, Yes; Prediction, No*, 73 MISS. L.J. 423, 452 (2003).

87. *Nat’l Socialist Party of Am. v. Village of Skokie*, 432 U.S. 43 (1977).

88. *E.g.*, *Virginia v. Black*, 538 U.S. 343 (2003).

89. *E.g.*, *Complaint for Mandamus, Injunctive, and Declaratory Relief, Fla. Conference of Black State Legislators v. Moore*, available at http://www.aclufl.org/legislature_courts/legal_department/briefs_complaints/e-x-felons_voting_rights.cfm (last visited June 1, 2004).

90. ACLU, *PATRIOT [sic] Act Fears Are Stifling Free Speech, ACLU Says in Challenge to Law*, <http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=13248&c=206> (last visited May 30, 2004).

C. Centrist

Most people probably feel most comfortable here. It is a compromising, moderate position. This is a political stance that values moderation, standing between the extremes of left or right. Centrists often are seen as pragmatic, but because there is no clear commitment to values they also are seen as expedient.

In my mind, President Bill Clinton personifies the center.⁹¹ The center is perhaps the most complex and ambiguous category, for it really has no solid political program. Often a self-identified reformist will actually block real reform. An historical example is Woodrow Wilson. Richard Hofstadter notes that in 1911–1912, Wilson's speeches reflected "a new and more aggressive note, a ringing demand for change, and yet for change that would preserve 'established purposes and conceptions.' In this idea—that we must have a forward-looking return to the past—was the link between the old and the new Wilson."⁹² This is a centrist position that voices liberal values, but actually preserves "established purposes and conceptions," the "forward-looking return to the past."⁹³ This causes the center to incline to the right rather than to the left. Moreover, the key characteristic of one at the center is political ambivalence.

As I teach my students, I become increasingly aware that if the number of social justice lawyers is to grow, we must solidify the commitment of progressive students. We must move liberal students as far to the left as they can go and increase their ability to operate effectively within the constraints of liberalism. We must try to develop a critical consciousness among those in the center so that they can resolve their ambivalence and more consistently embrace legal liberalism, so they may resist being recruited by the right.

D. Conservative

Here, I include neoconservatives, many of whom were formerly liberals but who lost faith in liberal policies and retreated to the

91. See JAMES MACGREGOR BURNS & GEORGIA J. SORENSON, *DEAD CENTER: CLINTON-GORE LEADERSHIP AND THE PERILS OF MODERATION* (1999).

92. RICHARD HOFSTADTER, *THE AMERICAN POLITICAL TRADITION AND THE MEN WHO MADE IT* 328 (Vintage Books ed. 1989) (1948).

93. *Id.*

right.⁹⁴ Conservatism is a political disposition to preserve what is established. Often, we mistakenly associate conservatives with preserving the status quo. But when we identify the Establishment we are referring to paradigm conservatives—particularly, those with power or vested interests in maintaining the status quo features of what has been established as the traditionally dominant societal organization, institutional arrangements, and cultural habits. Thus, conservatism is “a political philosophy based on a strong sense of tradition and social stability, stressing the importance of established institutions (as religion, property, the family, and class structure), and preferring gradual development with preservation of the best elements of the past to abrupt change.”⁹⁵

Conservatives have rearticulated and redeployed former liberal legal themes such as “equality of opportunity” and “colorblindness” in such a manner as to oppose current liberal themes such as affirmative action. The salient example is Dr. Martin Luther King Jr.’s hope that the country would measure the quality of individuals by the content of their character rather than the color of their skins. Conservative egalitarianism (individual fairness) has supplanted liberal reform (valuing diversity).

