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# Ferguson, the Rebellious Law Professor, and the Neoliberal University

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# Ferguson, the Rebellious Law Professor, and the Neoliberal University

*Harold McDougall*<sup>1</sup>

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## **Abstract**

Neoliberalism, a business-oriented ideology promoting corporatism, profit-seeking, and elite management, has found its way into the modern American university. As neoliberal ideology envelops university campuses, the idea of law professors as learned academicians and advisors to students as citizens in training, has given way to the concept of professors as brokers of marketable skills with students as consumers. In a legal setting, this concept pushes law students to view their education not as a means to contribute to society and the professional field, but rather as a means to make money. These developments are especially problematic for minority students and faculty who wish to remain grounded in their communities.

In the face of the Michael Brown and Eric Garner shootings and their aftermath, academics are challenged by events and by their own students to rethink the connection between law teaching and the needs of the community at large. This article considers these dilemmas and encourages faculty to respond, organizing to strengthen their own role in university affairs so they can freely work with their students to re-engage with social movements and marginalized communities. In this re-engagement, the article recommends that teachers use experiential learning techniques developed at CUNY Law School, grounded in the community collaboration and respect proposed by Prof. Gerald Lopez in his “rebellious” lawyering approach.

## Introduction

In 1992, Gerald Lopez argued that progressive lawyering required the practitioner to rethink the practice of law, the needs of the community, and the relationship between the two. He urged progressive lawyers to rebel<sup>2</sup> against reigning (“regnant”<sup>3</sup>) patterns of law and practice that served only to reinforce the established order<sup>4</sup> and alienate progressive lawyers from their natural base, the community.<sup>5</sup>

Today, as neoliberalism impinges upon the lives and jobs of legal academics, it is perhaps time for us to rethink the teaching of law itself, as well as how the needs of the community and our own needs have begun to converge. Can we, should we, be rebellious, too? Faculty right now stand in the middle of this quandary, as the events of Michael Brown, Eric Garner, and John Crawford’s deaths and the protests that emerged after this article was nearly finished, enveloped the country.

Part I tells the story of Justin Hansford, a young African-American law professor at St. Louis University who is deeply engaged in these protests. Hansford has already made the choice: he is a rebellious law professor if anyone is.<sup>6</sup> How did he make the connection to the community? How has his university responded to his actions? What are his next steps?

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<sup>2</sup> Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 440-41 (2000) (quoting GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992)) (“[T]he rebellious idea of lawyering against subordination” involves... collaborat[ing] with other professional and lay allies rather than ignoring the help that these other problem-solvers may provide in a given situation.”)

<sup>3</sup> GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992); Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747, 1752 (1994) (“López challenges the regnant story [that] glorifies lawyer preeminence and power...[and] constructs clients as victims[,] powerless and pathological objects.”)

<sup>4</sup> Rebecca Sharpless, *More Than One Lane Wide: Against Hierarchies Of Helping In Progressive Legal Advocacy*, 19 CLINICAL L. REV. 347, 394-95 (2012).

<sup>5</sup> GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992).

<sup>6</sup> Justin Hansford – Biography, SAINT LOUIS UNIVERSITY SCHOOL OF LAW, <http://www.slu.edu/colleges/law/slulaw/faculty/jhansfor>.

Part II explores what neoliberalism is. Part III describes the challenges of the neoliberal university as a work context for all faculty, including law professors, and especially “rebellious:” ones. Part IV suggests that faculty must first rebel on campus, reasserting their autonomy and agency despite the neoliberal university’s push to deny them.

Part V describes the special ways in which law professors can rebel off-campus, creating experiential learning opportunities for their students, through clinics, externships, or service learning opportunities. I advocate using such venues to connect with social movements struggling with neoliberalism at large, adding their insights, problem assessment and problem-solving skills to our own. In this fashion “rebellious” law professors can begin to follow the examples of “cause lawyering” practitioners who have been at this for quite some time now.<sup>7</sup> Part VI concludes with some thoughts about how this approach might assist us as we and our students engage with the issues brought to the forefront by the 2014 “Black Lives Matter” protests.

### **I. A Young and Rebellious Law Professor**

Professor Hansford, who teaches human rights law and race and the law, says he joined the Ferguson movement because he didn’t see how he could look himself in the mirror if he didn’t engage in this movement taking place so near to his home.<sup>8</sup> He participated as a legal observer, hoping to document and possibly minimize police brutality against protesters. Instead, like journalists who were also present, he found himself under arrest.<sup>9</sup>

“As I stood about 5 or 10 feet away, trying to not get in the way, my arm was suddenly twisted. I was being handcuffed. Without warning and before I could think, I was led away with

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<sup>7</sup> Jayanth K. Krishnan, *Lawyering for a Cause*, 94 CAL L. REV. 575, 581-88 (2006).

<sup>8</sup> Justin Hansford, *I went to Ferguson to protect the protesters. I got arrested instead.*, VOX (Oct. 24, 2014), <http://www.vox.com/2014/10/24/7033567/ferguson-protest-arrested-michael-brown>.

<sup>9</sup> *Id.*

both hands behind my back,” Hansford reports.<sup>10</sup> He was arrested before any of the protesters, and before any of the other four legal observers, all of whom were white.<sup>11</sup> Suddenly, the distance between professor and community narrowed, as police shoved him into a squad car in front of at least a hundred protesters chanting “Hands up! Don’t Shoot!”<sup>12</sup>

When he got to the station, the holding cells were full of activists who had participated in earlier protests, and once they saw him they all shouted, “You’re a lawyer, how did they arrest you!?” and “You’ve still got your green legal observer hat on, ha, ha. That hat didn’t save you did it?” Hansford’s night in jail showed him that the police saw him only as a young black male, not as a lawyer or law professor. Standing to the side in silence, “watching and pretending to be neutral” did not protect him.<sup>13</sup>

We will examine how St. Louis University responded to his actions, and his next steps, as the article progresses.

## II. What is Neoliberalism?

According to Prof. David Harvey of Johns Hopkins University, neoliberalism is an ideology promoting deregulation, privatization, and the internationalization of the market economy.<sup>14</sup> Neoliberalism has caused stunning increases in poverty and inequality worldwide,<sup>15</sup> and is increasingly associated with domestic and international authoritarianism.<sup>16</sup>

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> DAVID HARVEY, *NEOLIBERALISM: A BRIEF HISTORY* (Oxford University Press 2005).

<sup>15</sup> *Cf.* Saslow, *infra* note 62.

<sup>16</sup> James Collins, *Foreword to STRUCTURE AND AGENCY IN THE NEOLIBERAL UNIVERSITY* xiii, xiii–xiv (Joyce E. Canaan & Wesley Shumar eds., Routledge 2011); *see also* Robert Parry, *The Human Price of Neocon Havoc*, Consortium News (Oct. 27, 2014), *available at* <http://readersupportednews.org/opinion2/277-75/24843-focus-the-human-price-of-neocon-havoc>.

Neoliberalism has its roots in the neoconservative resurgence of the 1980s, marked by the rise of Margaret Thatcher in the U.K. and Ronald Reagan in the United States.<sup>17</sup> Neoliberalism arose as previously left-of-center political parties made a “right turn,” abandoning the lower socio-economic classes in favor of corporate largesse,<sup>18</sup> making common ground with the neocons in that regard. Modern neoconservatism is merely neoliberalism’s extreme right wing. Driven by the “righteous indignation of the economically comfortable,” neoconservatism seeks to recreate a past in which “abuses of power and authority, portioned out by privilege, went unexamined, unspoken and were good for business.”<sup>19</sup>

Today, the neoliberal/neocon consensus includes politicians regardless of their left or right designation.<sup>20</sup> (Think of Bill Clinton or Tony Blair) Christopher Hitchens in *Vanity Fair* describes countries governed by this consensus. They are operated as commercial enterprises for private profit, “reinforced by collusion between the state and favored corporations, through which the profits from private exploitation of public resources remain private property and the debts incurred become public responsibility. [Manipulated by corporations], the government is unaccountable to its citizens; the legislature is “for sale and functions mostly as a ceremonial rubber-stamp.”<sup>21</sup>

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<sup>17</sup> See Harvey, *supra* note 14.

<sup>18</sup> THOMAS FERGUSON & JOEL ROGERS, *RIGHT TURN: THE DECLINE OF THE DEMOCRATS AND THE FUTURE OF AMERICAN POLITICS* (Hill & Wang 1986).

<sup>19</sup> Magda Lewis, *Public Good or Private Value: A Critique of the Commodification of Knowledge in Higher Education – A Canadian Perspective*, in *STRUCTURE AND AGENCY IN THE NEOLIBERAL UNIVERSITY*, 51–52 (Joyce E. Canaan & Wesley Shumar eds., Routledge 2011).

<sup>20</sup> Collins, *supra* note 16, at xiii–xiv.

<sup>21</sup> Saslow, *infra* note 62; see, e.g., Rosalind S. Helderman, Updates: Day Two of the McDonnell Corruption Trial, *WASH. POST* (July 29, 2014), [http://www.washingtonpost.com/blogs/liveblog-live/liveblog/updates-corruption-trial-begins-for-mcdonnell/?wpisrc=al\\_lclpolitics](http://www.washingtonpost.com/blogs/liveblog-live/liveblog/updates-corruption-trial-begins-for-mcdonnell/?wpisrc=al_lclpolitics).

The neoliberal/neocon consensus accompanies a “worldwide shift of power away from the public realm [and] toward those who control the global economy.”<sup>22</sup> It aims to convince citizens that “personal solutions to collective problems [are] the only viable option,” leaving individuals and families facing entrenched profit-making interests on their own as they try to protect their health, seek an education, or look for social support.<sup>23</sup> A subset of this privatization of social justice is the ideological construct that historically oppressed and exploited people of color must succeed, if at all, in a “colorblind” world.<sup>24</sup> Aiding the neoliberal/neocon consensus, the media works to discredit those who raise issues of social justice and the interests of disadvantaged groups, dismissing them as advocates for special interests<sup>25</sup> or worse.<sup>26</sup>

### III. The Challenges of the Neoliberal University

“What's happening at other kinds of institutions around the country is now coming home to roost in higher education,” said one faculty member.<sup>27</sup> A “cult of corporate expertise and private-sector savvy has corralled the upper reaches of university life.”<sup>28</sup> The neoliberalization of universities thus replicates neoliberalism’s pattern in virtually every other sphere of its influence. One author has described that pattern as one of corporatization, managerialism, deprofessionalization, contingent labor, and “precaritization.”<sup>29</sup>

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<sup>22</sup> Lewis, *supra* note 19, at 47.

<sup>23</sup> *Id.* at 48.

<sup>24</sup> See generally MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATIONS IN THE UNITED STATES* Ch. 8 (Routledge, 3rd ed. 2014).

<sup>25</sup> *Id.* at 49.

<sup>26</sup> See Saslow, *infra* note 62 (“[F]or preaching that education is for public citizenship, not private productivity, [faculties] are now besieged by an inquisition-cum-hostile takeover. The managerial strategy is to surround and blockade, cutting off all aid and supplies to propel surrender in the face of starvation. For the ivory tower, that means choking off public funds, stripping us of the robes of authority, and undermining public sympathy for the professoriate, represented as a bunch of expensive, meddling, and unaccountable slackers.”)

<sup>27</sup> Carter & Linkins, *infra* note 68 (quoting Prof. Tal Brewer, chair of the University’s Philosophy Department.)

<sup>28</sup> *Id.*

<sup>29</sup> Saslow, *infra*, note 62 (Another characteristic, privatization, refers specifically to public universities.)



### A. Corporatization

The role of corporations actually begins at the founding of the American university. Prof. Judy Areen, former Dean of Georgetown Law School, observed in the *Yale Daily News* that when higher education began here in the 1600s, colonial authorities looked first to the English model of all-faculty governance. However, they, but determined that there were insufficient faculty available in the colonies to both teach in and operate the new institutions.<sup>30</sup> Instead, authorities established academic corporations<sup>31</sup> such as Harvard, Yale, Brown, constituting private universities over which lay governing boards exercised complete legal authority.<sup>32</sup>

Corporate universities with lay governing boards are unique to the United States.<sup>33</sup> The boards have “complete legal authority and responsibility for the institution.”<sup>34</sup> In practice, they delegate part of that authority to the officers and faculty, who manage the program and educational standards. They typically do not delegate their authority over adequacy of the plant, determination of overall policies, selection of a president, or the assurance of adequate financing, however.<sup>35</sup> Universities elsewhere in the world, such as Oxford and Cambridge are guilds,<sup>36</sup> not corporations, and are completely operated by the faculty.<sup>37</sup> (Though neoliberalism has its sights on even these.<sup>38</sup>)

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<sup>30</sup> Gavan Gideon, UP CLOSE: The challenge of ‘shared governance,’ *YALE DAILY NEWS*, (April 12, 2012), <http://yaledailynews.com/blog/2012/04/12/up-close-the-challenge-of-shared-governance/>.

<sup>31</sup> See, e.g., PRESIDENT AND FELLOWS (HARVARD CORPORATION), <http://www.harvard.edu/about-harvard/harvards-leadership/president-and-fellows-harvard-corporation> (last visited Oct. 27, 2014).

<sup>32</sup> See, e.g., Algo D. Henderson, Association of Governing Boards of Universities and Colleges, *The Role of the Governing Board*, 10 *AGB REPORTS* 2 (1967), available at <http://eric.ed.gov/?id=ED017244>.

<sup>33</sup> See Gideon, *supra* note 30; see also M.M. Chambers, *The University as Corporation*, 2 *THE J. OF HIGHER EDUC.* 24, 24-29 (1931).

<sup>34</sup> Henderson, *supra* note 32.

<sup>35</sup> *Id.*

<sup>36</sup> See Saslow, *infra* note 62.

<sup>37</sup> Oxford is comprised of “constituent colleges,” all of which are “self-governing.” University-wide affairs are managed by a University Council elected by “Congregation,” the members of the University’s academic and

By the late 19th century, university governing boards in America included more businessmen and fewer community leaders and ministers than the original model.<sup>39</sup> Public universities<sup>40</sup> chartered by state governments in the mid-19<sup>th</sup> century also experienced increased business intervention, as corporate and “robber baron” influence on state governments and educational institutions increased.<sup>41</sup>

All told, businessmen began wielding increasing power over curriculum and otherwise encroaching upon faculty autonomy in private universities as well as public. Professors, feeling an urgent need to protect academic freedom, tenure, and the faculty’s role in governance, formed the American Association of University Professors (AAUP) in 1915.<sup>42</sup>

The tension continues, but business and corporate interests rapidly gain ground as neoliberalism strengthens the lay board’s role. The term “neoliberal university” is generally applied to ostensibly public institutions such as state colleges or universities that have become subject to the dictates of neoliberal state legislators who serve corporate interests.<sup>43</sup> It is no

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administrative staff.). See UNIVERSITY OF OXFORD, [http://en.wikipedia.org/wiki/University\\_of\\_Oxford](http://en.wikipedia.org/wiki/University_of_Oxford) (last visited Oct. 27, 2014); see also UNIVERSITY OF OXFORD: STRUCTURE OF THE UNIVERSITY, [http://www.ox.ac.uk/new\\_to\\_the\\_university/university\\_structure.html](http://www.ox.ac.uk/new_to_the_university/university_structure.html) (last visited Oct. 27, 2014).

