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# Sensibilities for Social Justice Lawyers

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# Sensibilities for Social Justice Lawyers

ASCANIO PIOMELLI\*

More than forty years ago, in *Rules for Radicals*,<sup>1</sup> Saul Alinsky prescribed a path to redirect the energies and approaches of the young social justice activists and would-be revolutionaries of the 1960s and 1970s. Recently, I was asked to reflect on the practices and training of the social justice lawyers of the 21st Century.<sup>2</sup> Rather than pronouncing rules for the next generation of lawyers to follow, I will suggest six mindsets or sensibilities that I consider crucial for 21st Century social justice lawyers of all ages. As I will briefly sketch, I believe social justice lawyers are most effective when we appreciate – and live out – six simple truths:

- (1) We are not starting from scratch; we are building on the ideas and efforts of our predecessors and contemporaries.
- (2) It helps to be clear about our fundamental aims: what we mean by and count as social justice and social change.
- (3) We are at our best when we connect our efforts with others.
- (4) It is vital to cultivate our ability to see from multiple perspectives.
- (5) We are wise to pay close attention to class, race, and gender and to consciously combat all aspects of our cultural encapsulation.
- (6) Fostering social change is hard, fulfilling work.

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1. See SAUL D. ALINSKY, *RULES FOR RADICALS: A PRAGMATIC PRIMER FOR REALISTIC RADICALS* (1971). As his subtitle conveys, Alinsky urged greater attention to pragmatism and realism.

2. This essay grows out of my remarks at a panel discussion titled Teaching and Practicing 21st Century Social Justice Lawyering, at the U.C. Hastings College of the Law conference on Representing the Vulnerable and Remembering Ralph Abascal: Lessons from the 1970's (Mar. 16, 2012) (organized by my colleague, Professor Mark Aaronson).

**1. We are not starting from scratch; we are building on the ideas and efforts of our predecessors and contemporaries.**

To understand where we stand, how we got here, the roads others have walked, and the paths we might pursue, it behooves us to be intimately familiar with the extensive literature of the past thirty years about lawyering and social change. We should know well the work of Arthur Kinoy<sup>3</sup> and Gary Bellow,<sup>4</sup> of Jerry López,<sup>5</sup> Lucie White,<sup>6</sup> Luke Cole,<sup>7</sup> and Jennifer Gordon,<sup>8</sup> of Shauna

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3. Arthur Kinoy was one of the preeminent social justice lawyers in the U.S. in the second half of the 20th Century. He worked with militant unions and radical activists to resist Cold War repression in the 1940s and 1950s, with the Black freedom movement in the 1950s and 1960s, and defended social activists in the 1960s. He co-founded the Center for Constitutional Rights, was a leading advocate before the U.S. Supreme Court, and was a law professor at Rutgers University. See ARTHUR KINOY, *RIGHTS ON TRIAL: ODYSSEY OF A PEOPLE'S LAWYER* (1983) (describing vision of "people's lawyer" who focuses on using legal skills to enhance morale and ability of activists to push for social change).

4. Gary Bellow was a pioneering social justice lawyer and clinical legal educator. He served as deputy director of California Rural Legal Assistance (CRLA) in the 1960s and founded Harvard's clinical legal education program in the 1970s. See Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297 (1996); Gary Bellow, *Turning Solutions into Problems: Legal Aid Experience* 34 NLADA BRIEFCASE 106 (1977), available at <http://www.garybellow.org/garywords/solutions.htm> 1.

5. Jerry López, Professor of Law at UCLA School of Law, is the leading advocate of a "rebellious" approach to social justice lawyering, which he described in his path-breaking book. See GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992). See also Gerald P. López, *An Aversion to Clients: Loving Humanity and Hating Human Beings*, 31 HARV. C.R.-C.L. L. REV. 315 (1996); Gerald P. López, *Changing Systems, Changing Ourselves*, 12 HARV. LATINO L. REV. 15 (2009); Gerald P. López, *Don't We Like Them Illegal?*, 45 U.C. DAVIS L. REV. 1711 (2012); Gerald P. López, *Economic Development in the "Murder Capital of the Nation,"* 60 TENN. L. REV. 685 (1993); Gerald P. López, *Keynote Address: Living and Lawyering Rebelliously*, 73 FORDHAM L. REV. 2041 (2005); Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Re[b]ellious Colla[b]oration*, 77 GEO. L.J. 1603 (1989); Gerald P. López, *Shaping Community Problem Solving Around Community Knowledge*, 79 N.Y.U. L. REV. 59 (2004); 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).

