TEACHING LAW STUDENTS TO PRACTICE SOCIAL JUSTICE: AN INTERDISCIPLINARY SEARCH FOR HELP THROUGH SOCIAL WORK'S EMPOWERMENT APPROACH

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In clinical classes, students should learn that working toward social justice in their practice is both good and possible. After looking at the ABA Model Rules of Professional Conduct's lack of a clear definition of social justice and the way that this can hamper teaching students about social justice, this paper looks at social justice definitions from other professions and how social work in particular has demanded that their definition of social justice be actualized in practice. Discussing social work's “empowerment approach,” the paper describes the way it develops social work's definition of social justice and demands that social workers practice toward it. The paper suggests ways that we can adapt the empowerment approach to law practice so that our students will develop a strong sense of social justice toward which they can strive and by which they can evaluate their work.

It would be very easy for law students to leave law school believing that practicing law for individual clients means only helping people with money and power enforce laws that they or their predecessors have helped create by virtue of money and power while only occasionally helping people with fewer resources negotiate those laws. Even though we serve the poor and legally disenfranchised in our clinics and teach about valuing our clients’ lives and perspec-

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1 Although it is not universally true that clinical programs focus on serving the poor, many do in large part due to state practice rules that allow students to represent clients in court only if the client is a state actor or if the client is poor. For a history of student practice rules in clinical legal settings, see Peter Joy, Prosecution Clinics: Dealing with Professional Role, 74 Miss. L.J. 955 (2005), which discusses states adopting student practice

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tives,

2 our students can still have this vision of the law if our classes do not teach students to question and practice law within a broader social justice framework. 3 What do students learn from an SSI case if they

rules to conform with the ABA Proposed Model Rule Relative to Legal Assistance by Law Students, 94 Rep. of the A.B.A. 290, 290 (1969). According to Joy, the joint purpose of this rule was to get poor people representation and to encourage the development of clinical programs at law schools. Joy, supra, at 961. Some have gone further and hope that a primary purpose of student practice is to ensure that the private bar and non profit law firms get help from the law schools and their students in providing much needed representation to the poor. See Recommendations of the Conference on the Delivery of Legal Services to Low-Income Persons, 67 Fordham L. Rev. 1751 (1999):

Every state's student-practice rules should permit students to engage in legal representation, policy advocacy, community education, or other lawyering activities on behalf of all people or groups who would otherwise be unrepresented, under-represented, or represented by public interest or public service lawyers unable to serve every client who seeks their assistance.

Id. at 1794 (quoting Recommendation 114).

In Pennsylvania where I practice, this has played out in funding sources like IOLTA asking our clinics to report not just on educational objectives but on the numbers of clients served and the numbers of hours that our students have spent doing direct client service.

2 Respecting clients' values and perspectives runs the gamut of minimally accepting that clients should have some understanding of what is happening in their cases and accepting that clients must at least agree to settlements in their cases, see Model Rules Of Prof'l Conduct, R. 1.2 (2002), to teaching client centered lawyering, where clients' values become integral to understanding the case and case strategy. See Katherine R. Kruse, Fortress in the Sand: The Plural Values of Client-Centered Representation, 12 Clin. L. Rev. 369 (2006) (describing client centered lawyering and its variations).

3 This article focuses on practicing law with an eye toward social justice and demands defining it. Many others have felt that defining social justice is imperative to practicing toward it or teaching students to learn about it. For example, see Pamela Edwards & Sheilah Vance, Practice and Procedure: Teaching Social Justice through Legal Writing, 7 Berkeley Women's L.J. 63 (2001) (Social justice is the process of remedying oppression, which includes "exploitation, marginalization, powerlessness, cultural imperialism, and violence" and includes problems involving race, ethnicity, and interracial conflict, "class conflict, gender distinctions, . . . religious differences," and sexual orientation conflicts. Social justice also includes public interest work in its many guises.) Similarly, see Robert E. Rodes, Jr., Social Justice and Liberation, 71 Notre Dame L. Rev. 619 (1996), in which he defines social justice as follows:

The solution to the problem lies in the concept of social justice. Social justice is that branch of the virtue of justice that moves us to use our best efforts to bring about a more just ordering of society - one in which people's needs are more fully met. It solves the problem of assignability because it is something due from everyone whose efforts can make a difference to everyone whose needs are not met as things stand. I do not owe the man on the grate a place to live, but I do owe him whatever I can do to provide a social order in which housing is available to him. I do not owe any poor person a share of my wealth, but I owe every poor person my best effort to reform the social institutions by which I am enriched and he or she is impoverished.