E. Reactionary

Often described in right-wing understatement as conservatives, reactionaries actually attempt to exert a reciprocal or counteracting force or influence to those left of them, sometimes including their conservative allies. A common charge against them is that they want to “turn back the clock on progress.”⁹⁶ More than to preserve today’s Establishment—which may have incorporated liberal changes—reactionaries want to restore a previous set of “established purposes and conceptions.”⁹⁷ They want to return to the good old days, eroding liberal aspects of change in the Establishment. The political reactionary seeks to return the status quo to a former political order. This is illustrated by the recent controversy over

94. DAVID BROCK, *BLINDED BY THE RIGHT: THE CONSCIENCE OF AN EX-CONSERVATIVE* 4 (2002).

95. WEBSTER’S DICTIONARY, *supra* note 71, at 177.

96. *E.g.*, Edward M. Kennedy, *Fulfill Funding Promise*, USA TODAY, Oct. 26, 2003, at A.11.

97. HOFSTADTER, *supra* note 92, at 328.

Trent Lott's endorsement of the 1948 Dixiecrat platform of Strom Thurmond. This was not merely a conservative endorsement; it was a reactionary one.

Political mapping brings into sharp relief a set of constraints that are part of the system of lawyers, laws, and politics. Students must be aware of them and how they constrain lawyers physically and psychologically under the pressures of role, economics, and limited opportunities to do social justice work. Students must come to appreciate that whatever their orientation, the dynamics of contestation will bear on their efforts and results. They must learn not only to set an agenda, but also how to resist an opposing agenda. Presently within law schools the primary political positioning, if not contestation, centers on the opposing orientations of the American Constitution Society on the Left and the Federalist Society on the Right. While the former is embryonic, the latter is tremendously powerful. As David Brock notes,

The Federalist Society of right-wing lawyers who had been at the heart of the anti-Clinton conspiracy turned out to be a virtual Bush government in exile; the new administration's policies of tax cuts for the wealthy, slashing environmental protections, and rolling back civil rights bore the Society's stamp, as did many of Bush's nominees to the federal bench.⁹⁸

Those who cry out for social justice most acutely are well aware of the politics here. We know that around the world many clients and communities of marginalized, subordinated, and underrepresented people "can resist, do resist and have a rich and full history of resistance" to injustice.⁹⁹ Resistance is no silver bullet, and it is often romanticized. Yet, client narratives must incorporate this resistance into stories that educate judges, the bar, and the public. More importantly, that resistance can bear on strategic planning and advocacy.¹⁰⁰

98. BROCK, *supra* note 94, at 331.

99. Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345, 401 (1997).

100. As Michelle Jacobs explains:

As lawyers and students, we must now find ways to understand and to use the client's resistance on their behalf. We can do this by using their resistance to reframe legal issues and to assist in developing legal

V. SOCIAL JUSTICE LAWYERING MOVEMENT

According to Peter Gabel and Paul Harris, "A first-principle of a 'counterhegemonic' legal practice must be to subordinate the goal of getting people their rights to the goal of building an authentic or unalienated political consciousness."¹⁰¹ Thus, while rights strategies are important to social justice practice, as Gabel and Harris note, "the lawyer should always attempt to reshape the way legal conflicts are represented in the law, revealing . . . the true socioeconomic and political foundations of legal disputes."¹⁰²

A. *Preservation-Through-Transformation: The Problem*

Reva Siegel describes the historical process of what she calls "preservation-through-transformation."¹⁰³ Siegel explains that during the nineteenth and twentieth centuries, the legal system in the United States responded to demands for the equality of women and colored people with modifications—call it "law reform," perhaps—that began to treat them as equal under law. For most members of these groups, they appeared historically and formally in law as holding low status in hierarchical relationships: women to men, and colored people to white people. According to Siegel,

In gender, race, and class relationships, the legal system continued to allocate privileges and entitlements in a manner that perpetuated former systems of express hierarchy. Analyzed from this vantage point, the rise of liberal and capitalist systems of social organization did not result in the dismantlement of status relationships, but instead precipitated their evolution into new forms.¹⁰⁴

strategy. We can use their resistance to challenge stereotypical characterizations made by the courts and administrative agencies of our clients and their lives. We must also begin to understand the causes of clients' resistance to their lawyers, and where possible, eliminate the lawyer-created causes of resistance.