<sup>38</sup> In Ukraine, advocates of the corporate university have emerged, see, e.g., Alexander Spivakovsky et al., *The University as a Corporation Which Serves Educational Interests*, 347 *Communications in Computer and Information Science* 60, 60-71 (2013), available at [http://link.springer.com/chapter/10.1007%2F978-3-642-35737-4\\_4](http://link.springer.com/chapter/10.1007%2F978-3-642-35737-4_4); see also Andrew Chitty, *Storm Breaking Upon the University: The Marketisation and Instrumentalisation of British Higher Education* (“Burying the Haldane Principle”) (April 1, 2011), <http://stormbreaking.blogspot.com/2011/04/burying-haldane-principle.html>.

<sup>39</sup> See Gideon, *supra* note 30.

<sup>40</sup> See, e.g., University of California, Board of Regents, Bylaw 5: Composition and Powers of the Corporation, <http://regents.universityofcalifornia.edu/governance/bylaws/bl5.html>.

<sup>41</sup> Christian Fleck, *A Transatlantic History of the Social Sciences: Robber Barons, The Third Reich, and the Invention of Empirical Social Research*, Bloomsbury Academic (2011), available at <https://www.bloomsburycollections.com/book/a-transatlantic-history-of-the-social-sciences-robber-barons-the-third-reich-and-the-invention-of-empirical-social-research/ch1-the-building-of-an-american-empire>.

<sup>42</sup> See Gideon, *supra* note 30.

<sup>43</sup> Saslow, *infra* note 62, introducing *privatization* (the “transfer of universally accessible public services into the realm of private enterprise for profit, largely through cuts in government budgets”; see also Scott Peters, *The Faculty’s Role in Shared Governance in an Administrative Age*,” UNIVERSITAS (2012-2013),

stretch, however, to use the term also to describe those private universities whose governing boards and administrators have gotten comfortably into bed with corporate and/or neoliberal actors, however.<sup>44</sup> Corporate officers now heavily populate private university governing boards—ostensibly to raise operating funds and bolster endowments.<sup>45</sup> Today’s neoliberal university runs more like a business than an academy of learning.<sup>46</sup>

Katherine Franke of Columbia University Law School, speaking on “The Corporate University,” during a Pacifica radio interview, observed that when corporatization of a university takes place, top management—the President or Chancellor—“see themselves as responsible to investors or donors more than [they do] to the constituency on campus, the academics and students. A university is not just a business, where you have to have a bottom line that satisfies your board of directors every year like other businesses. We have a particular mission in the university, perhaps to do things that are unpopular, that challenge what your donors think is the right way in which you should be thinking about particular problems. If we’re not doing that, then we’re not running a university, we’re running some...kind of ideological machine.”<sup>47</sup>

### B. Managerialism

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<http://www.uni.edu/universitas/print/539> (“[D]eclining state support for higher education has remade the public university.”).

<sup>44</sup> Pablo Eisenberg, *Quit Corporate Boards*, INSIDE HIGHER ED (March 29, 2010), <http://www.insidehighered.com/views/2010/03/29/eisenberg#ixzz39MLfgHhp>.

<sup>45</sup> *Id.*

<sup>46</sup> KATHERINE FRANKE, *University of Illinois Urged to Reinstate Professor Steven Salaita, Critic of Israeli War in Gaza*, DEMOCRACY NOW (Sept. 9, 2014) [http://www.democracynow.org/2014/9/9/university\\_of\\_illinois\\_urged\\_to\\_reinstate#](http://www.democracynow.org/2014/9/9/university_of_illinois_urged_to_reinstate#); see also Joyce E. Canaan & Wesley Shumar, *Higher Education in the Era of Globalization and Neoliberalism*, in STRUCTURE AND AGENCY IN THE NEOLIBERAL UNIVERSITY, 4-5 (Joyce E. Canaan & Wesley Shumar eds., Routledge 2011) (“[U]niversities are themselves ...having their infrastructure reconfigured in a corporate manner, . . . [this] [m]arks a profound difference from the universities of the 1970s and 1980s”).

<sup>47</sup> Franke, *supra* note 46.

A key feature of the corporate governing style is “managerialism,” which uses governing structures that are “hierarchical, bureaucratized, and secretive.”<sup>48</sup> In the neoliberal university, managerialism heightens the role of administrators and governing boards in governance and curriculum, at the faculty’s expense.

The number of administrators and administrative staff at neoliberal universities relative to the number of faculty has dramatically increased over time,<sup>49</sup> while transparency and leadership accountability have steadily decreased.<sup>50</sup> In fact, the number of administrators and professional staff has more than doubled, and their rate of increase is more than double the growth rate of the student population.<sup>51</sup> Nationwide, there are now more full-time administrators than full-time faculty, and the disparity is widening.<sup>52</sup>

Whereas administration used to be handled by faculty members rotating through the administrative structure, today’s typical mid-level administrator or staff person is not directly involved in teaching students, and may have little or no professional academic background. As a consequence, these “deanlets” may experience the incentives to carry out their assignments as abstract and amorphous. Under such conditions, they may shirk their duties, squander resources,

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<sup>48</sup> Saslow, *infra* note 62.

<sup>49</sup> BENJAMIN GINSBERG, *THE FALL OF THE FACULTY: THE RISE OF THE ALL-ADMINISTRATIVE UNIVERSITY AND WHY IT MATTERS*, Ch. 1 (Oxford 2011).

<sup>50</sup> Wanda P. Red, Customer Book Review (reviewing BENJAMIN GINSBERG, *THE FALL OF THE FACULTY* (2011)), available at <http://www.amazon.com/The-Fall-Faculty-Benjamin-Ginsberg/product-reviews/0199975434>.

<sup>51</sup> Glenn Harlan Reynolds, *Beat the tuition bloat: Column*, USA TODAY (February 17, 2014), <http://www.usatoday.com/story/opinion/2014/02/17/college-tuition-job-students-loan-debt-column/5531461/>; see also John Hechinger, *The Troubling Dean-to-Professor Ratio*, BLOOMBERG BUSINESSWEEK (November 21, 2012), <http://www.businessweek.com/articles/2012-11-21/the-troubling-dean-to-professor-ratio>.

<sup>52</sup> Glenn Harlan Reynolds, *Toss out abusive college administrators*, USA TODAY (April 22, 2014), <http://www.usatoday.com/story/opinion/2014/04/22/administration-college-university-education-teachers-column/7944185/>; See also Jon Marcus, *New Analysis Shows Problematic Boom In Higher Ed Administrators*, NEW ENGLAND CENTER FOR INVESTIGATIVE REPORTING (February 6, 2014), <http://necir.org/2014/02/06/new-analysis-shows-problematic-boom-in-higher-ed-administrators/>.

and even engage in corrupt behavior.<sup>53</sup> And they are typically even less responsive to students than they are to faculty.<sup>54</sup>

Power, perks, and pay concentrate at the upper levels of this system.<sup>55</sup> Top administrators not only pull in astronomical salaries, says Professor Benjamin Ginsberg of Johns Hopkins University. They also surround themselves with status symbols--luxurious offices and residences, chauffeurs, household staff, lavish entertainment--all at the university's expense.<sup>56</sup> Governing board meetings are themselves lavish affairs, resplendent with first-class air tickets, chauffeured limousines, and five-star hotels.<sup>57</sup>

Administrative costs skyrocket as a result.<sup>58</sup> These expenses are borne primarily by students through tuition increases<sup>59</sup> which far outstrip the consumer price index.<sup>60</sup> Students and their families fall deeper and deeper into debt.<sup>61</sup>

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<sup>53</sup> Ginsberg, *supra* note 49, at 67-68, 70, 72, 78. On corrupt behavior, *see e.g. id.* at 79-80 (University contracts with members of the governing board or their associates or relatives), and *id.* at 87 (Staff receive kickbacks and bribes from service providers and contractors, or simply embezzle funds); *see also* Campos, *infra* note 54 (regarding law school student loan scam).

<sup>54</sup> Reynolds, *supra* note 52.

<sup>55</sup> Hechinger, *supra* note 51 (detailing exorbitant pay for a bevy of senior administrators at Purdue University).

<sup>56</sup> Ginsberg, *supra* note 49, at 74.

<sup>57</sup> *See, e.g.,* Ashley Woods, *Michigan State University Trustees Spend Lavishly As Student Tuition Skyrockets*, THE HUFFINGTON POST (Nov. 7, 2013), [http://www.huffingtonpost.com/2013/11/07/msu-trustees-spending-college-tuition\\_n\\_4233942.html](http://www.huffingtonpost.com/2013/11/07/msu-trustees-spending-college-tuition_n_4233942.html); Erica Perez & Agustin Armendariz, *UCLA Officials Bend Travel Rules With First-Class Flights, Luxury Hotels*, THE CENTER FOR INVESTIGATIVE REPORTING (Aug. 1, 2013), <http://cironline.org/reports/ucla-officials-bend-travel-rules-first-class-flights-luxury-hotels-5072>

<sup>58</sup> Scott Carlson, *Administrator Hiring Drove 28% Boom in Higher-Ed Work Force*, CHRONICLE OF HIGHER EDUCATION (February 5, 2014), <http://chronicle.com/article/Administrator-Hiring-Drove-28-/144519/> ("You see it on every campus—an increase in administration and a decrease in full-time faculty, and an increase in the use of part-time faculty...[along with]rising tuition...." [N]ew administrative positions...drove a 28-percent expansion of the higher-ed work force from 2000 to 2012. [During the same time] the number of full-time faculty and staff members per professional or managerial administrator...declined 40 percent, to around 2.5 to 1.... [and] faculty salaries were "essentially flat"....)

<sup>59</sup> Collins, *supra* note 16, at xv; *see also* Marcus, *supra* note 52.

<sup>60</sup> Reynolds, *supra* note 52 ("[C]ollege tuition increased from 1978 to 2011 at an annual rate of 7.45%. That far outpaced health-care [and housing] costs, which increased by 5.8%...and 4.3% [respectively]. Family incomes, [only] grew...3.8% [during the same period]"; *see also* Gerald Torres, *Law Schools Face Changes and Challenges*, THE ASSOCIATION OF AMERICAN LAW SCHOOLS, [http://aalsfar.com/services\\_newsletter\\_presAug04.php](http://aalsfar.com/services_newsletter_presAug04.php) ((Over the last thirteen years, "the average resident tuition at public law schools increased by 134%, while non-resident tuition

At the same time, faculty participation in shared governance is rolled back.<sup>62</sup> Major new programs, handling of student issues and the appointment of senior administrators are all undertaken with little or no faculty input.<sup>63</sup> Faculty members “learn about major new programs and initiatives from official announcements or from the campus newspaper.”<sup>64</sup>

At National University, faculty complained of dramatic changes in “policies governing faculty work and welfare without the faculty consultation required by board-approved faculty policy documents....”<sup>65</sup> Faculty at Penn faced paycheck docks if they didn’t participate in an insurance company’s wellness plan, which included questionnaires requesting some rather personal information. The Penn VP for Human Resources said the administration considered assessing higher premiums for those who didn’t participate, but opted for the pay docking because it was “more transparent” and they wanted to send a clear message.<sup>66</sup> At the University

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rose by 173%. The increase was lower at private schools but a still [a]substantial 118 %.”); *see also* Peters, *supra* note 43 (“Decreases in state support have led to an increased focus on tuition revenue.”)

<sup>61</sup> Collins, *supra* note 16, at xv (Notes that some university officials directed students to particular private lenders that charged “higher than average interest rates” but paid the colleges fees for such referrals; they “operate as shills for loan sharks in their drive to ‘generate revenue’”); *see also* Marcus, *supra* note 52; *compare* Paul Campos, *The Law School Scam*, THE ATLANTIC (Sept. 2014), <http://www.theatlantic.com/features/archive/2014/08/the-law-school-scam/375069/> (alarming amount of student debt not supported or justified by the job market attributable to the activities of “for profit” law schools, such as those owned by InfiLaw, creating a scenario reminiscent of the subprime-mortgage-lending industry debacle of a decade ago.)

<sup>62</sup> *See* James M. Saslow, *Losing Our Faculties*, ACADEME, THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS (May-June 2012), <http://www.aaup.org/article/losing-our-faculties#.VE7inOd9fAo>.

<sup>63</sup> Benjamin Ginsberg with Robin Young, *Are Bloated Bureaucracies Undermining Higher Education?*, HERE AND NOW, NPR (Nov. 2, 2011), <http://hereandnow.wbur.org/2011/11/02/university-cost-bloated>.

<sup>64</sup> *Id.*

<sup>65</sup> Kevin Kiley, *Taking a Precarious Stance*, INSIDE HIGHER ED (Sept. 6, 2012), <http://www.insidehighered.com/news/2012/09/06/national-university-faculty-say-administration-cutting-them-out-governance#ixzz362aIwygt>.

<sup>66</sup> Natasha Singer, *On Campus, A Faculty Uprising Over Personal Data*, N.Y. TIMES (Sept. 14, 2013), [http://www.nytimes.com/2013/09/15/business/on-campus-a-faculty-uprising-over-personal-data.html?pagewanted=all&\\_r=2&](http://www.nytimes.com/2013/09/15/business/on-campus-a-faculty-uprising-over-personal-data.html?pagewanted=all&_r=2&).

of Florida Law School, a Dean search failed because of the central administration's “incessant interference” with faculty governance.<sup>67</sup>

At the University of Virginia, highly-regarded President Teresa Sullivan was abruptly ousted by governing board members “steeped in a culture of corporate jargon and buzzy management theories,” who “wanted the school to institute austerity measures and re-engineer its academic offerings around inexpensive, online education.<sup>68</sup> The board is heavily weighted with corporate/neoliberal types, including “a coal company magnate, a Wall Street professional, a top lawyer for General Electric, a nursing home executive, a beer distribution entrepreneur, [and] the son of conservative televangelist Pat Robertson...”<sup>69</sup> Many are UVA alumni, but few have any experience in delivering higher education.<sup>70</sup>

### C. *Deprofessionalization, Contingent Labor, and “Precaritization”*

*Deprofessionalization* is “a new attitude toward specialized knowledge, which aims to discredit or eliminate all independent expertise and subject it to management-generated criteria.”<sup>71</sup> Deprofessionalization in the neoliberal university rolls back the traditional role of academics in the generation and transmission of knowledge,<sup>72</sup> as new modes of delivering coursework narrow the role of tenured and tenure-track faculty.<sup>73</sup>

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<sup>67</sup> Michelle Jacobs, *Failed Dean Search Delivers a Terrible Blow to Law School*, GAINSVILLE SUN (March 27, 2014, 6:10 AM), <http://www.gainesville.com/article/20140327/OPINION03/140329708?p=1&tc=pg>.