6. Louis A. Horvitz Professor of Law, Harvard Law School. See Lucie E. White, *Collaborative Lawyering in the Field? On Mapping Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157 (1994); Lucie White, *"Democracy" in Development Practice: Essays on a Fugitive Theme*, 64 TENN. L. REV. 1073 (1997); Lucie E. White, *Facing South: Lawyering for Poor*

Marshall,<sup>9</sup> Bill Hing,<sup>10</sup> Sameer Ashar,<sup>11</sup> Bill Quigley,<sup>12</sup> and a host of others.<sup>13</sup> We also need to be well read in the literature about

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*Communities in the Twenty-First Century*, 25 FORDHAM URB. L.J. 813 (1998); Lucie E. White, *Goldberg v. Kelly on the Paradox of Lawyering for the Poor*, 56 BROOK. L. REV. 861 (1990); 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 White, *Paradox, Piece-Work, and Patience*, 43 HASTINGS L.J. 853 (1992); Lucie White, *Representing "The Real Deal,"* 45 U. MIAMI L. REV. 271 (1990-91); Lucie E. White, *Seeking "... The Faces of Otherness ...": A Response to Professors Sarat, Felstiner, and Cahn*, 77 CORNELL L. REV. 1499 (1992); 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, *The Power Beyond Borders*, 70 MISS. L.J. 865, 874-76 (2001); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699; Panel III, *Creating Models for Progressive Lawyering in the 21st Century*, 9 J.L. & POL'Y 297, 303-20 (2001) [hereinafter *Progressive Lawyering*] (comments of Lucie White).

7. Luke Cole was one of the pioneer attorneys in the environmental justice movement and founder of the Center on Race, Poverty, and the Environment. See LUKE W. COLE & SHEILA R. FOSTER, *FROM THE GROUND UP: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT* (2001); Luke W. Cole, *Empowerment as the Key to Environmental Protection: The Need for Environmental Poverty Law*, 19 ECOLOGY L.Q. 619 (1992); Luke W. Cole, *Macho Law Brains, Public Citizens, and Grassroots Activists: Three Models of Environmental Advocacy*, 14 VA. ENVTL. L.J. 687 (1995); *Progressive Lawyering*, *supra* note 6, at 320-27 (comments of Luke Cole).

8. Professor of Law, Fordham University School of Law. See JENNIFER GORDON, *SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS* (2005) (describing and analyzing work of democratically run immigrant worker center she founded and directed in 1990s in Long Island); Jennifer Gordon, *The Lawyer is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CAL. L. REV. 2133 (2007); 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).

9. Professor of Law and Academic Dean, University of California, Hastings College of the Law. See Shauna I. Marshall, *Class Actions as Instruments of Change: Reflections on Davis v. City and County of San Francisco*, 29 U.S.F. L. REV. 911 (1995); Shauna I. Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL L. REV. 147 (2000).

10. Professor, University of San Francisco School of Law, and founder of the Immigrant Legal Resource Center. See Bill Ong Hing, *Coolies, James Yen, and Rebellious Advocacy*, 14 ASIAN AM. L.J. 1 (2007).

11. Professor, University of California, Irvine, School of Law. See Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 CLINICAL L. REV. 355 (2008); Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CAL. L. REV. 1879 (2007).

12. Professor of Law, Loyola University New Orleans College of Law. See William P. Quigley, *Letter to a Law Student Interested in Social Justice*, 1 DEPAUL J. FOR SOCIAL JUSTICE 7 (2007); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO. N.U. L. REV. 455 (1995); William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 WASH. U. J.L. & POL'Y 101 (2006).

13. Susan D. Bennett, *Little Engines that Could: Community Clients, Their Lawyers, and Training in the Arts of Democracy*, 2002 WIS. L. REV. 469; Sheila Foster, *Justice from the Ground Up: Distributive Inequities, Grassroots Resistance, and the Transformative Politics of the*

organizing, social activism, and liberation movements. We should be familiar with the stories and ideas of Ella Baker<sup>14</sup> and Bob Moses,<sup>15</sup> of Myles Horton<sup>16</sup> and Paulo Freire,<sup>17</sup> of Ernie Cortes,<sup>18</sup>

