

Cause Lawyering

Elon Law School
Winter 2022
Mondays & Wednesdays, 3:30-5:50 pm
Room 105

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Description

“Cause lawyering” refers to the practice of law as a means of achieving social change or advancing social movement aims. This course examines cause lawyering in various practice settings (non-profit organizations, government agencies, private practice) and various types of legal work (litigation, legislative & policy advocacy, transactional work), focusing on the distinctive strategic, ethical, and other professional issues in cause lawyering. The course is primarily designed as an accompanying course for students undertaking a residency-in-practice with a public interest law organization. Other students may also take the course, subject to availability.

Materials

All assigned reading is available online using the links in the course website emfink.net/CauseLawyering and the PDF of the syllabus.

Policies

Grading

Your grade for this course will be based on your participation in class discussion (50%) and a final project (50%). There will be no final exam.

Class Discussion

Each student will be the lead discussant for one class session during the term. This will include a short (2-3 pages) memo summarizing the assigned reading and suggesting questions for discussion.

You should send a copy of your memo to me by email, no later than 9:00 am on the day of class. I will share the memo with the rest of the class.

Paper & Presentation

Each student will complete a final written project (about 10 pages) on one of these topics:

- Career/organizational study of a lawyer, law firm, or legal organization engaged in cause lawyering
- Case study of a legal strategy associated with a social cause or movement
- Proposed legal strategy (litigation, lobbying, or transactional) to advance a cause/movement

Each student will give a presentation (~15-20 minutes) about their final project, during the last three class sessions of the term (March 2, 7 & 9).

You may use the final written project to satisfy the Upper Level Writing Requirement (ULWR). If you wish to do so, you must submit the [Upper Level Writing Requirement Intent Form](#) to the Registrar, no later than the second week of the term. To satisfy the ULWR, your final written project must conform to the minimum length and other standards (see [Elon School of Law Student Handbook](#)). Once I have reviewed and approved your project for the ULWR, you must submit the [Completion Form](#) to the Registrar.

The completed final project will be due on the last day of the Winter Term exam period.

Attendance

Elon Law School has adopted the following attendance policy for all courses:

The Law School administers a policy that a student maintain regular and punctual class attendance in all courses in which the student is registered, including externships, clinical courses, or simulation courses. Faculty members will give students written notice of their attendance policies before or during the first week of class. These policies may include, but are not limited to: treating late arrivals, early departures, and/or lack of preparation as absences; imposing grade or point reductions for absences, including assigning a failing grade or involuntarily withdrawing a student from the class; and any other policies that a professor deems appropriate to create a rigorous and professional classroom environment.

In case of illness or emergency, students may contact the Office of Student and Professional Life, which will then notify the student's instructors. A student may notify the faculty member directly of a planned absence and should refer to individual faculty members regarding any policy that may apply. In the case of prolonged illness or incapacity, the student should contact the Office of Student and Professional Life.

Excessive absences (more than 2 classes) may result in a reduction of your grade.

Disability Accommodations

For disability accommodation requests, contact the [Elon Law Registrar's Office](#).

Honor Code

The Law School [honor code](#) applies to all activities related to your law school study, including conduct during class and examinations.

Introduction

3 January

Cause Lawyers

Anna-Maria Marshall & Daniel Crocker Hale, [Cause Lawyering](#), 10 *Annual Review of Law & Social Science* 301 (2014)

Michael McCann, *Law & Social Movements*, in Sarat, ed., *The Blackwell Companion to Law & Society* 506 (2011)

Sandra Levitsky, *Law and Social Movements: Old Debates and New Directions*, in Sarat & Ewick, eds. *The Handbook of Law and Society* 382 (2015)

5 January

Social Movement Theory

David A. Snow, et al, *Frame Alignment Processes, Micromobilization, and Movement Participation*, 51 *American Sociological Review* 464 (1986)

J. Craig Jenkins, *Resource Mobilization Theory and the Study of Social Movements*, 9 *Annual Review of Sociology* 527 (1983)