Id. at 620-21.

A somewhat simpler definition was provided in an article discussing lawyering in a more strict Freirian empowerment model. See Daniel G. Solorzano & Tara J. Yosso, Maintaining Social Justice Hopes Within Academic Realities: A Freirian Approach to Critical Race/LatCrit Pedagogy, 78 Denv. U. L. Rev. 595 (2001) (defining social justice as "working toward the abolishment of racism, sexism, and poverty, and the empowerment of under-represented minority groups"). For the purposes of this paper, practicing within a social
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don’t learn to consider the values and biases built into a welfare system that has been created by people with money to discriminate between categories of people that have been deigned to deserve help? What do students learn from a landlord/tenant case if they don’t recognize it as an often unsuccessful dalliance by those without property to negotiate laws that were created by and are designed to benefit the propertied? When do we stop to teach our students that the legal system does not always serve the poor and disenfranchised and that it is part of our job as attorneys to address this by thinking about what social justice is and where we fit in? Where do we even find definitions of social justice that allow us to have this discussion and to work with our students to develop a working definition of it that they can use as a constant target toward which they should aim their practice? How do we remind ourselves and help our students see that practicing law is not value neutral and that we cannot practice without considering the consequences of our actions?

Although students in our clinics work with the poor and learn from us that law can be used to help the poor, we must do more than place our students and our clients in the same room if we hope to work toward social justice. Otherwise, our students may think that they are representing the poor due to state court practice rules and that our clients are just people whose legal misfortunes are our gains as we are able to work on their cases for practice. We must make clear to our students that our clinics exist to help our clients attain social justice and that social justice means more than just giving the poor access to counsel. We must teach them a model by which they can practice in a way that brings social justice into their practice.

Social justice must be our bailiwick. Not only do we as a group believe that there is such a thing as social justice, but we have been

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justice framework means instilling in our students that they are not to mechanically practice law by merely applying law to the facts of the individual case presented. Instead, they are to consider the oppressed condition of our low income community and practice law in a way that alleviates that oppression.

4 We have generally made statements as a bar that we believe in social justice and that our duty as attorneys is to bring social justice to the world. Some typical statements from our profession include the following statement from the incoming ABA president: “Public service work, pro bono representation, and provision of legal services to people of limited means are core components of our pursuit for equal justice under law. They are our most solemn responsibilities as lawyers, and they provide the greatest opportunities to affect positive social change.” Michael S. Greco, President-Elect, American Bar Association, Speech at the Equal Justice Council Awards & Recognitions Breakfast of the Maryland Legal Aid Bureau (May 25, 2005), available at http://www.abanet.org/op/greco/speeches/052505.pdf. Similarly, the ABA’s Section of Individual Rights and Responsibilities describes as its mission “provid[ing] leadership within the ABA and the legal profession in protectins and advancing human rights, civil liberties, and social justice.” http://www.abanet.org/irr/description.html.
entrusted by our colleagues to teach students to care about social justice and value public service. The AALS stated in the McCrate Report that clinics are to both teach students about the value of helping the legally needy and the limits of the legal system,\(^5\) noting that clinical programs have a particular responsibility to do so.\(^6\) The ABA and other bar associations encourage our students to do pro bono and community work when they become attorneys.\(^7\) It is through our

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\(^5\) See American Bar Association Section on Legal Education and Admissions to the Bar, Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (1992). A summary of these and other goals set out with the McCrate report that I have found helpful in organizing my thoughts about goals of clinical programs is in William P. Quigley, Introduction to Clinical Teaching for the New Law Professor: A View from the First Floor, 28 Akron L Rev 463, 471-473 (1995). It has been helpful to go through this article with my students as a way to talk with them about the dual goals of clinical teaching of teaching practice methods and serving clients.

\(^6\) I am not suggesting in this article that non-clinical teachers cannot or do not teach about social justice. I share the idea that clinical teachers are especially able to teach about social justice and working with the underrepresented—we have the client base there for our students to see and feel. We are working on the problems of the poor and we must focus on them. As Stephen Wizner wrote:

> What do students learn from representing clients in the law school clinic that they would not learn from their regular academic courses? First and foremost, they learn that many social problems, like poverty, can be seen and acted upon as legal problems. Second, they learn that legal representation is as necessary to the resolution of the complex legal problems of the poor as it is to those of the affluent. . . . Fourth, they learn to use the legal system to seek social change.