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*Environmental Justice Movement*, 86 CALIF. L. REV. 775 (1998); Sheila R. Foster & Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CAL. L. REV. 1999 (2007); Angela Harris, Margaretta Lin & Jeff Selbin, *From "The Art of War" to "Being Peace": Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CALIF. L. REV. 2073 (2007); Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLINICAL L. REV. 195 (2002); Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427 (2000); Ascanio Piomelli, *Foucault's Approach to Power: Its Allure and Limits for Collaborative Lawyering*, 2004 UTAH L. REV. 395; Ascanio Piomelli, *The Challenge of Democratic Lawyering*, 77 FORDHAM L. REV. 1383 (2009) [hereinafter *Piomelli, Challenge*]; Ascanio Piomelli, *The Democratic Roots of Collaborative Lawyering*, 12 CLINICAL L. REV. 541 (2006) [hereinafter *Piomelli, Democratic Roots*]; Dean Hill Rivkin, *Lawyering, Power, and Reform: The Legal Campaign to Abolish the Broad Form Mineral Deed*, 66 TENN. L. REV. 467 (1999); Laura L. Rovner, *Disability, Equality, and Identity*, 55 ALA. L. REV. 1043 (2004); Julie A. Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, 1 J. GENDER RACE & JUST. 405 (1998); Christine Zuni Cruz, *[On The] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557 (1999).

14. Ella Baker was an unsung, but leading activist in the Black freedom movement, who worked for the NAACP and the Southern Christian Leadership Conference and served as a key mentor and supporter of the Student Nonviolent Coordinating Committee (SNCC). For biographies or extended sketches of Baker, see JOANNE GRANT, *ELLA BAKER: FREEDOM BOUND* (1998); CHARLES M. PAYNE, *I'VE GOT THE LIGHT OF FREEDOM: THE ORGANIZING TRADITION AND THE MISSISSIPPI FREEDOM STRUGGLE 67-102* (1995); BARBARA RANSBY, *ELLA BAKER AND THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION* (1998). See also Piomelli, *Democratic Roots*, *supra* note 13, at 587-95. For studies of the community organizing tradition in the Black freedom movement, see JOHN DITTMER, *LOCAL PEOPLE: THE STRUGGLE FOR CIVIL RIGHTS IN MISSISSIPPI* (1994); JOHN EGERTON, *SPEAK NOW AGAINST THE DAY: THE GENERATION BEFORE THE CIVIL RIGHTS MOVEMENT IN THE SOUTH* (1994); ALDON MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR CHANGE* (1984); PAYNE, *supra*.

15. Bob Moses was a key organizer for SNCC and the leader of its Mississippi Project. See ERIC R. BURNER, *AND GENTLY HE SHALL LEAD THEM: ROBERT PARRIS MOSES AND CIVIL RIGHTS IN MISSISSIPPI* (1994); ROBERT P. MOSES & CHARLES E. COBB, JR., *RADICAL EQUATIONS: CIVIL RIGHTS FROM MISSISSIPPI TO THE ALGEBRA PROJECT* (2001); Robert P. Moses, *Constitutional Property v. Constitutional People*, in *QUALITY EDUCATION AS A CONSTITUTIONAL RIGHT 70-92* (Theresa Perry, Roberts P. Moses, Joan T. Wynne, Ernesto Cortes, Jr. & Lisa Delpit, eds., 2010).

16. Myles Horton was one of the founders of the Highlander Folk School, which provided leadership training to many of the key participants in the union organizing movement in the 1930s and 1940s and the Black freedom movement in the 1950s and 1960s. See FRANK ADAMS & MYLES HORTON, *UNEARTHING SEEDS OF FIRE: THE IDEA OF HIGHLANDER* (1975); JOHN M. GLEN, *HIGHLANDER: NO ORDINARY SCHOOL 1932-1962* (1988); MYLES HORTON & PAULO FREIRE, *WE MAKE THE ROAD BY WALKING: CONVERSATIONS ON EDUCATION AND SOCIAL CHANGE* (1990); MYLES HORTON, JUDITH KOHL & HERBERT KOHL, *THE LONG HAUL: AN AUTOBIOGRAPHY* (1997).

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Wade Rathke,<sup>19</sup> and Gary Delgado,<sup>20</sup> of Cesar Chavez<sup>21</sup> and Dolores Huerta,<sup>22</sup> of Mahatma Gandhi<sup>23</sup> and Martin Luther King.<sup>24</sup> And,

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17. Paulo Freire, a Brazilian educator, was perhaps the world's leading theorist and proponent of popular adult education. See PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (1970); PAULO FREIRE, *THE POLITICS OF EDUCATION: CULTURE, POWER & LIBERATION* (1985); HORTON & FREIRE, *supra* note 16.

