

Teaching Movements

Scott L. Cummings

As a rule, I am not a fan of the wired classroom. Too many distractions. However, on November 24, 2014, I confronted a dilemma. The country was expecting an announcement from the St. Louis County prosecutor about whether a grand jury had decided to return an indictment against white police officer Darren Wilson, who had shot and killed an unarmed black man, Michael Brown. And as the day grew longer and no word issued, I had to consider what to do.

Let me back up. I am a professor at the UCLA School of Law, where I teach courses on the legal profession, corporations, and community economic development. For the past several years, I was the faculty director of our Epstein Program in Public Interest Law and Policy, which is an intensive specialization designed to recruit and train the public interest leaders of the future. Perhaps unique among American law schools, UCLA allows program faculty and students to select incoming 1Ls through an admissions process that seeks to identify applicants with high public interest potential as demonstrated in their past work experience, personal background, extracurricular activities, and affirmative goals.¹ As a result of this process, we typically attract an older, more experienced, and more activist program class each year: twenty-five of the most passionate, dedicated, and inspirational students that I am privileged to know.

Precisely because these students care so deeply about social justice, the goal of the program is not to keep the world out of the classroom—like so much of law school—but to bring it in. It is to show how law shapes oppression, inequality, and injustice, and—critically—how law can be used as one tool (in coordination with others) to fight for a more just world. My students are optimists, they are dreamers, and although they could do anything they want in the world, they choose to stand on the side of righteousness and to challenge power.

On the evening of November 24 that commitment to stand with the oppressed presented a pedagogical difficulty. I was scheduled to have class with Epstein program students in the 2L seminar all are required to take, “Problem Solving in the Public Interest.” In fact, that night was to be our final class of the term,

Scott L. Cummings is the Robert Henigson Professor of Legal Ethics and Professor of Law at the UCLA School of Law.

1. See Richard L. Abel, *Choosing, Nurturing, Training and Placing Public Interest Law Students*, 70 *FORDHAM L. REV.* 1563 (2002).

a culmination and celebration of all the work that the students had done that semester. During the course, students were asked to develop an advocacy plan combining different tactics (litigation, policy advocacy, organizing, and media advocacy) to address an important social problem about which they cared deeply. That term, the student projects reflected and engaged with the most pressing issues outside the cloistered law school walls—issues to which many of the students had deeply personal connections. There was a clear theme in the student work, with a significant number choosing to pursue projects that responded directly to the massive inequalities and injustices in the criminal justice system. Michael Brown’s death and the history and continued reality of police mistreatment of communities of color was in the background and on the surface. As an example, one student wrote powerfully about police militarization and its impact on individuals with mental health issues. Others highlighted problems with criminal defense and prisons. Still others focused on the relation between criminal justice and communities of color, particularly immigrant communities. Michael Brown, and the countless others whose lives had been shattered by the criminal justice system but whose names were not remembered, were on our collective minds—which is what made that night a challenge.

As the class was intended to unfold, students were to present analyses and recommendations from their final paper projects. Then, as a celebration, we were to have some food and drink, taking in a breath before the hard final stretch of examinations. Yet the real world was to intervene to disrupt this pedagogical plan. Midway through the two-hour session, I began to notice students too intently focused on their computer screens. They were not just taking diligent notes or reviewing assignments. As I began to circulate around the room, I realized what was happening: St. Louis County Prosecutor Robert McCulloch had begun the news conference in which he was to announce the grand jury decision in the Michael Brown case. Computer screens were streaming news feeds. The student presentations faltered as a hush came over the room. Normally students would be shamed into closing their computer screens to avoid revealing their covert non-class activity. But not this time. Groups of students began to huddle around the screens of those who were running the newscasts until someone uttered the unthinkable words that smashed the silence: “No indictment.”

Shock and grief flooded the room. Some students became visibly distraught, eyes welling with tears. What should I do? What should I say? Should we carry on as planned? I quickly tried to recover. After a bit of conferencing, we decided that the final student presentations should go on, that it was only fair to credit all of their hard work, but that we could not—did not want to—proceed in celebration of the end of our class together. Suddenly, celebration felt unseemly, a cruel denial. We needed to do something to mark the moment and think about how we should respond: how we as lawyers and lawyers-to-be could do something to voice our collective demand that violence under cover

of law no longer receive law's protection. That was, after all, why we all were there: to make law live up to its promise.

As the presentations ended, we rallied together. Instead of socializing and unwinding, we went outside into the courtyard in the dark, and formed a silent circle. At this point, the students had taken the lead. I was following. We joined hands. And one by one each of us stepped into the circle to speak a truth about how we felt and what we wanted to do. Some spoke of the searing pain of seeing family and friends harassed by police who acted with impunity. Others talked about the strength they took from our solidarity. Still others talked about their need to leave the circle and to act. When it was finally my turn, I could find words only to say how much courage and inspiration I took from them all.

