

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 through the course website: emfink.net/CauseLawyering.

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 (1) a short (2-3 pages) memo on the topic and assigned reading, and (2) questions for discussion.

You should send a copy of your memo and questions to me at least 24 hours in advance, and I will share these with the rest of the class. I will circulate a sign-up sheet on the first day of class for you to choose which session you wish to lead.

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 an in-class presentation about their final project, during the last two weeks of the term (February 28, 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.

Course Outline & Reading Assignments

Introduction

3 January

Cause Lawyering

- Cummings, Movement Lawyering
- Anna-Maria Marshall & Daniel Crocker Hale, Cause Lawyering, 10 Annual Review of Law & Social Science 301 (2014)
- Michael McCann & Jeffrey Dudas, Retrenchment ... and Resurgence? Mapping the Changing Context of Movement Lawyering in the United States (CLSM, 37-59)

Social Movement Theory

- SOCIAL MOVEMENT THEORY OVERVIEW

Cause Lawyers Within the Legal Profession

Professional Identity

5 January

- Stephen Meili, Consumer Cause Lawyers in the United States: Lawyers for the Movement or a Movement Unto Themselves? (CLSM, 120-141)
- Kevin R. Den Dulk, In Legal Culture, but Not of It: The Role of Cause Lawyers in Evangelical Legal Mobilization (CLSM, 197-219)
- Corey S. Shdaimah, Intersecting Identities: Cause Lawyers as Legal Professionals & Social Movement Actors (CLSM, 220-245)

Practice Settings

10 January

- Bettina Brownstein, Private Practice & Cause Lawyering: A Practical & Ethical Guide, 31 Univ. of Arkansas Law Review 601 (2009)
- 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)
- David Luban, The Moral Complexity of Cause Lawyers Within the State, 81 Fordham Law Review 705 (2012)

Cause Lawyer Networks

12 January

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

Legal Mobilization as a Social Movement Strategy

17 January

- Sandra R. Levitsky, To Lead with Law: Reassessing the Influence of Legal Advocacy Organizations in Social Movements (CLSM, 145-163)
- Lynn Jones, The Haves Come Out Ahead: How Cause Lawyers Frame the Legal System for Movements (CLSM, 182-196)
- Anna-Maria Marshall, Social Movement Strategies & the Participatory Potential of Litigation (CLSM, 164-181)
- Erik Johnson, Social Movement Size, Organizational Diversity and the Making of Federal Law, 86 Social Forces 967 (2008)

Case Studies

The Scottsboro Boys

DATE

- Charles H. Martin, The international labor defense and black America, 26(2) Labor History 165 (1985)
- Susan D. Carle, Race, Class, & Legal Ethics in the Early NAACP, 20 Law & History Review 97 (2002)
- 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

School Desegregation

DATE

- Derrick A. Bell, Jr., Serving Two Masters: Integration Ideals & Client Interests in School Desegregation Litigation, 85 Yale Law Journal 470 (1976)
- Thomas Hilbink, The Profession, the Grassroots & the Elite: Cause Lawyering for Civil Rights & Freedom in the Direct Action Era (CLSM, 60-83)
- Scott Baker & Gary Biglaiser, A Model of Cause Lawyering,
- Gerald Rosenberg, The Hollow Hope: Can Courts Bring About Social Change?, chap. 2: Bound for Glory? Brown & the Civil Rights Revolution (2d ed.) (Univ. of Chicago Press 2008)
- Davison M. Douglas, Reading, Writing and Race: The Desegregation of the Charlotte Schools (Chapel Hill, 1995)
- Marc Tushnet, The Making of Civil Rights
- [Brown v. Board of Education]
- Swann v. Charlotte-Mecklenburg Board of Education,, 402 U.S. 1 (1971)

Housing

DATE

- Jeffrey D. Gonda, Unjust Deeds: The Restrictive Covenant Cases and the Making of the Civil Rights Movement (UNC Press 2015)
- Author, The Color of Money
- Racial covenants, a relic of the past, are still on the books across the country, NPR ()
- Rebecca Martinez, Uncovering Racist Housing Practices, One Deed At A Time, WUNC (May 26, 2021)
- North Carolina History Project, Restrictive Covenants
- [Hacking Into History: Discovering Racial Covenants in Durham County Property Deeds](<https://hackingintohistory.wordpress.com/>)
- American Panorama: An Atlas of United States History, University of Richmond Digital Scholarship Lab (Robert K. Nelson and Edward L. Ayers, eds.) -Redlining in New Deal America, 1935-1940, Greensboro, NC
 - Renewing Inequality: Family Displacements through Urban Renewal, 1950-1966 Greensboro, NC
- Shelley v. Kraemer, 334 U.S. 1 (1948) -[Fair Housing Act], 42 U.S.C. 3601 et seq. (1968)

Marriage

DATE

- Scott Barclay & Shauna Fisher, Cause Lawyers in the First Wave of Same Sex Marriage Litigation (CLSM, 84-100)
- Dorf & Tarrow, *Strange Bedfellows: How an Anticipatory Countermovement Brought Same-Sex Marriage into the Public Arena*, 39 Law & Social Inquiry 449 (2014)
- Loving v. Virginia, 388 U.S. 1 (1967)
- Obergefell v. Hodges, 576 U.S. 644 (2015)

Immigration

DATE

- Susan Bibler Coutin, Cause Lawyering & Political Advocacy: Movement Law on Behalf of Central American Refugees (CLSM, 101-119)

Labor & Employment

DATE

- Kathleen M. Erskine & Judy Marblestone, The Movement Takes the Lead, The Role of Lawyers in the Struggle for a Living Wage in Santa Monica, California (CLSM, 249-276)
- Jennifer Gordon, A Movement in the Wage of a New Law: The United Farm Workers & the California Agricultural Labor Relations Act (CLSM, 277-301)

Economic Development

DATE

- Scott L. Cummings, Mobilization Lawyering: Community Economic Development in the Figueroa Corridor (CLSM, 302-335)
- YOUNGSTOWN ARTICLES
- [Local 1300 United Steelworkers of America v. U.S. Steel Corp.] (), 631 F.2d 1264 (1980)

Student Presentations

28 February-9 March