18. Ernesto Cortes, Jr., is the Southwest regional director of the Industrial Areas Foundation (IAF), <http://www.industrialareasfoundation.org/#> (last visited Feb. 17, 2013). See Ernesto Cortes, Jr., *Justice at the Gates of the City: A Model for Shared Prosperity*, in *BACK TO SHARED PROSPERITY: THE GROWING INEQUALITY OF WEALTH AND INCOME IN AMERICA* 361-73 (Ray Marshall, ed., 1999); Ernesto Cortes, Jr., *Toward a Democratic Culture*, 24 *KETTERING REV.* 65 (2006), available at [http://www.swiaf.org/wp-content/uploads/2012/09/EC\\_KetteringReview\\_Verical.pdf](http://www.swiaf.org/wp-content/uploads/2012/09/EC_KetteringReview_Verical.pdf). For studies of the IAF and works by several of its senior organizers, see EDWARD T. CHAMBERS, *ROOTS FOR RADICALS: ORGANIZING FOR POWER, ACTION AND JUSTICE* (2003); MICHAEL GECAN, *GOING PUBLIC: AN ORGANIZER'S GUIDE TO CITIZEN ACTION* (2004); PAUL OSTERMAN, *GATHERING POWER: THE FUTURE OF PROGRESSIVE POLITICS IN AMERICA* (2002); MARK R. WARREN, *DRY BONES RATTLING: COMMUNITY BUILDING TO REVITALIZE AMERICAN DEMOCRACY* (2001).

19. Wade Rathke founded ACORN, the Association of Community Organizations for Reform Now. For explorations of ACORN and its approach to community organizing, see JOHN ATLAS, *SEEDS OF CHANGE: THE STORY OF ACORN, AMERICA'S MOST CONTROVERSIAL ANTIPOVERTY COMMUNITY ORGANIZING GROUP* (2010); GARY DELGADO, *ORGANIZING THE MOVEMENT: THE ROOTS AND GROWTH OF ACORN* (1986); *THE PEOPLE SHALL RULE: ACORN, COMMUNITY ORGANIZING, AND THE STRUGGLE FOR ECONOMIC JUSTICE* (Robert Fisher, ed., 2009). For works by Rathke, see WADE RATHKE, *CITIZEN WEALTH: WINNING THE CAMPAIGN TO SAVE WORKING FAMILIES* (2009); Wade Rathke, *Understanding ACORN: Sweat and Social Change*, in *THE PEOPLE SHALL RULE*, *supra*, at 40-62.

20. Gary Delgado left ACORN in 1980 to co-found the Center for Third World Organizing, *CTWO's History*, <http://www.ctwo.org/index.php?s=23>, (last visited Feb. 17, 2013), to focus on training community organizers of color and to remedy other organizing networks' failure to directly address racism as a central issue. See GARY DELGADO, *BEYOND THE POLITICS OF PLACE: NEW DIRECTIONS IN COMMUNITY ORGANIZING IN THE 1990s* (1994); DELGADO, *supra* note 19.

21. See CESAR CHAVEZ, *AN ORGANIZER'S TALE: SPEECHES* (Ila Stavans, ed., 2008). For recent studies of the United Farm Workers movement, see MARSHALL GANZ, *WHY DAVID SOMETIMES WINS: LEADERSHIP, ORGANIZATION, AND STRATEGY IN THE CALIFORNIA FARM WORKER MOVEMENT* (2009); MIRIAM PAWEL, *THE UNION OF THEIR DREAMS: POWER, HOPE, AND STRUGGLE IN CESAR CHAVEZ'S FARM WORKER MOVEMENT* (2009).

22. See A DOLORES HUERTA READER (Mario T. Garcia, ed., 2008).

23. See M.K. GANDHI, *NON-VIOLENT RESISTANCE (SATYAGRAHA)* (reprint 2001) (1951); MAHATMA GANDHI, *THE ESSENTIAL GANDHI: AN ANTHOLOGY OF HIS WRITINGS ON HIS LIFE, WORKS AND IDEAS* (Louis Fischer, ed., 2d ed. 2002); MOHANDAS K. GANDHI, *AUTOBIOGRAPHY: THE STORY OF MY EXPERIMENTS WITH TRUTH* (Mahadev Desai, trans., Beacon Press ed. 1993) (1957); RAJMOHAN GANDHI, *GANDHI: THE MAN, HIS PEOPLE, AND THE EMPIRE* (2008).