Steven Wizner, The Law School Clinic: Legal Education in the Interests of Justice, 70 Fordham L. Rev. 1929, 1935 (2002). However, people who teach non-clinical classes can and do teach about these issues. See, e.g., Deborah Rhode, In the Interest of Justice (2000). Others contribute strongly to the ideas of needing to work with the poor toward social justice. See generally Colloquium, What Does It Mean to Practice Law “In the Interests of Justice” in the Twenty-First Century?, 70 Fordham L. Rev 1543 (2002).

\(^7\) See Model Rules of Prof'L Conduct R. 6.1 (2002). Bar associations have occasionally taken more firm stands to encourage or demand that lawyers do pro bono work. In Ohio, a commission has recommended adopting a version of Rule 6.1 that would require attorneys to perform fifty hours of pro bono work or donate $500 to organizations that provide legal services to the poor. Ohio attorneys would have to report whether they have met their obligation under this Rule, although there will be no discipline if they fail to do so. See Supreme Court of Ohio Task Force on Pro Se & Indigent Litigants, Report and Recommendations of the Supreme Court 9-12 (2006). Similarly, the Michigan Bar Association is considering modifying its version of Rule 6.1 to adopt a 1990 voluntary standard of the state bar’s assembly, which suggested that an attorney should take three cases, volunteer at least thirty hours, or donate at least $300 annually to entities providing pro bono service. See Bob Gillett, The Bar and Pro Bono: Structure and Spontaneity, 85 Mich. Bar J., May 2006, at 33, 34. The ABA has a Law Firm Pro Bono Challenge in which it asks law firms to contribute 60 or 100 billable hours per year per attorney on pro bono work and have most of their partners and associates participate in doing the work. The actual challenge and further information about it is available through Pro Bono Institute at Georgetown University Law Center at http://www.probonoinst.org/challenge.php. Other efforts by attorney organizations include one by the Association of Corporate Counsel, who partner with the Pro Bono Institute to encourage pro bono work by its constituents. Information about the Corporate Pro Bono group (“CPBO”) is available at
teaching that we can bring about a bar that is willing and able to serve the poor and the community.

This paper is based on two premises. First, if we want our graduates to do legal work toward social justice, we must ingrain in them a concept of social justice that is both strongly held and operational. It must be strongly held so that students learn to demand of themselves that they strive toward achieving it by tailoring the work they do to meet social justice goals, whether they do so by directing their private practice toward those goals, by doing meaningful pro bono work, or by becoming public interest attorneys. It must be operational in that the definition must give students direction to determine if the work they are doing is toward social justice. Unless it is operational, the students when they become lawyers later will have to guess at whether the work they do is valuable. We need a social justice target at which to aim and not just hope to have a general feeling that we are doing good.

The second premise of this paper is that we have much to learn from the pedagogies of other disciplines about how to teach this to our students through their work in our clinics. This paper focuses on one effective way that social work does so when teaching practice methods defined by the “empowerment approach.”

Although for much of this article I organize thoughts about empowerment by focusing on Judith A.B. Lee, The Empowerment Approach to Social Work Practice (2nd ed. 2001), empowerment of the poor and connecting the poor to their communities as a means of addressing issues faced by clients has a long tradition in social work. The terminology of empowerment was not used prevalently until the work of Barbara Solomon. See Barbara B. Solomon, Black Empowerment: Social Work in Oppressed Communities (1976). However, the social work movement has had many iterations of theory which focused on empowering people since at least settlement house movement of the late 1800’s and early 1900’s. Other people who have employed empowerment theory in social work include Elaine Pinderhughes. See Elaine M. Pinderhughes, Empowerment for Our Clients and for Ourselves, 64 Soc. Casework 331, 334 (1983) [hereinafter Pinderhughes, Empowerment for Clients] (defining empowerment in the slight variant of “the ability to cope constructively with the forces that undermine and hinder coping, the achievement of some reasonable control over their destiny,” the goal being to “[a]ssist[ ] clients to exert their own power and to obtain needed resources”). See also Elaine M. Pinderhughes, Empowering Diverse Populations: Family Practice in the 21st Century, 76 Families in Soc’y 131 (1995); Carel B. Germain & Alex Gitterman, The Life Model of Social Work Practice: Advances in Theory and Practice (2nd ed. 1996). As discussed infra in Section IIIA, empowerment approaches and focusing on bringing social justice to oppressed classes is not accepted by all social workers. However, such approaches are prevalent and required curriculum at accredited social work schools.