<sup>68</sup> Zach Carter & Jason Linkins, *UVA Teresa Sullivan Ouster Reveals Corporate Control of Public Education*, HUFFINGTON POST (June 24, 2012), [http://www.huffingtonpost.com/2012/06/24/uva-teresa-sullivan-ouster-\\_n\\_1619261.html?ncid=edlinkusaolp00000009&fb\\_source=message](http://www.huffingtonpost.com/2012/06/24/uva-teresa-sullivan-ouster-_n_1619261.html?ncid=edlinkusaolp00000009&fb_source=message).

<sup>69</sup> Carter & Linkins, *supra* note 68.

<sup>70</sup> *Id.*

<sup>71</sup> Saslow, *supra* note 62.

<sup>72</sup> Collins, *supra* note 16, at xiv; *see also id.*, at xv (“[There has been] a shift away from older forms of academic value...and toward more frankly economic calculation.”)

<sup>73</sup> Peters, *supra* note 43.

Internet-based learning approaches, especially MOOCs (massive open online courses) raise concerns about the centrality of the faculty's role in the transmission of knowledge.<sup>74</sup> Even the faculty's ownership of their own intellectual property has come into question.<sup>75</sup> (The Rutgers University graduate faculty recently boycotted a university contract with Pearson Corp. that would give Pearson the intellectual property rights to any on-line courses the faculty develops.<sup>76</sup>)

Research and teaching are more and more corporate-funded and corporate-designed, as the university seeks to increase revenue through corporate sponsorships<sup>77</sup> and partnerships.<sup>78</sup> The resulting research and scholarship tends to affirm rather than challenge the corporate/neoliberal world view or critique its impact on social and cultural life.<sup>79</sup> Even curriculum and teaching is affected.<sup>80</sup>

*Contingent labor*, transforming jobs that once promised “full long-term employment” into “part-time positions adjustable to changing demand,” minimizes the institution's commitment to its employees.<sup>81</sup> Labor contingency advances on the neoliberal university campus

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<sup>74</sup> *Creative Destruction*, The ECONOMIST (June 28, 2014), at 11 (celebrating the use of internet and communications technology to decrease the “costly” role of faculty in the transmission of knowledge at universities worldwide.) Compare Canaan & Shumar, *supra* note 46, at 11 (The neoliberal university uses information technology not only to lower costs but also to destroy the “high-quality, well-paid permanent jobs” which lower profitability.)

<sup>75</sup> Canaan & Shumar, *supra* note 46, at 19 (Faculty increasingly seen as “subject matter experts”--only one part of a team that packages an educational commodity for on-line distribution).

<sup>76</sup> See Carl Straumsheim, *Rutgers Boycott Expands*, INSIDE HIGHER ED (Dec. 13, 2013), <http://www.insidehighered.com/news/2013/12/13/rutgers-u-liberal-arts-and-science-faculty-join-graduate-school-pearson-boycott>.

<sup>77</sup> Michael Barker, *On Corporate Power: Who Owns American Universities?*, CEASEFIRE, <http://ceasefiremagazine.co.uk/corporate-power-3/> (role of corporate philanthropy in the American higher education system.”); see also Stanley Katz, *Beware Big Donors*, THE CHRONICLE OF HIGHER EDUCATION (March 25, 2012), <http://chronicle.com/article/Big-Philanthropys-Role-in/131275/>.

<sup>78</sup> Lewis, *supra* note 19, at 53-54.

<sup>79</sup> Canaan & Shumar, *supra* note 46, at 18; Lewis, *supra* note 19, at 55.

<sup>80</sup> Douglas Belkin & Caroline Porter, *Corporate Cash Alters University Curricula*, WALL ST. J. (April 7, 2014), <http://online.wsj.com/news/articles/SB10001424052702303847804579481500497963552>; see also Mark Feldman, *More On “Corporate Cash Alters University Curricula”*, INSIDE HIGHER ED (April 8, 2014), <http://www.inside-higher-ed.com/more-on-corporate-cash-alterns-university-curricula/>.

<sup>81</sup> Saslow, *supra* note 62.



as buyouts and “post-tenure review” reduce tenure, restrict it, or eliminate it entirely.<sup>82</sup> The number of adjuncts and part-time lecturers increases as the numbers of full-time teachers decrease. Today, half the instructional staff at American colleges and universities are part-time, almost doubling the number of part-timers since 1987.<sup>83</sup>

At the same time, *precaritization* proceeds, as the administration cuts jobs, reduces salaries, and strips away health care, pensions, and other benefits. A clear, and possibly deliberate result is a state of “permanent insecurity and anxiety” among all those employed at the university.<sup>84</sup> Academic salaries in neoliberal universities stagnate across the board, while “outcomes assessments” increase.<sup>85</sup>

#### *D. Changes in the mission and purpose of the university*

Finally, the neoliberal university transforms the identities of those who work and learn there.<sup>86</sup> A blogger known as the “Homeless Adjunct” observes that the universities of the 1960s convened “well-educated, intellectual, and vocal people,” creating incubators of popular dissent “against the Vietnam War, against racism, against destruction of the environment in a growing corporatized culture, against misogyny, [and] against homophobia.”<sup>87</sup> This was unacceptable to “the corporations, the war-mongers, those in our society who would keep us divided based on

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<sup>82</sup> Saslow, *supra* note 62.

<sup>83</sup> Collins, *supra*, note 16, at xiv (The AAUP reports (2007) that “46% of faculty [positions] in US postsecondary institutions are held by people with temporary appointments”); Carlson, *supra* note 50.

<sup>84</sup> Saslow, *supra* note 62; Compare Noam Chomsky, Academic Freedom and the Corporatization of Universities, Speech at University of Toronto, Scarborough (April 6, 2011), *available at* <http://www.chomsky.info/talks/20110406.htm> (comparing universities in Mexico and the U.S.).

<sup>85</sup> Saslow, *supra* note 62.

<sup>86</sup> Cnaan & Shumar, *supra* note 46, at 4-6.

<sup>87</sup> *How The American University Was Killed in Five Easy Steps*, JUNCTREBELLION BLOG (Aug. 12, 2012), <http://junctrebillion.wordpress.com/2012/08/12/how-the-american-university-was-killed-in-five-easy-steps/>.

our race, our gender, our sexual orientation.”<sup>88</sup> Neoliberalism has not only reintroduced hierarchy, patriarchy and authoritarianism, it has reinforced them as well.<sup>89</sup>

Today, the neoliberal university encourages the “little people” on campus to think of themselves as solitary individuals, trying to get ahead or simply survive, always ready to respond to managerial commands and to identify with the top leadership’s world view.<sup>90</sup> Not only is education for the “99 percent” at risk, but even secure jobs<sup>91</sup> and a social safety net, “occupying” them with ceaseless worry and crisis and draining their energy for social activism.<sup>92</sup> It is now very difficult for many of us “to look up from the struggle for survival” and figure out how we got into this mess.<sup>93</sup>

Students are encouraged to see themselves as consumers of marketable skills<sup>94</sup> rather than citizens in training.<sup>95</sup> Neoliberal culture “hijacks the narrative” of a university education--no longer to develop your mind, but so you can get a “good job.”<sup>96</sup> Learning for the purpose of income generation becomes the primary goal of education,<sup>97</sup> undercutting the university’s role in producing the informed population that is one of the foundations of democracy.<sup>98</sup>

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<sup>88</sup> *Id.*

<sup>89</sup> See Canaan & Shumar, *supra* note 46, at 3.

<sup>90</sup> *Id.* at 4-6.

<sup>91</sup> *Id.* at 21 (competition even for middle class and professional jobs increase as such jobs are moved off-shore, like manufacturing jobs a generation earlier.)

<sup>92</sup> See Saslow, *supra* note 62.

<sup>93</sup> *Id.*

<sup>94</sup> Canaan & Shumar, *supra* note 46, at 5; see also Lewis, *supra* note 19, at 52.

<sup>95</sup> *Id.* at 8.

<sup>96</sup> Juntrebillion, *supra* note 87; compare Tayyab Mahmud, *Debt & Discipline: Neoliberal Reordering of Capitalism and the Working Classes*, 101 Kentucky L. J. 1, 39-40 (2012).

<sup>97</sup> Canaan & Shumar, *supra* note 46, at 4-5, 13.

<sup>98</sup> *Id.* at 17 (Using performance assessment to push teachers to inculcate “skills of employability” rather than initiating a “democratic discourse where all of an institution’s citizens are involved in developing ...knowledge...”)

Fewer and fewer students become “social engineers”<sup>99</sup> with the analytical and practical skills needed to reconstruct community and protect it from corrupt and overbearing private and public forces.<sup>100</sup> Minority students, especially, experience stress and tension as they seek to accommodate the demands of the neoliberal world while trying to remain grounded in their own communities and cultural contexts.<sup>101</sup> Standardized tests screen out more and more of such “grounded” minority candidates, increasing the number of minority and female students who have learned to adapt to white male ways of thinking.<sup>102</sup>

To effect this transformation, neoliberal university leadership does everything possible to undermine real solidarity and cohesiveness among faculty, students, and lower-level staff, often by creating the illusion of university-wide solidarity with “pomp and circumstance.”<sup>103</sup> The Homeless Adjunct sees this as part of the process of killing of the American University, in “five easy steps.”<sup>104</sup>

Faculty at neoliberal American universities have put little energy into resistance, however, and not merely because they fear for their jobs.<sup>105</sup> Faculty members at National University believe the administration “fosters an environment where...freedom to ask questions and critique administrative policies are restricted, and resources and support for developing new

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<sup>99</sup> *Id.* at 7 (Students’ “consumerist position” tends to “discourage critical thinking and foreclose...more genuine opportunit[ies] to have a say in the shaping of knowledge generation.”)

<sup>100</sup> Collins, *supra* note 16, at xvii (references chapters 9-12 for a look at student “agency” in struggle against these trends); *see also* Lewis, *supra* note 19, at 52.

<sup>101</sup> Cnaan & Shumar, *supra* note 46, at 24. Neoliberal worldview justifies “exploitative relationships,” for example, opposing worldviews that make “community and responsibility central themes,” *id.* at 25.

<sup>102</sup> Jay Rosner, *Quantifying the Unfairness Behind the Bubbles, in SAT WARS: THE CASE FOR TEST OPTIONAL COLLEGE ADMISSIONS*, 104 (Joseph A. Soares ed., 2009).

<sup>103</sup> Collins, *supra* note 16, at 16.

<sup>104</sup> Juntrebellion, *supra* note 87.

<sup>105</sup> Saslow, *supra* note 62.

ideas are unavailable.”<sup>106</sup> Saslow warns, that “for preaching that education is for public citizenship, not private productivity, [faculties] are now besieged by an inquisition-cum-hostile takeover [including a media campaign] to undermin[e] public sympathy for the professoriate, represented as a bunch of expensive, meddlesome, and unaccountable slackers.”<sup>107</sup>

Canadian professor Magda Lewis poignantly observes that progressive faculty in neoliberal universities have to “think one way and live another, to believe in a more egalitarian and open society while working within increasingly elitist and closed institutions.”<sup>108</sup> Though they believe deeply in the need to build a different kind of society, they feel “compelled to struggle for resources and power within the one that actually exists.”<sup>109</sup>

She’s preaching to the choir. Here’s Prof. Saslow:

“Though sixty-four isn’t so old today, I yearn to retire as soon as my precarious 401(k) may permit. I can’t bear any longer my front-row seat at the relentless boxing match between the corporate deanlets and us dwindling holdouts. [W]e’ve been up against the ropes for years, continually punch-drunk from the latest dictatorial, wrong-headed, or merely superfluous ‘innovation’ that management keeps jabbing at faculty. I used to be an honored professional, with valued expertise and integrity certified by peers. Now educators, like everyone else, are being beaten down [as lazy unreliaables] who must be monitored and kept hungry and ignorant of everything outside our assigned task. I only hope we still have strength enough to fight off these pandemic assaults.”<sup>110</sup>

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<sup>106</sup> Kiley, *supra* note 65.

<sup>107</sup> Saslow, *supra* note 62.

<sup>108</sup> Lewis, *supra* note 19, at 59.

<sup>109</sup> *See* Saslow, *supra* note 62.

<sup>110</sup> *See* Saslow, *supra* note 62.

David Harvey urges progressive academics to do more than simply engage in critical analysis of existing conditions at the neoliberal university, however.<sup>111</sup> First, we must develop solidarity within our ranks. In “rebellious” terms this means we must locate the community that potentially exists among our colleagues, understand its “stock stories” (such as those told by Professors Lewis, Franke, and Saslow<sup>112</sup>) and attempt to ground those stories with narratives about how neoliberalism affects us and what we can do about it. I call this “rebellious on campus.” Next, the narrative should open to consider our similarities to and connections with marginalized people and communities who face neoliberalism’s onslaught as well, supporting the adage that if one of us is not free, then none of us are. I call this “rebellious off campus.”

Justin Hansford's story, described in Part I, provides a particularly rebellious example. His home university is a private, Jesuit institution, and not as overtly neoliberal as it might be. Nonetheless, it is politically conservative, and as an untenured Assistant Professor, he is at risk. Conservative students have made numerous complaints in their classroom evaluations<sup>113</sup>, some of which were posted on the "Faculty Lounge" website.<sup>114</sup> After Justin appeared on a panel at Harvard entitled “Saving St. Louis,” his criticisms of the St. Louis Mayor and Police Chief found their way into the Boston Globe<sup>115</sup>, causing a stir among St. Louis University alumni, some of

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<sup>111</sup> NEOLIBERALISM, n. 2 *supra*, at 198

<sup>112</sup> See Franke, *supra* note 46; Saslow, *supra* note 62; Lewis, *supra* note 19.

<sup>113</sup> Telephone Interview with Prof. Justin Hansford, St. Louis University School of Law, in Wash., D.C. (Jan. 30, 2015).

<sup>114</sup> Jeff Redding, Police Arrest SLU Law Professor and Legal Observer During Saint Louis Protests, The Faculty Lounge (Oct. 27, 2014, 2:43 PM), <http://www.thefacultyounge.org/2014/10/police-arrest-slu-law-professor-and-legal-observer-during-saint-louis-protests.html>.

<sup>115</sup> Nicole Dungca, *Activists spar with Ferguson mayor, police chief at Harvard*, BOSTON GLOBE (Jan. 18, 2015), <http://www.bostonglobe.com/metro/2015/01/17/activists-spar-with-ferguson-mayor-police-chief-harvard-panel/KTb1TpWCrXzpT9wpeAytdM/story.html> (last visited January 31, 2015).

whom have called his Dean with strong complaints.<sup>116</sup> This is not even to mention the volumes of hate mail, hate email, phone calls, etc., that he constantly receives.

He clearly needs support, and is getting some from his progressive colleagues. How might more such support be developed, not just for Justin, but for all of our faculty who wish to rebel? I explore these questions in Parts IV and V.