24. See *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* (James M. Washington ed., 1986). See also TAYLOR BRANCH, *AT*

given their success, we are wise to also study the tactical and strategic brilliance of the Powell Memorandum<sup>25</sup> and the Christian Right.<sup>26</sup> As my students often complain, we have a lot of reading and reflecting to do, if we are serious about devoting our lives to the struggle for social change.

**2. It helps to be clear about our fundamental aims: what we mean by and count as social justice and social change.**

Our understanding of what we seek to achieve is the touchstone by which we assess and continually re-shape our tactics, strategies, and approaches. For the past forty years, the predominant view among public interest lawyers has been that our objective is to achieve particular policy outcomes or shifts in legal doctrine or statutory or regulatory interpretation that further the interests of our clients. In a phrase, the aim has been law reform. The primary problem to remedy, in this view, is the legal and political system's failure to adopt policies favorable to low-income and other marginalized groups and to formally recognize their legal claims. The lawyer's purpose is to obtain favorable legal and policy outcomes on behalf of her clients.

In the past two decades, a growing chorus of social justice lawyers and lawyering theorists has urged that our ultimate goal

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CANAAN'S EDGE: AMERICA IN THE KING YEARS, 1965-68 (2006); TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING YEARS, 1954-63 (1988); TAYLOR BRANCH, PILLAR OF FIRE: AMERICA IN THE KING YEARS, 1963-65 (1998); DAVID J. GARROW, BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE (1986).

25. Memorandum from Lewis F. Powell Jr. to Eugene B. Sydnor Jr., Chairman of Education Committee, U.S. Chamber of Commerce, (Aug. 23, 1971), available at <http://research.greenpeaceusa.org/?a=download&d=5971> (last visited Feb. 17, 2013). A few months before President Richard Nixon appointed him to the U.S. Supreme Court in 1971, Lewis Powell, wrote this confidential memo to the U.S. Chamber of Commerce urging major corporations and their supporters to launch a full-scale, multidimensional effort to invest in new institutions dedicated to shifting public discourse, attitudes, and beliefs to reverse what he labeled the "attack on the free enterprise system." *Id.* at 1.

26. See SARAH DIAMOND, NOT BY POLITICS ALONE: THE ENDURING INFLUENCE OF THE CHRISTIAN RIGHT (1998); WILLIAM MARTIN, WITH GOD ON OUR SIDE: THE RISE OF THE RELIGIOUS RIGHT IN AMERICA (rev. ed. 2005); CLYDE WILCOX & CARIN ROBINSON, ONWARD CHRISTIAN SOLDIERS?: THE RELIGIOUS RIGHT IN AMERICAN POLITICS (4th ed. 2010); DANIEL K. WILLIAMS, GOD'S OWN PARTY: THE MAKING OF THE CHRISTIAN RIGHT (2010).

ought instead to be building the power of our clients and their communities to directly shape their own lives and world.<sup>27</sup> Advocates of this approach—variously called “rebellious lawyering,” “community lawyering,” or, the term that I prefer, “democratic lawyering”<sup>28</sup>—view the ultimate condition we seek to reverse as political, economic, and social *subordination*. Subordination manifests and perpetuates itself through practices that presume that some people matter and some don’t, that some people merit consulting and some don’t, that some people should shape the contours and rules of our society and some need not. Subordination fuels and freezes material and spiritual deprivation. These social justice lawyers consequently focus on fostering clients’ and communities’ ability to act collectively with others in coordinated public efforts across legal, political, social, economic, and cultural spheres.

The goal is to build the power of “ordinary”—non-affluent, non-expert, non-privileged—people and communities to shape their circumstances and living conditions. The aim is not only to win particular rights or policy outcomes, but to pursue and win them in ways that enhance clients’ and communities’ power to win future struggles and to preserve those victories. Building power is the ultimate goal, particularly the power to act in concert with others. Knowing this discourse and deciding for ourselves what we are striving to achieve helps guide us in moments of uncertainty and enables us to reshape our practices to better fit our aspirations.

