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# Rebellious Pedagogy and Practice

Anthony V. Alfieri

*University of Miami School of Law*, [aalfieri@law.miami.edu](mailto:aalfieri@law.miami.edu)

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# REBELLIOUS PEDAGOGY AND PRACTICE

ANTHONY V. ALFIERI\*

*Gerald López's ground breaking book, **Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice**, introduced new critical pathways and perspectives for clinical educators to better understand and enhance their advocacy, teaching, and scholarship. Indeed, López's interdisciplinary investigation of the local, sociocultural context of the lawyering process produced a marked shift in both the pedagogy and the practice of public interest law, particularly civil rights and poverty law. A quarter century after its publication, **Rebellious Lawyering** stands out not only for its contextual critique of lawyering theory and practice, but also for its multifaceted integration of law, cultural studies, race and ethnicity, grassroots politics, and social movement history. At the same time, because it is descriptively anecdotal, rather than empirical, and prescriptively normative, rather than strictly methodological, it remains a work of organic and evolving clinical pedagogy and practice. The purpose of this article is to examine **Rebellious Lawyering** as a transformative, albeit unresolved, work of clinical theory and practice, and, thus, to underscore the continuing need to revise its teachings and practices to address a new century of poverty and inequality in America.*

*"In the end, we can only do the best we can with who we are, paying close attention to the ways pieces of ourselves matter to the work while never losing sight of the most important questions."<sup>1</sup>*

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\* Dean's Distinguished Scholar, Professor of Law and Director, Center for Ethics and Public Service, University of Miami School of Law, Visiting Scholar, Dartmouth College Ethics Institute, and Visiting Professor, Brown University Department of Africana Studies. For their comments and support, I am grateful to Amna Akbar, Sameer Ashar, Esme Caramello, Scott Cummings, Stephen Ellmann, Alexi Freeman, Martha Gómez, Ellen Grant, Adrian Barker Grant-Alfieri, Amelia Hope Grant-Alfieri, Carolyn Grose, Randy Hertz, Betty Hung, Catherine Kaiman, Maddie Kurtz, Gerald Lopez, Alfredo Mirande, Doug NeJaime, Ascanio Piomelli, and the pastors, deacons, and stewards of the Coconut Grove Ministerial Alliance. I also wish to thank Robin Schard, Emily Balter, Kelly Cox, Michelle Perez, and the University of Miami School of Law librarians for their research assistance, and the participants in the New York Clinical Theory Workshop and the **Rebellious Lawyering** at 25 Symposium.

<sup>1</sup> MATTHEW DESMOND, **EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY** 326 (2016) (footnote omitted).

## INTRODUCTION

In the late 1980s and early 1990s many of us in clinical education and public interest law<sup>2</sup> embraced Gerald López's *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice* ("Rebellious Lawyering")<sup>3</sup> in the same way that we had earlier embraced Derrick Bell's *And We Are Not Saved*,<sup>4</sup> David Kairys's *The Politics of Law*,<sup>5</sup> Patricia Williams's *The Alchemy of Race and Rights*,<sup>6</sup> and Gary Bellow's and Bea Moulton's *The Lawyering Process*.<sup>7</sup> Like these and other ground breaking voices in legal education and public interest law,<sup>8</sup> López introduced new critical pathways and perspectives for practitioners, teachers, and scholars to understand and to strengthen their work. And yet, in contrast to much of the prior foundational work in the field,<sup>9</sup> López's interdisciplinary investigation of the local,

<sup>2</sup> For a comprehensive account of public interest law, see ALAN CHEN & SCOTT CUMMINGS, PUBLIC INTEREST LAWYERING: A CONTEMPORARY PERSPECTIVE (2012). See also Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297, 309 (1996) ("Gerald López's vision of 'rebellious' practice most closely approximates my hope for an 'alliance' between lawyer and client.") (citation omitted).

<sup>3</sup> GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992). See also Anthony V. Alfieri, *Practicing Community*, 107 HARV. L. REV. 1747 (1994) (reviewing GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992)); Angelo N. Ancheta, *Community Lawyering*, 81 CAL. L. REV. 1363 (1993) (same); Daniel L. Greenberg, *Gerald López's Rebellious Lawyering*, 2 RECONSTRUCTION 116 (1993) (same); Ann Southworth, *Taking the Lawyer Out of Progressive Lawyering*, 46 STAN. L. REV. 213 (1993) (same).

<sup>4</sup> DERRICK BELL, AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE (1987).

<sup>5</sup> THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE (David Kairys ed., 1982).

<sup>6</sup> PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS (1991).

<sup>7</sup> GARY BELLOW & BEA MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY (1978). See also Susan Bryant & Elliott S. Milstein, *Reflections Upon the 25th Anniversary of the Lawyering Process: An Introduction to the Symposium*, 10 CLIN. L. REV. 1 (2003).

<sup>8</sup> For other insurgent voices in the field, see Derrick A. Bell, *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976); William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 29; William H. Simon, *Legality, Bureaucracy, and Class in the Welfare System*, 92 YALE L.J. 1198 (1983); William H. Simon, *Visions of Practice in Legal Thought*, 36 STAN. L. REV. 469 (1984); Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L & SOC. CHANGE 535 (1988); Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699.

<sup>9</sup> For an introduction to the foundational work in the field, see Gary Bellow, *Legal Aid in the United States*, 14 CLEARINGHOUSE REV. 337 (1980); Gary Bellow, *Turning Solutions into Problems: The Legal Aid Experience*, 34 NLADA BRIEFCASE 106 (1977); Gary Bellow & Jeanne Kettleson, *From Ethics to Politics: Confronting Scarcity and Fairness in Public Interest Practice*, 58 B.U. L. REV. 337 (1978); Edgar S. Cahn & Jean C. Cahn, *Power to the People or the Profession? The Public Interest in Public Interest Law*, 79 YALE L.J. 1005 (1970); Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73

sociocultural context of the lawyering process produced a marked shift in both the pedagogy and the practice of public interest law, particularly civil rights and poverty law.<sup>10</sup> Indeed, *Rebellious Lawyering* stands out not only for its contextual critique of lawyering theory and practice, but also for its multifaceted integration of law, cultural studies, race and ethnicity, politics, and social movement history. At the same time, because it is descriptively anecdotal, rather than empirical, and prescriptively normative, rather than strictly methodological, it remains a work of organic and evolving clinical pedagogy and practice.

The purpose of this article is to examine *Rebellious Lawyering* as a transformative, albeit unresolved, work of clinical theory and practice. The article proceeds in three parts. Part I explores the socio-legal background of *Rebellious Lawyering* by situating López and his writing within the decades long social history of clinical legal education,<sup>11</sup>

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YALE L.J. 1317 (1964); Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1050 (1970); Note, *Neighborhood Law Offices: The New Wave in Legal Services for the Poor*, 80 HARV. L. REV. 805 (1967); Note, *The New Public Interest Lawyers*, 79 YALE L.J. 1069 (1970).

<sup>10</sup> See, e.g., Gerald P. López, *A Rebellious Philosophy Born in East L.A.*, in A COMPANION TO LATINA/O STUDIES 240-50 (Juan Flores & Renato Rosaldo eds., 2007) (comparing rebellious and regnant visions of problem solving); Gerald P. López, *An Aversion to Clients: Loving Humanity and Hating Human Beings*, 31 HARV. C.R.-C.L. L. REV. 315 (1996) (centering community partnerships in political lawyering); Gerald P. López, *Lay Lawyering*, 32 UCLA L. REV. 1, 5-6 (1984) (describing “stock stories” as an “interpretive network”); Gerald P. López, *A Declaration of War by Other Means*, 98 HARV. L. REV. 1667, 1670 (1985) (reviewing RICHARD E. MORGAN, *DISABLING AMERICA: THE “RIGHTS INDUSTRY” IN OUR TIME* (1984)) (same); Gerald P. López, *Living and Lawyering Rebelliously*, 73 FORDHAM L. REV. 2041 (2005) (contrasting rebellious and reigning problem-solving methods); Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603 (1989) (discussing rights discourse in public interest litigation); Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1 (1989) (tracing lawyer misunderstanding of low-income women of color and their legal claims); Gerald P. López, *Training Future Lawyers to Work with the Politically and Socially Subordinated: Anti-Generic Legal Education*, 91 W. VA. L. REV. 305 (1989) (criticizing legal education for “its restricted models of teaching and learning, its disdain for lawyering and for training in all but a relatively small number of skills, its neglect of interdisciplinary theoretical ideas, its disregard of everyday life, and its lack of coordination”).

<sup>11</sup> For systematic expositions of clinical education, see CLINICAL ANTHOLOGY: READINGS FOR LIVE-CLIENT CLINICS (Alex J. Hurder, Frank S. Bloch, Susan L. Brooks & Susan L. Kay eds., 1997); STEPHEN ELLMANN, ROBERT D. DINERSTEIN, ISABELLE R. GUNNING, KATHERINE R. KRUSE & ANN C. SHALLECK, *LAWYERS AND CLIENTS: CRITICAL ISSUES IN INTERVIEWING AND COUNSELING* (2009); DEBORAH EPSTEIN, JANE H. AIKEN & WALLACE J. MLYNIEC, *THE CLINIC SEMINAR* (2014); ROY STUCKEY, *BEST PRACTICES FOR LEGAL EDUCATION* (2007); *THE NEW 1L: FIRST-YEAR LAWYERING WITH CLIENTS* (Eduardo R.C. Capulong, Michael A. Millemann, Sara Rankin & Nantiya Ruan eds., 2015); *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* (Susan Bryant, Elliott S. Milstein & Ann C. Shalleck eds., 2014).

critical jurisprudence (Critical Race Theory<sup>12</sup> and LatCrit Theory<sup>13</sup>), race and ethnic studies,<sup>14</sup> and progressive social movements in defense of minorities<sup>15</sup> and the poor.<sup>16</sup> Mapping López's writing against this historical backdrop illuminates the cultural and social crosscurrents that shaped his powerful critique of the standard conception of public interest practice, his divergence from client-centered lawyering, and his alternative, community-regarding construction of "rebellious lawyering."

Part II assesses "rebellious lawyering" as a transferable form of clinical pedagogy and practice, and as a legal-political method of community- and social-movement-building. This dual assessment evaluates efforts (e.g., collaborative problem solving, collective issue framing, alternative client-generated community intervention, community monitoring and enforcement, outcome measurement, and innovative organizational design) to translate "rebellious lawyering" theory into concrete practice for purposes of clinical teaching, community advocacy, and movement organizing in assorted institutional contexts and substantive fields.

Part III presents several brief case studies of "rebellious lawyering" linking clinical education, community practice, and social-movement-building. The studies help gauge the applicable scope, internal tension, pragmatic calculation, and end-result of López's vision

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<sup>12</sup> See generally CRITICAL RACE THEORY: THE CUTTING EDGE (Richard Delgado & Jean Stefancic eds., 2d ed. 2000); CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al. eds., 1995); MARI MATSUDA ET AL., WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT (1993). See also CRITICAL RACE FEMINISM (Adrien K. Wing ed., 1997).

<sup>13</sup> See generally CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes et al. eds., 2002); Francisco Valdes, *Latcrit 2013 Conference Symposium Afterword: Theorizing and Building Critical Coalitions: Outsider Society and Academic Praxis in Local/Global Justice Struggles*, 12 SEATTLE J. FOR SOC. JUST. 983, 1043 (2014) (emphasizing theory-action connections and anti-subordination theory as bedrock LatCrit concerns).

<sup>14</sup> See RODOLFO ACUNA, OCCUPIED AMERICA: A HISTORY OF CHICANOS (2000); RICHARD DELGADO, JUAN PEREA & JEAN STEFANCIC, LATINOS AND THE LAW: CASES AND MATERIALS (2008); IAN F. HANEY LÓPEZ, RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE (2003); THE LATINO CONDITION: A CRITICAL READER (Richard Delgado & Jean Stefancic eds., 2d ed. 2010).