Id. at 401–02.

101. Peter Gabel & Paul Harris, *Building Power and Breaking Images: Critical Legal Theory and the Practice of Law*, 11 N.Y.U. REV. L. & SOC. CHANGE 369, 375 (1982).

102. *Id.* at 376.

103. Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1113 (1997).

104. *Id.* at 1116.

In effect, Siegel describes an empirical phenomenon as well as a theory of “preservation-through-transformation” whereby status hierarchies are preserved not in spite of “transformation” efforts, but in part because of the justificatory rhetoric that explains and legitimates them.

As injustice is challenged, social institutions disassociate themselves from the prior regime and repudiate that rhetoric. The reality of the status hierarchy, however, has not changed as significantly as the new rhetoric would suggest. As Kenji Yoshino observes, “[t]o the contrary, the status hierarchy may be preserved precisely because the rhetoric has changed, permitting social actors to tell a progress narrative that legitimates the status quo.”¹⁰⁵

He thus likens the process to a virus: “[T]he status hierarchy mutates to ensure a longevity that would not have been possible if it had remained static.”¹⁰⁶ While “preservation-through-transformation” neither forecloses the possibility of significant change, nor assumes a constancy of bad intentioned actors, “[i]t does, however, caution that progress narratives about status hierarchies should be approached with intense skepticism.”¹⁰⁷ Finally, given the material stakes at issue, those in dominant positions of power or privilege who benefit from status hierarchy resist the very changes that social justice claims raise. Under these circumstances, the contestation over status hierarchy is “much more likely to effect rhetorical rather than substantive revision.”¹⁰⁸

The “virus” is manifested in the United States in a variety of anti-subordination movements.¹⁰⁹ Legal changes have been

105. Kenji Yoshino, *Covering*, 111 YALE L.J. 769, 825 (2002).

106. *Id.*

107. *Id.* at 826.

108. *Id.*

109. See Sally F. Goldfarb, *Applying the Discrimination Model to Violence Against Women: Some Reflections on Theory and Practice*, 11 AM. U. J. GENDER SOC. POL’Y & L. 251, 258 n.36 (2003) (citing Reva B. Siegel, “*The Rule of Love*”: *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117 (1996)); Darren Lenard Hutchinson, “*Unexplainable on Grounds Other than Race*”: *The Inversion of Privilege and Subordination in Equal Protection Jurisprudence*, 2003 U. ILL. L. REV. 615, 698 (2003); Kapila Juthani, *Police Treatment of Domestic Violence and Sexual Abuse: Affirmative Duty to Protect vs. Fourth Amendment Privacy*, 59 N.Y.U. ANN. SURV. AM. L. 51, 55 (2003); Rachel F. Moran, *The Elusive Nature of Discrimination*, 55 STAN. L. REV.

significant, at least in the formal sense, and those changes have certainly improved the lives of people. Yet, because the legal changes have not gone far enough, have not been sustainable enough to resist backlash and retrenchment, those changes have not been fully transformative. That is, they have not eradicated foundational status structures and systems. Sometimes, we have a tendency to focus too narrowly on the legal issue and, consequently, law reform efforts are reduced to stopgap or, increasingly, hold-harmless measures.

B. *The Praxis of Third Dimension Lawyering*

As social justice praxis, Lucie White presents three ideal types of activist lawyers engaged in social transformation.¹¹⁰ I want to examine her analysis as one possible response to the “preservation-through-transformation” problem that Reva Siegel describes. White’s first dimension of lawyering entails contesting litigation. This is a fairly straight ahead, rights based form of advocacy. Test case litigation and law reform litigation are illustrative. The lawyer seeks broad, sweeping and innovative remedies. The goal is reform, rather than transformation, and the courtroom is the principal venue.