### **3. We are at our best when we connect our efforts with others.**

It may sometimes be defensible for social justice lawyers to operate largely on our own (or only with fellow lawyers), but it is almost always dangerous. As social justice lawyers, it helps to remember that we are not the only potential agents of social change. We are at our best when we learn from and connect our efforts with mobilized groups of clients and constituents, with organizers and political activists, with public officials, researchers and philanthropists, with educators, journalists, and artists. For when we connect ourselves and our clients with others, we multiply the

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27. See authors cited, *supra* notes 5–13.

28. See Piomelli, *Challenge*, *supra* note 13, at 1386.



domains in which we can act, the tactics and strategies we can deploy, and our odds of ultimate, lasting success in changing our society and our culture. It is therefore vital for social justice lawyers to understand coalitions—which Bernice Johnson Reagon has taught us are vital, but dangerous settings<sup>29</sup>—and to know how to operate effectively in them.

In the monograph that inspired the conference for which I initially sketched this list of sensibilities, my colleague, Professor Mark Aaronson, reflects upon Ralph Abascal’s lawyering in the struggle to resist Governor Reagan’s welfare reform initiatives of the early 1970s.<sup>30</sup> Interpreting Ralph’s work as waged largely independently from client groups, Mark uses the case study to explore what it means to represent a geographically dispersed constituency. But from what I know of Ralph Abascal’s work, he did not always work “gyroscopically,” to use Mark’s term.<sup>31</sup> As a pioneer in the environmental justice movement and a partner of the disability rights movement, Ralph also knew well how to work *with*, rather than simply *on behalf of* clients and communities. I do not deny that there are moments of crisis or opportunity where it is not possible to collaborate closely with clients and constituencies, but we are on firmer ground when those moments are few and far between. Without individual or institutional partners to whom we must directly account—or, at the very least, with whom to consult and strategize—we deprive our efforts of vital insights and we risk descending into paternalism or expending resources to pursue issues or remedies that our clients and constituents don’t prioritize.

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29. See Bernice Johnson Reagon, *Coalition Politics: Turning the Century*, in HOME GIRLS: A BLACK FEMINIST ANTHOLOGY 353–68 (Barbara Smith, ed., 1983).

30. See Mark Neal Aaronson, *Representing the Poor: Legal Advocacy and Welfare Reform During Reagan’s Gubernatorial Years*, 64 HASTINGS L.J. (forthcoming 2013). In addition to successfully challenging Governor Reagan’s welfare reform efforts, Abascal, general counsel to California Rural Legal Assistance, litigated cases that banned the use of DDT and the short-handled hoe in agricultural fields. See Aurelio Rojas, *Ralph Abascal*, S.F. CHRON., Mar. 18, 1997, available at <http://www.sfgate.com/news/article/Ralph-Abascal-2849760.php>.

31. Professor Aaronson borrows the concept of “gyroscopic” representation from political theorist Jane Mansbridge to signify representatives who “act like gyroscopes, rotating on their own axes, maintaining a certain direction, pursuing certain built-in aims” and whose “accountability is only to their own beliefs and principles.” *Id.* (quoting Jane Mansbridge, *Rethinking Representation*, 97 AMER. POLI. SCI. REV. 515, 520 (2003)).

**4. It is vital to cultivate our ability to see and understand from multiple perspectives.**

Law school prides itself on teaching precisely the skill of viewing a situation from different perspectives. What I mean, however, is more than the ability to deploy and critique arguments from multiple sides or the ability to consider the precedential impact of deciding a particular case. Three other types of multiple-perspective-taking are vital to our success as social justice lawyers.

We need to know how to look and think *top-down*, to take a birds-eye view of systems and how they function and might be changed, as well as how they will likely respond to our change efforts. But simultaneously we must also look, think, and engage *bottom-up*, to understand how systems and practices look and feel from the perspective of those enmeshed in them and to elicit the ideas of ground-level participants both about *what* to address and *how*.

In a temporal sense, it is vital to look not only at the current dimensions of an issue or situation, but also to look backward to understand its historical roots and forward to anticipate the future trajectory of potential approaches.

And finally, we must cultivate our ability to recognize *strengths* as well as *weaknesses*. In law school, we are tenaciously taught (explicitly and implicitly) to hone in on weaknesses in arguments, in others, and in ourselves. But if we are to grow as lawyers and humans, we can't only identify failings or deficits to improve, we must also recognize, replicate, and build upon what we do well. Similarly, as social justice lawyers, it opens a world of possibilities when we see not only our clients' vulnerabilities and deficits (and provide our legal services to compensate for them), but when we recognize as well their strengths, insights, and assets (and build upon and connect them).

