

Cause Lawyering

Elon Law School
Fall 2016
Tuesdays, 3:30-6:00 pm
Room 206

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Description

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

Materials

Stuart A. Scheingold & Austin Sarat, *Something to Believe In: Politics, Professionalism, & Cause Lawyering* (Stanford Univ. Press 2004)

Austin Sarat & Stuart A. Scheingold (eds.), *Cause Lawyers & Social Movements* (Stanford Univ. Press 2006) (“CLSM” in Course Outline)

The course website has links to other assigned readings and additional resources.

Policies

Grading

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

Class Discussion

Each of you will be the lead discussant for at least one class session during the term. This will include a short (2-3 pages) overview of the topic and assigned reading, and some questions for discussion. You should send a copy of your overview and questions to me at least 24 hours in advance, and I will share these with the rest of the class. I will circulate a sign-up sheet on the first day of class for you to choose which session you wish to lead. If there are more sessions than students enrolled in the course, you will have the option to sign up as lead discussant for a second session.

Paper & Presentation

You will write a research paper (approx. 10 pages) on one of these topics:

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

You will also give a brief (~10 minutes) in-class presentation about your paper. The completed paper will be due on the last day of the exam period. I will give you more information about my expectations for the paper in class.

Attendance

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

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

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

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

Disability Accommodations

For disability accommodation requests, contact the Elon Law Registrar's Office.

Honor Code

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

Course Outline & Reading Assignments

Introduction: What is Cause Lawyering?

- Scheingold & Sarat, Something to Believe In, Chaps. 1-5
- Anna-Maria Marshall & Daniel Crocker Hale, Cause Lawyering, 10 Annual Review of Law & Social Science 301 (2014)

Cause Lawyering & Professional Ethics

Causes, Clients, & Conflicts

- Bettina Brownstein, Private Practice & Cause Lawyering: A Practical & Ethical Guide, 31 Univ. of Arkansas Law Review 601 (2009)
- Margareth Etienne, The Ethics of Cause Lawyering: An Empirical Examination of Criminal Defense Lawyers as Cause Lawyers, 95 Journal of Criminal Law & Criminology 1195 (2005)
- David Luban, The Moral Complexity of Cause Lawyers Within the State, 81 Fordham Law Review 705 (2012)

Legal Strategy & Political Goals

- Gary Bellow & Jeanne Kettleson, From Ethics to Politics: Confronting Scarcity & Fairness in Public Interest Practice, 58 Boston Univ. Law Review 337 (1978)
- Susan D. Carle, Race, Class, & Legal Ethics in the Early NAACP, 20 Law & History Review 97 (2002)
- Derrick A. Bell, Jr., Serving Two Masters: Integration Ideals & Client Interests in School Desegregation Litigation, 85 Yale Law Journal 470 (1976)

Cause Lawyering & Social Movements

Law as a Movement Strategy

- Michael McCann & Jeffrey Dudas, Retrenchment ... and Resurgence? Mapping the Changing Context of Movement Lawyering in the United States (CLSM, 37-59)
- Thomas Hilbink, The Profession, the Grassroots & the Elite: Cause Lawyering for Civil Rights & Freedom in the Direct Action Era (CLSM, 60-83)
- Scott Barclay & Shauna Fisher, Cause Lawyers in the First Wave of Same Sex Marriage Litigation (CLSM, 84-100)
- Susan Bibler Coutin, Cause Lawyering & Political Advocacy: Movement Law on Behalf of Central American Refugees (CLSM, 101-119)
- Stephen Meili, Consumer Cause Lawyers in the United States: Lawyers for the Movement or a Movement Unto Themselves? (CLSM, 120-141)

The Movement Lawyer's Role

- Sandra R. Levitsky, To Lead with Law: Reassessing the Influence of Legal Advocacy Organizations in Social Movements (CLSM, 145-163)
- Anna-Maria Marshall, Social Movement Strategies & the Participatory Potential of Litigation (CLSM, 164-181)
- Lynn Jones, The Haves Come Out Ahead: How Cause Lawyers Frame the Legal System for Movements (CLSM, 182-196)
- Kevin R. Den Dulk, In Legal Culture, but Not of It: The Role of Cause Lawyers in Evangelical Legal Mobilization (CLSM, 197-219)
- Corey S. Shdaimah, Intersecting Identities: Cause Lawyers as Legal Professionals & Social Movement Actors (CLSM, 220-245)

Cause Lawyering & Legislative Reform

- Kathleen M. Erskine & Judy Marblestone, The Movement Takes the Lead, The Role of Lawyers in the Struggle for a Living Wage in Santa Monica, California (CLSM, 249-276)

- Jennifer Gordon, A Movement in the Wage of a New Law: The United Farm Workers & the California Agricultural Labor Relations Act (CLSM, 277-301)

Cause Lawyering & Transactional Practice

- Scott L. Cummings, Mobilization Lawyering: Community Economic Development in the Figueroa Corridor (CLSM, 302-335)

Research Paper Presentations