Cause Lawyers in the Legal Profession

10 January

Public Interest Law Organizations

Catherine R. Albiston & Laura Beth Neilson, *Funding the Cause: How Public Interest Law Organizations Fund Their Activities and Why It Matters for Social Change*, 39 *Law & Social Inquiry* 62 (2014)

Laura Beth Nielsen & Catherine R. Albiston, *The Organization of Public Interest Practice: 1975-2004*, 84 *North Carolina Law Review* 1591 (2006)

Megan Ming Francis, *The Price of Civil Rights: Black Lives, White Funding, and Movement Capture*, 53 *Law & Society Review* 275 (2019)

12 January

Cause Lawyers in Government Agencies

Douglas NeJaime, *Cause Lawyers Inside the State*, 81 *Fordham Law Review* 649 (2012)

David Luban, *The Moral Complexity of Cause Lawyers Within the State*, 81 *Fordham Law Review* 705 (2012)

Steven K. Berenson, *Government Lawyer as Cause Lawyer: A Study of Three High Profile Government Lawsuits*, 86 *Denver Law Review* 457 (2009)

19 January

Cause Lawyers in Private Practice

Bettina Brownstein, *Private Practice & Cause Lawyering: A Practical & Ethical Guide*, 31 *Univ. of Arkansas Law Review* 601 (2009)

Brenda Bratton Blom, *Cause Lawyering and Social Movements: Can Solo and Small Firm Practitioners Anchor Social Movements?*, in Sarat, ed., 39 *Studies in Law, Politics, & Society* 119 (2006)

Louise Trubek & M. Elizabeth Kransberger, *Critical Lawyers: Social Justice and the Structures of Private Practice*, in Sarat & Abel, eds., *Cause Lawyering: Political Commitments and Professional Responsibilities* 201 (1998)

24 January

Cause Lawyering Fields and Networks

Steven Teles, *The Rise of the Conservative Legal Movement: The Battle for Control of the Law* (Princeton Univ. Press 2008). Read Chap. 2 (The Rise of the Liberal Legal Network) and Chap. 5 (The Federalist Society: Counter-networking)

Anthony Paik, Ann Southworth & John P. Heinz, *Lawyers of the Right: Networks and Organization*, 32 *Law & Social Inquiry* 883 (2007)

Anthony Paik, John P. Heinz, & Ann Southworth, *Political Lawyers: The Structure of a National Network*, 36 *Law & Social Inquiry* 892 (2011)

Leila Kavar, *Legal Mobilization on the Terrain of the State: Creating a Field of Immigrant Rights Lawyering in France and the United States*, 36 *Law & Social Inquiry* 354 (2011)

26 January

Professional Identity

Stephen Meili, *Consumer Cause Lawyers in the United States: Lawyers for the Movement or a Movement Unto Themselves?*, in Sarat & Scheingold, eds., *Cause Lawyers & Social Movements* 120 (2006)

Kevin R. Den Dulk, *In Legal Culture, but Not of It: The Role of Cause Lawyers in Evangelical Legal Mobilization*, in Sarat & Scheingold, eds., *Cause Lawyers & Social Movements* 197 (2006)

Corey S. Shdaimah, *Intersecting Identities: Cause Lawyers as Legal Professionals & Social Movement Actors*, in Sarat & Scheingold, eds., *Cause Lawyers & Social Movements* 220 (2006)

John Heinz, Ann Southworth, & Anthony Paik *Lawyers for Conservative Causes: Clients, Ideology, and Social Distance*, 37 *Law & Society Review* 5 (2003)

Kenneth Mack, *Law and Mass Politics in the Making of the Civil Rights Lawyer, 1931-1941*, 93 *Journal of American History* 37 (2006)

31 January

Legal Ethics

Susan Carle and Scott Cummings, *A Reflection on the Ethics of Movement Lawyering*, 31 *Georgetown Journal of Legal Ethics* 447 (2018)

Susan Carle, *Ethics and the History of Social Movement Lawyering*, 2018 *Wis. L. Rev. Forward* 12 (2018)

Susan Carle, *Race, Class, and Legal Ethics in the Early NAACP (1910-1920)*, 20 *Law & History Review* 97 (2002)