**5. We are wise to pay close attention to class, race, and gender and to consciously combat all aspects of our cultural encapsulation.**

"Cultural encapsulation" means the unconscious ways that our race, gender, and initial class background, as well as our

professional socialization and status in the professional middle class, all shape our thought and action.<sup>32</sup> For this journal and its readership, I will not rehearse all the reasons and ways that race, class, and gender matter—in the lives of our clients, the attitudes of decision-makers, the composition of the social justice lawyering bar, the interactions between social justice lawyers and our clients and communities. As a large literature has explored, it is crucial for lawyers to recognize the cultural proclivities and the ensuing opportunities and constraints that stem from the key markers of our identity and to know how to work across dimensions of difference.<sup>33</sup> In addition to paying attention to the impact of our race, class, and gender on our interpretation of the world and our interactions with others, it is vital that we focus too on our enculturation as lawyers and expert professionals. We are more likely to stay on track and meet our aspirations if we consciously explore whether the ways we are trained or conditioned to think and act—the assumptions that go without saying, that strike us as just the way things are—are consistent with the change we strive to create and the means we deem best calculated to bring it about.

For those of us moved by the democratic vision of lawyering, there are central elements of our cultural conditioning as lawyers from which we must deliberately break free. We regularly reject, for example, the idea that lawyers not only think differently, but that we think more clearly and effectively than other people. We also resist the assumption that law and lawyering are too complex and overwhelming for non-lawyers (especially those without formal education) to understand or participate in effectively—the

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32. See ROBERT F. COCHRAN, JR., JOHN M.A. DIPIPPA & MARTHA M. PETERS, *THE COUNSELOR-AT-LAW: A COLLABORATIVE APPROACH TO CLIENT INTERVIEWING AND COUNSELING* 207 (2d ed. 2006); Ascanio Piomelli, *Cross-Cultural Lawyering by the Book: The Latest Clinical Texts and a Sketch of a Future Agenda*, 6 HASTINGS RACE & POVERTY L.J. 131, 157–59 (2006); C.G. Wrenn, *The Culturally Encapsulated Counselor*, 32 HARV. EDUC. REV. 444–49 (1962).

33. See, e.g., Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyering*, 8 CLINICAL L. REV. 33 (2001); Bill Ong Hing, *Raising Personal Identification Issues of Class, Race, Ethnicity, Gender, Sexual Orientation, Physical Disability, and Age in Lawyering Classes*, 45 STAN. L. REV. 1807 (1993); Antoinette Sedillo Lopez, *Making and Breaking Habits: Teaching (and Learning) Cultural Context, Self-Awareness, and Intercultural Communication Through Case Supervision in a Client-Service Legal Clinic*, 28 WASH. U. J.L. & POL'Y 37 (2008); Marjorie Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FL. COASTAL L.J. 219 (2002); Carwina Weng, *Multicultural Lawyering: Teaching Psychology to Develop Cultural Self-Awareness*, 11 CLINICAL L. REV. 369 (2005).

expectation that our clients are uniformly too overwhelmed or too vulnerable to move effectively against their own subordination. And we challenge the conviction that expertise is properly measured by formal education and credentials (rather than lived experience) and that credentialed experts should be the primary sources of information and only indispensable participants in sound decision-making.

### **6. Fostering social change is hard, fulfilling work.**

In the seminar that my colleague, Shauna Marshall, and I teach each year to second-year law students concentrating their studies in social justice lawyering, we are often taken aback—originally in surprise, now simply in dismay—when a substantial portion of our students share that their attraction to social justice lawyering stems in part from a sense that social justice lawyers “don’t have to work long hours”<sup>34</sup> and are thus better able to achieve work-life balance.

While we strongly support the importance of personal self-care and family responsibility, we try, with incomplete success, to encourage this portion of our students to reconsider both the expectation and aspiration to work forty-hour weeks, along with the tacit assumptions underlying them. We seek to encourage these budding social justice lawyers to expect to work hard (including nights and weekends when necessary). But instead of dreading that prospect, we urge them to cherish and seize the opportunities that social justice lawyering provides for us to integrate and join, rather than segregate and balance, our work and our personal lives.