According to White,

within this image, the lawyer assumes that client groups perceive their suffering as injuries that can be redressed, and stand willing to share these perceptions with their lawyers. It is not the lawyer’s role to question the structure of the law itself, asking whether it sometimes prevents the lawyer from translating his clients’ grievances into good legal claims. Nor is it his role to question the judicial system, asking whether it sometimes prevents him from securing remedies that really work.¹¹¹

White’s second dimension of lawyering involves the use of litigation as public action with political significance. The law and its

2365, 2410 (2003); Robert Westley, *Reparations and Symbiosis: Reclaiming the Remedial Focus*, 71 UMKC L. REV. 419, 428 (2002).

110. Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699. For an insightful analysis of White’s article and critiques of it, see Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427 (2000).

111. White, *supra* note 110, at 755.

practice have cultural meaning; they constitute a discourse—not merely a discussion—about social justice. The advocacy seeks to influence public consciousness. Here, law is “a public conversation.”¹¹² As White explains,

the lawyer is not indifferent to victory in court. If a claim prevails, so much the better. But the measure of the case’s success is not who wins. Rather, success is measured by such factors as whether the case widens the public imagination about right and wrong, mobilizes political action behind new social arrangements, or pressures those in power to make concessions. To accomplish these goals, the lawyer must design the case with the audience—the subordinated group and the wider public—in mind.¹¹³

Finally, third dimension lawyering entails collaborative work with the client community. Drawing on the work of Paulo Friere and the parallel feminist method of consciousness raising, this dimension challenges subordination at the level of the consciousness of the client community. The third dimension of lawyering involves helping a group learn how to interpret moments of domination as opportunities for resistance.¹¹⁴ Thus, the lawyer must engage not only in dialogue and mutual education, but also in strategic work:

The lawyer must help the client-group devise concrete actions that challenge the patterns of domination that they identify. This strategizing is also a learning process. Through it, the group learns to interpret their relationship with those in power as an ongoing drama rather than as a static condition. They learn to interpret the particular configurations that the oppressor’s power takes on over time and to respond to those changing patterns with pragmatism and creativity. They learn how to design context-specific acts of public resistance, which work, not by overpowering the oppressor, but by revealing the wrongness and vulnerability of its positions to itself and to a wider public.¹¹⁵

112. *Id.* at 758.

113. *Id.* at 758–59.

114. *Id.* at 760–61.

115. *Id.* at 763.

White's analysis of the three dimensions of lawyering grows out of the context of South Africa, where members of a small farming community struggled against forced relocation under the oppression of apartheid, so the article is really about a concrete instance of resistance and organizing against subordination. I ask the students, "How has legal training prepared you regarding any of White's dimensions of lawyering?"

The third dimension is, of course, foreign to the traditional image of the lawyer. Indeed, one does not really need a law degree or an attorney's license to practice this dimension of advocacy. White claims that "fluency in the law—that is, a deep practical understanding of law as a discourse for articulating norms of justice and an array of rituals for resolving social conflict—will greatly improve a person's flexibility and effectiveness at 'third dimensional work'."¹¹⁶ I recently was following a car with a bumper sticker that read: "Question the Answers." Given the danger that law will shape work against subordination conservatively, is "fluency in the law" really an advantage in organizing? My students struggle with this question, as do I.¹¹⁷

In the next part, I describe an advocacy tool, the Eastman thick complaint, a tool that certainly facilitates second dimension lawyering, and which may also facilitate third dimension lawyering. Before I describe it, however, I want to be very clear that second dimension lawyering is high order advocacy. In spite of the limitations, many of us never get past this dimension, and that is quite okay. For example, White points to second dimension lawyering in Nelson Mandela's 1962 trial for terrorism: "He and the other defendants decided to use the event to speak out to white South Africans and the world about the injustice of apartheid. This proved inconsistent with the traditional strategy of raising technical defenses to defeat the state's claim."¹¹⁸

116. *Id.* at 765.