#### **IV. Rebellious on Campus**

The first step is to revive the “guild paradigm” of university faculties.<sup>117</sup> University faculty members should be “long-term, active members,” of this guild, not “alienated part-timers.” This means reconstituting ourselves as a collective. Only in this way can we resist the neoliberal regime, which seeks to convert university values and practices from serving the common good to serving societal privilege and its entrenched elites.<sup>118</sup>

Faculty are beginning to organize.<sup>119</sup> The AAUP reports an increasing number of faculty union drives at public universities, for example. Faculty at the University of Illinois at Chicago (a public university) recently organized a union called the UIC United Faculty. They are the first faculty from a large research university in Illinois to do so. In the spring semester of 2014, virtually the entire tenure-track and non-tenure track faculty voted to ratify United Faculty’s labor contract with university management.<sup>120</sup>

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<sup>116</sup> Telephone Interview with Justin Hansford, *supra* note 113.

<sup>117</sup> Saslow, *supra* note 62.

<sup>118</sup> *Id.*

<sup>119</sup> See, e.g., Elizabeth Segran, *The Adjunct Revolt: How Poor Professors Are Fighting Back: Can a budding labor movement improve the lives of non-tenured faculty—and, in the process, fix higher education?*, THE ATLANTIC (April 28, 2014), <http://www.theatlantic.com/business/archive/2014/04/the-adjunct-professor-crisis/361336/>.

<sup>120</sup> Media Release, American Association of University Professors (AAUP), UIC Faculty Overwhelmingly Ratify First Contracts (April 25, 2014), *available at* <http://www.aaup.org/media-release/uic-faculty-overwhelmingly-ratify-first-contracts>.

Tenure-line faculty at private institutions, in contrast, have been blocked from organizing formal unions since 1980 by the U.S. Supreme Court decision in *NLRB v. Yeshiva University*.<sup>121</sup> In that case, the court ruled that Yeshiva tenured and tenure-track faculty had significant managerial authority and therefore collective bargaining rights were inappropriate.<sup>122</sup> According to the Court, individual schools within the University are “substantially autonomous, and the faculty members at each school effectively determine its curriculum, grading system, admission and matriculation standards, academic calendars, and course schedules.”<sup>123</sup> “[T]he overwhelming majority of faculty recommendations as to faculty hiring, tenure, sabbaticals, termination, and promotion are implemented.... [giving Yeshiva's faculty a] crucial role . . . in determining other central policies of the institution.”<sup>124</sup> (Faculty in today’s neoliberal universities should ask themselves whether they think they have a “significant” managerial authority, or a “crucial” role in determining the central policies of their institutions.)

Regardless, the AAUP charters and sponsors collective bargaining units in private universities that lack only the power to collect dues or to call a strike.<sup>125</sup> Moreover, faculty “handbooks” have been recognized as a contractual obligation of private universities to respect faculty rights at least since the case of *Greene v. Howard University* (1969).<sup>126</sup> Several cases

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<sup>121</sup> *NLRB v. Yeshiva Univ.*, 444 U.S. 672, 673 (1980).

<sup>122</sup> Colleen Flaherty, *Time for a Union?*, INSIDE HIGHER ED (Feb. 21, 2014), <http://www.insidehighered.com/news/2014/02/21/u-illinois-urbana-champaign-faculty-watch-strike-chicago-campus-closely#ixzz363yiy15t>.

<sup>123</sup> *Yeshiva*, 444 U.S. at 677.

<sup>124</sup> *Id.* at 679.

<sup>125</sup> See, e.g. AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS (AAUP), Collective Bargaining, <http://www.aaup.org/issues/collective-bargaining>, for AAUP’s position on the matter.

<sup>126</sup> *Greene v. Howard University*, 412 F.2d 1128, 1135 (D.C. Cir. 1969); See AAUP Faculty Handbooks as Enforceable Contracts: A State Guide (2009), <http://www.aaup.org/NR/rdonlyres/3F5000A9-F47D-4326-BD09-33DDD3DBC8C1/0/FacultyHandbooksasEnforceableContractssmall.pdf> (“AAUP PDF”) (citing *Greene*: “Academic freedom rights are often explicitly incorporated into faculty handbooks, which are sometimes held to be legally binding contracts.”)

following *Greene* have come to similar conclusions.<sup>127</sup> In addition, some authors urge faculty to participate more vigorously in college governance institutions and even seek a larger faculty role in them as an alternative or supplement to the labor union approach.<sup>128</sup> (The University of Toronto, for example, has significant faculty and student representation on its governing body.<sup>129</sup>)

According to one report, faculty guilds comprise the university's "quality engine," and administrators should give them sufficient autonomy to ensure the integrity of their work and thereby the success of the university.<sup>130</sup> On the other hand, the work of the "administrative shell" surrounding the guilds is essential to their success, supporting the recruitment and retention of students as well as faculty, to say nothing of "libraries, laboratories, computers, buildings, travel, research assistance, and the like." The "defining function" of the shell is to raise money from donors and to facilitate "grant and contract application and awards to expand the research base," as well as ensuring "the efficient and effective operation of the institution."<sup>131</sup>

Though the "administrative shell" surrounding the quality engine supplies crucial management and support, its hierarchical organizational structure should not spill over into the

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<sup>127</sup> See AAUP PDF, *supra* note 126 (citing *Howard Univ. v. Lacy*, 828 A.2d 733 (D.C. 2003), *reh'g granted in part*, 833 A.2d 991 (D.C. 2003); *Paul v. Howard Univ.*, 754 A.2d 297 (D.C. Cir. 2000); *Breiner-Sanders v. Georgetown Univ.*, 118 F. Supp. 2d 1 (D.D.C. 1999); *McConnell v. Howard Univ.*, 818 F.2d 58 (D.C. Cir. 1987).

<sup>128</sup> *Cf.* Saslow, *supra* note 62 and description of Oxford governance, *supra* note 30.

<sup>129</sup> University of Toronto, Report of the Task Force on Governance (June 22, 2010), [http://www.governingcouncil.utoronto.ca/Governing\\_Council/taskforce/reportTFOG.htm](http://www.governingcouncil.utoronto.ca/Governing_Council/taskforce/reportTFOG.htm). (The University of Toronto's Governing Council is comprised of 16% alumni, 24% faculty, and 16% students.)

<sup>130</sup> Lombardi Program on Measuring University Performance, *University Organization, Governance, and Competitiveness*, Arizona State University, at 4 (2002), available at <http://mup.asu.edu/publications.html> (guilds are "organized collections of individual experts" that "function as self-perpetuating communities.")

<sup>131</sup> *Id.* at 5.



“quality engine’s academic core.”<sup>132</sup> That upsets the balance, and that is the story of the neoliberal university. It is out of balance.

To restore the balance, we faculty “guild” members in neoliberal universities must regain our lost autonomy,<sup>133</sup> by unionizing in public universities, by putting real energy into AAUP chapters in private universities, and by generally stepping up when it comes to university governance. Doing this, we will be better able to use the university as a base from which to help protect the public at large from neoliberalism’s onslaught.<sup>134</sup>

Professor Lewis points out that progressive faculty today, like progressive public intellectuals in general, are more and more likely to stand alone, “disconnected from social movements in a way that would have been difficult to predict two decades ago.”<sup>135</sup> That’s a real problem, and it’s especially important because neoliberalism affects not only our university, but our planet, and all its residents.<sup>136</sup>

That leads us to the next step, re-engagement with the community. This is essential to help us struggle against our own elitism as well as to help us make common cause with skilled and resourceful people who are struggling with the neoliberal political economy as surely as we are.

## V. **Rebelling Off-Campus**

### A. *Agency, Elitism, and Cultural DNA*

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<sup>132</sup> *Id.*

<sup>133</sup> See Saslow, *supra* note 62 (noting “an urgent wake-up call” to the loss of faculty autonomy in the areas of “curriculum, hiring, tenure, and promotion; over institutional purpose; and over our own working conditions.”)

<sup>134</sup> Saslow, *supra* note 62.

<sup>135</sup> Lewis, *supra* note 19, at 59; compare Laura Kalman, *YALE LAW SCHOOL AND THE SIXTIES: REVOLT AND REVERBERATIONS* (University of North Carolina Press, 2005); Geoff Bailey, *The Rise and Fall of SDS*, *INTERNATIONAL SOCIALIST REVIEW* (Sept.-Oct. 2003), <http://www.isreview.org/issues/31/sds.shtml>.

<sup>136</sup> See *esp.* Saslow *supra*, note 62 ([The] “infection in the US academy is but one outbreak of a broader epidemic....”)

I observed earlier that students in the neoliberal university are encouraged to see themselves as consumers of marketable skills rather than citizens in training.<sup>137</sup> Neoliberalism hijacks the narrative of the university as producer, not only of an informed population but one that is prepared to challenge authority for the sake of social justice.<sup>138</sup> I mentioned that this is especially problematical for minority students who see a value in remaining grounded in their own communities and cultural contexts. Standardized tests screen out many of them, but those that get through are subjected to another round of screening and molding, to conform them to the neoliberal ideal.

Lucie Jewel, in a 2008 article, gives us some extensive information on how this happens.<sup>139</sup> Jewel refers to the work of Pierre Bourdieu, a French cultural anthropologist who developed a model of class distinction and reproduction while observing working class French college students being socialized to the manners and speech patterns of the French upper class.<sup>140</sup> Such socialization was viewed as critical to their success. Jewel observed similar processes afoot at her own American law school, whose students were primarily working class.<sup>141</sup>

Sound familiar? How many of us see our students in the same dark suit in class as they prepare for OCI ("On Campus Interviews") with corporate law firms? How many of our colleagues, along with "Career Development" deanlets and administrators, encourage students to

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<sup>137</sup> Canaan & Shumar, *supra* note 46, at 8.

<sup>138</sup> See RICHARD PEARLSTEIN, *THE INVISIBLE BRIDGE: THE FALL OF NIXON AND THE RISE OF REAGAN* (2014); *Book Discussion on The Nixon Defense and The Invisible Bridge* (C-SPAN broadcast Nov. 22, 2014), available at <http://www.c-span.org/video/?322768-3/book-discussion-nixon-defense-invisible-bridge> (discussing the post-Reagan bifurcated narrative of the United States: on the right, a "perfect union" of children awaiting a hero to tell them what to do; on the left, a citizenry of grown-ups ready to question authority and hold it accountable).

<sup>139</sup> Lucille A. Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 *BUFFALO L. REV.* 1155 (2008).

<sup>140</sup> Jewel, *supra* note 136, at 1156-58, 1159.

<sup>141</sup> Jewel, *supra* note 136, at 1155-56.

believe that the intellectual processes, problem-solving skill sets, and way of life of the corporate attorney is the "gold standard" (no pun intended) to which all must aspire?<sup>142</sup>

In this way, we encourage students to substitute neoliberal patterns of life and work for their own. Yet they come from communities with cultural traditions that are extremely valuable in the struggle against neoliberalism. Gerald Lopez encourages "rebellious" lawyers to be receptive to these when looking for solutions to problems the community faces, avoiding "regnant" lawyering patterns.<sup>143</sup> Yet we are preparing law students to think and behave like neoliberal lawyers who serve corporations. You don't get much more "regnant" than that.

The more we steep them in regnant, neoliberal patterns, the harder it will be for them to rebel once they leave us. And, quiet as it's kept, the more we conform to those patterns in our teaching, the narrower will be our own vision of how to resist the impact of campus-based neoliberalism on our own lives and work.

I believe we can begin to reverse these processes by creating experiential learning opportunities for our students that permit them--and us--to engage with social movements and communities. Through "rebellious" clinics, externships, and service learning opportunities, we can help bridge the gap between university and community, for ourselves as well as for our students.<sup>144</sup> In doing so, rebellious law professors must consider a number of issues with which

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<sup>142</sup> See Prof. Duncan Kennedy, *Global Dialogue on the Future of Legal Education*, YOUTUBE (Mar. 28, 2012) <http://www.youtube.com/watch?v=eldHmK4wYcc> (American legal education's built in bias toward multinational interests; training young lawyers for hierarchy, to identify with the authority of their elders—professors, employers—and to get satisfaction from being the hired guns for the multinationals, with very little sense of themselves as autonomous moral and political actors.)

<sup>143</sup> Lopez, *supra*, note 3.

<sup>144</sup> See, e.g., Alina Ball, *Social Enterprise and Economic Empowerment Clinic*, University of California Hastings College of Law, <http://www.uchastings.edu/academics/clinical-programs/clinics/socialenterpriseandeconomicempowerment/index.php>; Alexi Freeman, *Getting Your Hands Dirty: New School Legal Education*, 36 THE DOCKET, Issue 1 (Jan. 2014); *interGenerational Movement Lawyer 2.0*, LAW AT THE MARGINS (June 14, 2013), <http://lawatthemargins.com/intergeneration-movement-lawyer-2-0/>; *Social Change Lawyering Gets the Goods*, WOMEN WITH A VISION (Sept. 6, 2013), <http://wwav-no.org/social-change-lawyering-gets-the-goods>; Juliet M. Brodie, *How Little Cases Fit Into the Big Picture: Teaching Social Justice*

they may not be familiar,<sup>145</sup> as they work in the field as well as when they reflect upon and prepare for that work in class with their students.

Inside the class, participants should discuss the proper role of lawyers in social justice movements, the principles of social movement lawyering, the importance of interdisciplinary learning and approaches and note the political and economic context of neoliberalism.<sup>146</sup>

As discussed above, the neoliberal/neocon consensus disempowers people in favor of corporations, tries to convince people that consumption, not collective action, is the answer to their problems, and that when facing entrenched profit-making interests as they try to protect their health, seek an education, or look for social support, they stand alone.<sup>147</sup> Further, if they are minorities, they must succeed, if at all, in a “colorblind” world.<sup>148</sup> This affects all of us, university people and community people, often differently, but still profoundly alike. In addition, we can expect the differences to decrease, and the similarities to increase, over time.

In addition, the class can benefit from interdisciplinary approaches that illuminate the power of what I call “cultural DNA.” Culture isn’t just the way we sing and dance and the food we eat. It’s the way we solve problems as a community. We see the evidence of a community’s problem-solving processes in the beliefs, behavior patterns, customs, art, music, cuisine, institutions, and organizations it generates along the way. DNA is the material that transfers genetic characteristics in all life forms. In a previous article, I used the metaphor of “cultural

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*Lawyering in Neighborhood-Based Community Lawyering Clinics*, available at <http://www.law.harvard.edu/academics/clinical/documents/littlecasesbigpicture.pdf>.

<sup>145</sup> See generally, Alina Ball, Alexi Freeman, & Sara Jackson, Presentation at the SALT Conference: Lawyering for Social Justice Movements: How the Legal Academy Can Maximize Impact (Oct. 2014).

