

**Summer 2009 Givelber Distinguished Lecturer
Northeastern Law School**

Course Syllabus

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Course Name

Strategies for Social Change Lawyering: Litigation and Beyond in the Fight for Worker Justice

Course Description

Poverty wages, sweatshop conditions, and complex structures designed to obscure the relationship between workers and those who profit from their labor characterize many low-wage industries. Using real life examples of worker exploitation, particularly among immigrant workers and workers of color, this course examines and evaluates the use of litigation to effect social change and other tools for social justice lawyering, including organizing, legislative advocacy, broad-based campaigns, direct action, cross-racial community building, and public education. The course will cover the potential, strengths, challenges, limitations and tensions in using these tools both independently and in conjunction with one another. Emphasis will be placed on identifying problems, analyzing power dynamics, developing strategy and practical litigation skills, and understanding political and ethical concerns. The course is intended to prepare students for on-the-ground problem-solving as practitioners.

Course Materials

Assigned reading available on course website; no need to purchase other sources for required readings
Additional handouts (provided)

Course Requirements

- (1) **Class Participation**: All students will be asked to comment on and respond to the reading and to actively engage in class discussion. We will also have in-class activities, including simulations of different types of advocacy and litigation skills, as well as role-playing.
- (2) **Written Requirement**: I will ask you to write a response piece after the first three class sessions. The piece should demonstrate your knowledge of the reading materials, analysis of the topics discussed in the first half of the course, and include your personal thoughts on how these impact your notion of legal practice. I am not looking for summaries of the reading but rather, connections and comparisons between the materials and a coherent articulation of your own ideas as they relate to the class reading, discussion, and in-class assignments.
- (3) **Group Project**: Students will work together in the second half of the class to develop a comprehensive strategy for addressing problems in a low-wage industry and present these on the last day of class.

Class 1: [Thursday, June 18, 6:15 - 9:15 p.m.]

Readings—Part 1: Telling Our Stories

Harry T. Edwards, *Remark: A Lawyer's Duty to Serve the Public Good*, 65 N.Y.U. L. Rev. 1148 (1990).

Cheryl Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1707 (1995), excerpt in Critical Race Theory: The Key Writings that Formed the Movement, Kimberlé Crenshaw, Neil Gotanda, Gary Peller, Kendall Thomas, eds., The New Press (2003) (pp. 276-281).

Margaret Montoya, *Celebrating Racialized Legal Narratives*, in Crossroads, Directions, and a New Critical Race Theory, Francisco Valdes, Jerome McCristal Culp, Angela P. Harris (eds.), Temple University Press (2002) (pp. 243-50).

People v. Hall, 4 Cal. 399 (1854).

Stephanie M. Wildman, Privilege Revealed, New York University Press (1996) (excerpts).

Introductions & the power of narrative: What aspirations brought you to law school? What do you hope to get out of this particular course? How has legal education affected your aspirations?

Discussion: Analyze Edwards, Harris, Montoya, Wildman and the California Supreme Court opinion in *People v. Hall* with your own experience. What is the value of narrative and storytelling? What place does it have in the practice of law? How do our own identities shape our experience with the law? How do we translate our stories into legal language? How do our clients do it? What do we gain and lose by doing that?

In-class exercise: interviews.

Readings—Part 2: Using Litigation

Gerald N. Rosenberg, The Hollow Hope Can Courts Bring About Social Change?, The University of Chicago Press (2008) (pp. 1, 9-21).

Newspaper articles on garment workers' case.

Discussion: Evaluate Rosenberg's thesis that courts have historically been of little value in achieving social change. What are the obstacles and the promise presented by use of the courts to achieve social justice? How could litigation help in the garment industry? Consider how best to eliminate or minimize the obstacles found. What are the best strategies for maximizing success by reliance upon the courts?

In-class exercise: identify problems faced by garment workers forced to work in brutal conditions and brainstorm legal claims.

Class 2: [Friday, June 19, 1:30 - 5:30 p.m.]

Readings—Part 1: Development of Legal Theory

Fair Labor Standards Act, 29 U.S.C. §§202, *et seq.*

Structure of garment industry (diagram)

Sweatshop Slaves, Kent Wong, Julie Monroe (eds.), UCLA Center for Labor Research and Education, (Chapter 1).

Rutherford Food Corp. v. McComb, 331 U.S. 722 (1947)

Torres-Lopez v. May, 111 F.3d 633 (9th Cir. 1997)

Federal Rule of Civil Procedure 30(b)(6)

Discussion: Conducting an industry analysis. Research and development of facts. Analyze the issues raised in the newspaper articles with your understanding of the garment industry and the cases. What legal claims might exist?

In-class exercise: break into groups to develop litigation strategy. Note parallels and conflicts between various options and develop strategy for presenting consistent theme for your case. Draft introduction to your complaint, brief summary of the argument, or deposition questions. Role play.

Readings—Part 2: Litigation & Beyond

Newspaper articles about lawsuit.

Gerald Lopez, Rebellious Lawyering, Westview Press (1992) (pages 1-4, bottom of 23-29, middle of 38-44).

Saul Alinsky, Rules for Radicals: A Pragmatic Primer for Realistic Radicals, Vintage Books (1989), (chapter on “Tactics”).