<sup>15</sup> See SUSAN CARLE, DEFINING THE STRUGGLE: NATIONAL RACIAL JUSTICE ORGANIZING 1880-1915 (2013); JOHN EGERTON, SPEAK NOW AGAINST THE DAY: THE GENERATION BEFORE THE CIVIL RIGHTS MOVEMENT IN THE SOUTH (1994); RICHARD KLUGER, SIMPLE JUSTICE: THE HISTORY OF *BROWN V. BOARD OF EDUCATION* AND BLACK AMERICA'S STRUGGLE FOR EQUALITY (1975); MARK TUSHNET, THE NAACP'S LEGAL STRATEGY AGAINST SEGREGATED EDUCATION, 1925-1950 (1987).

<sup>16</sup> See MARTHA F. DAVIS, BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT (1993); FRANCES FOX PIVEN & RICHARD A. CLOWARD, POOR PEOPLE'S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL (1979); PROC. HARV. CONF. L. & POVERTY (Mar. 1967).

in advocacy and organizing, including its costs, benefits, and trade-offs. Drawn from the contemporary civil rights and environmental justice struggles of impoverished, inner-city communities in Miami, the case studies illustrate the continuing contradictions of “rebellious lawyering” for legal advocates and movement organizers and, hence, the continuing need to revise its teachings and practices to address the changing contours of a new century of poverty and inequality in America.

## I. REBELLIOUS AND REGNANT LAWYERING

This Part explores the socio-legal background of *Rebellious Lawyering* by mapping López’s place within the cultural and social history of clinical legal education, critical jurisprudence, race and ethnic studies, and progressive social movements. The account illuminates the cultural and social crosscurrents that shaped his critique of the standard conception of public interest practice, his divergence from client-centered lawyering, and his alternative, community-regarding construction of “rebellious lawyering.” At the outset, consider the idea of regnant lawyering.

### A. Regnant Lawyering

López’s vision of progressive lawyering presents both a critique and a sympathetic extension of long-standing advocacy and organizing practices in the fields of civil rights and poverty law.<sup>17</sup> Like others writing during the transformative era of clinical education in the 1980s and 1990s,<sup>18</sup> López points out the limits of conventional rights discourse and litigation-driven social policy.<sup>19</sup> Unlike other critical scholars skeptical of rights-harnessed social movements,<sup>20</sup> however, he ties rights discourse to human dignity. Moreover, he connects dignity to

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<sup>17</sup> Here, as elsewhere, I use the term “progressive lawyering” broadly to encompass lawyers working for civil rights and labor law firms, legal aid and legal services organizations, and public interest law groups. See Alfieri, *supra* note 3, at 1748 n.4.

<sup>18</sup> For a helpful overview of this period, see CHEN & CUMMINGS, *supra* note 2, at 273-334 (discussing the public interest lawyer-client relationship).

<sup>19</sup> Rights discourse remains a deeply ingrained and an integral part of progressive lawyering. See VICKI LENS, *POOR JUSTICE: HOW THE POOR FARE IN THE COURTS* (2016); Anthony V. Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659, 695-711 (1988); Scott L. Cummings, *Movement Lawyers*, 51 HARV. C.R.-C.L. L. REV. (forthcoming 2016); Scott L. Cummings, *The Puzzle of Social Movements in American Legal Theory* 61-71 (Mar. 1, 2016) (unpublished manuscript) (on file with author); Ann Southworth, *Lawyers and the “Myth of Rights” in Civil Rights and Poverty Practice*, 8 B.U. PUB. INT. L.J. 469 (1999).

<sup>20</sup> See, e.g., GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (2d ed. 2008); STUART A. SCHEINGOLD, *THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE* (1974).

moral agency in both the public and private spheres of a client's life – at home, in the workplace, and within a neighborhood. By fusing rights discourse, human dignity, and moral agency, López reimagines poor people as autonomous, competent, and powerful self-determining agents. This definition of personhood also enables him to reimagine the possibility of collaboration and solidarity among like-minded individuals and groups in impoverished communities.<sup>21</sup>

López's normative vision of client self-determination and client-lawyer collaboration informs his commitment to community education,<sup>22</sup> organization,<sup>23</sup> and mobilization<sup>24</sup> and, in turn, animates his critique of standard advocacy and organizing practices embedded in conventional or "regnant" styles of lawyering. By "regnant" lawyering, López means a style of lawyering piloted by the traditional assumptions of legal and popular culture, assumptions that "long had kept Latinos, among others, at the margins and on the bottom" of society.<sup>25</sup> López associates this lawyering style with the cultural and social crosscurrents that gave rise to the "first wave" of "self-con-

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<sup>21</sup> Alfieri, *supra* note 3, at 1750-51. See also Gerald P. López, *Economic Development in the "Murder Capital of the Nation,"* 60 TENN. L. REV. 685 (1993) (exploring the meaning of community and collective self-determination in the legal discourse of economic development).

<sup>22</sup> See Margaret Martin Barry et al., *Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics*, 18 CLIN. L. REV. 401 (2012); Ingrid V. Eagly, *Community Education: Creating A New Vision of Legal Services Practice*, 4 CLIN. L. REV. 433 (1998); Bill Ong Hing, *Legal Services Support Centers and Rebellious Advocacy: A Case Study of the Immigrant Legal Resource Center*, 28 WASH. U. J.L. & POL'Y 265 (2008).

<sup>23</sup> See Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001); Loretta Price & Melinda Davis, *Seeds of Change: A Bibliographic Introduction to Law and Organizing*, 26 N.Y.U. REV. L. & SOC. CHANGE 615 (2000-2001); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1994); Aaron Samsel, *Toward A Synthesis: Law As Organizing*, 18 CUNY L. REV. 375, 398 (2015). See also Tomiko Brown-Nagin, *Does Protest Work?*, 56 HOWARD L.J. 721 (2013).

<sup>24</sup> Community mobilization strategies span a range of street-level activities such as organizing affinity support groups, planning peer-facilitated rights education workshops, and negotiating city-wide, multi-group coalitions. LÓPEZ, *supra* note 3, at 31-32. See also Gerald P. López, *Working with Communities and Organizations*, in SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES, AND LAW 158-171 (Martha R. Mahoney, John O. Calmore, & Stephanie Wildman eds., 2003); Gerald P. López, *Shaping Community Problem Solving Around Community Knowledge*, 79 N. Y. U. L. REV. 59 (2004). See also JOEL HANDLER, SOCIAL MOVEMENTS AND THE LEGAL SYSTEM (1978); MICHAEL McCANN, RIGHTS AT WORK: PAY EQUITY REFORM AND THE POLITICS OF LEGAL MOBILIZATION (1994); Michael W. McCann, *Social Movements and the Mobilization of Law*, in SOCIAL MOVEMENTS AND AMERICAN POLITICAL INSTITUTIONS 201 (Anne N. Costain et al. eds., 1998); Michael W. McCann & Helena Silverstein, *Social Movements and the American State: Legal Mobilization as a Strategy for Democratization*, in A DIFFERENT KIND OF STATE? POPULAR POWER AND DEMOCRATIC ADMINISTRATION 134 (1993).

<sup>25</sup> LÓPEZ, *supra* note 3, at 2; Alfieri, *supra* note 3, at 1753.

sciously progressive lawyers” who together appeared in his family’s East Los Angeles neighborhood in the 1960s.<sup>26</sup> He describes this “cadre of new lawyers” as “outsiders,” largely “white and male” and inclined “to dress, speak, and act alike – or at least to dress, speak, and act not at all like us.”<sup>27</sup>

To López, the regnant idea of practice goes beyond mere appearance or outsider identity principally to frame his critique of the standard conception of public interest practice. On his view, the regnant idea shapes legal consciousness, it “surrounds” and “dwells within” progressive lawyers, effectively defining their work and workplace, legal and social knowledge, institutional roles and relationships, and vision of social change.<sup>28</sup> Deeply elitist and paternalistic in content, that vision casts progressive lawyers as “preeminent problem-solvers” and “political heroes” laboring in public interest organizations, legal aid offices, and even union-side labor law firms.<sup>29</sup> Unsurprisingly, López remarks, these outsider lawyers knew little about the lives of their clients and little about how laws actually affected their East Los Angeles neighborhood.<sup>30</sup> More troubling, he adds, these same lawyers tried too little to learn *from* their clients and to grasp lessons *from* the very different social worlds in which their clients lived and worked.<sup>31</sup> In this way, progressive lawyers failed to understand “the relationship between what they do and what they hope[ ] to change.”<sup>32</sup>

According to López, this continuing lack of cultural and historical understanding leads progressive lawyers often to mistake moments of client dependency, helplessness, and passivity as evidence of an immutable culture of poverty. Other professionals, he adds, for example social workers, as well as ordinary “lay people,” frequently make the same mistake.<sup>33</sup> Under this regnant logic, López explains, progressive lawyers rationalize their top-down “leadership” in law reform litigation campaigns, campaigns which seem tailored to “make statements”

<sup>26</sup> LÓPEZ, *supra* note 3, at 1; Alfieri, *supra* note 3, at 1753.

<sup>27</sup> LÓPEZ, *supra* note 3, at 1.

<sup>28</sup> *Id.* at 23; Alfieri, *supra* note 3, at 1753. Sympathetically extending López’s work, Ascanio Piomelli explains that regnant ideas “discipline” the judgment and conduct of progressive lawyers. See Ascanio Piomelli, *Foucault’s Approach to Power: Its Allure and Limits for Collaborative Lawyering*, 2004 UTAH L. REV. 395, 432-33 (2004) (“At the heart of disciplinary techniques was what Foucault called normalizing judgment, the interrelated practices of defining appropriate and inappropriate behavior or conduct (the normal and abnormal), of establishing gradations between the former and latter, and of imposing micro-penalties to discourage nonconformity as well as system of reward to encourage internalization of the norms.”) (footnote omitted).

<sup>29</sup> LÓPEZ, *supra* note 3, at 24; Alfieri, *supra* note 3, at 1753.

<sup>30</sup> LÓPEZ, *supra* note 3, at 13-23, 24; Alfieri, *supra* note 3, at 1754-55.

<sup>31</sup> LÓPEZ, *supra* note 3, at 13-23, 24; Alfieri, *supra* note 3, at 1754-55.

<sup>32</sup> LÓPEZ, *supra* note 3, at 5; Alfieri, *supra* note 3, at 1754-55.

<sup>33</sup> LÓPEZ, *supra* note 3, at 26; Alfieri, *supra* note 3, at 1756.



about “*their* (more than their clients)” opposition to “society’s injustices.”<sup>34</sup> This peculiar but pervasive logic gains force from lawyers’ knowledge about “how things work and how to get things done.”<sup>35</sup> In fact, consistent with the regnant style of practice, lawyers’ leadership on this valence seems altogether natural and normal.<sup>36</sup> Because only the lawyer “counts” for regnant purposes, López bemoans that clients “nearly vanish[ ]” in the law-driven pursuit of “large-scale, media-covered litigation” and client “non-legal” concerns (e.g., family, health, and neighborhood preservation) fall overshadowed.<sup>37</sup>

To López, the typical regnant lawyer is too constrained by his privileged cultural stance, advantaged socio-economic status, and hierarchy-infused professional education and training either to understand<sup>38</sup> or to “crossover” the boundaries of client and community difference.<sup>39</sup> Although these constraints may prove insurmountable for many regnant lawyers, López allows that they do leave room for some to “bear witness”<sup>40</sup> and to “pitch in.”<sup>41</sup> Despite this extant room to maneuver, even well-intentioned regnant lawyer “crossover” carries the risk of denying clients the opportunity to exercise their autonomy as moral agents and the corresponding risk of depriving communities of the opportunity to participate in their own collective self-determination. López cites evidence of this denial when lawyers persuade their clients to “turn over their ‘legal’ cases” and to “feel entirely dependent” upon their law-school-instilled technical skills.<sup>42</sup> That interpersonal dynamic, he mentions, is often institutionalized into structural patterns and pressures that encourage lawyers to adopt “formulaic” advocacy practices deferential to their “professional ex-

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<sup>34</sup> LÓPEZ, *supra* note 3, at 24-26; Alfieri, *supra* note 3, at 1754-56. See also Jules Lobel, *Courts as Forums for Protest*, 52 UCLA L. REV. 477, 489-90 (2004).

<sup>35</sup> LÓPEZ, *supra* note 3, at 24-26; Alfieri, *supra* note 3, at 1754-56.