<sup>146</sup> For more on interdisciplinary learning and approaches, see, e.g., ALLEN F. REPKO, INTERDISCIPLINARY RESEARCH: PROCESS AND THEORY 23, 49-50 (2008); Matthew Miller & Veronica Boix Mansilla, *Thinking Across Perspectives and Disciplines*, GOODWORK PROJECT REPORT SERIES, Number 27 (Nov. 2004).

<sup>147</sup> Lewis, *supra* note 19, at 48.

<sup>148</sup> See generally MICHAEL OMI & HOWARD WINANT, RACIAL FORMATIONS IN THE UNITED STATES Ch. 8 (Routledge, 3rd ed. 2014).

DNA” to describe a matrix or template that organizes the cultural information of a particular community and gives it coherence.<sup>149</sup> Just as an organism’s DNA contains the instructions needed for it to develop, survive, and reproduce, cultural DNA permits human communities to pass analogous instructions to their successors, such as how to prepare food, practice faith, provide for one’s young, and struggle against oppression.

The cultural DNA produced by each human community over time, carrying the imprint of its distinct problem-solving techniques, constitutes a rich storehouse of potential solutions for many social, economic, political, and medical problems.<sup>150</sup> In order for conditions within minority and working-class communities to improve, not only must the physical and economic infrastructure be rebuilt, including housing, schools, stores, transportation, and jobs. The community’s civic and social culture—its cultural DNA—must be renovated and re-energized as well. Regnant lawyering will produce the opposite result, one of many reasons why rebellious lawyering is the preferred approach.

Using insights gained by such discussions, participants will plan their work and reflect upon the work they have already done. To order student work outside the classroom, their teachers must establish ongoing relationships with lawyers, organizers, and staff with whom the students have contact, strengthening students’ learning from their experiences in the field. The class should also constantly examine and critique the contradictions between “cause-lawyering” on the one hand, and “the professional project of the organized bar” on the other. They should

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<sup>149</sup> Harold A. McDougall, *Reconstructing African American Cultural DNA: An Action Research Agenda for Howard University*, 55 HOW. L.J. 63, 64-65 (2011); Harold McDougall, *Cultural DNA: Bringing Civic Infrastructure to Life*, THE HUFFINGTON POST BLOG (July 10, 2012, 9:31 AM), [http://www.huffingtonpost.com/harold-a-mcdougall/animating-citizens-assembly\\_b\\_1656586.html](http://www.huffingtonpost.com/harold-a-mcdougall/animating-citizens-assembly_b_1656586.html).

<sup>150</sup> See Sabine U. O’Hara, *Valuing socio-Diversity*, 22 INT’L J. SOC. ECON. 31 (1995); Sabine U. O’Hara & Sigrig Stagl, *Global Food Markets and Their Local Alternatives: A SocioEcological Economic Perspective*, 22 POPULATION & ENV’T, 533, 542 (July 2001); see also Kennedy, *supra*, note 142 (All resistance to neoliberal multinationalism is local, grounded in the local experience of rebellion against the oppressiveness of the local system, hopefully generating new forms of resistance, new ways of fighting back that will be more generally useful.)

note especially the “powerful socializing messages” of regnant lawyering, such as valuing “private practice in general and in elite law firms in particular,” and promoting “analytic distance rather than political commitment.”<sup>151</sup>

### *B. Planning, Doing, and Reflecting*

The first step is for our students to learn to think about what they are doing and to learn from their experiences in the field. In my own work as Director of the Law and Public Policy Program at Catholic University, I combined class and field work supervision through a “planning, doing, reflecting” model that I developed along with several colleagues at the CUNY Law School, as part of its founding in the early 1980s.

In the Law and Public Policy Program at Catholic University, my goal was to teach students how to think and work like lawyers who practiced before all three branches of government -- the legislature and the Executive (including administrative agencies), and not just the courts. Because this playing field is so complex, students had to learn to keep their objectives and their working relations with others in constant focus. I found they could do this more effectively if they used a planning-doing-reflecting model.<sup>152</sup> This approach helps students “learn how to learn from experience,” encouraging lifelong learning habits particularly suited to the Information Age.

Students use learning agendas to *plan*, identifying what they hope to learn from what they *do* -- in their classes, in their internships, and in their jobs; while in law school and after graduation. Students *reflect* with learning journals or summary memoranda.

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<sup>151</sup> Krishnan, *supra* note 7, at 585.

<sup>152</sup> Popularized by CUNY Law School. *See, e.g.*, Harold McDougall, *Lawyering and Public Policy*, 38 J. LEGAL ED. 369, 372-75, 383-86 (1988) (hereinafter, *Lawyering I*).

In the complex, chaotic system of federal policy and lawmaking in which my students operated, I found that *planning* involved narrowing seemingly limitless choices of action down to those few which were most appropriate.<sup>153</sup> First, the student employed *theoretical perspective* to place the problem in its larger context.<sup>154</sup> This helped identify the widest range of choices, helped identify the widest range of possible repercussions of each choice, and helped the student/practitioner identify which choices should be referred to experts in fields other than law.<sup>155</sup>

Of the exclusively legal remedies which remain, *legal reasoning* helped eliminate those which do not promise a satisfactory outcome in the legislature, the courts, or before an administrative agency.<sup>156</sup> Finally, completing the planning process, *professional responsibility* further winnowed the remaining choices by eliminating those which it would be unethical to pursue.<sup>157</sup>

The *doing* phase began with the final choice among those remedies considered acceptable after filtering through the lenses of theoretical perspective, legal reasoning, and professional responsibility. This choice was an exercise of *clinical judgment*<sup>158</sup> (employing a number of skills, among them ends-means thinking, planning, risk evaluation, hypothesis formulation, and

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<sup>153</sup> *Id.* at 390.

<sup>154</sup> *I.e.*, social, historical, political, scientific, and/or economic context. *See id.* at 371.

<sup>155</sup> *See* Harold McDougall, *Social Movements, Law and Implementation*, 75 CORNELL L. REV. 83, 102-111 (1989) (historical case study of litigation, legislation, and community organizing in the civil rights movement); and *id.* at 118-122 (community-building). *See also* Harold McDougall, *Lawyering and the Public Interest in the 1990s*, 60 FORDHAM L. REV. 1, 1-9, 11-30, 45-47 (1991) (theory and practice in a postmodern legal system) (hereinafter *Lawyering II*).

<sup>156</sup> *See, e.g.*, McDougall, *Lawyering I*, *supra* note 152, at 381-383 (legal reasoning in public interest litigation). *See also* McDougall, *Lawyering II*, *supra* note 155, at 43-44 (legal reasoning in public interest litigation).

<sup>157</sup> *See* McDougall, *Lawyering I*, *supra* note 152, at 371, 376-379.

<sup>158</sup> *See id.* at 371, 375-76, 383-84. *See also* McDougall, *Social Movements*, *supra* note 152, at 111-115 (case study of tactical judgments made in pursuing the Civil Rights Restoration Act of 1989); and McDougall, *Lawyering II*, *supra* note 155, at 9-11, 30-34 (overview of clinical judgment in a postmodern legal system), *see especially* 34-37.

information acquisition).<sup>159</sup> It is often experienced by students (and practitioners) as almost instinctive in nature, but if closely examined, it is usually informed by the planning process described above.

Once the choice is made, *doing* was carried through by means of *oral and written communication*<sup>160</sup> and by means of *management of effort*.<sup>161</sup> Oral and written communication is more than just writing the best brief; it is the ability to draft statutory language which keeps a legislative coalition from shattering, or the ability to draft regulations which stay within the boundaries of delegated power. Similarly, management of effort is more than simply keeping track of one's own time; it is the ability to keep a focus group, legislative coalition, or group of *amicus curiae* moving, cohering, principled and on track.<sup>162</sup>

*Reflecting* is the inverse of planning, and deploys the same skills -- theoretical perspective, legal reasoning, and professional responsibility. Here, the student/practitioner reviews the choice made (the options discarded as well as the one adopted) and the consequences flowing from that choice. In many instances, reflecting collapses quickly into planning for the next stage of a lawyer's activity.

### C. *Teaching Social Justice Lawyering*

The “reflective” practice I taught my students at Catholic was not “rebellious,” however. They generally worked for government agencies, trade associations, or, at best, nonprofits with a social justice orientation. We did not discuss neoliberalism at all, already the “regnant” political philosophy of both Democrat and Republican decision makers at the time, hardly to be

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<sup>159</sup> See McDougall, *Lawyering II*, *supra* note 155, at 34-37.

<sup>160</sup> See McDougall, *Lawyering I*, *supra* note 152, at 371, n.12.

<sup>161</sup> *Id.* at 371, n.14.

<sup>162</sup> See McDougall, *Social Movements*, *supra* note 152, at 83-86 (the role of groups in building community and pressing for legal and political change). See also McDougall, *Lawyering II*, *supra* note 155, at 37-40 (community-building).



challenged when lobbying the government. Cultural DNA was a concept I had not even developed yet. Clearly, some modifications to the "planning-doing-reflecting" model are needed when students are directly engaged with social justice organizations, unions, and community groups, particularly if they do so in "rebellious" mode.

While the planning-doing-reflecting model itself remains very useful, the definitions of the six lawyering skills that flesh out the model must widen to describe, chart, and track work carried on with communities that bring their own resources and problem-solving tools to the table. They must broaden to help students grasp the structurally subordinating nature of the problems community people face, for example. Moreover, teachers and students alike must appreciate the degree to which many, if not most of neoliberalism's structurally subordinating forces affect our own life chances, and choices, as well. All this departs from traditional, "regnant" law school teaching, which does not train students how to build and sustain coalitions or to understand the political and economic frameworks that they must challenge when they pursue social justice and struggle against neoliberalism.<sup>163</sup>

From a pedagogical perspective, it is especially interesting to note that the sequence of planning-doing-reflecting via the six lawyering skills shifts as a consequence of the community focus of "rebellious" law teaching. The sequence I used in public policy externships was still "regnant" in that it started with a cerebral examination of the world from the standpoint of various theories of society developed by academics. It then proceeded to narrow alternatives using standard deductive reasoning.

To avoid a "heroic" posture that disempowers community members, we start, not with theoretical perspective, but with oral communication. To be specific, we begin by learning and

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<sup>163</sup> Artika R. Tyner, *Planting People, Growing Justice: The Three Pillars Of New Social Justice Lawyering*, 10 HASTINGS RACE & POVERTY L. J. 219, 239 (2013).

teaching how to listen, because community members have much to tell us, not only about their world, but about our own. We then move to theoretical perspective, for a link between the world they know and the one with which we are more familiar. Next, we move to professional responsibility, to focus on the ethics of our interactions. Then management of effort, so we understand fully what their resources are, how they connect with those we bring, and how they can be integrated in ways that are both holistic and productive. Legal reasoning and clinical judgment--the “heroic” skills—now come last, and are tempered with the knowledge that some of the skill sets we have discovered among community members along the way can moderate, magnify, and in some cases replace the need for a legal solution. As we review these reconfigured lawyering skills, I will share some examples of how Baltimore community people gave me new insights through the lens of the skill in question, as I interviewed them for my book, *Black Baltimore: A New Theory of Community*.<sup>164</sup>

#### 1. ORAL COMMUNICATION

*Oral communication* now includes “engaged listening,” giving our clients voice, an opportunity to say “I was wronged.”<sup>165</sup> It is easy to underestimate the power of listening and its healing and transformative potential.<sup>166</sup> Also, client stories are powerful ways to highlight injustices in our system.<sup>167</sup> But there's much more to this listening than therapy for our community-based clients. It's also about what they can teach us, things we miss about the whole

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<sup>164</sup> McDougall, *Black Baltimore*, *infra* note 169.

<sup>165</sup> See, e.g., López, *supra* note 3 (encouraging lawyers to recognize and work with, rather than against, the knowledge base and power of traditionally subordinated communities).

<sup>166</sup> See generally David J. Willis, *The Professional Listener*, 35 HOUS. LAW. 16, 16-17 (1997) (“Many lawyers . . . instead of listening to the broad range of client concerns, limit their time and attention to those elements they consider to be purely “legal” or “relevant . . .”)

<sup>167</sup> See, e.g., Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1, 2 (1989) (providing examples of the power of this traditionally ignored knowledge base).

social construct we occupy with them, things we miss because we are occupants of a different location within it.<sup>168</sup>

I first experienced this conceptual relocation as I interviewed black residents of West Baltimore for my book,<sup>169</sup> mapping and appreciating the cultural patterns and civil society formations I found there, in neighborhoods that later became the subject of the HBO series, *The Wire*.<sup>170</sup> I found their stories and observations so elegant and powerful that I could no longer rely on the dense theoretical construct I had erected to explain their lives. Instead, I found myself listening more and talking less. In the book itself, I not only retell their stories but what was going on in the street around us as we talked. The whole setting in which they lived their lives was an essential part of the story, a narrative that the reader could re-live with me, growing and changing as I did.<sup>171</sup>

I found that as we engaged in conversation, their life knowledge and my theoretical approaches both jostled and reinforced one another,<sup>172</sup> in a mutual “outside the box” thinking

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<sup>168</sup> Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 *Clinical L. Rev.* 147, 159-60 (2000) (“[P]overty lawyers have to learn to listen to their clients...if they are to find out ...how their ‘legal’ problem may be connected to other trouble spots in their lives”)

<sup>169</sup> HAROLD MCDUGALL, *BLACK BALTIMORE: A NEW THEORY OF COMMUNITY* (Temple University Press, 1993).

<sup>170</sup> *The Wire* (HBO Television Broadcast 2002-2008).

<sup>171</sup> See Angelo N. Ancheta, *Community Lawyering*, 81 *CAL. L. REV.* 1363, 1372-73 (1993) (hereinafter *Community Lawyering I*) (“All people see the world through ‘stock stories,’ ...combinations of existing knowledge and methods of perceiving and processing information that give order to [their] world.” Narrative allows one not only to tell one’s own story, but also to invite others into the story, perhaps creating a shared narrative that links teller and listener as problem solvers); see also Angelo N. Ancheta, *Community Lawyering*, 1 *ASIAN L.J.* 189, 198-99 (1994).

<sup>172</sup> Alfieri, *supra* note 3, at 1755 (To López, truth ...arises out of [a] collaboration between lawyers and clients...[that recognizes] the value of a client’s practical knowledge – the ‘know-how inevitably at work in each and every person’s effort to get by day to day.’”)

process that was immensely useful and enjoyable.<sup>173</sup> In later work blogs<sup>174</sup> and law review articles,<sup>175</sup> I described such interactions as a “sharing of epiphanies.”<sup>176</sup>

## 2. THEORETICAL PERSPECTIVE

Our *theoretical perspective* broadens, so we not only see facts through “social context” lenses such as economics, history, sociology, political science, or statistics; we also now see the law itself as a mutable social construct, as an “object, product, and determinant” of social conflict.<sup>177</sup> Avi Brisman quotes Gerald Lopez on this as follows: “[L]aw is not a collection of definitions and mandates to be memorized and applied but a culture composed of storytellers, audiences, remedial ceremonies [and] a set of standard stories and arguments. . . .”<sup>178</sup> If law itself is a collection of “stories and storytelling practices” that organize social reality and conventions that define and resolve disputes,<sup>179</sup> then we should expect conflict around the identity and authority of those storytellers, and the content of the stories they tell.

