

# The Rebellious Law Professor: Combining Cause and Reflective Lawyering

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## Introduction

In 1992, Gerald López argued that progressive lawyering requires 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 against reigning (“regnant”<sup>2</sup>) patterns of law and practice that serve only to reinforce the established order<sup>3</sup> and alienate progressive lawyers from their natural base, the community.<sup>4</sup>

It is 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, as cause lawyers are? Faculty right now stand in the middle of this quandary, as the deaths of Michael Brown, Eric Garner, and Freddie Gray, and too many others spark protests that envelop 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

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1. 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.”).
2. LÓPEZ, REBELLIOUS LAWYERING, *supra* note 1; 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.”).
3. Rebecca Sharpless, *More than One Lane Wide: Against Hierarchies of Helping in Progressive Legal Advocacy*, 19 CLINICAL L. REV. 347, 394-95 (2012).
4. LÓPEZ, *supra* note 1.

anyone is.<sup>5</sup> How did he make the connection to the community? How has his university responded to his actions? What are his next steps?

Part II explores a variety of ways in which law professors can rebel, creating off-campus 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 class and race issues, 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>6</sup>

As we move forward, strengthening our engagement with today’s fragmented social movements and, indeed, with the communities from which we have come, we may well find ourselves protecting the honor of our profession<sup>7</sup> and our rights as faculty, and our own autonomy and agency as well. It is possible that we, and the community members with whom we engage, will learn to think outside our respective boxes together, creating a broad-based program out of their work and our own,<sup>8</sup> serving all our interests.<sup>9</sup>

Part III concludes with some thoughts about how this approach might assist us and our students to engage with the issues brought to the forefront by the “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

5. Justin Hansford—Biography, SAINT LOUIS UNIV. SCH. OF LAW, <http://law.slu.edu/people/justin-hansford> (last visited Aug. 27, 2015).
6. Jayanth K. Krishnan, *Lawyering for a Cause*, 94 CALIF. L. REV. 575, 581-88 (2006).
7. 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.”).
8. See also James M. Saslow, *Losing Our Faculties*, ACADEME, May-June 2012, at 47 (“[S]tructural 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: WHY DEMOCRACY NEEDS THE HUMANITIES (2012), “[W]e 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.”)).
9. See Angelo N. Ancheta, *Community Lawyering*, 81 CALIF. L. REV. 1363, 1378 (1993) (stating that 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.”).

to his home.<sup>10</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>11</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 both hands behind my back,” Hansford reports.<sup>12</sup> He was arrested before any of the protesters, and before any of the other four legal observers, all of whom were white.<sup>13</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>14</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>15</sup>

## II. Rebellious Off-Campus

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

Neoliberalism disempowers people in favor of corporations, and tries to convince people that consumption, not collective action, is the answer to their problems. When facing entrenched profit-making interests as they try to protect their health, seek an education, or look for social support, it tells them they stand alone.<sup>16</sup> Further, if they are minorities, they must succeed, if at all, in a “colorblind” world.<sup>17</sup> This affects all of us, university people and community people, often differently, but still profoundly alike. We can expect the differences to decrease, and the similarities to increase, over time.

10. 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>.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. 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* 48 (Joyce E. Canaan & Wesley Shumar eds., 2011) [hereinafter *STRUCTURE AND AGENCY*].

17. See generally MICHAEL OMI & HOWARD WINANT, *Colorblindness, Neoliberalism, and Obama*, in *RACIAL FORMATIONS IN THE UNITED STATES* (3rd ed. 2014).

Neoliberalism can also hijack the narrative of the university as producer of a population that is not only informed but also prepared to challenge authority for the sake of social justice.<sup>18</sup> Students in the “neoliberal university” are encouraged to see themselves as consumers of marketable skills rather than as citizens in training, for example.<sup>19</sup>

This is especially problematic for minority students who see a value in remaining grounded in their own communities and cultural contexts. Standardized tests screen out many of the community-oriented; those who get through are subjected to another round of screening and molding once they arrive, which pressures them to conform to the neoliberal ideal.