Although I would like it to be a premise of this paper that the empowerment approach is a good way to teach social work, I am not a social work educator. When I informally have discussed whether the empowerment approach is a good method with teachers at Temple University’s social work school, some have fully supported the teaching but fear that teaching the approach may end as insurers do not want to pay social workers to empower people and are more likely to want to pay them to “treat” them. Treating may have
firmly defines social justice as giving power to the powerless, a definition that can apply to most of the situations in which social workers find themselves. It lends itself both to work with individuals and to work with communities to address systemic change. The approach demands that social workers incorporate that definition and mandates that they look at all the work that they do to determine whether the actions they take meet the standard of addressing power imbalances, including determining what populations they will serve, which cases they will handle, and which interventions are appropriate to address their clients' issues.

As lawyers, we want our profession to be on the forefront of seeking social justice and want to teach our students to do the same. At this point, other disciplines appear to be more on the forefront in demanding that the social justice implications of professional interventions be considered in the clinical work of their students and practitioners. This paper looks at how social work's empowerment approach can help us teach a similar commitment to social justice to our law students. Part I of this paper describes the problem in more detail. It looks at some legal sources to which students might look for guidance, particularly our *Model Rules of Professional Conduct*, and discusses the lack of help that students find there. It suggests that in order to discuss social justice with and on behalf of our clients, we must help our students come up with a definition of social justice that they can use. Part II of the paper looks at social work's ethical code as well as the codes of some other professions. Those codes do a better job of defining social justice operationally than we have done in our codes and practice materials. Part III of this paper looks at the empowerment approach in social work teaching. It describes its more fully elucidated definition of social justice and a social worker's role in promoting it. Part IV looks at how clinical pedagogy could incorporate the empowerment approach. It uses my disability clinic as an example and describes some things that I have done or could do in the clinical setting to teach the ideas of the empowerment approach. It looks at the parts of the approach that are most relevant, including its use in defining problems, recognizing solutions, and seeking systemic change through a practice that focuses on the problems of individuals.9

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9 A colleague who reviewed this paper asked me who the “we” is that believes we need to teach social justice and is seeking to find something like the empowerment approach to help teach this. I hope that “we” includes many or most clinical and non-clinical teachers who believe that doing some work toward making the world a better place should be part of a lawyer's practice. “We” certainly includes me, although I do not say “I” in
I. TALKING ABOUT SOCIAL JUSTICE WITH LAW STUDENTS: WHY WE NEED THE EMPOWERMENT APPROACH

A. The Need For A Theory Of Social Justice

My student, Susan, hesitates to go to see a client, Ms. B, a 48-year-old African American paraplegic who lives in a gentrifying neighborhood in West Philadelphia. The neighborhood was once crime ridden and populated by low income residents but has changed dramatically over the past ten years so that many of my students now live there; Susan does not feel unsafe going there. Her concerns stem from the bare bones facts of the case that she got on the phone that make the case appear futile—Ms. B's landlord wants to raise her monthly rent from $400 to $800 and the client objects as she cannot afford it on her monthly $870 Social Security Disability Income benefit. The client knows that she cannot afford this raised rent and she believes it is unfair and must be illegal.

Although Susan is willing to consider that this is unfair, she is not hopeful about the case. We have no rent control. With nothing more, the law will likely allow the landlord to raise the rent. Susan knows of no clear law into which the client's problem neatly fits to address the client's needs. Besides this, Susan is practicing in my clinic for people with disabilities and the seriously ill, which has traditionally focused on handling SSI cases and simple estate planning. We have spent much of our time in the academic component of our class learning about those substantive areas. Susan feels that we are doing enough in those areas and that landlord/tenant "is not the kind of law that we do."¹⁰

Further, Susan does not want to help this client because Susan is unhappy at being asked to make a home visit. Ms. B does not want to come into the office. Susan interprets Ms. B's unwillingness to come to us as showing Ms. B's lack of commitment to her own case. Although Ms. B uses a wheelchair due to her paraplegia and other impairments, Ms. B makes other appointments and the student feels that the Ms. B.

much of this paper unless I am talking about specific things that I have done with my students.