Those truths connected our community to the one outside—one of anguish and outrage, but also resistance and mobilization. When we broke hands, some students left to join that resistance, going to mass rallies and marches that were arising around the city. In the days that followed, many of those same students, joined by faculty, would be on the front lines of a new movement asserting that Black Lives Matter, using the force of collective action to change law and social practice. Six months later, Los Angeles became the nation's largest city to mandate that its police officers wear body cameras in an effort to document police-community interaction and, it was hoped, improve police conduct and accountability. Although movement activists continued to fight over the details—whether the police would be able to review the video footage before writing their reports and whether they would be able to withhold footage from the public—it was a step forward for a department infamous for its treatment of black and brown residents. It was also precisely what I and my colleagues had, in our public interest seminars and beyond, been trying to teach: that it is organized movements of people, allied with lawyers and other activists, speaking truth to power that changes law; that changing law is just one step in the never-ending struggle to shift power in favor of those who lack it.

I have reflected on the Michael Brown moment in my class many times in the past year. And I have thought a great deal about our circle and what it meant to speak truth among ourselves at that moment of hurt and anger. That moment was one of the most profound in my nearly decade-and-a-half of teaching. One—as countless others fade—I will most certainly never forget. As I have reflected, I have tried to understand its lessons for my own teaching: about law as a system of rules that reflects power inequality, but also about law as an aspiration to greater justice and as a tool to be leveraged to hold those in power to their claim to respect law. That aspiration led me to Alabama this past summer, where I took my daughters to study and draw inspiration from the history and legacy of the civil rights movement. It was there I was reminded of Martin Luther King Jr.'s unforgettable speech on the eve of the Montgomery bus boycott, given to an overflow crowd of several thousand at the Holt Street Baptist Church, in which he intoned, to explosive applause: “And we are not wrong, not wrong in what we are doing. If we are wrong, the

Supreme Court of this nation is wrong. If we are wrong, the Constitution of the United States is wrong.”² Law matters in the fight for equality not because it resolves conflict, but rather because it can be a symbol of what is right—a symbol that can be mobilized by people to create hope and demand change.

As I thought back about my class, one lesson was clear: that there was nothing more powerful and enduring than directly confronting the law in action—for good or ill. And if that meant departing from my script, going into a space of discomfort where I did not have a learning goal or even know what might happen, that was necessary to arrive at what we so often obscure in our day-to-day teaching: for so many in our society, the law does not work. Indeed, I have thought since that genuine learning—confronting the fact that law does not always work but that we nonetheless have to continue to fight to demand that it does—requires walking outside the space of comfort into the dark courtyard of vulnerability.

But, of course, that moment of candor in the face of raw injustice we experienced on November 24 could not be predictably reproduced. So I have also reflected on how that honesty, that space for speaking truth and for galvanizing action, can be recaptured and sustained in a more systematic way as I go forward. This has led me to think of the metaphor of our circle and how it signified something important about both building communities of solidarity within the law school and making it link to circles outside in the real world of struggle for social change.

What I have come up with is not a path-breaking new program, but rather a recommitment to the core values that drew me to become a law professor in the first instance—values that are too often neglected in the race for the status goods associated with academic success. How to exist in the Ivory Tower while staying accountable to those whose voices too often do not carry over its walls has been the central puzzle of my experience as a law professor. I have not solved that puzzle, but I have redoubled my efforts to continue trying by building and deepening the links between my own work and the larger political project of supporting movements of the marginalized to make my city—and my country—better.

This involves three choices:

The first is to reinvest in building communities of students who are connected to movements for social change and understand our law school as a space where political engagement is valued and even promoted. This means continuing to bring in social justice-minded students to our program, to connect them to one another and to faculty, and to ensure that they have the institutional resources and guidance to make it through law school with their dreams of social change solidified and their skills strengthened. It means standing up for the contributions these students make to the law school independently of what they might mean for the *U.S. News* ranking algorithm.

2. A CALL TO CONSCIENCE: THE LANDMARK SPEECHES OF DR. MARTIN LUTHER KING, JR. 10 (Clayborne Carson & Kris Shepard eds., 2001).

It means fighting for students who have nontraditional backgrounds: students like Frankie Guzman, who at the age of fifteen was put in juvenile detention for holding up a Kmart clerk at gunpoint and by twenty-four had already spent six years behind bars.³ Despite the odds, Frankie fought his own way to college and then to UCLA Law School, where he applied in order to become a lawyer for young people like the person he used to be—stuck in the juvenile justice system with no hope for the future. We accepted Frankie, and he accepted us. He brought his commitment here, and we supported him to carry that commitment back to his community: as a Soros Fellow at the National Center for Youth Law, where he fights for juvenile justice sentencing reform to make sure first-time youth offenders are not placed in adult prisons. Although Frankie's story is particularly compelling, his commitment and drive are not unique. The challenge we now face as educators who want to support the work of Frankie and other students like him is that law schools have become increasingly inhospitable to their dreams. The economic model of contemporary legal education subsidizes those who score high on the metrics that "count" most in the race for rankings. Too often, this means that students with the background and resources to achieve high LSAT scores pay a substantially discounted tuition rate (and sometimes no tuition at all), while those with LSATs below their law school's average, many from less privileged backgrounds pursuing social justice dreams, pay full freight. This places significant obstacles in the place of those students who overcome incredible odds in the drive to give back to their communities as public interest lawyers, but who confront mountains of debt to do so. Creating communities of social justice in law schools requires ensuring that law schools remain financially accessible and that loan assistance actually works to enable graduates to pursue the path of hope and helping.