<sup>36</sup> LÓPEZ, *supra* note 3, at 24-26; Alfieri, *supra* note 3, at 1754-56.

<sup>37</sup> LÓPEZ, *supra* note 3, at 16, 18-19; Alfieri, *supra* note 3, at 1754-56.

<sup>38</sup> On the pre-understanding of regnant lawyers, see Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107, 2123-25 (1991) [hereinafter Alfieri, *Reconstructive Poverty Law Practice*]; Anthony V. Alfieri, *The Ethics of Violence: Necessity, Excess, and Opposition*, 94 COLUM. L. REV. 1721 (1994) (reviewing AUSTIN SARAT & THOMAS KEARNS, *LAW’S VIOLENCE* (1992)).

<sup>39</sup> LÓPEZ, *supra* note 3, at 375.

<sup>40</sup> On bearing witness in advocacy through client voices, see Nancy Cook, *The Call to Witness: Historical Divides, Literary Narrative, and the Power of Oath*, 98 MARQ. L. REV. 1585 (2015); Herbert A. Eastman, *Speaking Truth to Power: The Language of Civil Rights Litigators*, 104 YALE L.J. 763 (1995); Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485 (1994); Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1 (2000). See also Austin Sarat, *Bearing Witness and Writing History in the Struggle Against Capital Punishment*, 8 YALE J.L. & HUMAN. 451 (1996).

<sup>41</sup> LÓPEZ, *supra* note 3, at 275, 287; Alfieri, *supra* note 3, at 1752.

<sup>42</sup> LÓPEZ, *supra* note 3, at 102-16, 110; Alfieri, *supra* note 3, at 1755-56 nn.19-21.

pertise” and, likewise, tend to push lawyers into accommodating the cabined role of a self-regulating legal “technician” rather than the client- or community-based collaborative role of a “co-eminent” problem-solver.<sup>43</sup> Contrast this regnant tendency with López’s community-regarding notion of “rebellious lawyering.”

### B. *Rebellious Lawyering*

López’s concept of “rebellious lawyering” embodies a vision of legal practice that diverges from a narrowly formalist, neutral concept of client-centered lawyering<sup>44</sup> to embrace broader community- and social-movement-building. Animated by egalitarian client norms of democratic participation and full citizenship, and tailored to address individual and group needs in low-income communities of color, López’s vision focuses on enhancing the community-informed, collaborative problem-solving capacity of lawyers across a wide range of practice settings (e.g., for-profit law firms, nonprofit organizations, and governmental agencies) and substantive areas (e.g., civil rights, criminal defense, economic development, environmental, immigration, labor, and juvenile justice).

Although López’s writing shares much in common with the pioneering work of Gary Bellow and Jeanne Charn, Edgar and Jean Cahn, and others inside and outside the legal academy, his vision is more collaborative,<sup>45</sup> more community-engaged,<sup>46</sup> and more move-

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<sup>43</sup> LÓPEZ, *supra* note 3, at 144, 190, 213, 232; Alfieri, *supra* note 3, at 1755 n.19.

<sup>44</sup> For alternative models of client-centered lawyering, see DAVID A. BINDER, PAUL BERGMAN, PAUL TREMBLAY, & IAN S. WEINSTEIN, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* (3d ed. 2012); Robert D. Dinerstein, *Client-Centered Counseling: Reappraisal and Refinement*, 32 ARIZ. L. REV. 501 (1990); Stephen Ellmann, *Client-Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers’ Representation of Groups*, 78 VA. L. REV. 1103 (1992); Stephen Ellmann, *Lawyers and Clients*, 34 UCLA L. REV. 717 (1987); Michelle S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, 27 GOLDEN GATE U. L. REV. 345 (1997); Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLIN. L. REV. 369 (2006); Julie D. Lawton, *Who Is My Client? Client-Centered Lawyering with Multiple Clients*, 22 CLIN. L. REV. 145 (2015).

<sup>45</sup> See also Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLIN. L. REV. 427 (2000); Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLIN. L. REV. 157, 160-61 (1994).

<sup>46</sup> See also Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLIN. L. REV. 333 (2009); John O. Calmore, *A Call to Context: The Professional Challenge of Cause Lawyering at the Intersection of Race, Space and Poverty*, 67 FORDHAM L. REV. 1927 (1999); Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 24 AM. INDIAN L. REV. 229 (2000); Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67 (2000); Hina Shah, *Notes from the Field: The Role of the Lawyer in Grassroots Policy Advocacy*, 21 CLIN. L. REV. 393 (2015); Janine Sisak, *If the Shoe Doesn’t Fit . . . Reformulating Rebellious Lawyering to Encompass Community Group Representation*, 25 FORDHAM URB. L.J. 873

ment-oriented<sup>47</sup> than most of his predecessors and many of his contemporaries.<sup>48</sup> Equally important, his vision is more skeptical and suspicious of the standard ways of knowing and naming the world used by lawyers, judges, and lawmakers.<sup>49</sup> To López, there is no universal or given truth that “makes sense of everything in the world.”<sup>50</sup> Instead, truth is contingent on local context, negotiated through collaborative problem-solving, and ultimately only partially knowable.<sup>51</sup> In short, truth is both provisional and practical – a kind of functional knowledge or “know-how inevitably at work in each and every person’s effort to get by day to day” and yet always regularly “outside” professional “understanding of the social world.”<sup>52</sup>

For López, rebellious lawyering reconceives the standard subject-object roles and hierarchical dominant-subordinate relationships of client-centered lawyering. On his nuanced conception, the client is neither a powerful subordinate *object* controlled by the disciplining discourse and gaze of a dominant lawyer nor a sovereign *subject* controlling the means and ends of a purely instrumental lawyer agent. Instead, on this thicker alternative conception, clients are complex, multi-dimensional, and ever-changing, inhabiting a range of subject-object roles and negotiating a variety of dominant-subordinate relationships while situated in local networks of family, school, work, religion, and community.

To reconstruct client roles and lawyer-client and client-community relationships, López urges multiple, experimental forms of lawyer, client, and community collaboration, inclusion, intervention,

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(1998).

<sup>47</sup> See also Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLIN. L. REV. 355 (2008) [hereinafter Ashar, *Law Clinics and Collective Mobilization*]; Sameer Ashar, *Public Interest Law and Resistance Movements*, 95 CAL. L. REV. 1879 (2007) [hereinafter Ashar, *Public Interest Lawyers and Resistance Movements*]; Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS 302 (Austin Sarat & Stuart A. Scheingold eds., 2006); Jennifer Gordon, *The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CAL. L. REV. 2133 (2007); Douglas NeJaime, *The Legal Mobilization Dilemma*, 61 EMORY L. J. 663 (2012); Douglas NeJaime, *Winning Through Losing*, 96 IOWA L. REV. 941 (2011).

<sup>48</sup> Many of López’s contemporaries link clinical education to social justice. See Jane Aiken, *Striving to Teach “Justice, Fairness, and Morality,”* 4 CLIN. L. REV. 1 (1997); Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1475-78 (1998); Stephen Wizner & Jane Aiken, *Teaching and Doing: The Role of Law School Clinics in Enhancing Access to Justice*, 73 FORDHAM L. REV. 997 (2004).

<sup>49</sup> Alfieri, *Reconstructive Poverty Law Practice*, *supra* note 38, at 2134-37; Leslie Espinoza & Angela P. Harris, *Afterword: Embracing the Tar-Baby-Latcrit Theory and the Sticky Mess of Race*, 85 CAL. L. REV. 1585, 1607 (1997).

<sup>50</sup> LÓPEZ, *supra* note 3, at 65.

<sup>51</sup> *Id.* at 29.

<sup>52</sup> *Id.*; Alfieri, *supra* note 3, at 1756.

enforcement, evaluation, and innovation. Those experimental forms and structures derive from six core lawyering process principles: (1) collaboration with individual, group, and community clients; (2) inclusion of diverse client perspectives in framing and resolving problems; (3) encouragement of client-generated alternative approaches to community intervention and problem solving; (4) community-erected monitoring and enforcement strategies; (5) joint client-lawyer outcome measurement and impact evaluation; and (6) innovative organizational management and delivery system design. In these important respects, López's vision challenges the standard neutral conception of law, politics, and the lawyering process still dominant in legal education and in the legal profession. To the extent that this standard conception continues to limit lawyer legal-political roles and client-lawyer collaborative relationships, as well as to narrow the function of advocacy organizations and to blunt the efficacy of legal institutions, the notion of "rebellious lawyering" carries ongoing significance for law teachers, lawyer advocates, and citizen activists. In the next part, consider the specific components of rebellious pedagogy.

## II. REBELLIOUS PEDAGOGY

This Part assesses "rebellious lawyering" as a transferable form of clinical pedagogy and practice, and as a legal-political method of community- and social-movement-building. The assessment evaluates efforts to translate "rebellious lawyering" theory into concrete practice for purposes of clinical teaching, community advocacy, and movement organizing in various institutional contexts and substantive fields. Those efforts emphasize collaborative problem solving, collective issue framing, client-generated community intervention, community monitoring and enforcement, outcome measurement, and innovative organizational design. Imagining such forms and strategies requires new rebellious ways of seeing.

### A. *New Ways of Seeing*

Rebellious pedagogy requires new ways of seeing law, lawyers, and communities in action. López points out that passing moments of rebellion may go unnoticed in the rote and routine patterns of law and the lawyering process. Oftentimes, he notes, such daily moments "arise in the course of activities that many others treat either as trivial or mechanical to good lawyering."<sup>53</sup> By way of illustration, he cites the mundane ways in which "lawyers create and update a file," structure "intake interviews and follow-up contacts," conduct fact investiga-

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<sup>53</sup> LÓPEZ, *supra* note 3, at 62.

tions, and “deploy conventional symbols of power.”<sup>54</sup>

Discerning moments of everyday, practical rebellion among clients and communities turns in part on how lawyers understand the meaning of people’s acts. Elsewhere I have argued that a lawyer’s ability to decipher the meaning of a client’s acts is “contingent on the epistemic, interpretive, and linguistic stance of both participants in and observers of those acts.”<sup>55</sup> Lawyers and clients, I have pointed out, “are both participants and observers; their acts of knowing, interpreting, reading, writing, and speaking construct as well as witness the construction of meaning.”<sup>56</sup> Yet, acts of rebellion inscribe only fragments of this constructed meaning into the oral, written, and social texts of law and the roles and relationships of the lawyering process. At times those fragments will be sufficient to bridge epistemic, interpretive, and linguistic differences and to forge collaborative alliances. At other times the knowledge structures, cognitive frameworks, interpretive practices, speech patterns, and even spatial relations of lawyers will erect barriers to mutual understanding.<sup>57</sup> Ethnography offers a means to overcome those barriers.

To illustrate the use of ethnography as a lawyering process method, consider Matthew Desmond’s ongoing sociological study of the process of inner-city eviction in contemporary urban America. Desmond understands “ethnography as a *sensibility*, a ‘way of seeing.’”<sup>58</sup> To Desmond, “ethnography isn’t something that we go and do. It’s a fundamental way of being in the world.”<sup>59</sup> In this way, Desmond’s ethnographic vision resonates with the mission and methodology of clinical education and experiential learning. Desmond observes: “If we approach ethnography as a sensibility, then we can begin cultivating a set of skills or disciplines long before we actually enter the field.”<sup>60</sup> On his account, it is in fact “possible to transform yourself into an ethnographer – day in, day out – so that when the time comes for you to set foot in the field, you already are one.”<sup>61</sup>

Both clinical education and experiential learning more generally embrace the transformative cultivation of professional skills and disciplines through classroom instruction and reflection, fieldwork immersion, and firsthand observation. Applied to community-based advocacy and organizing strategies of rebellious lawyering, Desmond’s

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<sup>54</sup> *Id.* at 63-64; Alfieri, *supra* note 3, at 1761 n. 32.

<sup>55</sup> Alfieri, *supra* note 3, at 1748.

<sup>56</sup> *Id.* at 1748-49.

<sup>57</sup> *Id.* at 1749-50.

<sup>58</sup> DESMOND, *supra* note 1, at 403 (emphasis in original).