¹⁰ Our clinics often define our client base and our strategies for our students. We may choose to help people with certain traits (like ours that helps clients with severe illnesses or disabilities) or to help people with certain types of legal problems (like handling only SSI or family law cases). Limiting our methods may not be the best ways to serve the poor—it limits actions that some believe are important in representing people. See Anthony V. Alfieri, The Antinomies of Poverty Law and a Theory of Dialogic Empowerment, 16 N.Y.U. Rev. L. & Soc. Change 659, 664 (1987-1988) (arguing that no representation should be done unless it activates class consciousness and politically mobilizes the poor). For the purpose of this example, it may be more limiting that Susan is willing to say that there are certain things that we do for our clients by clinic rule and that is enough to close her mind to other problems that our clients face.
would make an effort to come to us if the case were important enough. We have spent a lot of time in our class talking about the abilities of our client base of people with disabilities and this client appears unwilling to use hers. This seems like a cut and dried case to Susan, who does not feel the need to see the client, the apartment, or the community to evaluate the case.

At my prodding, Susan goes to Ms. B’s home. When Susan gets to the apartment, she discovers several things that she did not elicit on the phone from Ms. B and which she thinks Ms. B could have told her. There are seven steps into the apartment, steps about which Susan did not ask on the phone and which Ms. B did not reveal. Ms. B cannot traverse the steps in her wheelchair. In fact, Ms. B tells Susan that her landlord does not want her there because he fears she will not be able to get out of the apartment in an emergency. Ms. B is willing to take that chance and has an elaborate network of neighbors and family members who help her get in and out of her apartment when she needs to leave.

Inside the apartment, it is clear to Susan that the gentrification of the neighborhood has not extended to any rehabilitation of the apartment. Although the apartment is better than many that our clients experience, it has several code violations, including some open electrical wires and leaky pipes. Ms. B also did not mention these problems to her on the phone. The landlord has told Ms. B that the conditions will be fixed when she begins to pay the higher rent. Ms. B expects that the landlord just wants her out and afterwards will fix up the apartment.

Ms. B has lived in this neighborhood for twenty-five years and wants to stay there because she knows it and likes it. Besides, it would be daunting for her to move in her condition and have to learn or fight for accessible ways in a new neighborhood. Further, she knows that there is no way that she will be able to afford to move to another apartment in this or any other “nice” neighborhood due to the shortage of accessible housing and subsidized housing. She has nowhere to go.

Susan sees a landlord who is trying to rent an apartment for what the landlord may see as the going rent in this revitalizing neighborhood. There is a tenant who cannot pay the rent but she does not see this as the landlord’s problem. The landlord may seem paternalistic, but maybe the landlord has the tenant’s best interest at heart in trying to get her out of an apartment from which she could not escape in a fire due to her disability. Susan would hate to help the tenant stay in this place and learn that the client died in a fire. Besides, the student herself has lived in some pretty unappetizing places as a student and knows that rental housing is never perfect. She knows that there are laws regarding habitability of apartments, but these code violations do not seem too bad. The landlord will just fix them and even if the landlord cannot kick the
tenant out the first time, he will be able to do it as soon as he fixes up the problems and raises the rent to one the client cannot afford.

Susan knows that there are tenant groups in the city that advocate for better housing. The student has been to the local Center for Independent Living and met its advocacy group. However, she does not see the relevance of these organizations to the legal problem—the landlord wants to raise the rent and the law says it is okay to do so. The landlord has the power to do what he wants with his property eventually so we should let him. From our class discussions and our class trip to talk with housing counselors at the local Center for Independent Living, Susan agrees that there may be nowhere for this client to go. She hopes that a housing counselor will be able to find the client some housing in a “not too bad neighborhood.”

Susan is hampered in her evaluation by several problems that are common to many students, even to those that come to our classes with the desire to do public interest law. It begins with the mistaken belief that it is appropriate to evaluate the facts of the situation solely by looking at it through the lens of her experience. The student may have very little life experience and her experience may not be relevant to the client’s experience. The student’s problems continue with romanticizing her client as needing to be almost perfect.