To acquire a theoretical perspective on their community work, our students must study the history of social movements and of their interactions and struggles with law and the legal system. They should develop the ability to recognize how ideological narratives organize both power and subordination. They should become grounded in social movement praxis as well as

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<sup>173</sup> Piomelli, *supra* note 2, at 436-37.

<sup>174</sup> McDougall, *Cultural DNA: Bringing Civic Infrastructure to Life*, *supra* note 149.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* at 68.

<sup>177</sup> Gosta Esping-Andersen et al., *Modes of Class Struggle and the Capitalist State*, KAPITALISTATE, 4-5 (1976).

<sup>178</sup> Avi Brisman, *The Criminalization of Peacemaking, Corporate Free Speech, and The Violence Of Interpretation: New Challenges To Cause Lawyering*, 14 CUNY L. REV. 289, 312-13 (2011) (citing *Rebellious Lawyering* (1992)).

<sup>179</sup> Alfieri, *supra* note 3, at 1760.

legal theory.<sup>180</sup> Such work-study points toward a whole new theory of social change, one in which law may not be the only, or even the most appropriate solution.<sup>181</sup>

Elsewhere, I have discussed the possibility of creating a broad coalition of community organizations to constitute a “civic infrastructure.”<sup>182</sup> Such an infrastructure could help keep government and big business accountable to the “99%.”<sup>183</sup> It could also empower people to step out of the shadows of these behemoths, carrying on cooperative economics or community mediation, for example, operating “off the grid” wherever possible.

For students to work with and alongside social movements, they must learn what these movements are up against. In other words, they must study the ideological framework and political economy of neoliberalism itself.<sup>184</sup> Ascanio Piomelli recommends that we and our students familiarize ourselves with “economic democracy and development, the secondary labor market,” “cultural production and identity,” and with the relation between “seemingly mundane local affairs” and the “politics of multinational decision-making.”<sup>185</sup> Extending our theoretical perspective in this way, we can collaborate with social movement activists to better understand the objective structural conditions under which we all operate.<sup>186</sup> From that vantage point we can

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<sup>180</sup> (*inter*)*Generation Movement Lawyer 2.0*, LAW AT THE MARGINS (June 14, 2013), <http://lawatthemargins.com/intergeneration-movement-lawyer-2-0/>; see also Brisman, *supra* note 175, at 312-13 (“[L]aw is not a collection of definitions and mandates to be memorized and applied but a culture composed of storytellers, audiences, remedial ceremonies, a set of standard stories and arguments, and a variety of conventions about storywriting, storytelling, argument making, and the structure and content of legal stories . . . .” (citing *Rebellious Lawyering* (1992))).

<sup>181</sup> Sharpless, *supra* note 4, at 379.

<sup>182</sup> Harold A. McDougall, *Social Change Requires Civic Infrastructure*, 56 HOW. L.J. 801 (2013).

<sup>183</sup> See Harold McDougall, *The Citizen’s Assembly: A Civic Infrastructure for Progressive Social Change*, THE HUFFINGTON POST BLOG (Oct. 21, 2014), [http://www.huffingtonpost.com/harold-a-mcdougall/civic-engagement\\_b\\_1637398.html](http://www.huffingtonpost.com/harold-a-mcdougall/civic-engagement_b_1637398.html)

<sup>184</sup> Piomelli, *supra* note 2, at 484-85.

<sup>185</sup> Piomelli, *supra* note 2, at 484-85.

<sup>186</sup> See Saslow, *supra* note 62.

better work together for justice, fairness, equality, and democracy, locally and in the global community.<sup>187</sup>

In such a collaboration, our students can learn to mesh their own theoretical perspectives with the problem-assessing strategies of their community partners<sup>188</sup> in the "epiphany" process I described earlier.<sup>189</sup> In this manner theoretical perspective and management of effort intersect as students, community members, and local organizers figure out "what's the problem?" and "where did it come from?"<sup>190</sup>

Community leader Ella Johnson helped broaden my theoretical perspective in this regard. She let me know that though there were twelve thousand people in her neighborhood of Sandtown, only the most prosperous residents had been involved in the Baltimore City government's redevelopment process. These were the people "who own their own homes, or have a job....The working poor in our neighborhood come out and sweep the streets, but even they are a far cry from the most damaged people. We've got to reach way down deep, get those people who have almost given up, to really make a difference here. Otherwise you're always skimming the cream off the top, and people get the idea that something is happening in the community, but it's not happening for them."

"Sandtown is really poor," she said. "People don't realize how serious it is. You don't turn that around overnight. It's going to take a long time, and continuous work, before you see any

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<sup>187</sup> Canaan & Shumar, *supra* note 46, at 18, 27; *see also* Ben Salt et al., *Workers' Education and Neoliberal Globalization: An Adequate Response to Transnational Corporations?* 51 ADULT EDUCATION QUARTERLY 9 (2000) (efforts to introduce a critique of neoliberalism into the curriculum of worker education for union members).

<sup>188</sup> Marshall, *supra* note 168, 160-61 (citing Gary Bellow on the "importance of going beyond solving individual claims and introducing solutions that strike at the root of clients' problems, and [challenging] the institutions and structures surrounding their lives.")

<sup>189</sup> McDougall, *Reconstructing African American Cultural DNA*, *supra* note 149.

<sup>190</sup> *See* Jessica A. Rose, *Rebellious Or Regnant: Police Brutality Lawyering In New York City*, 28 FORDHAM URB. L.J. 619, 654 (2000)

results you can measure." <sup>191</sup>

### 3. PROFESSIONAL RESPONSIBILITY

*Professional responsibility* opens up as well, obliging us to consider not only the legal consequences of our professional choices, but the social, and personal consequences as well. Bill Quigley cautions that lawyers who step in and assume leadership and spokesperson roles in community efforts can disempower the community.<sup>192</sup> Similarly, Lani Guinier cautions that lawyers helping social movements successfully organize around a counter-story must resist becoming the movement's primary storytellers.<sup>193</sup>

Reverend Alfred Vaughn of the Sandtown Baptist Church in West Baltimore gave me a deep “interdisciplinary” perspective on what we lawyers call professional responsibility. “I owe my whole development to [my] church, to the people of Sandtown. They've been my inspiration, they saw in me a spark and ignited it. It's my responsibility to pass it on to those who come later.” He found “all the needs in the world” in his own neighborhood and had partnered with other churches in the Sandtown neighborhood to address these needs with soup kitchens, food banks, all financed by their our own congregations.

“It's about giving a hundred dollars to keep a single mother's water from being turned off,” he told me. “The needs of the people in our community are real; you have to be here, to walk out in the streets to see it, to understand. Each of us has a golden opportunity to find out what God intends for us and to be about that business. When God opens one for you, give it all

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<sup>191</sup> McDougall, *Black Baltimore*, *supra* note 169, at 153-54.

<sup>192</sup> William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 462-63 (1994-1995).

<sup>193</sup> *See, e.g.*, Prof. Lani Guinier, *Legal Profession: Responsibilities of Public Lawyers*, HARVARD LAW SCHOOL, [hls.harvard.edu/academics/curriculum/catalog/index.html?faculty=Guinier,+Lani&year=2014-2015](https://hls.harvard.edu/academics/curriculum/catalog/index.html?faculty=Guinier,+Lani&year=2014-2015) (last visited Feb. 11, 2015).

your allegiance." <sup>194</sup>

#### 4. MANAGEMENT OF EFFORT

*Management of effort* involves not only balancing one's own time, resources, and energy.<sup>195</sup> It also means respecting and supporting the balances of one's collaborators in group work, whether they be individuals or organizations, cultivating social capital, and maximizing the flow of information.<sup>196</sup>

This particular lesson is best learned and taught in the context of community organizing and coalition-building itself. To develop these skills, rebellious law professors again need to consider interdisciplinary approaches, turning to labor and community organizers to help teach students how to be conscious of the community that they deal with and how to create new analyses and solutions<sup>197</sup> with collaborative thinking.<sup>198</sup>

The emerging field of Interdisciplinary Studies provides useful guidance. According to interdisciplinarian Allen Repko, interdisciplinary practitioners build bridges between disciplines by borrowing the tools and methods of one discipline for use in another.<sup>199</sup> It is the rebellious law professor's job to build bridges not just between law and economics, politics, history or

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<sup>194</sup> McDougall, *Black Baltimore*, *supra* note 169, at 7.

<sup>195</sup> These are important and not to be underestimated. *See* Krishnan, *supra* note 7, at 585-587 (constraints cause lawyers face in the context of an ongoing legal practice).

<sup>196</sup> Alfieri, *supra* note 3, at 1761 ("López views lawyer-client collaborative problem-solving as part of a gradual, integrated move into 'a larger network of cooperating problem-solvers.'")

<sup>197</sup> *See* McDougall, *Reconstructing African American Cultural DNA*, *supra* note 149.

<sup>198</sup> Marshall, *supra* note 168, at 160 ("If...the client is a participant, he will be more likely to collaborate in the solving of the problem. [In this scenario,] lawyer and client... [learn] about the other's expertise, challenging each other, raising questions, and offering solutions.")

<sup>199</sup> Repko, *supra* note 146, at 23.



psychology. It is also to build bridges to “lay” problem-solvers whose intellectual discipline is rooted in their own community’s cultural DNA.<sup>200</sup>

Interdisciplinary Miller and Boix Mansilla show how “cognitive bridges” can aid this process.<sup>201</sup> These include reasoning by analogy to connect similar approaches from different disciplines, linking disciplines with “compound concepts” that draw from both, and assembling theories of causation from different disciplines to build “multi-causal explanations” of phenomena under study.<sup>202</sup> They also suggest using the methods or research of one discipline to check on the accuracy of the methods or research of another.<sup>203</sup> Finally, they point out that one can bridge “explanation-action” gaps by using one discipline to define a problem and another discipline to guide interventions, implementations, or solutions.<sup>204</sup> Such techniques might help us navigate the intersection of lawyering and community problem-solving skill sets.

For the rebellious law professor and student, the process begins with “mapping.” Mapping helps us note, assess, and appreciate a community’s social and civic capital--the levels of time, energy and resources and networks available to each person in the community as well as in the community at large. We also look for “civic infrastructure”--the patterns of leadership, formal and informal, and the presence of existing community organizations and coalitions.<sup>205</sup>

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<sup>200</sup> See McDougall, *Reconstructing African American Cultural DNA*, *supra* note 149, at 66.

<sup>201</sup> See Miller & Boix Mansilla, *supra* note 143, at 9.

<sup>202</sup> *Id.* at 9.

<sup>203</sup> *Id.* at 11.

<sup>204</sup> *Id.* at 12.

<sup>205</sup> McDougall, *Social Change*, *supra* note, 182, at 822-23. See also Piomelli, *supra* note 2, at 483 (“[C]lients and lawyers work inescapably within a network of problem-solving practitioners [:] the client himself, his family, friends, neighbors, community activists, organizers, [media], public employees, administrators, policy makers, researchers, funders. Moving the world in the desired direction often depends on the identification and effective coordination of [such people].”)

Mapping thus helps us become “grounded” in the community,<sup>206</sup> to become familiar with its cultural DNA, not just in terms of the way people sing and dance and the food they eat, but also how they solve problems.<sup>207</sup>

Rebellious lawyers can actually enhance a community’s social capital, civic capital, and even its civic infrastructure by facilitating community dialogues in which residents can compare experiences. Such exchanges within the community can help grow the kind of “class consciousness [that leads to] effective coalition-building [and] community-driven strategies with both legal and non-legal components.”<sup>208</sup>

Shauna Marshall refers to a need to “understand the community’s organizations, its places of worship, its institutions, its bureaucracies,” “foster connections between clients with similar problems” and create settings where members of the community can “talk about common problems, to begin to analyze and understand systemic inequities, and to look into the possibility of concerted action as a means of taking on an ongoing problem.”<sup>209</sup> Thus civic infrastructure is built and enhanced.

In his article, *Living and Lawyering Rebelliously*, Gerald Lopez describes three years spent conducting in-person and phone interviews of 2000 residents and over 1000 service providers before opening the Legal Needs and Resources Project in New York City.<sup>210</sup> This mapping process prepared Lopez and his colleagues to do some collaborative thinking, engaging

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<sup>206</sup> Alfieri, *supra* note 3, at 1757 (“In López’s vision, to ‘lawyer rebelliously’ is to ‘ground [advocacy] in the lives and in the communities of the subordinated themselves.’ [requiring] advocates to ...collaborate with others in strategic planning ... to build and join coalitions, and to appreciate the regional, national, and international dimensions of ‘local affairs.’”)

<sup>207</sup> McDougall, *Reconstructing African American Cultural DNA*, *supra* note 149, at 68.

<sup>208</sup> Janine Sisak, *If The Shoe Doesn’t Fit . . . Reformulating Rebellious Lawyering To Encompass Community Group Representation*, 25 FORDHAM URB. L.J. 873, 879 (1998).

<sup>209</sup> Marshall, *supra* note 168, at 161-62.

<sup>210</sup> Gerald P. Lopez, Keynote Address: *Living and Lawyering Rebelliously*, 73 FORDHAM L. REV. 2041, 2050 (2005).

with the community as a partner rather than as an expert and alien “fixer.” Enriched by the community’s cultural DNA, they built networks and partnerships to address the community’s needs.<sup>211</sup>

I saw community organizers and activists use similar approaches during the time I spent in Baltimore.<sup>212</sup> Community organizer Darnell Ridgeley, who I described as a “big, fair-skinned black community advocate with fire-red hair and outrageous fingernails,”<sup>213</sup> gave me some lessons on management of effort.

"It's very important to find and cultivate the informal leadership of the community," she observed. "The formal leaders are the homeowners, the stable folk; the people who are articulate, the people who have something. They're very important. They are the traditional readership of the black community, and we're lucky to have them. Too many of them leave the community, abandoning the struggle. But the only way the process of empowerment can continue is if new leadership continues to surface, not always to stand out in front, but also to fill in the gaps, to maintain communications and dialogue among all the people in the community."

Ridgley summed up her task in the spring of 1991 as follows: "Empowerment means teaching people how to take care of themselves. People are ready to work hard and want to be recognized for what they do, but they also want limits. You have to know how to move from the conceptual to the concrete; otherwise you lose people. Few people want to sit and plan for four, five hours. People have to go to their jobs and work, you have to understand this. It's important

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<sup>211</sup> Collaborative thinking of this type features largely in the “rebellious problem solving” of Lopez. *See, e.g., id.* at 2048-49 (2005). *See also* Marshall, *supra* note 168, at 159-60, 162 (Community members’ knowledge about their neighborhoods, their institutions, their bureaucracies were now valued and clients were asked to participate in the development and implementation of the solutions to their problems.)