Penda Hair, "Louder than Words: Lawyers, Communities and the Struggle for Justice," Rockefeller Foundation (2001) (pp. 42-59)

(Optional) Julie Su, "Making the Invisible Visible: the Garment Industry's Dirty Laundry." 1 *Journal of Gender, Race and Justice* 405 (1998).

(Optional) Arthur Kinoy, Rights on Trial, Bernal Books (1994), chapter on “Union Busting and Red Baiting”

Discussion: How does litigation bring about social change? Evaluate the claims of Lopez and Alinsky and analyze in the context of litigation. Can litigation be "rebellious" or "radical"? How does social change happen?

In-class exercise: Evaluate benefits of litigation. Discuss limits. Integrate other strategies into the litigation strategy to address garment workers' case.

Class 3: [Saturday, June 20, 12 noon to 4:00 p.m.]

Readings—Part 1: Legislative advocacy, governmental agencies, media

Kim Bobo, Wage Theft in America, The New Press, 2009 (excerpts).

California Labor Code §§ 2671, et seq. (AB 633)

APALC materials on AB 633 and enforcement

Zhao v. Bebe Stores, Inc. Plaintiffs' Motion for Partial Summary Judgment

Sample press releases

Discussion: Analyze what non-litigation strategies social justice lawyers have in the arsenal. Which ones are effective? Which ones are not? What does it depend on? Are these strategies in conflict with, complementary to, helpful in or separate from a litigation strategy? Integrating legislative advocacy, governmental agency enforcement, media work, worker organizing into a comprehensive social justice strategy. What are the benefits and limitations of these approaches?

In-class exercise: Role play legislative advocacy and media work.

Readings—Part 2: Organizing & worker centers

Betty Hung, "Law and Organizing From the Perspective of Organizers: Finding a Shared Theory of Social Change," 1 Los Angeles Public Interest L. Journal 4 (2009).

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).

Map of worker centers in the United States.

Discussion: History and development of worker centers. How do worker centers advance the cause of worker justice? What are their limits? Can and should lawyers and workers' centers work together?

In-class: "Made in L.A." (clips of award-winning documentary on Los Angeles garment workers' multi-year campaign against popular clothing retailer Forever 21)

Group Project: You are assigned to interview a taxi worker (contact information will be provided). See sample profile of Sentayehu Silassie. Write (1) a profile and (2) a declaration for a case challenging the working conditions in the Los Angeles taxi industry.

Class 4: [Thurs., June 25, 6:15 to 9:15 p.m.]

Readings—Part 1: Tackling the Taxi Industry

Gary Blasi, Jacqueline Leavitt, "Driving Poor: Taxi Drivers and the Regulation of the Taxi Industry in Los Angeles," a report funded by the UCLA Institute of Industrial Relations (2006).

Los Angeles Taxi Workers Alliance, "Sweatshops on Wheels: Review & Recommendations for L.A.'s Taxicab Industry," September 2006.

Schaller Consulting, "Higher Pay, Safer Cabbies," January 2004.

Yellow Taxi Co. of Minneapolis v. NLRB, 721 F.2d 366 (D.C. Cir. 1983)

NLRB v. Friendly Cab Co., 512 F.3d 1090 (9th Cir. 2008)

Review structure of garment industry diagram from Class 2

Discussion: Applying what we have learned, how do we approach addressing the workers' rights abuses in this industry? How is it similar to and different from the garment industry? How can litigation be used? How do industries change as a result of litigation and advocacy campaigns (both to improve and to avoid further liability)?

In-class exercise: Report back on interviews and group project. Industry analysis. Evaluate the positions of various players within the industry. Develop a litigation strategy.

Part 2: A Comprehensive Strategy

Materials from the Los Angeles Taxi Workers Alliance

Discussion: How do we create a comprehensive strategy (litigation, legislation, media, public education, organizing) to transform working conditions in the industry?

In-class exercise: Take different pieces of the strategy and evaluate how they would be used. Come back together to evaluate how they would complement or conflict with each other.

Class 5: [Fri., June 26, 1:30 to 5:30 p.m.]

Readings—Part 1: Push back, immigration status and rights

Litigation Guide for Immigrant Worker Advocates (excerpt on undocumented rights)

Hoffman Plastic Compounds, Inc. v. NLRB, 535 U.S. 137 (2002)

Post-Hoffman decisions

Bill Ong Hing, David Bacon, "Rights, Not Raids," *The Nation*, April 29, 2009.

Discussion: How does immigration status affect the ability of workers to stand up?

In-class exercise: Role play.

Readings—Part 2: Push back, First Amendment and SLAPP suits

California Code of Civil Procedure § 425.16

Complaint in Bell Cab Co. v. South Asian Network, Case No. VC051895, filed Oct. 6, 2008

APALC Motion to Strike under C.C.P. 425.16

Discussion: What risks do workers take when they engage in litigation and a broader campaign for change? How do employers and corporations push back? What tools do workers have to resist? Evaluate in the context of the power of litigation and all of the other strategies covered in class.

In-class exercise: Hearing. Teams will represent different interests in the industry depending on the strategies you have developed. Prepare and deliver your testimony and/or argument. Be prepared to challenge and question others and answer their questions.

In-class group projects: Time to integrate arguments raised and hone your own strategy for the taxi industry.

Class 6: [Sat., June 27, 12 noon to 4 p.m.]

Group reports/presentations on comprehensive strategy.