11 There is certainly more going on here than this student needing to learn about social justice. This student needs to learn about good lawyering. Among other things, the student is not very good at fact gathering. She is satisfied that she understands the story behind this case based on a short phone call through which she gathered very few facts. This says something about her ability to develop facts in the way a lawyer should for any type of case. Gathering relevant facts and working toward solutions is even more difficult for students who are working with the poor if they do not have a sense of social justice. Students may not know what questions to ask if their life experiences are different from their clients. They also just may not ask if they do not have a sense of social justice to motivate them to really want to help their clients and delve more deeply into them.

12 For a well-cited demonstration of how a strategy that would incorporate a client’s vision of social justice would be impossible without recognizing the clients’ needs, see Lucie G. White, Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Ms. G, 38 Buff. L. Rev. 1 (1990) (discussing why clients do not discuss their needs, including being intimidated, being humiliated by the situations they are in, and having their situations objectified). See also Anthony V. Alfieri, Disabled Clients, Disabling Lawyers, 43 Hastings L.J. 769 (1992) (arguing that lawyers take away client narratives of their lives by refusing to accept that their narratives have value and that clients should participate in defining case tasks and strategies toward the end of, among other things, promoting client autonomy and political strength).

13 See Cathy Lesser Mansfield, Deconstructing Reconstructing Poverty Law: A Practice-based Critique of the Storytelling Aspects of the Theoretics of Practice Movement, 61 Brook. L. Rev. 889 (1995) (arguing that all poor people do not look the same and that their cases should be handled however the attorney deems best to address the goals that the client defines).
maybe one flaw that has led to the legal problem.\textsuperscript{14} She also romanticallyizes the legal system and expects a lot of it, believing that all legal problems can be analyzed and resolved through legal system mechanisms alone.\textsuperscript{15} Further, she sees the problems of individuals as unique to each person, believing that our local community is a neutral entity with little relevance to resolving their clients' problems. Part of this is not being able to see her client's case in context—she is not looking at all of the parts of the world that are pressing on the client and affecting the client.\textsuperscript{16} However, part of it is also that she sees social justice as a concept that may be talked about in her clinical and non-clinical classes but as something about which she need not think while evaluating Ms. B's case. Maybe she hopes that by working with someone whom she knows is poor and has a disability, she is "doing" social justice. Her willingness to have the clinic remain focused on priorities it has traditionally handled allows her to not consider where injustices exist but rather to traipse through her clinical experience letting someone else define the types of cases that should be handled and allowing her to avoid evaluating for herself why certain cases need to be handled. She has nothing from which she can extrapolate what cases she might handle to serve social justice needs in her legal career.

What this student needs is a sense of social justice. Without it, she has no tools to effectively analyze the situation and assist this client. She needs to understand how poverty and disability affect this client. She needs to see that although this person has been found to be disabled by the government and deserving of support, the income she is given is way below her needs, even though she is one of the people who worked and paid into the system. She needs to feel the injustice of inadequate housing for this client. She needs to feel the wrong the landlord is committing by renting substandard housing. She needs to want to find a solution for this client. She needs to learn that this is a problem faced by others in the community and to see if

\textsuperscript{14} See William H. Simon, The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era, 48 U. MIAMI L. REV. 1099 (1994) (arguing that lawyers who believe in empowering individual clients think that we can come to a consensus on community interests by trivializing the differences between client interests and that acting toward the collective good is problematic with unique individuals).


\textsuperscript{16} For a discussion of the importance of seeing the client in the community, see Solorzano & Yosso, \textit{supra} note 3.
there are community resources or actions that can be taken to work on these problems. She needs to understand that the client is doing nothing wrong by trying to stay where she is. She needs to understand the power that the landlord has and the lack of power the client feels and to find ways to address this power imbalance so that the client will be able to live in the community. She must know that the power imbalance is not accidental but that many low income tenants will face the same problems with their landlords. Further, she needs to understand the consequences of her failure, including likely homelessness or institutionalization for this paraplegic, and almost certainly not an accessible home in a “nice” or a “not too bad” community.