Lucie Jewel, in a 2008 article, describes how this happens.<sup>20</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>21</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>22</sup>

Sound familiar? How many of us see our students in the same dark suits 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 believe that the intellectual processes, problem-solving skill sets, and way of life of the corporate attorney embody the “gold standard” (no pun intended) to which all must aspire?<sup>23</sup>

In this way, students may learn to substitute neoliberal patterns of life and work for their own. Yet many come from communities with cultural traditions that are extremely valuable in the struggle against neoliberalism. Gerald López encourages “rebellious” lawyers to be receptive to these traditions when

18. 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), <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).
19. Harold McDougall, *Facing the Neoliberal University*, 72 NAT’L LAW. GUILD REV. 65, 70 (forthcoming 2015) (citing Joyce E. Canaan & Wesley Shumar, *Higher Education in the Era of Globalization and Neoliberalism*, in *STRUCTURE AND AGENCY*, *supra* note 16, at 8).
20. Lucille A. Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 BUFF. L. REV. 1155 (2008).
21. *Id.* at 1156-59.
22. *Id.* at 1155-56.
23. See Duncan Kennedy, *Global Dialogue on the Future of Legal Education*, YOUTUBE (Mar. 28, 2012), <http://www.youtube.com/watch?v=eldHmK4wYcc> (demonstrating that American legal education favors training young lawyers to accept hierarchy, to identify with the authority of their elders, and to get satisfaction from being the hired guns for the multinational corporations, with little sense of their own value as autonomous moral and political actors.).

looking for solutions to problems the community faces, avoiding “regnant” lawyering patterns.<sup>24</sup> Yet the default settings of the law curriculum may be 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.<sup>25</sup>

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 marginalized 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>26</sup>

In doing so, rebellious law professors must consider a number of issues with which they may not be familiar,<sup>27</sup> as they work in the field and also as they reflect upon and prepare for that work in class with their students. Class participants especially need to discuss the proper role of lawyers in social justice movements, the principles of social movement lawyering, and the importance of interdisciplinary learning and approaches, and need to note the political and economic context of neoliberalism.<sup>28</sup>

The class can also 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

24. Alfieri, *supra* note 2, at 1752.

25. McDougall, *Facing the Neoliberal University*, *supra* note 19.

26. *See, e.g.*, Alina Ball, *Social Enterprise and Economic Empowerment Clinic*, UNIV. OF CALIF. HASTINGS COLL. OF LAW, <http://www.uchastings.edu/academics/clinical-programs/clinics/socialenterpriseandeconomicempowerment/index.php> (last visited Sept. 6, 2015); Alexi Freeman, *Getting Your Hands Dirty: New School Legal Education*, THE DOCKET (Dec. 19, 2013) <http://www.dbadocket.org/young-lawyers/getting-your-hands-dirty-new-school-legal-education/> (Denver Bar Association’s blog); Chaumtoli Huq, *(inter)Generational 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, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLINICAL L. REV. 333 (Spring 2009).

27. *See generally*, Alina Ball, Alexi Freeman, & Sara Jackson, *Lawyering for Social Justice Movements: How the Legal Academy Can Maximize Impact*, Presentation at the SALT Conference (Oct. 10, 2014).

28. 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, *GOODWORK PROJECT REPORT SERIES, NO. 27, THINKING ACROSS PERSPECTIVES AND DISCIPLINES* (Nov. 2004), <http://evergreen.edu/washingtoncenter/docs/resources/millerboix.pdf>.

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 DNA to describe a matrix or template that organizes the cultural information of a particular community and gives it coherence.<sup>29</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>30</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 rebellious lawyering is the preferred approach. Indeed, neoliberalism is the cultural DNA of the reigning powers in our legal system—operating within law schools via a supposedly neutral set of lawyering skills.<sup>31</sup>

Using class discussions to prepare them for their encounters in the community, 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. These relationships will help teachers broaden and deepen their 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. Students should note especially the "powerful socializing messages" of regnant lawyering, such as valuing "private practice in

29. Harold A. McDougall, *Reconstructing African American Cultural DNA: An Action Research Agenda for Howard University*, 55 *HOW. L.J.* 63, 64-65 (2011) [hereinafter McDougall, *Reconstructing African American Cultural DNA*]; Harold McDougall, *Cultural DNA: Bringing Civic Infrastructure to Life*, HUFFINGTON POST: THE 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) [hereinafter McDougall, *Cultural DNA*].

30. See Sabine U. O'Hara, *Valuing Socio-Diversity*, 22 *INT'L J. SOC. ECON.* 31 (1995); Sabine U. O'Hara & Sigrid 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 23 (stating that 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).

31. Duncan Kennedy, *Legal Education as Training for Hierarchy*, reprinted in *THE POLITICS OF LAW* 54, 57 (D. Kairys, ed., 3d ed. 1998).

general and in elite law firms in particular,” and promoting “analytic distance rather than political commitment.”<sup>32</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—not just the courts, but also the legislature and the executive branch (including administrative agencies). 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>33</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.

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 that were most appropriate.<sup>34</sup> First, the student employed the lawyering skill of *theoretical perspective* to place the problem in its larger context.<sup>35</sup> This helped identify the widest range of choices, the widest range of possible repercussions of each choice, and the choices that should be referred to experts in fields other than law.<sup>36</sup>

Of the exclusively legal remedies that remained, a second lawyering skill, *legal reasoning*, helped eliminate those that would not produce a satisfactory

32. Krishnan, *supra* note 6, at 585.

33. Popularized by CUNY Law School. *See, e.g.*, Harold McDougall, *Lawyering and Public Policy*, 38 J. LEGAL EDUC. 369, 372-75, 383-86 (1988) [hereinafter McDougall, *Lawyering I*].