The second choice is to bring my own resources to bear in supporting movements for change. Leading is by example and not just exhortation. For me, this means redoubling my commitment to teach courses that allow me to connect my students with local struggles—to use our collective capital to challenge poverty and inequality in Los Angeles. In this regard, I have been lucky to be on a faculty that has supported my colleagues and me to teach clinical courses from a position of complete parity on the law school faculty. And I have used this to teach clinical courses on community economic development that have over the past decade supported initiatives by local movements for economic justice: helping shape policy around labor standards in the waste and port trucking industries; assisting local organizations in the pursuit of community benefits agreements in connection with downtown development; supporting the creation of worker cooperatives owned by immigrant workers in sectors like landscaping; and helping community-based organizations preserve affordable housing against the forces of gentrification and displacement. Doing this work is an individual choice, but it is one that operates in the context of broader

3. Meredith May, *From Prison to Juvenile Justice Lawyer*, SFGATE (Feb. 17, 2013, 11:01 PM), <http://www.sfgate.com/crime/article/From-prison-to-juvenile-justice-lawyer-4286757.php>.

institutional choices by my law school to support this type of clinical work. My law school has long been a leader in clinical legal education: a fount of client-centered, rebellious, and third-dimensional lawyering, and a continued leader in movements to end injustice against immigrants and promote police accountability. But this vision is under stress as law schools confront the intersecting pressures of fiscal austerity and new requirements for experiential learning by the ABA and (likely) the California Bar.⁴ Intensive clinical work that trains students through experiences with live clients with real problems and real struggles is costly. There are incentives for deans, which other schools have confronted, to cut back and invest in less costly teachers and approaches. There is no inevitability to the continuation of the social justice mission of clinical education that was one of its cornerstones when it was institutionalized nearly a half-century ago. To maintain the ability to connect our work to the world around us through robust clinical education—to enrich our communities as we enrich the experiences of our students—we have to continue to struggle to create that institutional space, or it will shrink and atrophy.

My third choice is to take what I learn about and from social movements for change—in Los Angeles and beyond—and channel it back into my teaching and scholarship. I have tried to do this in multiple ways. I have taught a seminar on law and social movements that asks students to think about how foundational movements of social change—labor, civil rights, LGBT rights, and others—have changed (or failed to change) American society. What lessons can we learn from them? What role do lawyers play in them? A focal point of that class, and my scholarly work on social movement lawyering, has been to challenge students to embrace the positive role that lawyers can play as allies and even leaders in struggles for change. All too often, I have seen law students adopt critical views of lawyers as change agents—views that have been shaped by a half-century’s worth of critical commentary that suggests lawyers often do more harm than good to social movements. My teaching and scholarly project has been to reclaim an affirmative role for lawyers and their legal tools—to challenge students to think about how law can support and enlarge the scope of transformative change. Less explicitly, but no less deliberately, I also have sought to reincorporate movements into my doctrinal teaching: using them in my course on the legal profession to highlight how lawyers manage conflicts, and in my corporations class to show how workers movements have sought to challenge the traditional conception of corporate ownership.⁵

4. See AM. BAR. ASS’N, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, Standard 303(a)(3) (2014-2015) (requiring law schools to offer a curriculum that allows each student to complete “one or more experiential course(s) totaling at least six credit hours”); STATE BAR OF CAL., TASK FORCE ON ADMISSIONS REGULATION REFORM, PHASE II FINAL REPORT 2 (2014) (stating recommendation that new applicants to the bar should have “taken at least fifteen units of practice-based, experiential course” work).
5. In Business Associations, I teach a class on worker-owned cooperatives and another on employee rights to corporate property, using the famous case *Local 1330 v. United States Steel Workers*, 631 F.2d 1264 (1980).

It has now been almost a year since that Michael Brown moment and that circle in my seminar—that moment that changed the country and also changed me. And as I have embarked anew this year teaching the same class, I have tried to carry forward the lessons of last year. This year, for the first time, a colleague and I are co-teaching the course around the very issues that sparked the current movement: how public interest lawyers have responded—and should continue to respond—to injustice caused by local racial and economic inequality and the lack of police accountability to low-income communities of color.

It is all too easy for us to forget about lawlessness and the damage it inflicts as we step each day into our offices and classrooms built as monuments to the rule of law. It should not take senseless death to remind us that law is only an ideal that requires unceasing struggle to achieve. And yet we should also not let that tragedy pass without honoring it with action—another lesson I recall from my summer trip to Alabama. As King spoke at the eulogy of the four girls killed in the bombing of Birmingham's 16th Street Baptist Church:

And so my friends, they did not die in vain. God still has a way of wringing good out of evil. And history has proven over and over again that unmerited suffering is redemptive. The innocent blood of these little girls may well serve as a redemptive force that will bring new light to this dark city.⁶

Let us make it so.

6. A CALL TO CONSCIENCE, *supra* note 2, at 89.