To be sure, a significant number of our students do not share the expectation or aspiration to limit their work to a nine-to-five schedule. They and we point out that social justice lawyers, especially early in their careers, have much still to learn about law and lawyering and many relationships they must invest the time to develop with communities and allies. They and we note that social justice lawyers typically face adversaries with far greater resources and judges and policymakers who are often predisposed against our clients, so we need to work hard to make headway in the currents

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34. The context of these comments makes clear this is not simply a comparison to the hours worked by attorneys in large private firms, but instead to a hope to work something close to a standard U.S. workweek of forty hours.

we swim against. Together, we suggest that the stakes are high enough, the consequences of defeat or success significant enough, and the number of available social justice lawyering positions limited enough, that clients, communities, and social justice organizations are entitled to expect social justice lawyers to work as long as it takes to vigorously advocate with and for their clients and constituencies.

We emphasize the relative privilege of social justice lawyers. We point out that social justice lawyers are among the few in the U.S. economy who are able to engage in work that is consistent with and meaningfully expresses our deepest values. Unlike the majority of U.S. workers, our work is not typically closely supervised, physically taxing, or spiritually deadening. And unlike many attorneys in private firms, social justice lawyers pursue outcomes we wholeheartedly endorse. In our jobs, we creatively express, rather than ignore or mask, our interests, values, and key aspects of our lives. We also note how social justice workplaces are far more cooperative than competitive, with co-workers usually willing to pitch in and support each other if workloads become crushing. We discuss, as well, the joy of working to achieve outcomes we feel good about, with colleagues, clients, and allies who share our values and commitments. And we reassure these students that most people find being a social justice lawyer, representing clients and causes they care deeply about, far more engaging than they found their law school classes and activities; it does indeed get better.

Frequently, however, our efforts are met with examples of organizations that do prioritize containing lawyers' workloads to close to forty hours a week. The students who raise these examples share legitimate concerns of preventing burnout, as well as compelling stories of having experienced as children the consequences on their families of long parental work hours. Occasionally, a student will express the sentiment that social justice lawyers' low salaries (perhaps combined with substantial educational debt) justify limiting work hours to close to forty a week. Eventually, someone counters that social justice lawyers' pay is only low in comparison to salaries in private firms and government and still supports a solid middle-class standard of living, especially for couples who both work for wages. Without perfectly predicting positions in these discussions, the impacts of

race and familial socioeconomic class background on these conversations are apparent.

In all these discussions, we steer our students away from thinking about work-life balance in terms of a comparative tally of (presumptively draining) work hours vs. (presumptively recharging) leisure hours. We suggest instead a focus on how much time social justice lawyers spend in fulfilling, self-affirming, meaningful activities—at work and at home—that lead to outcomes that matter, serve those we care about, improve our communities, bring us satisfaction, uplift our spirit, express our authentic selves, and enable us to grow in the ways we desire. We urge our students to appreciate the ways in which social justice lawyering enables us to *integrate*, rather than to *separate*, our work life and our social and family life.<sup>35</sup> We suggest that this seamlessness in one's life is a precious gift that few others experience.

In pessimistic moments, I worry that losing the persuasive struggle over this final sensibility endangers the odds of successful implementation of the first five. The optimist and fighter in me, though, usually retort that we simply need to redouble our efforts to ensure that social justice lawyers share a personal or visceral connection, rather than simply a philosophical one, to their organizations' and clients' attainment of their aims. We need to ensure that as social justice lawyers we do not view our work as a bestowal of charity upon clients and communities—who, as recipients, are only to express gratitude, but not to shape or redirect the service we provide. We must continue to push to be accountable not only to supervisors and boards of directors, but also to clients and communities. Perhaps most importantly, we must recruit and welcome into the social justice lawyering community attorneys who come from the communities we serve, who see themselves or their loved ones in the faces of those with whom we work.<sup>36</sup>

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35. We and the social justice lawyers whom we bring in as guests to our class describe, for example, the ways in which our parenting is enhanced by being able to discuss with our kids the ends that we pursue and the values we act on through our work.

36. One of the reasons that we changed the name from the Public Interest Law Concentration to the Social Justice Lawyering Concentration was our sense that many students of color and students from working-class or low-income backgrounds have come to associate the "public interest" label with White, middle-class, well-meaning-but-naïve do-gooders.

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As social justice lawyers, we are at our best when we fully internalize that our lawyering is not primarily about our own self-expression. It is about the vital end we seek: the survival, advancement, and flourishing of our clients and our communities. Our aim is not simply to "fight the good fight," but to win it.