34. *Id.* at 390.

35. *I.e.*, social, historical, political, scientific, or economic context. *See id.* at 371.

36. *See* Harold McDougall, *Social Movements, Law and Implementation*, 75 CORNELL L. REV. 83, 102-11 (1989) [hereinafter McDougall, *Social Movements*] (historical case study of litigation, legislation, and community organizing in the civil rights movement); *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) [hereinafter McDougall, *Lawyering II*] (theory and practice in a postmodern legal system).

outcome in the legislature or the courts, or before an administrative agency.<sup>37</sup> Finally, completing the planning process, the lawyering skill of *professional responsibility* further winnowed the remaining choices by eliminating those that would be unethical to pursue.<sup>38</sup>

The *doing* phase began with the final choice among those remedies considered acceptable after filtering them through the lenses of theoretical perspective, legal reasoning, and professional responsibility. This choice was an exercise of a fourth lawyering skill, *clinical judgment*<sup>39</sup> (employing a number of subsidiary skills, among them ends-means thinking, planning, risk evaluation, hypothesis formulation, and information acquisition).<sup>40</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. This phenomenon has been described as the “logic of experience.”<sup>41</sup>

Once the choice is made, *doing* was carried through by means of lawyering skills five and six—*oral and written communication*<sup>42</sup> and *management of effort*.<sup>43</sup> Oral and written communication is more than just writing the best brief; it is the ability to draft statutory language that keeps a legislative coalition from shattering, or the ability to draft regulations that 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>44</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

37. See, e.g., McDougall, *Lawyering I*, *supra* note 33, at 381-83 (legal reasoning in public-interest litigation). See also McDougall, *Lawyering II*, *supra* note 36, at 43-44 (legal reasoning in public-interest litigation).

38. See McDougall, *Lawyering I*, *supra* note 33, at 371, 376-79.

39. See *id.* at 371, 375-76, 383-84. See also McDougall, *Social Movements*, *supra* note 36, at 111-15 (case study of tactical judgments made in pursuing the Civil Rights Restoration Act of 1989); and McDougall, *Lawyering II*, *supra* note 36, at 9-11, 30-34 (overview of clinical judgment in a postmodern legal system), see especially 34-37.

40. See McDougall, *Lawyering II*, *supra* note 36, at 34-37.

41. Cf. GARY BELLOW & BEA MOULTON, *THE LAWYERING PROCESS* 295, 303 (1978) (discussing a “logic of experience” that seems to combine intuition and intellect, a thought process developed from intuition, creativity, and imagination through disciplined experience). A master chess player may be twelve moves ahead, and to the novice it looks like instinct, but it is actually the result of countless games the master has played, providing a “logic of experience.” Cf. Hugh Patterson, *Intuition and Second Guessing*, CHESS IMPROVER, <http://chessimprover.com/intuition-and-second-guessing/> (last visited Sept. 7, 2015).

42. See McDougall, *Lawyering I*, *supra* note 33, at 371, n.12.

43. *Id.* at 371, n.14.

44. See McDougall, *Social Movements*, *supra* note 36, at 83-86 (discussing the role of groups in building community and pressing for legal and political change). See also McDougall, *Lawyering II*, *supra* note 36, at 37-40.

the one adopted) and the consequences flowing from those choices. In many instances, reflecting transitions 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 at all discuss neoliberalism, already the “regnant” political philosophy of both Democratic and Republican decision-makers at the time, hardly to be 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 described above 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>45</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”<sup>46</sup> posture that disempowers community members, I propose starting not with theoretical perspective, but with oral communication. To be specific, we begin by learning and teaching how to listen, because community members have much to tell us not only about their world but also about our own. We then move to theoretical perspective, for a link between

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

46. Alfieri, *supra* note 2, 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.”).

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, we move to management of effort, so we understand fully what resources community members have, 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 that most separate us from “lay” community members, now come last in our planning process. Moreover, they 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>47</sup>

#### 1. Oral communication

*Oral communication* now includes “engaged listening,” giving our clients voice, providing an opportunity to say “I was wronged.”<sup>48</sup> It is easy to underestimate the power of listening and its healing and transformative potential.<sup>49</sup> Also, client stories are powerful ways to highlight injustices in our system.<sup>50</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 social construct we occupy with them, things we miss because we are occupants of a different location within it.<sup>51</sup>

I first experienced this conceptual relocation as I interviewed black residents of West Baltimore for my book,<sup>52</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>53</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

47. HAROLD MCDUGALL, *BLACK BALTIMORE: A NEW THEORY OF COMMUNITY* (1993) [hereinafter MCDUGALL, *BLACK BALTIMORE*].

48. See, e.g., LÓPEZ, *REBELLIOUS LAWYERING*, *supra*, note 1, at 193-94, 195, 198, 200 (encouraging lawyers to recognize and work with, rather than against, the knowledge base and power of traditionally subordinated communities).