<sup>59</sup> *Id.* at 404 n.3.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

ethnographic method offers lawyers, law professors, graduate and undergraduate students, and lay activists an alternative “way of seeing” minority groups and interpreting “what you see” in inner city neighborhoods as “transitory and tenuous” rather than as an immutable “culture of poverty.”<sup>62</sup> His ethnographic method also illuminates the impact of urban institutions (e.g., courts, governmental agencies, non-profit organizations, and schools) “that occupy a space between people and structural conditions and that encode disadvantage in people’s language, habits, belief systems, and practices.”<sup>63</sup>

Desmond’s study of inner-city eviction and his ethnographic method present a new way of seeing and making sense of the inner city for rebellious lawyers. Like Desmond and other urban sociologists,<sup>64</sup> ethnographers,<sup>65</sup> and cultural anthropologists,<sup>66</sup> López grounds his rebellious methodology in the “familiar practices” and the “small, everyday details” of the lawyering process.<sup>67</sup> That process is thick with implicit bias – epistemological, cognitive, interpretive, and linguistic. Conscious and unconscious,<sup>68</sup> bias infects a lawyer’s habits of know-

<sup>62</sup> *Id.* at 324-25, 376-77, 389 n.1.

<sup>63</sup> *Id.* at 376-77.

<sup>64</sup> See KENNETH CLARK, *DARK GHETTO: DILEMMAS OF SOCIAL POWER* (1965); ST. CLAIR DRAKE & HORACE R. CAYTON, *BLACK METROPOLIS: A STUDY OF NEGRO LIFE IN A NORTHERN CITY* (1945) (vol. 1 & 2); MITCHELL DUNEIER, *GHETTO: THE INVENTION OF A PLACE, THE HISTORY OF AN IDEA* (2016); GUNNAR MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* (1944) (vol. 1 & 2); WILLIAM JULIUS WILSON, *THE TRULY DISADVANTAGED: THE INNER CITY, THE UNDERCLASS, AND PUBLIC POLICY* (1987); Peter Dreier, *America’s Urban Crisis: Symptoms, Causes, Solutions*, 71 N.C. L. REV. 1351 (1993).

<sup>65</sup> See HARRY F. WOLCOTT, *ETHNOGRAPHY: A WAY OF SEEING* 42-102 (2d. ed., 2008); Sudhir Venkatesh, “*Doin’ the Hustle*”: *Constructing the Ethnographer in the American Ghetto*, in *ETHNOGRAPHY AND THE CITY: READINGS ON DOING URBAN FIELDWORK* 179-85 (Richard E. Ocejo ed., 2013).

<sup>66</sup> See Gerry Tierney, *Becoming a Participant Observer*, in *DOING CULTURAL ANTHROPOLOGY* 9-18 (Michael V. Angrosino ed., 2d ed. 2007); Cheryl Rodriguez & Yvette Baber, *Reconstructing a Community through Archival Research*, in *DOING CULTURAL ANTHROPOLOGY* 63-70 (Michael V. Angrosino, ed., 2002).

<sup>67</sup> LÓPEZ, *supra* note 3, at 74, 382.

<sup>68</sup> See Adjoa Artis Aiyetoro, *Can We Talk? How Triggers for Unconscious Racism Strengthen the Importance of Dialogue*, 22 NAT’L BLACK L.J. 1 (2009); Ralph R. Banks & Richard T. Ford, *(How) Does Unconscious Bias Matter? Law, Politics, and Racial Inequality*, 58 EMORY L.J. 1053, 1063-68 (2009); Tanya Kateri Hernandez, *Bias Crimes: Unconscious Racism in the Prosecution of “Racially Motivated Violence,”* 99 YALE L.J. 845, 852-855 (1990); Jerry Kang et al., *Implicit Bias in the Courtroom*, 59 UCLA L. REV. 1124, 1128-35 (2012); Cynthia Lee, *Making Race Salient: Trayvon Martin and Implicit Bias in a Not Yet Post-Racial Society*, 91 N.C. L. REV. 1555, 1586-1608 (2013); Justin D. Levinson, *Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering*, 57 DUKE L.J. 345, 347-50 (2007); L. Song Richardson & Phillip Atiba Goff, *Implicit Racial Bias in Public Defender Triage*, 122 YALE L. J. 2626, 2629-31 (2013); Robert J. Smith & Justin D. Levinson, *The Impact of Implicit Racial Bias on the Exercise of Prosecutorial Discretion*, 35 SEATTLE U. L. REV. 795, 823 n.116 (2012).

ing, thinking, and speaking and hinders a lawyer's ability to see client identities,<sup>69</sup> hear client narratives,<sup>70</sup> and translate client stories in advocacy.<sup>71</sup> Regnant claims of professional neutrality and objectivity will not cure conscious and unconscious lawyer bias in interviewing, counseling, fact investigation, at trial or on appeal. To address bias, rebellious lawyers must develop new ways of speaking, especially about race.

### B. *New Ways of Speaking*

New rebellious ways of speaking about civil rights and poverty law require new visions of low-income communities of color burdened by stigmatizing identity narratives expressed in the form of "race talk." Race talk matters – in the arts, media, politics, culture, and society. Race talk also matters in law not merely for lawyers, judges, and policy makers, but for lawbreakers and law rebels, their families, and their communities. By law rebels, I mean lay or citizen activists – individuals, groups, or whole communities – acting in ways large and small to challenge racial subordination and unequal treatment in law and, correspondingly, in culture and society.<sup>72</sup> The late Milner Ball situates contemporary law rebels among "the neighborhood[s] and the neighbors" of our universities "whether or not they are our clients, who are crushed by, cope with, and triumph over oppression."<sup>73</sup>

Across America law rebels fuel antisubordination campaigns at local, regional, and national levels. Endorsing an alternative conception of equal protection, those campaigns, for example the Movement for Black Lives,<sup>74</sup> express the "conviction that it is wrong for the state

<sup>69</sup> See Andrew W. Bribiesco, *Latino/a Plaintiffs and the Intersection of Stereotypes, Unconscious Bias, Race-Neutral Policies, and Personal Injury*, 13 J. GENDER RACE & JUST. 373 (2010); Leslie Espinoza Garvey, *The Race Card: Dealing With Domestic Violence in the Courts*, 11 AM. U. J. GENDER SOC. POL'Y & L. 287, 295–307 (2003); Tanya Kateri Hernandez, *Latino Inter-Ethnic Employment Discrimination and the "Diversity" Defense*, 42 HARV. C.R.-C.L. L. REV. 259, 316 (2007); Ian F. Haney López, *Race, Ethnicity, Erasure: The Saliency of Race to LatCrit Theory*, 85 CALIF. L. REV. 1143, 1164–72, 1192–03 (1997).

<sup>70</sup> See Phyliss Craig-Taylor, *Lifting the Veil: The Intersectionality of Ethics, Culture, and Gender Bias in Domestic Violence Cases*, 32 RUTGERS L. REC. 31 (2008); Jyoti Nanda, *Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System*, 59 UCLA L. REV. 1502 (2012).

<sup>71</sup> Alfieri, *supra* note 3, at 1763.

<sup>72</sup> See Milner S. Ball, *Jurisprudence from Below: First Notes*, 61 TENN. L. REV. 747, 747 (1994) ("We have for once learnt to see the great events of world history from below, from the perspective of the outcast, the suspects, the maltreated, the powerless, the oppressed, the reviled—in short, from the perspective of those who suffer.").

<sup>73</sup> Milner S. Ball, *Power from the People*, 92 MICH. L. REV. 1725, 1732 (1994) (reviewing GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992)).

<sup>74</sup> See *A Message from the Movement 4 Black Lives Policy Table, The Movement For Black Lives*, THE MOVEMENT FOR BLACK LIVES, <http://movementforblacklives.org/mes>

to engage in practices that enforce the inferior social status of historically oppressed groups.”<sup>75</sup> Steered by this antisubordination principle, the Movement for Black Lives and other post-*Brown*<sup>76</sup> civil rights movements<sup>77</sup> challenge not only “the pillars of policing and criminal justice,” but also the “larger target” of “white supremacy and structural inequality.”<sup>78</sup> That twin challenge defies the traditionally regnant identity narratives heard and identity performances seen in civil rights and criminal cases.

Regnant narratives spoken by lawyers in the form of race talk evoke antebellum and Jim Crow era narratives in describing black offenders and victims as well as black tenants and homeowners at risk of displacement in Miami and inner cities elsewhere. Both antebellum and Jim Crow narratives draw on the historical images and tropes common to nineteenth century American slavery and twentieth century racial segregation. Contemporary antebellum and Jim Crow narratives recast the same imagery and rhetoric to portray black offenders and victims, and at-risk tenants and homeowners, as culturally inferior, morally stunted, and socially deviant. Both spoken and written, the narratives stigmatize the public identity of black inner-city residents, their families, and their communities. By public identity, I mean the individual or group performance of certain “scripted acts and dialects” and “traits and behaviors” commonly associated with class, race, gender, sexuality, religion, and disability in a public or quasi-public space, such as a church, school, workplace, or street-scene.<sup>79</sup> This public, stigmatizing vision of color and colored commu-

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sage-from-the-movement-4-black-lives-policy-table/ (last visited June 20, 2016) (“We are a new generation of organizers, advocates, and communities who are working to discover our mission and fulfill it. We believe in elevating the experiences and leadership of the most marginalized Black people, including but not limited to those who are queer, trans, gender nonconforming, Muslim, formerly and currently incarcerated, poor and working class, differently-abled, women, undocumented, and immigrants.”).

<sup>75</sup> Reva B. Siegel, *Equality Talk: Antisubordination and Anticlassification Values in Constitutional Struggles over Brown*, 117 HARV. L. REV. 1470, 1472-73 (2004) (citing Owen Fiss’s “group-disadvantaging principle” and Laurence H. Tribe’s “antisubjugation principle”). See also LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* §16-21, at 1514-21 (2d ed. 1988); Owen M. Fiss, *Groups and the Equal Protection Clause*, 5 PHIL. & PUB. AFF. 107, 108, 157 (1976).

<sup>76</sup> See *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

<sup>77</sup> See Jennifer Gordon, *Law, Lawyers, and Labor: The United Farm Workers’ Legal Strategy in the 1960s and 1970s and the Role of Law in Union Organizing Today*, 8 U. PENN. J. LAB. & EMP. L. 1 (2005); Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407 (1995); Douglas NeJaime, *Marriage Equality and the New Parenthood*, 129 HARV. L. REV. 1185 (2016).

<sup>78</sup> Amna A. Akbar, *Law’s Exposure: The Movement and the Legal Academy*, 65 J. LEGAL EDU. 352, 357 (2015) (footnote omitted).

<sup>79</sup> See Anthony V. Alfieri, *(Un)Covering Identity in Civil Rights and Poverty Law*, 121



nity pervades the race talk heard throughout administrative agency bureaucracies, courthouses, and legislative chambers in run-of-the-mill and high-profile civil rights and criminal cases.<sup>80</sup>

Although systematic research documenting lawyers' use of race talk in courtrooms is scant, there is sufficient archival evidence from the field of legal history<sup>81</sup> to demonstrate that lawyers in civil rights and criminal cases made common use of race talk during the nineteenth and twentieth centuries.<sup>82</sup> Lamentably, anecdotal research shows that the lawyer use of race talk continues into our own century in American courts.<sup>83</sup> The past and present practice of lawyer race talk in civil rights and criminal cases revisits a more fundamental, albeit unsettled, inquiry – whether civil rights lawyers, prosecutors, and defenders should engage in race talk? If so, how? And when? This inquiry implicates normative and instrumental considerations central to the advocacy function.<sup>84</sup> Normative considerations involve questions of human dignity, racial identity, and role morality. Instrumental considerations entail strategic, result-oriented questions of client and community best interest.<sup>85</sup>

For more than two decades I have explored both sets of questions through case studies of the prosecution and defense of black and white violent offenders in the criminal justice system and case studies of individuals and communities of color in civil rights litigation.<sup>86</sup> The

HARV. L. REV. 805, 811 (2008).

<sup>80</sup> See Anthony V. Alfieri, *Objecting to Race*, 27 GEO. J. LEGAL ETHICS 1129, 1130-31 (2014).

