

# Cause Lawyering

Elon University School of Law

Fall 2016

## General Information

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### Professor

Eric M. Fink

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Room A213

Tuesdays, 10:00 – 11:00 am, or by appointment <[calendly.com/emfink](https://calendly.com/emfink)>

### Class Meetings

Room 206

Tuesdays, 3:30 – 6:00 pm

### Description

“Cause lawyering” refers to the use of law to advance social or political goals. This course will examine cause lawyering in different practice settings (non-profit organizations, government agencies, private practice) and different types of legal work (litigation, policy advocacy, transactional work), focusing on the distinctive strategic, ethical, and other professional issues in cause lawyering.

The course serves as an accompanying course for students enrolled in residencies with public interest law organizations. Other students may also take the course, subject to availability.

## Course Material

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### Books

- 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)

### Articles

Assigned readings not included in the books listed above are available online via Westlaw, Lexis, HeinOnline, or JSTOR.

## Website

The course site (<http://facstaff/elon.edu/efink/CauseLawyering>) has links and additional resources related to cause lawyering.

## Course Policies

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### Class Attendance, Preparation, and Participation

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.*

You are expected to complete all assigned reading, remain attentive throughout class meetings, and participate in class discussions and exercises. The Elon Law School honor code applies to all activities related to your law school study, including but not limited to conduct during class and examinations.

### Assignments & Grading

There will be no final examination for this course. Instead, each student will write a short 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

The paper is **due November 8**. Each student will give a brief (10 minutes maximum) in-class presentation about their paper.

*Students enrolled as an accompanying course for the term-in-practice residency: In addition to the writing assignments described above, you will also keep records of your time and activity in the residency, and a journal identifying and critically reflecting on issues related to professional role and legal ethics as they arise in the residency experience.*

Your final grade will be based on your paper & presentation (as described above) (75%), and your contributions to class discussion (25%). For students enrolled

as an accompanying course, the journal submissions will be reviewed on a "pass-fail" basis. Excessive absences (3 or more classes), persistent lack of preparation, or inattention during class (including but not limited to inappropriate use of computers or electronic devices) may result in a reduction of your grade.

## Outline & Reading Assignments

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### 1. 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)

### 2. Cause Lawyering & Professional Ethics

#### 2.1 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)

#### 2.2 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)

### 3. Cause Lawyering & Social Movements

#### 3.1 Lawyers & Movements

- 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)

### **3.2 Lawyers & Activists**

- 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)

## **4. 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)

## **5. Cause Lawyering & Transactional Practice**

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

## **6. Student Presentations**