<sup>212</sup> See Harold McDougall, *The Outer Harbor*, BALTIMORE MAGAZINE, March 2006 (comparing neighborhood strategies to remedy the effects of gentrification.)

<sup>213</sup> McDougall, *Black Baltimore*, *supra* note 169, at 141.

not to waste people's time....Community involvement must go beyond block parties and health fairs," Ridgley said. "People must have something to do, must feel needed. Many of their differences will be resolved in the context of collaborative work."<sup>214</sup>

Her thoughts were echoed by Athena Young, a community resident who became an activist during the four years I spent in West Baltimore.

"Harold, you've got to feed people every day," she said. "They need attention and recognition. You can't just throw them a scrap every couple of months and expect them to believe that things are changing. They have to feel it as part of their lives. Coming in every couple of months and spending a lot of money to rally people just won't do it."<sup>215</sup>

Ultimately we teach our students that "progressive practice must be a partnership in which ...lawyers and clients...share power and combine their overlapping practical knowledge of the world in order to solve problems of subordination."<sup>216</sup> In this way all participants draw upon their personal experiences "to interpret and transform the world through problem solving."<sup>217</sup> It is by using such approaches that law students learn to answer questions such as "how do we best put our plans into action?", "which stakeholders must we involve?", and "by what benchmarks shall we measure success?"<sup>218</sup> They learn that by listening to our clients, we not only gain "a fuller understanding of the problem and the context in which it arises." More, if the client is a participant, "he will be more likely to collaborate in the solving of the problem."<sup>219</sup>

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<sup>214</sup> *Id.* at 148-149, 152-153.

<sup>215</sup> *Id.* at 151-152.

<sup>216</sup> Piomelli, *supra* note 2, at 440, 483.

<sup>217</sup> *See* Ancheta, Community Lawyering I, *supra* note 171, at 1365.

<sup>218</sup> *Compare* Piomelli, *supra* note 2, at 488 ("We must decide: (1) what results to seek; (2) which potential actors (either individuals or institutions) to seek to persuade; (3) what stories, arguments, or actions are best calculated to persuade them; and (4) who is best situated to tell those stories, make those arguments, or take those actions. In this model a lawyer is but one of many possible storytellers, argument-makers, and action-takers.")

<sup>219</sup> Marshall, *supra* note 168, at 160.

## 5. LEGAL REASONING AND CLINICAL JUDGMENT

*Legal reasoning* and *clinical judgment* are also transformed. Anthony Alfieri quotes Lopez to describe reigning modes of legal reasoning. “Lawyers employ a variety of discourses that describe law (constitutions, statutes, regulations, and judge-made decisions), legal institutions (courts and bureaucracies), and sociolegal relations (lawyer-client, lawyer-state, and client-state).... Shaped by law and institutional need, [these discourses] make claims about the world subordinated people inhabit, its truths and necessities.”<sup>220</sup>

Prof. Quigley warns lawyers in community contexts against creating dependency by focusing on litigation as a goal instead of a tactic, bending community processes to the lawyer's "own skill set,"<sup>221</sup> in an unfortunate and costly example of someone whose only tool is a hammer approaching every problem as though it were a nail.<sup>222</sup> This is an entrenched part of the “regnant” lawyering model that Lopez criticizes.<sup>223</sup> The regnant lawyer does not see the community as a significant source of problem analysis, much less problem solutions.

Even social justice lawyers can find themselves ignoring or even struggling with the community, as they cling to the regnant’s one-man show.<sup>224</sup> Prof. Hiblink describes confrontations between regnant lawyers and community organizers during the civil rights movement, for example. He recounts clashes between Thurgood Marshall and Legal Defense Fund lawyers and organizers from SNCC, CORE, and SCLC, for example.<sup>225</sup> The civil rights

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<sup>220</sup> Alfieri, *supra* note 3, at 1760; *compare* Lopez, *supra* note 210.

<sup>221</sup> *See* Quigley, *supra* note 192, at 467-68.

<sup>222</sup> *Cf.* Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, And Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 958 (1992).

<sup>223</sup> *See* Lopez, *supra* note 3, at 187-94, *available at* [http://law.indiana.edu/instruction/profession/doc/21\\_2.pdf](http://law.indiana.edu/instruction/profession/doc/21_2.pdf).

<sup>224</sup> Alfieri, *supra* note 3, at 1755.

<sup>225</sup> Thomas Hiblink, *The Profession, The Grassroots and The Elite: Cause Lawyering for Civil Rights and Freedom in the Direct Action Era*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS*, 68-69 (Austin Sarat & Stuart A. Scheingold eds., 2006).

lawyers viewed the organizers' direct action campaigns as threatening respect for law, the touchstone of their own law-based/constitutional strategy,<sup>226</sup> their own "heroic" stance.<sup>227</sup>

For rebellious lawyers, on the other hand, it becomes increasingly clear that the law is not always—or even often—the best way to solve a community problem,<sup>228</sup> and may even tend to reproduce neoliberal power relations. Recognizing these possibilities, rebellious lawyers may begin to see their roles as problem solvers begin to take over from their roles as lawyers, as they brainstorm with community members to figure things out.<sup>229</sup> Lawyers may even become builders of social movements themselves, departing radically from the notion that their role is restricted to formal legal practice.<sup>230</sup> At the same time, they may come to recognize that "everyone possesses lawyering and storytelling skills that can alter social arrangements and remedy disputes," and may take it upon themselves to "help clients understand how to transfer their everyday living skills to legal advocacy."<sup>231</sup> Thinking outside the regnant box like this increases the probabilities of solutions emerging that contradict neoliberal power relations.<sup>232</sup>

This carries over into *clinical judgment*, leading us to fully appreciate Kevin Johnson's contention that social change in the United States is much more likely to occur through mass

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<sup>226</sup> Piomelli, *supra* note 2, at 482 (regnant lawyers: to act as if their disproportionately of-color and female lower-income clients are largely... irrelevant to efforts to change the conditions of their lives and the larger structure of our society.").

<sup>227</sup> Alfieri, *supra* note 3, at 1763 (progressive lawyers who "adopt a heroic stance toward communities" are condemned as outsiders, frustrating the "realization of lawyer-client community" and lawyers' connection to "client identities, narratives, and histories. To make these human connections, lawyers must relearn their habits of knowing, thinking, and speaking.")

<sup>228</sup> Demonstrations, community organization and mobilization, public information campaigns, all are strategies to be considered along with legal action, for example.

<sup>229</sup> See Lopez, *supra* note 3, at 197-98, available at [http://law.indiana.edu/instruction/profession/doc/21\\_2.pdf](http://law.indiana.edu/instruction/profession/doc/21_2.pdf).

<sup>230</sup> Austin Sarat & Stuart Scheingold, *What Cause Lawyers to For and To Social Movements, Introduction in CAUSE LAWYERS AND SOCIAL MOVEMENTS*, 10-12 (Austin Sarat & Stuart A. Scheingold eds., 2006) (Four stages by which lawyers have built social movements).

<sup>231</sup> Alfieri, *supra* note 3, at 1760 (quoting Gerald Lopez, *supra* note 3).

<sup>232</sup> Kevin R. Johnson, *Lawyering for Social Change: What's A Lawyer to Do?*, 5 MICH. J. RACE & L. 201, 208, 213-14 (1999); see also Jewel, *supra* note 136.

political movements than through traditional legal approaches.<sup>233</sup> Mass mobilization reaches more people, so Johnson's students work with community organizations, and also help mobilize the community as well as working on cases.<sup>234</sup> Johnson argues that lawyers working towards social change should shift their focus to consider how traditional legal action could complement community activism and political involvement rather than overshadow it, suggesting a significant expansion of clinical judgment.<sup>235</sup>

My first experience of this expansion occurred when, as a young lawyer working with a tenant's union, we discovered a law permitting me to file a motion to place their building in a tenant-managed receivership provided two-thirds of the building's residents signed on.<sup>236</sup> I became a facilitator and organizer as well as a lawyer, broadening my agency in a way I found exhilarating. Twenty years later, I had the honor to be invited to share my own thoughts on clinical judgment during a strategy and tactics discussion with the leaders of a broad-based community organization in West Baltimore, Baltimoreans United in Leadership Development (BUILD). They were aware of my "mapping" in their community, and figured it was time for me to become part of the process as well as observing it.<sup>237</sup>

Reverend Vernon Dobson, BUILD's leader, invited me to debrief with Gary Rodwell, the lead organizer on the project. "[T]he situation in Sandtown provides us with a challenge," he said. "Right now our live wires to the people there are not hot to the touch. That's something that

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<sup>233</sup> Johnson, *supra* note 221, at 208.

<sup>234</sup> Johnson, *supra* note 221, at 208.

<sup>235</sup> *Id.* at 214; *see also* Krishnan, *supra* note 7, at 581-584; Alfieri, *supra* note 3, at 1757 ("López urges the development of 'sensibilities and skills' tailored to the 'collective fight for social change.'").

<sup>236</sup> N.Y. MULT. DWEL LAW § 302-a; 3 N.Y. RPAPL §§ 769-82; *see also* MOLLY WASOW PARK, THE CITY OF NEW YORK INDEPENDENT BUDGET OFFICE, REVIEW OF THE DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT'S ARTICLE 7A PROGRAM, *available at* <http://www.ibo.nyc.ny.us/iboreports/7amemo.pdf>.

<sup>237</sup> McDougall, Black Baltimore, *supra* note 169, at 181-84.

you've felt yourself, Harold, as you have been digging around up there, talking to people, surveying the situation. I know you have some ideas about further steps that could be taken, and I want you to explain them to Gary here."<sup>238</sup>

I took a moment to consider my role as a journalist and scribe, and how it had expanded to “active listener” during the four years I had spent in the neighborhood. I presented an idea for linking Bible study groups throughout the community in a common problem-solving process, inspired by my research on the “Christian base communities” at the core of the liberation theology movements of Latin America.<sup>239</sup>

Rodwell observed that the other players in Sandtown, the city government and the foundations, were under “intense pressure to produce immediate results.”<sup>240</sup> He told me that the kind of “relational process” I proposed took a lot longer than constructing or renovating housing, which was the focus of the other players. But he agreed that even though it would take a lot longer, it was the way to go. “That way you develop empowered people, and they are empowered not just in the context of the public spaces of the community, but in their families, in their jobs, and in their churches,” he said.<sup>241</sup>

“It does take a long time,” I replied, remembering what I had been told by another organizer, many years before. “A lot of us have to accept that we may not see the results of this during our own lifetimes.”<sup>242</sup>

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<sup>238</sup> McDougall, Black Baltimore, *supra* note 169, at 181

<sup>239</sup> See generally, Liberation Theology, BBC (last updated July 18, 2011), <http://www.bbc.co.uk/religion/religions/christianity/beliefs/liberationtheology.shtml> (“Liberationists [believed] the church should act to bring about social change, and should ally itself with the working class to do so”); see also Leonardo & Clodovis Boff, *A Concise History of Liberation Theology*, reprinted by LandReform.org, available at [www.landreform.org/boff2.htm](http://www.landreform.org/boff2.htm).

<sup>240</sup> McDougall, Black Baltimore, *supra* note 169, at 183.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*



"That's what they say in the Bible," Reverend Dobson said. "All those who died in the faith, not having received the promise, their resurrection will be validated in us." He left and came back with a Bible, and leafed quickly to Hebrews 11:39-40.<sup>243</sup>

*"And these all, having received witness through faith, received not the promise, God having provided some better thing for us, that they without us should not be made perfect."*<sup>244</sup>

Students should understand that such experiences not only build and strengthen one's faculties of theoretical perspective and clinical judgment, they also provide a rare opportunity to broaden one's horizons and extend one's humanity, and should be cherished all the more. You can feel your communication skills grow, and you appreciate the great resource community-based stories comprise all the more, not because they can help persuade relevant authorities, but also because these narratives join and bind our respective communities.<sup>245</sup>

As our students learn rebellious clinical judgment, they will begin to appreciate how regnant tunnel vision can blind us to how community-based direct action campaigns often create favorable contexts for law-based strategies, giving better answers to questions such as "what can we try that's new, and why will that work where other approaches have failed?"<sup>246</sup>

Prof. Archeta advises rebellious lawyers "to transcend the conventional definition of lawyer" and widen their focus to include "a broad range of legal and political activities."<sup>247</sup> This also means the role of community actors as co-partners in defining course of action

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<sup>243</sup> *Id.*

<sup>244</sup> Hebrews 11:39-40.

<sup>245</sup> Piomelli, *supra* note 2, at 472-73; *see also* Alfieri, *supra* note 3, at 1758 (quoting Gerald Lopez) ("All people see the world through 'stock stories,' ... combinations of existing knowledge and methods of perceiving and processing information that give order to [their] world." Narrative allows one not only to tell one's own story, but also to invite others into the story, perhaps creating a shared narrative that links teller and listener as problem solvers.)

<sup>246</sup> *See* Alfieri, *supra* note 3, at 1751-52; Krishnan, *supra* note 7, at 589 (grassroots activists "work to collectively frame the cause" in relation to "existing opportunities [and] resources"); *see also* Sarat, *supra* note 230; Piomelli, *supra* note 2, at 488.

<sup>247</sup> Archeta, Community Lawyering I, *supra* note 171, at 1398-99.

dramatically expands, as community members and rebellious lawyers “share responsibility for the change process,” working together “to realize their vision of social change: communities they call their own.”<sup>248</sup>

## VI. Conclusion

*Black Baltimore* was published in 1992, the same year Gerald Lopez published the *Rebellious Lawyer*. I had pretty much given up on the practice of law, and was looking to the community for answers. A stint with the NAACP in the late 1990s, as their Washington Bureau chief (the national legislative director), brought me back into the law and policy world, but as a lobbyist rather than as a litigator. Even there, I tried to involve the community in everything I did, traveling out of the Capital to enlist their help.

There must have been something in the water in the 1990s, because I realize now that Gerald and I were responding to the same pattern of historical and social forces, needing to ground ourselves in the community as neoliberalism gained strength and influence. I continued to dream of a system in which problem solvers of all shapes and stripes could converge, much as Gerald has suggested, but also to create a parallel structure outside the existing political, legal, and economic structure entirely—“off the grid,” if you will. This civic infrastructure would be a coalition of community organizations, self-help groups and social movements<sup>249</sup> that would “shadow” government at all levels<sup>250</sup>, including the courts, jails, and police, expose their wrongdoings and support their efforts toward positive change. The infrastructure would relate to the world of business in exactly the same way. This vision grew directly out of the conversation I had with Rev. Dobson and organizer Gary Rodwell, set forth above.

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<sup>248</sup> Tyner, *supra* note 163, at 225, 229.

<sup>249</sup> See McDougall, *Social Change*, *supra*, note 182, at 807-07, 821-823.

<sup>250</sup> *Id.* at 24-826.