117. The issue of law and organizing simply adds another significant layer of complexity. See Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1994).

118. White, *supra* note 110, at 759 n.217.

While one should certainly aspire to the third dimension in some contexts, we should not be hypercritical of second dimension lawyering. Third dimension lawyering really requires a certain set of circumstances that facilitates a joint project with clients to translate felt experience into understanding and actions that can increase their power. There are groups that are ready to go, whose consciousness about oppression is well developed and who will advance their cause very well within second dimension advocacy. Yet, they may need a third dimension response as well as a second dimension response—a sort of hybrid response.¹¹⁹

C. Herbert Eastman and the Thick Complaint in Social Justice Lawyering

Consistent with this view of third dimension lawyering, as an exercise in my social justice lawyering class I require the students to draft a federal court complaint on the Herbert Eastman model of pleading.¹²⁰ Eastman provides an example of a “thick complaint” that contrasts with traditional notice pleading.¹²¹ I intend the complaint drafting assignment to enable students to use the complaint as part of third dimension lawyering.

Third dimension lawyering is very hard to do: How does the lawyer get invited into the client community, and how does she legitimate her presence beyond mere invitation? Is it enough simply not to be regnant? How can advocates move beyond the first and second dimensions? Even with consciousness raising and collaboration galore, how do you achieve the transformation that can only result from the elimination of institutional domination and

119. See generally, PENDA D. HAIR, *LOUDER THAN WORDS: LAWYERS, COMMUNITIES AND THE STRUGGLE FOR JUSTICE, A REPORT TO THE ROCKEFELLER FOUNDATION* (2001) (six case studies that demonstrate how civil rights advocates are responding to recent changes in the sociopolitical landscape).

120. Herbert A. Eastman, *Speaking Truth to Power: The Language of Civil Rights Litigators*, 104 *YALE L.J.* 763, 836–49 (1995). In the past students have filed complaints against the federal government seeking “spatial reparations;” against local police for failing to respond adequately to instances of domestic violence; and against local school boards for failing to protect gay and lesbian youth from violence and harassment in high school.

121. Pleading rules present an apparent constraint, but not a real one. The Federal Rules of Civil Procedure require a short and plain statement of the claim. FED. R. CIV. P. 8. This encourages a “thin” complaint.

oppression? I think the process of professional re-socialization simply does not reorient students enough, or in time, to move beyond the second dimension lawyering stage. The complaint assignment, however, has proven to be a very good, reflective, and self-critical start for most of them.

Though not a clinician, I take a page from their book here. Drawing on the insights of two clinical professors, I offer their views of the value of moving students beyond the traditional realms of "thinking like a lawyer." Lisa Lerman observes, "Student externs can cultivate their skills as reflective practitioners. Even if students become busy lawyers who have little time to ruminate, they will carry with them the skill of reflective observation."¹²² According to Jane Aiken,

Clinical legal education has long valued reflection as a key to effective teaching. Our supervisory questions should be directed to fostering reflection rather than eliciting information. As teachers, we must deviate from system-reinforcing behaviors and challenge the students to examine and reflect upon the prevailing social, political, and cultural realities that affect their own and their clients' lives.¹²³

Within the context of collaborative work along lines of third dimension lawyering, I ask the students: "How does your filing an Eastman complaint fit within these themes?" "Do you have reservations about these strategies of empowerment?" "What are the risks of filing a complaint in court—especially a complaint that takes the radical form of an Eastman complaint?" "What advantages and disadvantages accompany a focus on the courtroom?" "How can lawyers be part of a process of exploration and empowerment?"

VI. SOCIAL MOVEMENTS AS CRITICAL TO TRANSFORMATIVE CHANGE: THE CHALLENGES AND OPPORTUNITIES

It is difficult to change positive law and social norms without the influence of a social movement.¹²⁴ I have learned this lesson in

122. Lisa G. Lerman, *Professional and Ethical Issues in Legal Externships: Fostering Commitment to Public Service*, 67 *FORDHAM L. REV.* 2295, 2299 (1999).