49. 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 . . .’”).

50. 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).

51. 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.”).

52. MCDUGALL, *BLACK BALTIMORE*, *supra* note 47.

53. *The Wire* (HBO television broadcast 2002-2008).

found myself listening more and talking less. In the book itself, I retell not only 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 relive with me, growing and changing as I did.<sup>54</sup>

I found that as we engaged in conversation, their life knowledge and my theoretical approaches both jostled and reinforced one another,<sup>55</sup> in a mutual “outside the box” thinking process that was immensely useful and enjoyable.<sup>56</sup> In later work—blogs<sup>57</sup> and law review articles<sup>58</sup>—I described such interactions as a “sharing of epiphanies.”<sup>59</sup>

## 2. Theoretical perspective

Our *theoretical perspective* broadens with community engagement, 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>60</sup> Avi Brisman quotes Gerald López 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>61</sup> If law itself is a collection of “stories and storytelling practices” that organize social reality and conventions that define and resolve disputes,<sup>62</sup> then we should expect conflict around the identity and authority of those storytellers, and the content of the stories they tell.

54. See Ancheta, *Community Lawyering*, *supra* note 9, at 1372-73 “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) (reviewing LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 1).

55. Alfieri, *supra* note 2, 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.’”).

56. Piomelli, *supra* note 1, at 436-37.

57. McDougall, *Cultural DNA*, *supra* note 29.

58. McDougall, *Reconstructing African American Cultural DNA*, *supra* note 29.

59. *Id.* at 68.

60. Gosta Esping-Andersen, Rodger Friedland & Erik Olin Wright, *Modes of Class Struggle and the Capitalist State*, 4-5 *KAPITALISTATE* 186 (1976).

61. 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 LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 1).

62. Alfieri, *supra* note 2, at 1760.

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 legal theory.<sup>63</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>64</sup>

Elsewhere, I have discussed the possibility of creating a broad coalition of community organizations to constitute a “civic infrastructure.”<sup>65</sup> Such an infrastructure could help keep government and big business accountable to the “99%.”<sup>66</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>67</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 the relation between “seemingly mundane local affairs” and the “politics of multinational decision-making.”<sup>68</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>69</sup> From that vantage point we can better work together for justice, fairness, equality, and democracy, locally and in the global community.<sup>70</sup>

63. Huo, *supra* note 26; see also Brisman, *supra* note 61, 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 LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 1)).

64. Sharpless, *supra* note 3, at 379.

65. Harold A. McDougall, *Social Change Requires Civic Infrastructure*, 56 *HOW. L.J.* 801 (2013).

66. See Harold McDougall, *The Citizen’s Assembly: A Civic Infrastructure for Progressive Social Change*, HUFFINGTON POST: THE BLOG (June 29, 2012, 10:49 AM), [http://www.huffingtonpost.com/harold-a-mcdougall/civic-engagment\\_b\\_1637398.html](http://www.huffingtonpost.com/harold-a-mcdougall/civic-engagment_b_1637398.html) (updated Aug. 29, 2012, 5:12 AM) [hereinafter McDougall, *The Citizen’s Assembly*].

67. Piomelli, *supra* note 1, at 484-85.

68. *Id.*

69. See Saslow, *supra* note 8.

70. STRUCTURE AND AGENCY, *supra* note 16, at 18, 27; see also Ben Salt, Ronald M. Cervero & Andrew Herod, *Workers’ Education and Neoliberal Globalization: An Adequate Response to Transnational Corporations?* 51 *ADULT EDUC. Q.* 9 (2000) (discussing efforts to introduce a critique of neoliberalism into the curriculum of worker education for union members).

In such a collaboration, our students can learn to mesh their own theoretical perspectives with the problem-assessing strategies of their community partners<sup>71</sup> in the “epiphany” process I described earlier.<sup>72</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>73</sup>

Community leader Ella Johnson helped broaden my theoretical perspective in this regard. She let me know that though there were 12,000 people in her neighborhood of Sandtown (where Freddie Gray was born), only the most prosperous residents had been involved in the Baltimore City government’s redevelopment process. These were the people

[W]ho 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.<sup>74</sup>

“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 results you can measure.”<sup>75</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>76</sup> (again, the “hero” dilemma). Similarly, Lani Guinier cautions that lawyers helping social movements successfully organize around a counterstory of resistance must avoid becoming the movement’s primary storytellers.<sup>77</sup>

71. Marshall, *supra* note 51, 160-61 (citing Gary Bellow, *Turning Solutions into Problems: The Legal Aid Experience*, 34 NLADA BRIEFCASE 106, 121 (1977), 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.”).