<sup>81</sup> See ARIELA J. GROSS, *DOUBLE CHARACTER: SLAVERY AND MASTERY IN THE ANTEBELLUM SOUTHERN COURTROOM* (2000); ARIELA J. GROSS, *WHAT BLOOD WON'T TELL: A HISTORY OF RACE ON TRIAL IN AMERICA* (2008); Anthony V. Alfieri, *Race Trials*, 76 TEX. L. REV. 1293 (1998). See generally HELEN T. CATTERALL, *JUDICIAL CASES CONCERNING AMERICAN SLAVERY AND THE NEGRO* (1926).

<sup>82</sup> See generally Anthony V. Alfieri & Angela Onwuachi-Willig, *Next-Generation Civil Rights Lawyers: Race and Representation in the Age of Identity Performance*, 122 YALE L.J. 1484, 1488 n.5 (2013) (reviewing KENNETH W. MACK, *REPRESENTING THE RACE: THE CREATION OF THE CIVIL RIGHTS LAWYER 161-69* (2012) and DEVON CARBADO & MITU GULATI, *ACTING WHITE? RETHINKING RACE IN POST-RACIAL AMERICA* (2013)).

<sup>83</sup> See Alfieri, *supra* note 80, at 1132-36.

<sup>84</sup> Modern efforts by bar associations, courts, and legislatures to regulate the use of race talk in civil and criminal cases have struggled to describe its various race-neutral, race-coded, and race-conscious forms, and equally important, to prescribe the scope of its permissible use under legal ethics codes and standards, judicial rules, and statutes. *Id.* at 1130.

<sup>85</sup> *Id.* at 1131.

<sup>86</sup> See, e.g., Anthony V. Alfieri, *Defending Racial Violence*, 95 COLUM. L. REV. 1301 (1995) (parsing the racial form and content of criminal defenses in cases of black-on-white racial violence); Anthony V. Alfieri, *Lynching Ethics: Toward a Theory of Racialized Defenses*, 95 MICH. L. REV. 1063 (1997) (presenting a modern taxonomy of racialized defenses); Anthony V. Alfieri, *Prosecuting Race*, 48 DUKE L.J. 1157 (1999) (exploring race-conscious models of prosecutorial discretion); Anthony V. Alfieri, *Prosecuting the Jena Six*, 93 CORNELL L. REV. 1285 (2008) (explicating racialized norms of prosecution);

studies have analyzed the meaning of racial identity and narrative, the trial and retrial of race cases, the relationship between race and legal ethics, the impact of racial and ethnic differences on civil rights and criminal trials, and the interconnections between race and community. Taken together, these studies give rise to four descriptive and prescriptive predicates for the study and regulation of race talk: narrative thickness, public identity construction, racial stereotype, and dignitary harm. The predicates furnish a basis for a rebellious way of talking about race respectful of the human dignity of individuals and communities of color.

The first predicate – *narrative thickness* – borrows from the fields of anthropology, linguistics, and literary studies.<sup>87</sup> The claim of narrative thickness asserts that lawyer race talk describes individuals (offenders and victims as well as at-risk tenants and homeowners) and communities of color in shifting, race-neutral,<sup>88</sup> race-coded,<sup>89</sup> and race-conscious<sup>90</sup> language that echoes the discordant, contested narratives of race in American culture and society.

The second predicate – *public identity construction* – comes from the field of cultural studies.<sup>91</sup> The claim of public identity construction maintains that lawyer race talk socially constructs the public identity

Anthony V. Alfieri, *Prosecuting Violence/Reconstructing Community*, 52 STAN. L. REV. 809 (2000) (linking the prosecution of racial violence and the reconstruction of interracial community); Anthony V. Alfieri, *Race Prosecutors, Race Defenders*, 89 GEO. L.J. 2227 (2001) (comparing the role and impact of race within both criminal prosecution and defense functions).

<sup>87</sup> See, e.g., CLIFFORD GEERTZ, *Thick Description: Toward an Interpretive Theory of Culture*, in THE INTERPRETATION OF CULTURES: SELECTED ESSAYS 3-30 (1973).

<sup>88</sup> See Neil Gotanda, *A Critique of 'Our Constitution is Color-Blind'*, 44 STAN. L. REV. 1 (1991); Ian F. Haney López, "A Nation of Minorities": Race, Ethnicity, and Reactionary Colorblindness, 59 STAN. L. REV. 985, 988 (2007); Christopher W. Schmidt, *Brown and the Colorblind Constitution*, 94 CORNELL L. REV. 203 (2008); Reva B. Siegel, *Discrimination in the Eyes of the Law: How "Color Blindness" Discourse Disrupts and Rationalizes Social Stratification*, 88 CALIF. L. REV. 77, 88-94 (2000); Andrew E. Taslitz, *Racial Blindsight: The Absurdity of Color-Blind Criminal Justice*, 5 OHIO ST. J. CRIM. L. 1, 7 (2007).

<sup>89</sup> See IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* (2014); Amy H. Kastely, *Out of the Whiteness: On Raced Codes and White Race Consciousness in Some Tort, Criminal, and Contract Law*, 63 U. CIN. L. REV. 269 (1994); Margaret E. Montoya, *Máscaras Y Trenzadas: Reflexiones Un Proyecto De Identidad Y Análisis A Través De Veinte Años*, 32 CHICANA/O-LATINA/O L. REV. 7 (2014). See also Gary Blasi, *Advocacy Against the Stereotype: Lessons from Cognitive Social Psychology*, 49 UCLA L. REV. 1241, 1273-75 (2002).

<sup>90</sup> See Ralph Richard Banks, *Beyond Colorblindness: Neo-Racialism and the Future of Race and Law Scholarship*, 25 HARV. BLACKLETTER L.J. 41, 56 (2009); Christopher A. Ford, *Administering Identity: The Determination of "Race" in Race-Conscious Law*, 82 CAL. L. REV. 1231 (1994); Reva B. Siegel, *From Colorblindness to Antibalkanization: An Emerging Ground of Decision in Race Equality Cases*, 120 YALE L.J. 1278 (2011).

<sup>91</sup> See, e.g., Alfieri, *(Un)Covering Identity in Civil Rights and Poverty Law*, *supra* note 79, at 835-36; Austin Sarat & Jonathan Simon, *Beyond Legal Realism?: Cultural Analysis, Cultural Studies, and the Situation of Legal Scholarship*, 13 YALE J.L. & HUMAN. 3 (2001).

of individuals and communities of color inside and outside American courtrooms.

The third predicate – *racial stereotype* – derives from the field of social psychology.<sup>92</sup> The claim of racial stereotype holds that the socially constructed public identity of individuals and communities of color reflects and reinforces demeaning racial stereotypes entrenched within American culture and society.

The fourth predicate – *dignitary harm* – comes from the field of moral philosophy.<sup>93</sup> The claim of dignitary harm insists that demeaning, race-infected cultural and social stereotypes stigmatize individuals and communities of color, diminishing the private and public experience of human dignity in American society.

In prior work, I pressed civil rights lawyers and criminal prosecutors and defenders to avoid strategic narratives and arguments that exploit and publicly disseminate harmful, stereotypical constructions of racial identity.<sup>94</sup> Additionally, I urged civil rights lawyers, prosecutors, and defenders to construct a primer or toolkit in order to challenge explicit and implicit courtroom expressions of racism without impairing or risking the best interests of their individual, group, or community clients.<sup>95</sup> To be sure, both of these affirmative, race-conscious approaches diverge from the deep-seated traditions of race-neutral and race-coded advocacy in American law and legal education. Dislodging those traditions rests in part on the creation of new organizational designs for clinic-community collaboration and in part on the adoption of race-conscious legal-political practices of client and community representation. Consider new organizational designs to engineer race-conscious legal-political campaigns in Miami and other impoverished cities.

### C. *New Organizational Designs*

#### Rebellious pedagogy in the study of civil rights and poverty law

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<sup>92</sup> See, e.g., DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 153 (1993) (discussing the adverse impact of segregation on educational environments); JUDY J. MOHRAZ, *THE SEPARATE PROBLEM: CASE STUDIES OF BLACK EDUCATION IN THE NORTH, 1900-1930*, at xiv (1979) (observing that “segregation produced inferior education for black children because of inadequate facilities and frequently diluted academic programs”); Kenneth B. Clark, *Segregation and Educational Quality*, in *THE BLACK AMERICAN AND EDUCATION* 216 (Earle H. West ed., 1972) (commenting on the “consistently inferior” education provided to black children in segregated schools). Cf. JOHN B. MARTIN, *THE DEEP SOUTH SAYS “NEVER”* 148-49 (1958) (remarking upon “low Negro achievement” in desegregated schools).

<sup>93</sup> See DAVID LUBAN, *LEGAL ETHICS AND HUMAN DIGNITY* 65-95 (2007); Anthony V. Alfieri, *Ethics, Race, and Reform*, 54 *STAN. L. REV.* 1389 (2002).

<sup>94</sup> See Alfieri & Onwuachi-Willig, *supra* note 82, at 1550-53.

<sup>95</sup> *Id.* at 1545-46.

advocacy entails experimenting with new organizational designs and innovative legal-political campaigns. To be beneficial, the designs and campaigns must take into account the fluctuating dynamics of lawyer-client roles and relationships, the changing backdrop of cultural, economic, political, and social structures, and the shifting categories of age, class, disability, ethnicity, gender, race, and sexuality. Engrafted on the setting of clinical education, the designs and campaigns also must accommodate the institutional constraints of university and law school-based advocacy.<sup>96</sup> Consider, for example, the organizational design of the Historic Black Church Program housed at the University of Miami School of Law's Center for Ethics and Public Service ("the Center").

Founded in 1996, the Center is a law-school-sponsored interdisciplinary ethics education, skills training, and community engagement program devoted to the values of ethical judgment, professional responsibility, and public service in law and society. The goal of the Center is to educate law students to serve their communities as citizen lawyers.<sup>97</sup> The notion of citizen lawyers fuses long held traditions of public service<sup>98</sup> and civic professionalism<sup>99</sup> with a more activist, community-based vision of legal advocacy and political organizing. To bolster and to inculcate that vision, the Center operates two community outreach graduate programs – the Professional Responsibility and Ethics Program,<sup>100</sup> and the Historic Black Church Program – as well

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<sup>96</sup> See Peter A. Joy, *Government Interference with Law School Clinics and Access to Justice: When Is There a Legal Remedy?*, 61 CASE W. RES. L. REV. 1087 (2011); Robert R. Kuehn & Peter A. Joy, *An Ethics Critique of Interference in Law School Clinics*, 71 FORDHAM L. REV. 2037 (2003); Robert R. Kuehn & Bridget M. McCormack, *Lessons from Forty Years of Interference in Law School Clinics*, 24 GEO. J. LEGAL ETHICS 59 (2011). See also Kevin Barry, Marcy Karin, *Law Clinics and Lobbying Restrictions*, 84 U. COLO. L. REV. 985 (2013).

<sup>97</sup> Since 1996, the Center has trained over 1,200 law student fellows and interns, and served over 45,000 members of the Florida community, including university undergraduate and graduate students, government agencies, high schools and middle schools, homeowners and tenants, lawyers and judges, nonprofit organizations and neighborhood associations, and civic leaders through education, training, research, and policy assistance. See CENTER FOR ETHICS & PUB. SERV. ANN. REP. 6 (2015).

<sup>98</sup> See Anthony V. Alfieri, *Denaturalizing the Lawyer-Statesman*, 93 MICH. L. REV. 1204 (1995) (reviewing ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993)); Russell G. Pearce, *Rediscovering the Republican Origins of the Legal Ethics Codes*, 6 GEO. J. LEGAL ETHICS 241 (1992).

<sup>99</sup> See Anthony V. Alfieri, *Against Practice*, 107 MICH. L. REV. 1073 (2009) (reviewing WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELSH WEGNER, LLOYD BOND & LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007)); Russell G. Pearce & Bruce A. Green, "Public Service Must Begin at Home": *The Lawyer as Civics Teacher in Everyday Practice*, 50 WM. & MARY L. REV. 1207 (2009).