Susan Carle, *From Buchanan to Button: Legal Ethics and the NAACP (Part II)*, 8 *University of Chicago Law School Roundtable* 281 (2001)

Margareth Etienne, *The Ethics of Cause Lawyering: An Empirical Examination of Criminal Defense Lawyers as Cause Lawyers*, 95 *Journal of Criminal Law & Criminology* 1195 (2005)

Deborah Cantrell, *Sensational Reports: The Ethical Duty of Cause Lawyers to be Competent in Public Advocacy*, 30 *Hamline Law Review* 567 (2007)

Law, Lawyers & Movements

2 February

Legal Mobilization

Lynn Jones, *The Haves Come Out Ahead: How Cause Lawyers Frame the Legal System for Movements*, in Sarat & Scheingold, eds., *Cause Lawyers & Social Movements* 182 (2006)

Kenneth Andrews & Kay Jowers, *Lawyers and Embedded Legal Activity in the Southern Civil Rights Movement*, 40 *Law & Policy* 10 (2018)

Francesca Polletta, *The Structural Context of Novel Rights Claims: Rights Innovation in the Southern Civil Rights Movement, 1961-1966*, 34 *Law and Society Review* 376 (2000)

Jennifer Woodward, *Making Rights Work: Legal Mobilization at the Agency Level*, 49 *Law & Society Review* 691 (2015)

7 February

Litigation, Legislative, & Transactional Cause Lawyering

Anna-Maria Marshall, *Social Movement Strategies & the Participatory Potential of Litigation*, in Sarat & Scheingold, eds., *Cause Lawyers & Social Movements* 164 (2006)

Scott Barclay & Daniel Chomsky, *How Do Cause Lawyers Decide When and Where to Litigate on Behalf of their Cause?*, 48 *Law & Society Review* 595 (2014)

Kathleen M. Erskine and Judy Marblestone, *The Movement Takes the Lead: The Role of Lawyers in the Struggle for a Living Wage in Santa Monica, California*, in Sarat & Scheingold, eds., *Cause Lawyers & Social Movements*, in Sarat & Scheingold, eds., *Cause Lawyers & Social Movements* 249 (2006)

Jennifer Gordon, *A Movement in the Wage of a New Law: The United Farm Workers & the California Agricultural Labor Relations Act*, in Sarat & Scheingold, eds., *Cause Lawyers & Social Movements* 277 (2006)

Aaron Porter, Norris, Schmidt, Green, Harris, Higginbotham & Associates: *The Sociological Import of Philadelphia Cause Lawyers*, in *Cause Lawyering: Political Commitments and Professional Responsibilities* 151 (1998)

Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, in Sarat & Scheingold, eds., *Cause Lawyers & Social Movements* 302 (2006)

9 February

Movements & Counter-Movements

David S. Meyer & Suzanne Staggenborg, *Movements, Countermovements, and the Structure of Political Opportunity*, 101 *American Journal of Sociology* 1628 (1996)

Francisco Valdes, *Culture, "Kulturkampf", and Beyond: The Antidiscrimination Principle under the Jurisprudence of Backlash*, in *The Blackwell Companion to Law & Society*, Chap. 15

Michael McCann & Jeffrey Dudas, *Retrenchment ... and Resurgence? Mapping the Changing Context of Movement Lawyering in the United States*, in Sarat & Scheingold, eds., *Cause Lawyers & Social Movements* 37 (2006)

Thomas M. Keck, *Beyond Backlash: Assessing the Impact of Judicial Decisions on LGBT Rights*, 43 *Law & Society Review* 151 (2009)

Michael Dorf & Sidney Tarrow, *Strange Bedfellows: How an Anticipatory Countermovement Brought Same-Sex Marriage into the Public Arena*, 39 *Law & Social Inquiry* 449 (2014)

14 February

Determinants and Meaning of Success

Erik Johnson, *Social Movement Size, Organizational Diversity and the Making of Federal Law*, 86 *Social Forces* 967 (2008)

Anne Bloom, *Practice Style and Successful Legal Mobilization*, *Law & Contemporary Problems* (2008)

Melinda D. Kane, *You've Won, Now What? The Influence of Legal Change on Gay and Lesbian Mobilization, 1974-1999*, 51 *Sociological Quarterly* 255 (2010)