72. McDougall, *Reconstructing African American Cultural DNA*, *supra* note 29.

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

74. MCDUGALL, BLACK BALTIMORE, *supra* note 47, at 153-54.

75. *Id.*

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

77. See, e.g., Lani Guinier, *Legal Profession: Responsibilities of Public Lawyers*, HARV. LAW SCH., [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).

The Rev. Alfred Vaughn of the Sandtown Baptist Church in West Baltimore gave me a deep “interdisciplinary” perspective on what we lawyers call professional responsibility.<sup>78</sup> “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.”<sup>79</sup> 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 and food banks, all financed by their own congregations.<sup>80</sup>

“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 your allegiance.”<sup>81</sup>

#### 4. Management of effort

*Management of effort* involves not only balancing one’s own time, resources, and energy;<sup>82</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>83</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>84</sup> with collaborative thinking.<sup>85</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

78. MCDUGALL, BLACK BALTIMORE, *supra* note 47, at 7.

79. *Id.*

80. *Id.*

81. *Id.*

82. These are important and not to be underestimated. See Krishnan, *supra* note 6, at 585-587 (constraints cause lawyers face in the context of an ongoing legal practice).

83. Alfieri, *supra* note 2, at 1761 (“López views lawyer-client collaborative problem-solving as part of a gradual, integrated move into ‘a larger network of cooperating problem-solvers.’”) [Citing López, *supra* note 1, at 55].

84. See McDougall, *Reconstructing African American Cultural DNA*, *supra* note 29.

85. Marshall, *supra* note 51, 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.”).

discipline for use in another.<sup>86</sup> It is the rebellious law professor's job to build bridges not just between law and economics, politics, history or psychology. It is also to build bridges to "lay" problem-solvers whose intellectual discipline is rooted in their own community's cultural DNA.<sup>87</sup>

Interdisciplinary Miller and Boix Mansilla show how "cognitive bridges" can aid this process.<sup>88</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>89</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>90</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>91</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 management-of-effort process begins with "mapping." Mapping helps us note, assess, and appreciate a community's social and civic capital—the levels of time, energy, 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>92</sup> Mapping thus helps us become "grounded" in the community,<sup>93</sup> to become familiar with its cultural DNA, its way of solving problems.<sup>94</sup>

Rebellious lawyers can actually enhance a community's social capital, civic capital, and even its civic infrastructure by facilitating community dialogues

86. Repko, *supra* note 28, at 23.

87. See McDougall, *Reconstructing African American Cultural DNA*, *supra* note 29, at 66.

88. See MILLER & BOIX MANSILLA, *supra* note 28, at 9.

89. *Id.*

90. *Id.* at 11.

91. *Id.* at 12.

92. McDougall, *Social Change Requires Civic Infrastructure*, *supra* note 65, at 822-23. See also Piomelli, *supra* note 1, 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].").

93. Alfieri, *supra* note 2, at 1757 ("In López's vision, to 'lawyer rebelliously' is to 'ground [advocacy] in the lives and in the communities of the subordinated themselves. This . . . requires 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.'").

94. McDougall, *Reconstructing African American Cultural DNA*, *supra* note 29, at 68.

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>95</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>96</sup> Thus civic infrastructure is built and enhanced.

In his article *Living and Lawyering Rebelliously*, Gerald López describes three years spent conducting in-person and phone interviews of 2,000 residents and over 1,000 service providers before opening the Legal Needs and Resources Project in New York City.<sup>97</sup> This mapping process prepared López and his colleagues to do some collaborative thinking, engaging with the community as a partner rather than as an expert and alien “fixer.” Enriched by the community’s cultural DNA, they helped build networks and partnerships to address the community’s needs.<sup>98</sup>

I saw community organizers and activists use similar approaches during the time I spent in Baltimore.<sup>99</sup> Community organizer Darnell Ridgley, who I described as a “big, fair-skinned black community advocate with fire-red hair and outrageous fingernails,”<sup>100</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 leadership 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

95. Janine Sisak, *If the Shoe Doesn’t Fit . . . Reformulating Rebellious Lawyering to Encompass Community Group Representation*, 25 *FORDHAM URB. L.J.* 873, 879 (1998).

96. Marshall, *supra* note 51, at 161-62.

97. Gerald P. López, *Living and Lawyering Rebelliously*, Keynote Address at the Symposium on Critical Race Lawyering, in 73 *FORDHAM L. REV.* 2041, 2050 (2005).