<sup>100</sup> The Professional Responsibility and Ethics Program designs and delivers in-house continuing legal education ethics training in cooperation with bar associations, government agencies, nonprofit legal services organizations, and law school-affiliated alumni groups

as two community engagement undergraduate programs.<sup>101</sup>

An experimental and protean organizational structure loosely composed of both legal-political (civil rights, environmental justice, and social enterprise)<sup>102</sup> and sociocultural (oral history and documentary film) projects, the Historic Black Church Program serves low- and moderate-income communities within the City of Miami and Miami-Dade County in partnership with local faith-based groups, civic associations, and nonprofit organizations and, when possible, in cooperation with governmental agencies<sup>103</sup> and officials.<sup>104</sup> Expressly designed to reach out to, jointly engage with, and preserve the cultural and social history of low-income communities of color, the Historic Black Church Program's entry point into Miami's inner-city neighborhoods initially hinged on the compilation of church- and community-based oral histories and the production of documentary films.

Launched in 2007, the Oral History and Documentary Film Project emerged from church-by-church outreach to the clergy and congregations of the Coconut Grove Ministerial Alliance, Inc. (the "Ministerial Alliance"), a consortium of inner-city black churches located in Coconut Grove Village West (the "West Grove"), a former

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through continuing legal education training and a legal ethics and professionalism colloquia series. See CENTER FOR ETHICS & PUB. SERV. ANN. REP., *supra* note 97, at 1.

<sup>101</sup> The Center's two undergraduate outreach and recruitment programs include the UM Environmental Justice, Law, & Science Consortium ("Environmental Consortium") and the Dartmouth College Ethics Institute Internship Program ("Dartmouth Ethics Program"). The Environmental Consortium is a university-wide undergraduate student internship program designed to train the next generation of environmental lawyers, scientists, and policy makers. Students conduct interdisciplinary research, draft policy papers, and collaborate with community groups, nonprofit organizations, and government agencies in field studies. Partners include the Abess Center for Ecosystem Science and Policy, Everglades Law Center, Miami Waterkeeper, Urban Environment League, UM School of Architecture, and UM Rosenstiel School of Marine and Atmospheric Science (Department of Marine Ecosystems and Society). The Dartmouth Ethics Program is an undergraduate student internship program designed to educate students in applied ethics and the law. During their week-long residency in Miami, Dartmouth students attend academic seminars, conduct research, and participate in colloquia with local community groups, nonprofit organizations, and government agencies. *Id.* at 5.

<sup>102</sup> In January 2016, the civil rights, environmental justice, and social enterprise projects consolidated their work and converted into two in-house, live-client clinics. CENTER FOR ETHICS & PUB. SERV. ANN. REP. 2-3 (2016).

<sup>103</sup> The civil rights project furnished research and policy support to the City of South Miami in investigating charter school race discrimination. See Alex Butler, *South Miami Working With Somerset Academy SoMi Over 'Racial Disparity'*, MIAMI HERALD (June 1, 2015), <http://www.miamiherald.com/news/local/community/miami-dade/south-miami/article22835337.html#storylink=cpy>; Alex Butler, *South Miami, UM Building 'Racial Disparity' Case Against Somerset*, MIAMI HERALD (Jan. 15, 2015), <http://www.miamiherald.com/news/local/community/miami-dade/south-miami/article7057199.html#storylink=cpy>.

<sup>104</sup> The civil rights project drafted a model community benefits agreement ordinance for the Miami-Dade County Board of County Commissioners. See *Community Benefits Agreement for the Distribution of County Funds* (June 2015) (on file with author).

Jim Crow neighborhood bordering the City of Coral Gables and the City of Miami. The project's opening semester-long outreach or "bridge" campaign included historical and sociological research, pastoral meetings with ministers and deacons, attendance at church services, and participation in clothing, shower, and homeless feeding ministries.<sup>105</sup> Since its launch, the project has produced five films documenting the history of the West Grove,<sup>106</sup> public school segregation in Miami-Dade County,<sup>107</sup> and environmental injustice in the City of Miami.<sup>108</sup>

Both the Center's current Environmental Justice Clinic and the Social Enterprise Clinic arose out of the outreach work of the Oral History and Documentary Film Project. This crossover cultural work laid the footing for a series of ongoing community-wide municipal equity initiatives in the areas of civil rights, environmental justice, and public health.<sup>109</sup> The gradual buildup of strong campus-community relationships during the course of these grassroots advocacy and organizing campaigns drove the formation and growth of the Center's newly established clinics.

Today the Environmental Justice Clinic delivers rights education, interdisciplinary research and policy resources, and advocacy and organizing assistance to low- and moderate-income communities discriminated against by state and private actors in matters affecting the built and natural environment, and to communities seeking fair treatment and meaningful involvement in the development, implementation, and enforcement of environmental laws, regulations, and policies, including incinerator contamination and industrial pollution.

To further enlarge and institutionalize the Center's work on the

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<sup>105</sup> See Anthony V. Alfieri, *Community Education and Access to Justice in a Time of Scarcity: Notes from the West Grove Trolley Garage Case*, 2013 WIS. L. REV. 121, 125-33.

<sup>106</sup> On cultural and social history, see *West Coconut Grove: Past, Present & Future* (2010), CENTER FOR ETHICS & PUB. SERV. ORAL HISTORY FILM PROJECT (2010), <http://www.law.miami.edu/academics/center-for-ethics-and-public-service/oral-history-film-project>; *History of Churches in the West Grove: Past, Present & Future*, CENTER FOR ETHICS & PUB. SERV. ORAL HISTORY FILM PROJECT (2011), <http://www.law.miami.edu/academics/center-for-ethics-and-public-service/oral-history-film-project>.

<sup>107</sup> On civil rights and public education, see *G.W. Carver: A Community School* (2012), CENTER FOR ETHICS & PUB. SERV. ORAL HISTORY FILM PROJECT (2012), <http://www.law.miami.edu/academics/center-for-ethics-and-public-service/oral-history-film-project>; *Someday We'll All Be Free: The Desegregation of Miami*, CENTER FOR ETHICS & PUB. SERV. ORAL HISTORY FILM PROJECT (2013), <http://www.law.miami.edu/academics/center-for-ethics-and-public-service/oral-history-film-project>.

<sup>108</sup> On environmental justice, see *Old Smokey: A Community History* (2014), CENTER FOR ETHICS & PUB. SERV. ORAL HISTORY FILM PROJECT (2014), <http://www.law.miami.edu/academics/center-for-ethics-and-public-service/oral-history-film-project>.

<sup>109</sup> See *supra* notes 146-156 and accompanying text.

built environment inside impoverished neighborhoods, the Social Enterprise Clinic provides education, training, and transactional assistance to inner-city churches and affiliated community development and nonprofit corporations. The assistance addresses the governance, operation, financing, and start-up of nonprofit organizations and for-profit benefit and social purpose corporations that shape and reshape the built environment.

Now in its tenth year, the Historic Black Church Program demonstrates that López's vision of community-based collaboration and inclusion, client-generated intervention and problem solving, community-administered monitoring and joint client-lawyer impact assessment, and innovative organizational management and delivery system design are not only possible, but also essential to the growth of experimental inner-city clinics and to the formulation of race-conscious legal-political strategies of advocacy and organizing. Consider the place of rebellious clinical methods and legal-political practices in combating inner-city eviction.

### III. REBELLIOUS PRACTICES: FIGHTING INNER-CITY EVICTION

This Part presents four brief case studies of "rebellious lawyering" in clinical education and community practice to gauge the applicable scope, internal tension, pragmatic calculation, and end-result of Lopez's vision in advocacy and organizing, including its costs, benefits, and trade-offs. Collected from the civil rights and environmental justice battles of impoverished, inner-city communities in Miami, the case studies illustrate the continuing tensions within "rebellious lawyering" for legal advocates and movement organizers. For many communities, the eviction crisis in urban America ignites the battle over the inner city. Consider the breadth of that crisis.

#### A. *The Eviction Crisis in Urban America*

The eviction crisis in urban America is well-documented by Desmond's landmark study of the sociology and ethnography of urban poverty in America. Both as scholarship and reportage, his work stands among the most important studies of inner-city poverty, inequality, and racial segregation in the current annals of social science, akin in breadth and depth to Jacob Riis's *How the Other Half Lives: Studies Among the Tenements of New York*,<sup>110</sup> Jane Jacobs's *The Death and Life of Great American Cities*,<sup>111</sup> and William Julius Wil-

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<sup>110</sup> JACOB A. RIIS, *HOW THE OTHER HALF LIVES: STUDIES AMONG THE TENEMENTS OF NEW YORK* (1890).

<sup>111</sup> JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* (1961).

son's *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy*.<sup>112</sup> Unlike Riis, Jacobs, and Wilson, however, *Evicted* focuses on the affordable-housing crisis and America's "eviction epidemic."<sup>113</sup>

Desmond reports that millions of people are evicted from their homes every year because of "the rapidly shrinking supply of affordable housing."<sup>114</sup> For Desmond, "the problems endemic to poverty – residential instability, severe deprivation, concentrated neighborhood disadvantage, health disparities, even joblessness – stem from a lack of affordable housing in our cities."<sup>115</sup> Nonetheless, he points out, academics, advocates, and policy makers "have failed to fully appreciate how deeply housing is implicated in the creation of poverty."<sup>116</sup> Eviction, according to Desmond, is in fact "a cause, not just a condition, of poverty."<sup>117</sup> Yet, he comments, eviction remains "one of the least studied processes affecting the lives of poor families."<sup>118</sup>

The task for rebellious lawyers working in metropolitan inner cities is twofold: first, to disseminate Desmond's research findings to socio-legal academics, legal-political advocates, judges, and local, state, and national policy makers to more effectively address the crisis and consequences of inner-city displacement for predominantly minority low-income communities, and second, to integrate Desmond's ethnographic methods into legal education, especially experiential learning in clinics, simulation practicums, and externships, and to better prepare interdisciplinary students to serve at-risk inner-city clients and communities.

The starting points for the integration of Desmond's research are the "process" and "fallout" of eviction.<sup>119</sup> Investigating the involuntary displacement or removal (formal and informal evictions, landlord foreclosures, and building condemnations) of inner city tenants between May 2008 and December 2009 in the predominantly black neighborhoods of Milwaukee, Wisconsin,<sup>120</sup> Desmond learned that eviction is "commonplace in poor neighborhoods and that it extracts a heavy toll on families, communities, and children."<sup>121</sup> Indeed, the Milwaukee data he collected "linked eviction to heightened residential

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<sup>112</sup> WILSON, *supra* note 64.

<sup>113</sup> DESMOND, *supra* note 1, at 305.

<sup>114</sup> *Id.* at 295, 305.

<sup>115</sup> *Id.* at 333.

<sup>116</sup> *Id.* at 5.

<sup>117</sup> *Id.* at 299.

<sup>118</sup> *Id.* at 295-96.

<sup>119</sup> *Id.* at 5, 317.

<sup>120</sup> *Id.* at 4-5, 33, 330.

<sup>121</sup> *Id.* at 296.



instability, substandard housing, declines in neighborhood quality, and even job loss.”<sup>122</sup> But the severe “fallout” of eviction goes beyond data. The loss of a home, Desmond explains, “sends families to shelters, abandoned houses, and the street. It invites depression and illness, compels families to move into degrading housing in dangerous neighborhoods, uproots communities, and harms children.”<sup>123</sup> By closely documenting the experiences of eight black and white Milwaukee families “swept up in the process of eviction,” Desmond “tells an American story” generalizable to many other American cities – Kansas City, Cleveland, Chicago, and elsewhere.<sup>124</sup>

The next step in the clinical integration of Desmond’s research is to assess the import of Desmond’s research for academics, advocates, and policy makers working both to create innovative legal-political anti-displacement strategies and to improve the delivery of legal assistance to at-risk tenants. Academics, advocates, and policy makers in the field of housing, particularly the private rental market, share Desmond’s core concerns with the causes, consequences, and economics of eviction. For this largely law-school-trained cohort, his “combined data sources provide a new portrait of the powerful ways the private housing sector is shaping the lives of poor American families and their communities.”<sup>125</sup> The data show, for example, that “the majority of poor renting families in America spend over half of their income on housing, and at least one in four dedicates over 70 percent to paying the rent and keeping the lights on.”<sup>126</sup> For poor women of color and their children, Desmond shows, the dynamics of the private housing market produce “the violence of displacement” and the “fall-out” of clinical depression and illness, educational and family disruption, and the loss of local cohesion, community investment, and human dignity.<sup>127</sup> Put bluntly, “without stable shelter, everything else falls apart.”<sup>128</sup> As a result, Desmond points to the need for “a new sociology of displacement that documents the prevalence, causes, and consequences of eviction,” what he calls “a committed sociology of inequality that includes a serious study of exploitation and extractive markets.”<sup>129</sup> Of necessity, Desmond’s new sociology of displacement carries relevance for academic research, legal-political advocacy, and policy making in the field of housing, including access to justice, evic-

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<sup>122</sup> *Id.* at 331.