What stories could be used to cause that apparatus to cohere? To paraphrase Lopez, and his commentators, what would be the “definitions and mandates?” How would they “prescribe social reality,” and what “conventions for defining and resolving disputes” would they establish?<sup>251</sup> Who would be the storytellers, their audiences, and what “remedial ceremonies” would we engage in to make things right? I suggested in my blogs and articles that these stories and ceremonies would be rooted deeply in cultural DNA, replete with epiphanies as the cultural DNA strands of one community and another clashed and accommodated one another, growing together in a shared narrative that would bind us all together.<sup>252</sup>

To move in this direction, we must first protect the honor of our profession<sup>253</sup> and our rights as faculty, not only for our own autonomy and agency, but also to strengthen our engagement with today's fragmented social movements and, indeed, with the communities from which we have come. In the epiphany process, we think outside our respective boxes together, creating a broad-based program out of their work and our own,<sup>254</sup> serving all our interests.<sup>255</sup>

As we undertake such important projects, developing strategies and tactics to solve the economic, social, political, and environmental imbalances that undergird global inequality and exclusion, it is crucial that we model consensus, community and solidarity in our own ranks.

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<sup>251</sup> Alfieri, *supra* note 3, at 1761.

<sup>252</sup> See McDougall, *Reconstructing African American Cultural DNA*, *supra* note 149; McDougall, *A Citizen's Assembly*, *supra* note 183.

<sup>253</sup> Cf. Dan Ariely, PREDICTABLY IRRATIONAL, REVISED AND EXPANDED EDITION: THE HIDDEN FORCES THAT SHAPE OUR DECISIONS 285 (2009) (describing the displacement of professionalism with “the laws of commerce, and the urge for wealth,” causing the “bedrock of ethics and values on which the professions had been built” to disappear. “You could look at almost any professional group and see signs of similar problems.”)

<sup>254</sup> See also Saslow, *supra* note 62 (“structural problems of higher education” cannot be changed unless we “change priorities in society at large, ultimately a political task.” (citing Martha C. Nussbaum’s *Not for Profit*, “we must....work ... to give students the capacity to be true democratic citizens of their countries and the world’....For what is at stake in the current academic wars is, quite starkly, the nature of our still nominally democratic society.”)

<sup>255</sup> See Ancheta, *Community Lawyering I*, *supra* note 171, at 1398 (Community lawyers must consider themselves “part of the community for which they work,” so “[p]ersonal empowerment can go hand-in-hand with...client empowerment.)

These are values we must develop to do "rebellious" law teaching, in the community, with our colleagues, and with our students. It is not only our students who will begin to see themselves as "social engineers" whose aim is to transform neoliberalism rather than merely accommodate to it.<sup>256</sup> We will find ourselves growing and changing in this regard as well.<sup>257</sup> This must be a democratic, collegial process involving our students and alumni as well as the participants in today's social movements, and it needs to begin now.<sup>258</sup>

To take a current example, students at Howard University, especially law students, have vigorously engaged in Black Lives Matter Protests and organizing, sweeping forward in ways that are pretty dramatic, reminding many of the faculty of our own youthful protest activity.<sup>259</sup> While some of us feel our only role is to get out of the way, I believe we need to support their emerging leadership with constructive, respectful, and helpful engagement, bringing what we can offer to the table, while also being careful not to attempt to take charge. In this regard, our

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<sup>256</sup> See Cannan & Shumar, *supra* note 46 (e.g., as students aiming only to consume marketable skills); see also Salt et al., *supra* note 187 (assessing union re-education of unemployed workers along a spectrum from seeking to transform neoliberalism to merely accommodating it, examining labor union education plans in seven countries, including the U.S.)

<sup>257</sup> Alfieri, *supra* note 3, at 1763.

<sup>258</sup> In one promising development, members of the Denver Law faculty have formed the Rocky Mountain Collective on Race, Place, and Law (RPL) to more fully incorporate the study of racial and other inequities into the school's curriculum and to provide students and faculty an opportunity to study issues of power, locality, law, and the "impact of these forces on subordinated communities." Rocky Mountain Collective on Race, Place & Law, UNIVERSITY OF DENVER: STRUM COLLEGE OF LAW (2014), <http://www.law.du.edu/index.php/rocky-mountain-collective-on-race-place>. The group has sponsored faculty reading groups, conferences, speakers, seminars, and public information events. Rocky Mountain Collective on Race, Place & Law, The Equal Protection Initiative, UNIVERSITY OF DENVER: STRUM COLLEGE OF LAW (2014), <http://www.law.du.edu/index.php/rocky-mountain-collective-on-race-place/sponsored-activities/equal-protection-initiative>. RPL seems to have reignited the "guild" idea as a community of practice, creating a social movement of sorts among some members of the faculty and student body, and their numbers are growing. They have not yet attempted to exercise agency in faculty governance or by collaborating with community organizations in the field, however. These would both be necessary steps towards achieving the relatively autonomous and socially engaged law faculty guilds which I envision. But they are off to a very good start.

<sup>259</sup> See Susan Svrluga & Dan Morse, Several hundred protest Ferguson decision in Georgetown and Pentagon City, Wash. Post (Nov. 29, 2014), [http://www.washingtonpost.com/local/crime/2014/11/29/d6bc3b28-7800-11e4-bd1b-03009bd3e984\\_story.htm](http://www.washingtonpost.com/local/crime/2014/11/29/d6bc3b28-7800-11e4-bd1b-03009bd3e984_story.htm); *Black Lives Matter – It's Different This Time*, THY BLACK MAN NEWS (Dec. 12, 2014), <http://thyblackman.com/2014/12/12/black-lives-matter-its-different-this-time/>; Vanessa Woodard Byers, *Howard University students in solidarity with protesters in Ferguson*, BLOGGING BLACK MIAMI (Aug. 13, 2014), <http://www.bloggingblackmiami.com/2014/08/howard-university-students-in-solidarity-with-protesters-in-ferguson.html>.

engagement with our students parallels the engagement with community partners upon which I have reflected in this article.<sup>260</sup>

I began the article with a look at neoliberalism, how it has changed the university and affected us as students and faculty. I noted its even greater effects on community at large, arguing that faculty, students, and community partners could be strengthened in our respective struggles with neoliberalism by connecting all of us via experiential learning vehicles such as externships, clinics, and class research and consulting assignments with community groups and social movements.

My first step in this direction has been to get off my own campus and see what other people--academics, practitioners, community leaders, are doing and thinking about Black Lives Matter. Deborah Small, a community lawyer working against mass incarceration, had some powerful insights on the connection between the existing neoliberal order and police “misconduct.”<sup>261</sup>

“I believe the problem has less to do with poor police training and individual racial bias than it does with the role that police are charged to play in our society as a buffer between socioeconomic classes and as the enforcers of deeply entrenched power relationships,” she wrote me in an email.<sup>262</sup> She described the police as enforcers of a political commitment to protect and maintain established power, race, and class relations, with even black police officers playing this role.<sup>263</sup> (Ta-Nehesi Coates made similar points in a recent article in the Atlantic.<sup>264</sup>)

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<sup>260</sup> See Part V.

<sup>261</sup> Profile – Deborah Small, SHE SOURCE, <http://www.shesource.org/experts/profile/deborah-small>.

<sup>262</sup> Email from Deborah Small, Executive Director and Founder, Break the Chains, to Harold McDougall, Professor of Law, Howard University School of Law, November 29, 2014 10:28 AM (on file with author).

<sup>263</sup> *Id.*

<sup>264</sup> Ta-Nehesi Coates, *Blue Lives Matter*, THE ATLANTIC (Dec. 22, 2014, 10:00AM), <http://www.theatlantic.com/politics/archive/2014/12/blue-lives-matter-nypd-shooting/383977/> (discussing police brutality and reform as community problems.)

Deborah maintains these power relations rest in part on the “racialization of criminality,” a narrative that must be rejected if we are to develop “responses to negative [black] behavior that are proportional and reasonable.”<sup>265</sup> To do so, we will have to gain control of our communities, because “people who don't control their communities can't control the police in their communities.”<sup>266</sup>

I addressed the question of community control in a Huffington Post blog on the protests, entitled “American Spring.”<sup>267</sup> In it, I argued for the creation of elements of “civic infrastructure”-- neighborhood watch units in black communities, to keep an eye out for the negative behavior Deborah describes and also to keep an eye on the police, who have a formal relationship with Neighborhood Watch.<sup>268</sup> These units could create “free spaces”<sup>269</sup> for needed community dialogue and attendant action on all manner of issues, not just crime, and not just the police.<sup>270</sup>

In a conversation with Hilary Shelton, NAACP Washington Bureau Director, I learned that the NAACP started something like this in the 1990s in collaboration with the Clinton-era Justice Department.<sup>271</sup> The initiative was called “Community Watch.” At present, I plan to raise

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<sup>265</sup> Email from Deborah Small, *supra* note 261.

<sup>266</sup> *Id.*

<sup>267</sup> Harold McDougall, *American Spring?*, HUFFINGTON POST BLOG (Dec. 10, 2014, 9:57 PM), [http://www.huffingtonpost.com/harold-a-mcdougall/american-spring\\_b\\_6292942.html](http://www.huffingtonpost.com/harold-a-mcdougall/american-spring_b_6292942.html).

<sup>268</sup> *Id.*; see also McDougall, *The Citizen's Assembly*, *supra* note 183.

<sup>269</sup> Harry Boyte, *Higher Education and the Politics of Free Spaces*, HUFFINGTON POST BLOG (September 3, 2014 1:07 pm), [http://www.huffingtonpost.com/harry-boyte/higher-education-and-the-\\_3\\_b\\_5747818.html](http://www.huffingtonpost.com/harry-boyte/higher-education-and-the-_3_b_5747818.html) (“Hannah Arendt believed that the revolutionary spirit which infused movements like the American revolution and the civil rights movement involved “the experience of being free...an exhilarating awareness of the human capacity of beginning.” The problem, for Arendt, was that the governing structures eventually created by such revolutions left no space for the very freedom that constituted part of the revolution’s treasure.” American revolutionaries, for example “failed to incorporate the town-hall meeting into the Constitution,” a tradition of localized spaces of freedom” and agency that should have been treasured and preserved.)

<sup>270</sup> McDougall, *supra* note 267.

<sup>271</sup> Hilary O. Shelton – Biography, NAACP, <http://www.naacp.org/pages/hilary-o.-shelton> (last visited Jan.13, 2015).

the idea with other organizations that have the capacity to do on-the-ground organizing to see if there is any interest.

At the same time, Hilary wants Howard students and faculty to lend research support to a push for federal legislation curbing police use of excessive force. I have received similar requests from the Lawyer's Committee and the Legal Defense Fund, both subscribers (with the NAACP, Urban League, and others) to a fourteen-point "Unified Statement"<sup>272</sup> on desired government responses to the police misconduct issue.

Justin Hansford, along with local attorneys and law students from Saint Louis University, recently organized and participated in a free legal rights training for Ferguson protestors.<sup>273</sup> Hansford has used the opportunity provided by the recent wave of unrest following the shootings of Mike Brown, Eric Garner, and John Crawford to strengthen the community in and around Ferguson. By participating in protests, serving as a legal observer, and providing training to the protestors, Hansford is becoming an architect of the aforementioned "civic infrastructure."<sup>274</sup>

Indeed, one of Professor Hansford's legal training workshops delivered near the Ferguson protest zone featured "a lively mix of lecture, question-and-answer, simulations and town hall-style pronouncements from the audience that were often as informative as the expert advice."<sup>275</sup> Here we see the "free spaces"<sup>276</sup> of civic infrastructure as well as a "rebellious" appreciation for the problem-solving skills of community members.

Hansford himself comments, "[p]rotesting is an act of hope. It's not altogether reasonable to believe that standing in a certain place, walking around in circles, chanting and clapping, can

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<sup>272</sup> *A Unified Statement of Action to Promote Reform and Stop Police Abuse*, LAWYER'S COMMITTEE FOR CIVIL RIGHTS (August 18, 2014), [http://signup.lawyerscommittee.org/p/dia/action3/common/public/?action\\_KEY=10281](http://signup.lawyerscommittee.org/p/dia/action3/common/public/?action_KEY=10281).

<sup>273</sup> Chris King, *SLU Law offers free legal rights education to Ferguson protestors*, THE SAINT LOUIS AMERICAN (Oct. 5, 2014, 2:41 PM), [http://www.stlamerican.com/news/local\\_news/article\\_a664c6c0-4cc7-11e4-8910-23f428e10cc6.html](http://www.stlamerican.com/news/local_news/article_a664c6c0-4cc7-11e4-8910-23f428e10cc6.html).

<sup>274</sup> *Id.*; Hansford, *supra* note 8.

<sup>275</sup> King, *supra* note 273.

<sup>276</sup> *See* Boyte, *supra* note 269.

in some way create a better world. But it calls for a measure of determination to offset the inevitable fear of backlash, repression, arrest, and violence that accompanies any endeavor of speaking truth to power.....<sup>277</sup>

Hansford has offered research and on-the-ground legal work opportunities for my students to support the work in Ferguson.<sup>278</sup> He observes that the primary role of lawyers and law students at this phase of the Ferguson movement is to educate community members through Know Your Rights forums, and also to provide protection to those community members and activists who are arrested, detained, or charged by the police.<sup>279</sup> In this regard, the dangers of “regnant” lawyers—or politicians—taking over the Movement has not yet even surfaced, Hansford observes.<sup>280</sup> But it might. And we will need to alert our students to that, and train them to avoid such pitfalls.

I plan to provide a forum for such research opportunities through my Civil Rights Planning seminar, which will shift its focus from theory to practice. I am also collaborating with colleagues in our clinic to develop a "Civil Rights Street Law" program, to be taught by our law students in area high schools.

I have also reached out to our new Dean, Danielle Holley-Walker<sup>281</sup>, to seek official Howard Law School sponsorship of these projects. Meanwhile, my research assistant, Akasha Perez, has been tasked by the Howard Law Journal to organize the 2015 Wiley Branton

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<sup>277</sup> Jeff Redding, *Police Arrest SLU Law Professor and Legal Observer During Saint Louis Protests*, THE FACULTY LOUNGE (Oct. 27, 2014, 2:43 PM), <http://www.thefacultylounge.org/2014/10/police-arrest-slu-law-professor-and-legal-observer-during-saint-louis-protests.html>.

<sup>278</sup> See, e.g., The Nat'l Lawyers' Guild, *The NLG Needs YOUR Help in Ferguson!*, NATIONAL LAWYERS' GUILD (Nov. 20, 2014), <https://www.nlg.org/news/announcements/nlg-needs-your-help-ferguson> (last visited, January 28, 2015).

<sup>279</sup> Telephone Interview with Justin Hansford, *supra* note 113.

<sup>280</sup> *Id.*

<sup>281</sup> Danielle Holley-Walker – Biography, HOWARD UNIVERSITY SCHOOL OF LAW, <http://www.law.howard.edu/1821>.



Symposium, which for the last several has years focused on social justice topics for a special issue of the journal, recruiting speakers immersed in the topic of choice. This year the proposed topic is “Social Engineering in the 21st Century,” bringing the school’s motto up to date.

I can’t wait to get started.