98. Collaborative thinking of this type features largely in the “rebellious problem solving” of López. *See, e.g., id.* at 2048-49 (2005). *See also* Marshall, *supra* note 51, at 159-60, 162 (finding that 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).

99. *See* Harold McDougall, *The Outer Harbor*, *BALTIMORE MAG.*, March 2006, at 114-16 (comparing neighborhood strategies to remedy the effects of gentrification).

100. MCDUGALL, *BLACK BALTIMORE*, *supra* note 47, at 141.

gaps, to maintain communications and dialogue among all the people in the community.<sup>101</sup>

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 not to waste people's time. . . . Community involvement must go beyond block parties and health fairs. People must have something to do, must feel needed. Many of their differences will be resolved in the context of collaborative work.<sup>102</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>103</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>104</sup> In this way all participants draw upon their personal experiences "to interpret and transform the world through problem solving."<sup>105</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?" and "Which stakeholders must we involve?" and "By what benchmarks shall we measure success?"<sup>106</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"; the client who is a co-participant "will also be more likely to collaborate in the solving of the problem."<sup>107</sup>

101. *Id.*

102. *Id.* at 148-49, 152-53.

103. *Id.* at 151-52.

104. Piomelli, *supra* note 1, at 440, 483.

105. See Ancheta, *Community Lawyering I*, *supra* note 9, at 1365.

106. Cf. Piomelli, *supra* note 1, 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.").

107. Marshall, *supra* note 51, at 160.

### 5. Legal reasoning and clinical judgment

Even *legal reasoning* and *clinical judgment* are transformed. Anthony Alfieri describes reigning modes of legal reasoning as follows. “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>108</sup>

Professor 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>109</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>110</sup> This is an entrenched part of the “regnant” lawyering model that López criticizes.<sup>111</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 “heroic” show.<sup>112</sup> Professor Hiblink describes confrontations between regnant lawyers and community organizers during the civil rights movement, for example, in clashes pitting Thurgood Marshall and Legal Defense Fund lawyers against organizers from SNCC, CORE, and SCLC.<sup>113</sup> The civil rights lawyers viewed the organizers’ direct-action campaigns as threatening respect for law, the touchstone of their own law-based/constitutional strategy,<sup>114</sup> their own “heroic” stance.<sup>115</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>116</sup> and may even tend to reproduce neoliberal power relations.

108. Alfieri, *supra* note 2, at 1760, referring to LÓPEZ, *REBELLIOUS LAWYERING*, *supra*, note 1 at 40-43.

109. See Quigley, *supra* note 76, at 467-68.

110. Cf. Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 *HASTINGS L.J.* 947, 958 (1992).

111. See *The Rebellious Idea of Lawyering Against Subordination*, in LÓPEZ, *REBELLIOUS LAWYERING*, *supra* note 1, at 187-94, [http://law.indiana.edu/instruction/profession/doc/21\\_2.pdf](http://law.indiana.edu/instruction/profession/doc/21_2.pdf) [hereinafter *The Rebellious Idea of Lawyering Against Subordination*].

112. Alfieri, *supra* note 2, at 1755.

113. 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).

114. Piomelli, *supra* note 1, at 482 (regnant lawyers tend “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.”).

115. See Alfieri, *supra* note 2, at 1763.

116. Demonstrations, community organization and mobilization, public information campaigns,

Recognizing these possibilities, rebellious lawyers may see their roles as problem-solvers take over from their roles as lawyers, as they brainstorm with community members to figure things out.<sup>117</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>118</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>119</sup> Thinking outside the regnant box like this increases the probabilities of solutions emerging that contradict neoliberal power relations.<sup>120</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 political movements than through traditional legal approaches.<sup>121</sup> Mass mobilization reaches more people, so Johnson’s students work with community organizations and help mobilize the community while also working on cases.<sup>122</sup> Johnson argues that lawyers working toward 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 reconfiguring and expansion of clinical judgment.<sup>123</sup>

My first experience of this expansion occurred when, as a young lawyer working with a tenants 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>124</sup> I became a facilitator and organizer as well as a lawyer, broadening my agency in a way I found exhilarating. Twenty

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all are strategies to be considered along with legal action, for example.