<sup>123</sup> *Id.* at 5.

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

<sup>125</sup> *Id.* at 333.

<sup>126</sup> *Id.* at 4, 303.

<sup>127</sup> *Id.* at 298-300.

<sup>128</sup> *Id.* at 300.

<sup>129</sup> *Id.* at 333.

tion courts, governmental regulation, and community resistance. This new sociology promises to shape emerging rebellious practices in the inner city. Turn next to an exposition of those practices.

### B. *Rebellious Practices in the Inner City*

Applying López's rebellious practices to inner city landscapes alters the "look" and "feel" of legal-political advocacy and organizing.<sup>130</sup> For López, the lawyering style is "different"<sup>131</sup> because it "systematically tries to encourage local people to share experiences and to develop the know-how that will enable them to better anticipate and address their needs over time" through civic engagement and the creative integration of litigation and mobilization strategies.<sup>132</sup> Civic engagement and strategic integration flow from the rebellious idea of collaboration between and among clients, community partners, and "professional and lay allies."<sup>133</sup> López stresses that collaboration enables lawyers to be "educated" by others and to learn "how to work *with* (not just on behalf of)" others – "women, low-income people, people of color, gays and lesbians, the disabled, and the elderly."<sup>134</sup> In this sense, collaboration grounds advocacy and organizing locally "in the lives and in the communities of the subordinated themselves."<sup>135</sup>

To López, local grounding in the sensibilities and skills of clients and community partners, in their "practical knowledge" and "know-how" about "how things work" in neighborhood settings, connects "lay and legal cultures" and encourages "different cultural interpretations" of law and legal action outside of conventional lawyer "stock stories and storytelling techniques."<sup>136</sup> On López's reading, law functions as "a set of stories and storytelling practices that describe and prescribe social reality and a set of conventions for defining and resolving disputes."<sup>137</sup> In effect, grassroots collaboration offers "bicultural and bilingual" methods of interpreting and translating law, thereby shifting lawyer-client roles and relationships "in two directions, creating both a meaning for the legal culture out of the situations that people are living and a meaning for people's practices out of the legal culture."<sup>138</sup> This fluid dynamic gives rebellious lawyers a "feel" for the client's experience – what she "thinks, feels, needs, and

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<sup>130</sup> LÓPEZ, *supra* note 3, at 30.

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

<sup>132</sup> *Id.* at 32-33; Alfieri, *supra* note 3, at 1757.

<sup>133</sup> LÓPEZ, *supra* note 3, at 37.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 38.

<sup>136</sup> *Id.* at 38, 40, 44, 47, 50, 55-56; Alfieri, *supra* note 3, at 1758.

<sup>137</sup> LÓPEZ, *supra* note 3, at 43.

<sup>138</sup> *Id.* at 38, 43-44, 60-61; Alfieri, *supra* note 3, at 1759.

desires” – in dealing with the legal and sociocultural dimensions of inner-city antipoverty and civil rights struggles against accelerating displacement and intractable segregation.<sup>139</sup>

López cautions that the “stock and improvised” stories lawyers and clients use to approach these everyday struggles “establish meaning *and* distribute power” in ways that may “disfigure” an individual client’s capacity to resist injustice and, moreover, “distort” the social conditions critical for a community to mount a legal-political rights campaign, for example in opposing displacement and segregation.<sup>140</sup> To prevent this kind of marginalization, López points to the constant need to be alert to the “specific adaptations” that individuals, groups, and communities make to accommodate discrimination and inequality. He also cites the need to be attentive to the “unpredictable” practical “opportunities” for cooperative problem-solving through community education, self-help organizing, collective mobilization, and stakeholder coalition-building.<sup>141</sup>

The growing inner-city struggle for environmental and housing justice in Miami illustrates the broad parameters, internal tensions, and pragmatic calculations of López’s rebellious practices at work. In evaluating the role of public interest lawyers in local, grassroots legal-political organizing campaigns and larger social justice movements summoned by López, Sameer Ashar underlines the varying tensions spawned by the highly contingent and context-specific nature of lawyer participation in client and community collaborations. To Ashar and others, the multiple sites (e.g., private industry and public sector) and diverse subjects (e.g., private low-wage workers and public housing tenants) of struggle in part define the scope of the lawyer’s role and in part determine the range of legal intervention, both affirmative and defensive. Even when legal intervention is secondary to more direct political action, the presence of the lawyer and legal advocacy confers valuable legitimacy on community justice campaigns. That same presence, however, inexorably risks lawyer domination and strains lawyer accountability. To an extent, Ashar notes, political or-

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<sup>139</sup> LÓPEZ, *supra* note 3, at 38, 43-44, 60-61; Alfieri, *supra* note 3, at 1759.

<sup>140</sup> LÓPEZ, *supra* note 3, at 43, 59; Alfieri, *supra* note 3, at 1760.

<sup>141</sup> LÓPEZ, *supra* note 3, at 24, 55, 62, 64, 68, 275-329, 331-79; Alfieri, *supra* note 3, at 1761-62. *See also* Susan D. Bennett, *Creating a Client Consortium: Building Social Capital, Bridging Structural Holes*, 13 CLIN. L. REV. 67 (2006); Scott L. Cummings, *Clinical Legal Education and Community Development*, 14 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 208 (2005); Sheila Foster, *Justice from the Ground Up: Distributive Inequities, Grassroots Resistance, and the Transformative Politics of the Environmental Justice Movement*, 86 CALIF. L. REV. 775 (1998); Sheila R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CALIF. L. REV. 1999 (2007); Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLIN. L. REV. 195 (2002).

ganizers may mitigate the lawyer professional tendency to dominate individual and institutional clients in rights-centered political campaigns. Yet, organizers may also overreach in their influence on campaign decision-making. The key, Ashar explains, is to optimize the balance of power between and among lawyers, organizers, and clients in negotiating with state and private entities.<sup>142</sup>

Scaffolding López's rebellious pedagogy and practice onto a university-based, law-school clinical platform presents complex organizational challenges of partner recruitment and resource allocation as well as rich interdisciplinary opportunities for experiential learning and legal-political fieldwork in support of community advocacy and mobilization. To Ashar, rebellious clinical experiments of this kind must be guided by an affirmative, normative political and social vision congruent with lawyer professional role and responsibility and compatible with cross-modal advocacy (e.g., litigation, policy and legislative advocacy, community and public education, media advocacy, and international or transnational advocacy). In inner-city Miami, advocacy and organizing strategies embrace both the racial identity and cross-racial solidarity of community partnerships and the greater institutional accountability that accompanies such group and regional partnerships.<sup>143</sup>

Pedagogically, the greater accountability of rebellious partnerships carries significant consequences for experiential learning outcomes. For López and Ashar, the centrality of community-based, experiential learning moves students "from an individualistic, formal understanding of law to a more social, contextualized understanding."<sup>144</sup> That interpretive move, Ashar emphasizes, requires "the capacity of deep critique, of thinking beneath and beyond liberal legalist approaches to social problems."<sup>145</sup> For clinical students in Miami's Historic Black Church Program and in like-minded law school programs elsewhere, deep critique occurs through collaborative work with community partners in fieldwork and in classroom reflection.

### C. *Environmental and Housing Justice in Miami: Case Studies*

Battles over environmental and housing justice in Miami unfold daily in once historically segregated and now rapidly gentrifying neighborhoods throughout the city and the larger county. The Historic Black Church Program demonstrates that experimental clinical

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<sup>142</sup> Ashar, *Public Interest Lawyers and Resistance Movements*, *supra* note 47, at 1917-22.

<sup>143</sup> Ashar, *Law Clinics and Collective Mobilization*, *supra* note 47, at 390-400.

<sup>144</sup> Sameer M. Ashar, *Deep Critique and Democratic Lawyering in Clinical Practice*, 104 CAL. L. REV. 201, 217 (2016) (footnote omitted).

<sup>145</sup> *Id.* at 219.

projects guided by a rebellious vision of community-based collaboration and inclusion, client-generated intervention and problem solving, community-administered monitoring, joint client-lawyer impact assessment, and innovative organizational management and delivery system design can effectively challenge both private and state action that disregards the civil rights, environmental safety, and public health of inner-city communities. Mustering such challenges depends upon the willingness and ability of clinics to work closely with the diverse and sometimes competing constituents of local communities in order to devise race-conscious, legal-political campaign strategies combining the movement-building tools of education, advocacy, and organizing.<sup>146</sup> Consider four recent clinic-backed civil rights and environmental justice campaigns in Miami.

### 1. *The West Grove Trolley Garage Campaign*

The West Grove Trolley Garage campaign sprang from community-wide opposition to the construction of a City of Coral Gables municipal bus depot in an intact, multigenerational residential neighborhood of the West Grove based on widespread concerns about public health, safety, and environmental segregation.<sup>147</sup> At the request of the Ministerial Alliance, civil rights project students provided rights education and public health research to a coalition of West Grove protest groups, walked picket lines, packed state court and municipal hearing rooms, recruited and supported a pro bono litigation team, and facilitated a community-led negotiated settlement halting the installation of the bus depot.<sup>148</sup> In June 2016, the City of Miami Com-

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<sup>146</sup> For primers on community and labor organizing, see SAUL ALINSKY, REVELLE FOR RADICALS (1969); SAUL ALINSKY, RULES FOR RADICALS: A PRACTICAL PRIMER FOR REALISTIC RADICALS (1972).

<sup>147</sup> Swati Prakash, *Racial Dimensions of Property Value Protection Under the Fair Housing Act*, 101 CAL. L. REV. 1437, 1455-56 (2013) (“[M]any municipalities encouraged de facto segregation by targeting African-American communities for rezoning as industrial, providing inferior municipal services, withholding municipal amenities such as parks and swimming pools, engaging in regressive property tax assessment, and targeting minority neighborhoods for public infrastructure, thereby displacing the residents. These local land use decisions—which might be called ‘environmental segregation’—created tangible threats to property value and ensured that minority communities would be exposed to dangerous industrial land uses well into the twenty-first century.”) (footnotes omitted).

<sup>148</sup> For background on the Coral Gables Trolley Garage case, see Sandra Ward, Dorothy Henry, Coconut Grove Church of Christ and Evelyn Prophet v. City of Miami and Astor Trolley, LLC, No. 3D13-2794 (Fla. Cir. Ct. Sept. 12, 2013) (order granting summary judgment), *appeal docketed*, No. 3D13-2794 (Fla. 3d Dist. Ct. App. Oct. 31, 2013), *appeal dismissed per stipulation*, 162 So.3d 1024 (Table), 2014 WL 5794710 (Fla. 3d Dist. Ct. App. Sept. 30, 2014). See also Title VI of the Civil Rights Act of 1964 in *City of Coral Gables, Fla. v. Astor Trolley, LLC: Hearing Before City Comm’n, City of Coral Gables* (July 22, 2014) (statement of Anthony V. Alfieri), [http://coralgables.granicus.com/MediaPlayer.php?view\\_id=4&clip\\_id=616](http://coralgables.granicus.com/MediaPlayer.php?view_id=4&clip_id=616); Editorial, *The Trolley Debacle*, MIAMI HERALD (Nov. 16,

mission voted unanimously to negotiate the purchase of the bus depot and to convert the facility into a community center or alternative public space for neighborhood use.<sup>149</sup>

## 2. *The East Gables Trolley Campaign*

A related byproduct of the West Grove Trolley Garage campaign, the East Gables Trolley campaign stemmed from the rights education and investigative research work of civil rights project students conducted jointly with homeowners' and tenants' groups objecting to the denial of municipal trolley service to residents of the MacFarlane Homestead Subdivision and the Golden Gates District of Coral Gables, parts of the original Jim Crow neighborhood composing the East Gables. The upshot of this rights education and investigative research work resulted in the pro se filing of a civil rights administrative complaint by a local homeowner and long-time activist against the City of Miami, the City of Coral Gables, and Miami-Dade County in the U.S. Department of Transportation Federal Transit Administration Office of Civil Rights, and the subsequent negotiated extension of municipal trolley service to the East Gables.<sup>150</sup>

## 3. *The Old Smokey Campaign*

The still ongoing Old Smokey campaign comes out of environmental rights education, research, and policy work by environmental justice project students in conjunction with the Ministerial Alliance as well as past and present homeowners and tenants in the West Grove, the City of Miami, and Miami-Dade County, who are at risk of harm to their health and property. This collaborative work centers on investigating the effects of environmental exposure to hazardous waste

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2013), <http://infoweb.newsbank.com.access.library.miami.edu/resources/doc/nb/news/14A234EA2FE46BF8?p=WORLDNEWS>; Joey Flechas, *Coral Gables Settles Dispute Over Trolley Garage*, MIAMI HERALD (Aug. 4, 2014), <http://www.miamiherald.com/news/local/community/miami-dade/coral-gables/article1978350.html>.