123. Aiken, *supra* note 25, at 298.

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

many ways. For many years I served on the Board of Directors of the New World Foundation, a progressive funder based in New York City.¹²⁵ Over the past 50 years, its core mission has been to fund the movement building process. In closing the present Article, I want to draw on its experience to discuss why social movements are critical to social justice. Recently, funding social movements has drawn a lot of attention within philanthropic circles. This is partly because “the multiple constituencies and issue areas we fund seem to need the integration, engagement and synergy that movements create.”¹²⁶ Operating within the third dimension, social justice lawyers can be important players in the movement’s integration, engagement, and synergy. From its longstanding experience, the New World Foundation observes, “The building of social movements gives us rich opportunities for practice. For at the heart of every social movement are people who suffer injustice, who organize to oppose it, and who must transform themselves, their organizations and society in order to succeed.”¹²⁷ This is very hard to appreciate sitting within law offices and standing at the lectern in front of our students. Yet, I know from my own grant making at the Ford Foundation in the early 1990s, my past association as a board member with the National Asian Pacific American Legal Consortium, and my present association as a board member with Oxfam America that successful social movements “can produce extraordinary leaps of human progress, even in the most daunting times.”¹²⁸

I know that the people who suffer injustice most acutely are tough, resilient, and able to survive under the worst of circumstances. The character and persistence they develop, when translated into a social movement, is inspiring without romance. As a countervailing force to governmental and corporate power, becoming a part of activist social movements for social justice is imperative for lawyers to heed their public calling in the truest sense. The people who suffer injustice most acutely have few places from which they are

REV. 2062 (2002). For an excellent panoramic view, see Symposium, *Social Movements and Law Reform*, 150 U. PA. L. REV. 1 (2001).

125. See <http://www.newwf.org> (last visited May 30, 2004).

126. NEW WORLD FOUND., FUNDING SOCIAL MOVEMENTS: THE NEW WORLD FOUNDATION PERSPECTIVE 1 (2003).

127. *Id.* at 6.

128. *Id.*

able to lift their voices and assert their collective strength. Where this occurs, however, is often through their own organizations and activism.

Moreover, as the New World Foundation points out, "there are few ways to act on a scale commensurate with government and corporate power—to act locally and globally at the same time, to move regions, states or nations—except through inclusive social movements that grow independently of the prevailing order."¹²⁹ Within the docket of grant making at the NWF, I have heard these countervailing voices in programs to organize groups in the South, advance a new politics of multiracial democracy in California, support worker organizing for economic justice and human rights, fund labor-community alliances, and advance an agenda of environmental justice.

Where and how does the lawyer enter the movement building and dynamics? William Quigley has analyzed various themes in community empowerment lawyering, including the primary goal of building up the community and preventing it from becoming dependent on lawyers.¹³⁰ He suggests that the community must be involved in everything that the lawyer does, and that the lawyer must learn community organizing and leadership development.¹³¹ The lawyer must never become the leader for the group, and must be wary of speaking for the group. Lawyers must be aware of how much they are taking as well as giving, and must be willing to confront their own comfort with an unjust legal system.¹³²

For my students, I think the most basic theme deals with their social distance from marginalized, subordinated, and under-represented clients and communities. Quigley correctly points to the necessity to be willing to "journey with the community."¹³³ This means that the lawyer must learn to join rather than lead, to listen rather than to speak, and "to assist people in empowering themselves rather than manipulating the levers of power for them."¹³⁴

129. *Id.*

130. Quigley, *supra* note 117, at 464–65.

131. *Id.* at 471–74.

132. *Id.* at 474–78.

133. *Id.* at 478.

134. *Id.* at 479.