117. See *The Rebellious Idea of Lawyering Against Subordination*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS, *supra* note 113, at 197-98.
118. Austin Sarat & Stuart Scheingold, *Introduction, What Cause Lawyers Do ‘for’ and ‘to’ Social Movements*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS, *supra* note 113, at 10-12 (discussing four stages by which lawyers have built social movements).
119. Alfieri, *supra* note 2, at 1760 (quoting Gerald López, *supra*, note 1, at 40).
120. 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 20.
121. Johnson, *supra* note 120, at 208.
122. *Id.*
123. *Id.* at 214; see also Krishnan, *supra* note 6, at 581-84; Alfieri, *supra* note 2, at 1757 (“López urges the development of ‘sensibilities and skills’ tailored to the ‘collective fight for social change.’”).
124. N.Y. MULT. DWELL. LAW § 302-a (McKinney 2015); 3 N.Y. REAL PROP. ACTS LAW §§ 769-82 (McKinney 2015); 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 (2003), <http://www.ibo.nyc.ny.us/iboreports/7amemo.pdf>.

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>125</sup>

The Rev. 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 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>126</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>127</sup>

Rodwell observed that the other players in Sandtown, the city government and the foundations, were under “intense pressure to produce immediate results.”<sup>128</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>129</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>130</sup>

“That’s what they say in the Bible,” the Rev. Dobson said. “All those who died in the faith, not having received the promise, their resurrection will be

125. MCDougall, *Black Baltimore*, *supra* note 47, at 181-84.

126. *Id.* at 181.

127. *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, *INTRODUCING LIBERATION THEOLOGY* (1987).

128. MCDougall, *Black Baltimore*, *supra* note 47, at 183.

129. *Id.*

130. *Id.*

validated in us.” He left and came back with a Bible, and leafed quickly to Hebrews 11:39-40.<sup>131</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>132</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 your appreciation of the great resource community-based stories comprise increase, not just because they can help persuade relevant authorities, but also because these narratives join and bind our respective communities.<sup>133</sup>

Regnant tunnel vision can blind us to the ways in which community-based direct-action campaigns create favorable contexts for law-based strategies. As our students learn rebellious clinical judgment, they will begin to appreciate how community partners can expand our range of answers to questions such as “what can we try that’s new?” and “why will that work where other approaches have failed?”<sup>134</sup>

Professor Ancheta 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>135</sup> Such approaches dramatically expand the role of community co-partners in defining courses of action. Community members and rebellious lawyers now “share responsibility for the change process,” working together “to realize their vision of social change: communities they call their own.”<sup>136</sup>

### Conclusion

*Black Baltimore* was published in 1992, the same year Gerald López published *Rebellious Lawyering*. 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

131. *Id.*

132. *Hebrews* 11:39-40.

133. Piomelli, *supra* note 1, at 472-73; *see also* Ancheta, *supra* note 54.

134. *See* Alfieri, *supra* note 2, at 1751-52; Krishnan, *supra* note 6, at 589 (discussing how grass-roots activists “work to collectively frame the cause” in relation to “existing opportunities [and] resources”); *CAUSE LAWYERS AND SOCIAL MOVEMENTS*, *supra* note 113; Piomelli, *supra* note 1, at 488.

135. Ancheta, *Community Lawyering I*, *supra* note 9, at 1398-99.

136. Tyner, *supra* note 45, at 225, 229.

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>137</sup> that would “shadow” government at all levels,<sup>138</sup> including the courts, jails, and police. It would expose wrongdoing and support efforts toward positive change. The infrastructure would relate to the world of business in exactly the same way, working for accountability and balance. This vision grew directly out of the conversation I had with the Rev. Dobson and organizer Gary Rodwell, set forth above.

What stories could be used to cause such an apparatus to cohere? To paraphrase López 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>139</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>140</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. 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

137. See McDougall, *Social Change*, *supra*, note 65, at 807-07, 821-23.

138. *Id.* at 824-26.

139. Alfieri, *supra* note 2, at 1761.

140. See McDougall, *Reconstructing African American Cultural DNA*, *supra* note 29; McDougall, *The Citizen's Assembly*, *supra* note 66.

rather than merely accommodate to it.<sup>141</sup> We will find ourselves growing and changing in this regard as well.<sup>142</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>143</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 engagement with our students parallels the engagement with community partners upon which I have reflected in this article.<sup>144</sup>

Earlier in the article, I suggested that neoliberalism has changed the university and affected us as students and faculty. Its effects have been even greater on the community at large. Connecting faculty, students, and community partners via experiential learning vehicles such as externships, clinics, and class research, and consulting assignments with community groups and social movements could strengthen all of us in our respective struggles with the emerging neoliberal order.

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 in California against mass incarceration, had some powerful insights on the connection between the existing neoliberal order and police “misconduct.”<sup>145</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

141. See Canaan & Shumar, *supra* note 19 (e.g., as students aiming only to consume marketable skills); see also Salt, Cervero & Herod, *supra* note 70 (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.).

142. Alfieri, *supra* note 2, at 1763.

143. 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.bloggingleblackmiami.com/2014/08/howard-university-students-in-solidarity-with-protesters-in-ferguson.html>.