Kenneth T. Andrews and Sarah Gaby, *Local Protest and Federal Policy: The Impact of the Civil Rights Movement on the 1964 Civil Rights Act*, 30 *Sociological Forum* 509 (2015)

16 February

Critical Appraisals

Sandra R. Levitsky, *To Lead with Law: Reassessing the Influence of Legal Advocacy Organizations in Social Movements*, in Sarat & Scheingold, eds., *Cause Lawyers & Social Movements* 145 (2006)

Thomas Hilbink, *The Profession, the Grassroots & the Elite: Cause Lawyering for Civil Rights & Freedom in the Direct Action Era*, in Sarat & Scheingold, eds., *Cause Lawyers & Social Movements* 60 (2006)

Tifanei Ressler-Moyer, Pilar Gonzalez Morales & Jaqueline Aranda Osorno, *Movement Lawyering During a Crisis: How the Legal System Exploits the Labor of Activists and Undermines Movements*, 24 CUNY Law Review 91 (2021)

Scott L. Cummings, *Rethinking the Foundational Critiques of Lawyers in Social Movements*, 85 Fordham Law Review (2017)

Case Studies

21 February

The Scottsboro Trials

Robin D.G. Kelley, *In the Heart of Trouble: Race, Sex, & the ILD*, Chap. 4 in Hammer & Hoe: *Alabama Communists During the Great Depression* (1990)

William F. Pinar, *The Communist Party/NAACP Rivalry in the Trials of the Scottsboro Nine*, 163 *Counterpoints* 753 (2001)

Charles H. Martin, *The International Labor Defense and Black America*, 26 *Labor History* 165 (1985)

Hollace Randsell, [Conflict Between Rival Organizations for Control of the Case] (<https://www.emfink.net/CauseLawyering/asset/>), from Report on the Scottsboro, Ala. Trials, prepared for the ACLU (1931)

American Experience, *Scottsboro: An American Tragedy*

- The Scottsboro Trial: A Timeline
- Who Were the Scottsboro Boys?
- A Fateful Journey
- The Scottsboro Defense Committee
- The NAACP and the Scottsboro Trial
- The International Labor Defense
- The Scottsboro Defense Attorney
- The Scottsboro Accusers
- The Scottsboro Judges

Norris v. Alabama, 294 U.S. 587 (1935)

Patterson v. Alabama, 294 U.S. 600 (1935)

23 February

Brown v. Board of Education

Scott Baker & Gary Biglaiser, *A Model of Cause Lawyering*, 43 *Journal of Legal Studies* 37 (2014)

Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals & Client Interests in School Desegregation Litigation*, 85 *Yale Law Journal* 470 (1976)

Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)

Brown v. Board of Education of Topeka, 349 U.S. 294 (1955)

Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* 42-57 (2d ed. 2008)

Erika Frankenberg, What school segregation looks like in the US today, in 4 charts, *The Conversation* (July 19, 2019)

28 February

Shelley v. Kraemer

Jeffrey D. Gonda, *Unjust Deeds: The Restrictive Covenant Cases and the Making of the Civil Rights Movement* (2015).

- Introduction—Restrictive Covenants, Housing Rights, and the Civil Rights Movement
- Chap. 2—Courtrooms: Local Lawyers and Legal Activism
- Chap. 3—The NAACP: National Leadership and Housing Desegregation
- Chap. 5—Failures and Foundations: The Covenant Cases and Postwar Black Freedom Struggles

Shelley v. Kraemer, 334 U.S. 1 (1948)

Robert K. Nelson and Edward L. Ayers, eds., *American Panorama: An Atlas of United States History*, University of Richmond Digital Scholarship Lab

- Mapping Inequality: Redlining in New Deal America, [Greensboro, NC](#)
- Renewing Indquality: Urban Renewal, Family Displacements, and Race, 1955-1966 [Greensboro, NC](#)

Cheryl Thompson, Racial covenants, a relic of the past, are still on the books across the country, *National Public Radio* (Nov. 17, 2021)

Student Presentations

March 2, 7, & 9