<sup>149</sup> See David Smiley, *Fate of West Grove trolley garage may finally be resolved*, MIAMI HERALD (June 9, 2016), <http://www.miamiherald.com/news/local/community/miami-dade/coconut-grove/article82774262.html>.

<sup>150</sup> For history of the Coral Gables Trolley Campaign cases, see Clarice C. Cooper, FTA No. 2014-0043 (June 17, 2014) (instructing the City of Miami to improve its Title VI Program procedures and protections for future service and fare changes affecting the trolley system); Clarice C. Cooper, FTA No. 2013-0131 (Oct. 28, 2013) (finding violations of Title VI by the City of Miami, the City of Coral Gables, and Miami-Dade County in failing to conduct equity and disparate impact analysis in siting of trolley maintenance facility). See also Monique O. Madan, *Gables Trolleys to Roll Out in MacFarlane Historic District*, MIAMI HERALD (July 24, 2015), <http://www.miamiherald.com/news/local/community/miami-dade/coral-gables/article1978350.html>; Jenny Staletovich, *Feds: Local Governments Violated the Civil Rights Act in Coral Gables Trolley Case*, MIAMI HERALD (Nov. 12, 2013), <http://www.miamiherald.com/news/local/community/article1957396.html>.

from the former City of Miami Incinerator No. 2 (i.e., Old Smokey), organizing a county-wide citizen steering committee of adversely affected residents, mobilizing the clean-up of local parks,<sup>151</sup> improving local right-to-know legislation, and supporting a second pro bono litigation team. That team petitioned federal and state agencies for a public health assessment of widespread private property and public park contamination,<sup>152</sup> aided in overturning the City of Miami Commission's designation of eight Old Smokey waste-contaminated parks as brownfield sites,<sup>153</sup> and prepared litigation to remediate contaminated parks and to compensate injured residents. Today the Old Smokey campaign continues in the West Grove and across the City of Miami and Miami-Dade County.

#### 4. *The Day Avenue 8 Campaign*

The recently initiated Day Avenue 8 campaign addresses the private housing developer-proposed up-zoning of eight residential apartment buildings on the north and south side of Day Avenue in the West Grove.<sup>154</sup> Because the up-zoning proposal puts more than a dozen low- and moderate-income minority tenants at risk of imminent eviction and the similarly situated north end residents of the West Grove

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<sup>151</sup> On the clean-up of Merrie Christmas Park, see Rebeca Piccardo, *Urban Oasis Reopens at Merrie Christmas Park After Toxic Soil Contamination*, MIAMI HERALD (Apr. 9, 2015), <http://www.miamiherald.com/news/local/community/miami-dade/coconut-grove/article18000965.html>; David Smiley, *Neighbors, City Officials Remain at Odds Over Merrie Christmas Park*, MIAMI HERALD (Oct. 16, 2014), <http://www.miamiherald.com/news/local/community/miami-dade/article2923939>.

<sup>152</sup> See Old Smokey Steering Committee, ATSDR Supplemental Petition for Public Health Assessment and Disease Registry (Nov. 20, 2014) (on file with author); Old Smokey Steering Committee, ATSDR Petition for Public Health Assessment and Disease Registry (May 2, 2014) (on file with author). See also Nick Madigan, *In the Shadow of 'Old Smokey,' a Toxic Legacy*, N.Y. TIMES (Sept. 22, 2013), [http://www.nytimes.com/2013/09/23/us/old-smokey-is-long-gone-from-miami-but-its-toxic-legacy-lingers.html?\\_r=0](http://www.nytimes.com/2013/09/23/us/old-smokey-is-long-gone-from-miami-but-its-toxic-legacy-lingers.html?_r=0).

<sup>153</sup> See CENTER FOR ETHICS & PUB. SERV./Environmental Justice Project, *Contamination and Brownfield History* (2014) (on file with author); City of Miami Resolution PH.2 14-01018 Dep't of Capital Improvement Programs/Transportation Has Been Withdrawn (Oct. 23, 2014) (withdrawing designation of brownfield property sites within the City of Miami); David Villano, *City Quietly Labels Toxic Parks "Brownfield Sites," Limiting Neighborhood Input In Cleanup*, MIAMI NEW TIMES (Oct. 3, 2014), <http://www.miaminewtimes.com/news/city-quietly-labels-toxic-parks-brownfield-sites-limiting-neighborhood-input-in-cleanup-6554885>.

<sup>154</sup> At a public hearing on October 21, 2015, the City of Miami Planning, Zoning and Appeals Board ("PZAB") voted to deny the Day Avenue 8 up-zoning applications. The matter is now on appeal to the City of Miami Commission. At the October hearing, PZAB members and the City of Miami Attorney both admitted that they were unaware of their federal statutory duties under the Fair Housing Act and, moreover, that they had made no effort to ensure municipal compliance with the Act. See PZAB Resolution of Eight Day Avenue Parcels: Hearing on 15-00969lu Before City of Miami Planning, Zoning and Appeal Board (Oct. 21, 2015), [http://egov.ci.miami.fl.us/meetings/2015/10/2955\\_M\\_Planning,\\_Zoning\\_and\\_Appeals\\_Board\\_15-10-21\\_Verbatim\\_Minutes\\_\(Long\).pdf](http://egov.ci.miami.fl.us/meetings/2015/10/2955_M_Planning,_Zoning_and_Appeals_Board_15-10-21_Verbatim_Minutes_(Long).pdf).

at risk of looming gentrification and displacement, the Ministerial Alliance requested that the Center's Environmental Justice Clinic open a civil rights investigation to safeguard the fair housing rights of the Day Avenue 8 tenants and the West Grove as a whole. Joined by law firm co-counsel Hogan Lovells, staffed by clinic students, and supported by a coalition of West Grove churches, tenants, and homeowners, the investigation is currently researching the City of Miami's up-zoning policies and practices in predominantly minority inner-city neighborhoods (e.g., West Grove, Little Haiti, and Little Havana). The term "up-zoning" or "spot-zoning" refers to a city-approved zoning redesignation permitting higher density, more intensive land development and building construction in commercial, industrial, or residential areas by private actors (e.g., individuals and businesses), nonprofit organizations, and governmental or other public entities.<sup>155</sup> The purpose of the Day Avenue 8 investigation is to determine whether the city is in fact engaging in a pattern and practice of up-zoning in predominantly minority inner-city neighborhoods that has caused, is causing, or predictably will cause a disproportionately adverse effect on those neighborhoods by: (1) displacing residents, (2) perpetuating segregation, and/or (3) destroying low-income housing units without replacing an equivalent number of units in the affected neighborhoods or in other areas of the city. Evidence of such a disproportionately adverse effect may give rise to one or more disparate-impact claims cognizable under the Fair Housing Act<sup>156</sup> and possible claims of tenant-targeted

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<sup>155</sup> See Abraham Bell & Gideon Parchomovsky, *Givings*, 111 YALE L.J. 547, 550 (2001) (defining upzoning as a government-enacted change in a zoning ordinance to benefit certain property owners) (footnote omitted); Jon C. Dubin, *From Junkyards to Gentrification: Explicating A Right to Protective Zoning in Low-Income Communities of Color*, 77 MINN. L. REV. 739, 742-43 (1993) ("Higher-grade zoning, zoning or planning measures that induce certain higher-quality residential or other uses can produce . . . create market pressures that effectively price out existing low-income residents through the process of gentrification. Residents subjected to incompatible upzoning face the prospect of involuntary displacement and the functional and psychological trauma of dislocation and perhaps homelessness.") (footnotes omitted).

<sup>156</sup> 82 Stat. 81, as amended, 42 U.S.C. § 3601; Implementation of the Fair Housing Act's Discriminatory Effects Standard, 78 Fed. Reg. 11460 (2013); 24 CFR § 100.500(c)(1) (2014). Under the Fair Housing Act, it is unlawful to "refuse to sell or rent . . . or otherwise make unavailable or deny, a dwelling to a person because of race" or other protected characteristic, or "to discriminate against any person in" making certain real-estate transactions "because of race" or other protected characteristic. 42 U.S.C. §§ 3604(a), 3605(a). *Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Communities Project, Inc.*, 135 S. Ct. 2507, 2523 (2015) ("[A] disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity."). In *Inclusive Communities Project, Inc.*, the Court cited the results-oriented language and statutory purpose of the Fair Housing Act, the Court's interpretation of similar language in Title VII and the ADEA, and congressional ratification of disparate-impact claims in 1988 against the backdrop of the unanimous view of nine Courts of Appeals. 135 S. Ct. at 2519, 2525 (citing *Huntington Branch, NAACP v. Huntington*, 844 F.2d 926, 935-936 (2d Cir.



coercion or intimidation in violation of the Civil Rights Act of 1871, commonly known as the Ku Klux Klan Act.<sup>157</sup>

Together, the Historic Black Church Program's clinic-generated, legal-political campaigns surrounding the West Grove Trolley Garage, the East Gables Trolley, Old Smokey, and the Day Avenue 8 show that the local, sociocultural context of the lawyering process is crucial to the practice of public interest law, especially in the fields of civil rights and environmental justice. Furthermore, the campaigns show that cultural studies, race and ethnicity, politics, and social movement history provide critical underpinnings for clinical pedagogy and practice.

### CONCLUSION

López's *Rebellious Lawyering* stands among the transformative canons of clinical theory and practice. His powerful critique of the standard conception of public interest practice, his divergence from client-centered lawyering, and his alternative, community-regarding construction of "rebellious lawyering" offer a boldly transferable form of clinical pedagogy and practice as well as an affirmative legal-political method of community- and social movement-building. To the extent that the severity of his theoretical critique and the deployment of his practical methodology remain unresolved inside and outside of the law school classroom, they remind us that the clinical enterprise is at bottom a collaborative, community-based learning experience.

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1988); *Resident Advisory Bd. v. Rizzo*, 564 F.2d 126, 146 (3d Cir. 1977); *Smith v. Clarkton*, 682 F.2d 1055, 1065 (4th Cir. 1982); *Hanson v. Veterans Administration*, 800 F.2d 1381, 1386 (5th Cir. 1986); *Arthur v. Toledo*, 782 F.2d 565, 574–575 (6th Cir. 1986); *Metropolitan Housing Development Corp. v. Arlington Heights*, 558 F.2d 1283, 1290 (7th Cir. 1977); *United States v. Black Jack*, 508 F.2d 1179, 1184–1185 (8th Cir. 1974); *Halet v. Wend Investment Co.*, 672 F.2d 1305, 1311 (9th Cir. 1982); *United States v. Marengo Cty. Comm'n*, 731 F.2d 1546, 1559, n. 20 (11th Cir. 1984)).

<sup>157</sup> See Act of 1871, ch. 22, 17 Stat. 13 (1871) ("An Act to Enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States and for Other Purposes."). See also 42 U.S.C. §§ 1983, 1985 (2016).