144. See Part II C, *supra*.

145. *Profile—Deborah Small*, SHE SOURCE, <http://www.shesource.org/experts/profile/deborah-small> (last visited Sept. 6, 2015).

of deeply entrenched power relationships,” she wrote me in an email.<sup>146</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>147</sup> (Ta-Nahisi Coates made similar points in a recent article in *The Atlantic*).<sup>148</sup>

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>149</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>150</sup>

I addressed the question of community control in a HUFFINGTON POST blog on the protests, titled *American Spring*.<sup>151</sup> In it, I argued for the creation of some components 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>152</sup> These units could create “free spaces”<sup>153</sup> for needed community dialogue and attendant action on all manner of issues, not just crime, and not just the police.<sup>154</sup>

146. 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).

147. *Id.*

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

149. Email from Deborah Small, *supra* note 146.

150. *Id.*

151. Harold McDougall, *American Spring?*, HUFFINGTON POST: THE 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).

152. *Id.*; see also McDougall, *The Citizen’s Assembly*, *supra* note 66.

153. Harry Boyte, *Higher Education and the Politics of Free Spaces*, HUFFINGTON POST: THE BLOG (Sept. 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.” *Id.* (quoting Roger Berkowitz, *The Spirit of Revolution*, HANNAH ARENDT CTR. BLOG (Nov. 11, 2011), <http://www.hannaharendtcenter.org/?p=14123>). Arendt’s problem, says Boyte, was that the governing structures eventually created by such revolutions “left no space for the very freedom that constituted part of the revolutionary treasure.” *Id.* (quoting Berkowitz, *supra*). 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. *Id.* (quoting Berkowitz, *supra*).

154. Harold McDougall, *What Happens When the Protests Are Over?*, HUFFINGTON POST: THE BLOG (June 1, 2015), [http://www.huffingtonpost.com/harold-a-mcdougall/what-happens-when-the-protests-are-over\\_b\\_7222548.html](http://www.huffingtonpost.com/harold-a-mcdougall/what-happens-when-the-protests-are-over_b_7222548.html).

This kind of approach, I argued in a later post,<sup>155</sup> was going to be necessary to respond to the hassles faced every day by people in neighborhoods like Freddie Gray's Sandtown in Baltimore.<sup>156</sup> "Their protests are, at bottom, about a political and economic system that just doesn't care about little people until, like Lilliputians, they get organized."<sup>157</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>158</sup> The initiative was called "Community Watch." At present, I plan to raise 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>159</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 protesters.<sup>160</sup> Hansford has used the opportunity provided by the waves of unrest following police shootings to strengthen the community in and around Ferguson. By participating in protests, serving as a legal observer, and providing training to the protesters, Hansford is becoming an architect of a local civic infrastructure.<sup>161</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>162</sup> Here we see the "free

155. *Id.*

156. Nurith Aizenman, 'Baltimore for Real': A Tour Through Troubled Sandtown, NPR (May 04, 2015), <http://www.npr.org/2015/05/04/404114222/baltimore-lifts-curfew-but-problems-run-deept-in-sandtown>.

157. McDougall, *What Happens When the Protests Are Over?*, *supra* note 154.

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

159. *A Unified Statement of Action to Promote Reform and Stop Police Abuse*, LAWYER'S COMM. CIV. RIGHTS (Aug. 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).

160. Chris King, *SLU Law Offers Free Legal Rights Education to Ferguson Protestors*, ST. LOUIS AM. (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).

161. *Id.*; Hansford, *supra* note 10.

162. King, *supra* note 160.

spaces”<sup>163</sup> of civic infrastructure as well as a “rebellious” appreciation for the problem-solving skills of community members.

Hansford himself comments, “Protesting 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 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>164</sup>

Hansford has offered research and on-the-ground legal work opportunities for my students to support the work in Ferguson.<sup>165</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>166</sup> The dangers of “regnant” lawyers—or politicians—taking over the movement has not yet surfaced, Hansford observes.<sup>167</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>168</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 Symposium, which for the past several years has 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.

163. See Boyte, *supra* note 153.

164. Jeff Redding, *Police Arrest SLU Law Professor and Legal Observer During Saint Louis Protests*, 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>.

165. See, e.g., *The NLG Needs YOUR Help in Ferguson!*, NAT’L LAW. GUILD (Nov. 20, 2014), <https://www.nlg.org/news/announcements/nlg-needs-your-help-ferguson> (last visited Jan. 28, 2015).

166. Telephone interview with Justin Hansford, *supra* notes 8-13.

167. *Id.*

168. *Danielle Holley-Walker—Biography*, HOWARD UNIV. SCH. OF LAW, <http://www.law.howard.edu/1821>.