Quigley takes this notion from Barbara Major, an African American organizer who works with numerous low-income women's groups in the southern United States. Major argues that "empowerment" occurs "when a person or group of people know who they are, accept who they are, and refuse to let people make them anything else."¹³⁵ She notes, moreover, that rather than working "in community,"¹³⁶ we should think more about working "with community."¹³⁷ Working with the community is what she means by "journey[ing] with the community":

This journey has to involve the community really getting a sense of who they are, in the sense of beginning to understand their own power. In working with community the wisdom or the knowledge of the lawyer does not outweigh the wisdom and the knowledge of the community, about itself especially.¹³⁸

VII. CONCLUSION

In this Article I have discussed the need to focus specific attention of our pedagogy, scholarship, and activist collaboration on the problem of social injustice as we seek to teach and learn about social justice lawyering. Now is the time to advance the social justice agenda and to bring the topic more directly into our classrooms and students' lives. In order to do so we must reverse what Duncan Kennedy has described legal education to be—training for hierarchy.¹³⁹ We must take seriously the need to re-socialize those students who seek to pursue social justice work because, as Gerald López correctly observes, "in many ways both current and past lawyers fighting for social change and all with whom they collaborate . . . have had to face trying to learn how largely to overcome rather than to take advantage of law school experience."¹⁴⁰

135. *Id.* at 461.

136. *Id.* at 462.

137. *Id.*

138. *Id.*

139. DUNCAN KENNEDY, LEGAL EDUCATION AND THE REPRODUCTION OF HIERARCHY: A POLEMIC AGAINST THE SYSTEM, at i–ii (1983).

140. Gerald P. Lopez, *The Work We Know So Little About*, 42 STAN. L. REV. 1, 2 (1989).

Not only must we reorient our students as professionals, but we must also teach new lessons in new ways. We must provide an enabled opportunity and greater ability for them to work with those who are marginalized, subordinated, and underrepresented to bring social justice to their homes, workplaces, schools, streets, and communities—to their lives. There is much work to do and the wrong side is winning too many battles. Still, I am hopeful that tomorrow's new day will arrive shortly.

In 1992, I served on this law school's faculty. I submitted a tenure piece on Archie Shepp and Critical Race Theory in which I wrote of the difficulty I had in bringing my 101 page, 388 footnoted article to a close. I determined that part of the difficulty was an audience problem:

When all is said and done, this writing is probably for my children, 10 year-old Jonathan and 6 year-old Canai, and for their rainbow of little friends, associates, and peers, who at this time cannot really appreciate fully what I have struggled to write here. Perhaps the slim hope, however, does indeed lie in "cohort replacement."¹⁴¹

As I write this, young Jonathan is now a first-year law school student, and young Canai is a college freshman. I would have hoped for more progress since that earlier time when I placed my hope in them. Yet the issues remain, though now they are more urgent. I must repeat what I wrote in 1992:

The nation's pressing challenge, I think, lies in us adults providing good answers to questions like these: Can this one nation under God continue as presently constituted and oriented without burning out or burning up before Jonathan, Canai, and their group can position themselves to improve the situation? When they are able, will they still be willing, as they are now when left to their own devices, to reconcile human differences? Will they properly recognize those differences as culturally and socially constructed determinants of value that place a disproportionately high premium on whiteness, elitism, maleness, high income, or

141. John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 SO. CAL. L. REV. 2129, 2229 (1992).

wealth? Will enough of them reject the pursuit of life, liberty, and happiness that is so constricted by a material aggrandizement secured at the expense of social relations that value people, cooperation, inclusive community, and true broad access to the realization, finally, of America's high positive ideals? Can we save the children so that they will have their chance to save the nation?¹⁴²

In *Grutter v. Bollinger*,¹⁴³ the University of Michigan Law School affirmative action case, Justice Sandra Day O'Connor wrote, "We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today."¹⁴⁴ This Article has shown that we are running out of time, and not only because of Justice O'Connor's time-bomb jurisprudence.

142. *Id.*

143. 539 U.S. 306, 342 (2003).

144. *Id.* at 342.