B. Talking With Students About Social Justice Obligations Using Our Model Rules

When Susan thinks about her responsibilities to her clients, it is unlikely that she will begin with any idea that her duties to her client have anything to do with promoting social justice. Although Susan may have taken professional responsibility already and may have learned about theorists who believe that we have a moral or ethical obligation to act toward social justice, Susan is likely to believe that she will be fulfilling her professional obligations if she follows our state’s version of the Model Rules of Professional Conduct. She knows that it is the Rules on which she has been or will be tested on in the MPRE. It is there that she will likely want to look to determine how she must practice to practice ethically toward social justice. It is also unfortunate that when Susan studies these Rules, she will find virtually nothing that will help her define what social justice is for lawyers or how to practice toward it. The Rules differ from other professional codes in that they describe very few “goods” toward which we should practice and give us too many outs in allowing us to choose not to practice toward those “goods” we are willing to define. They do virtually nothing to describe problems in society

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18 Passing the Multistate Professional Responsibility Exam (MPRE) is a prerequisite to bar admission in most states. To a large extent, it tests a person’s understanding of the ABA’s rules. Information about that exam is available at http://www.ncbex.org/multistate-tests/mpre/. See Jane B. Baron & Richard K. Greenstein, Constructing the Field of Professional Responsibility, 15 Notre Dame J.L. Ethics & Pub. Pol'y 37 (2001), for a discussion of law school ethics classes and textbooks that focus predominantly on ethics as a field of law and focusing on the Model Rules as a way to teach the subject and pass the MPRE when the matter could be taught as a way to bring morals and other ethical principles to bear on one’s practice. They argue it has the effect of separating moral responsibility from law and professional responsibility from ethics.
19 It is explicit in the newest iteration of Rule 6.1 that the attorney “should” do pro bono work and that the Rule had to include the word “voluntary” in it. In its comments, it
that we might address, even problems that should not be controversial like abuse or human rights violations. There is nothing to help us evaluate whether the work we are doing is in the public or community interest. There is nothing about problems that affect those most often unrepresented by attorneys. Interpreting our rules, we cannot decide whether we are working toward social justice.20

There is a hint of what social justice is in the Preamble to the Rules but it does little to elucidate Rule 6.1 or any other social justice definition. Describing a lawyer’s duty as a public citizen, the Preamble notes that “lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.”21 This suggests that social justice may include ensuring that people can access the legal system when they need it. However, it does not discuss what is necessary to bring justice to the world other than a voice in the legal system. There is nothing to suggest, for example, that working on issues that can address basic human needs has special value.22 Similarly, the Preamble suggests that lawyers should work toward “improvement in the law.”23 However, there is nothing suggesting what improvement in the law would be.

The inability of the Rules to define social justice substantively is even more apparent when we look at how the goals of the Preamble are put into force in the rules themselves. It might be argued that ABA Rule 6.1 attempts a substantive definition of social justice by suggesting that attorneys have a duty to serve the poor. Rule 6.1 prescribes aspirational goals of fifty hours of pro bono service to “(1) persons of limited means or (2) charitable, religious, civic, community,

states that it is not enforceable in any way. Model Rules of Prof’l Conduct R. 6.1, Cmt. 12 (2002) (“The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.”)


22 This may eventually work its way into Rule 6.1 or the Preamble based on work being done to seek “civil Gideon” funding so that all low income people have access to counsel in civil cases. A recent ABA resolution passed promoting a civil Gideon sought to allow for counsel to the poor “as a matter of right” for “adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody.” It seems possible that this type of language could eventually infiltrate Rule 6.1 as the ABA works toward getting private attorneys to do their share toward getting this access to civil counsel. See ABA House of Delegates Resolution 112A (August 2006).

23 Model Rules of Prof’l Conduct, Preamble, ¶6 (2002).
Teaching Law Students to Practice Social Justice

governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means.\(^{24}\) However, this rule is merely an access to counsel rule that suggests that we should help the poor and otherwise underrepresented without stating the goals for doing so. The rule suggests neither why the poor and underrepresented need help nor that we should work to change the conditions of the poor. Issues of race, gender, class, inequality, and discrimination in society are absent.\(^{25}\)

\(^{24}\) **Model Rules of Prof'L Conduct R. 6.1 (2002).**

\(^{25}\) Some states have discussed the problem of racism, sexism and discrimination in their ethical codes, although they focus not on whether lawyers should fight discrimination as part of their work but instead want to ensure that lawyers do not act inappropriately themselves. For example, New York has an ethical rule against discriminating in selection of clients. See Robert T. Begg, *The Lawyer’s License To Discriminate Revoked: How A Dentist Put Teeth In New York’s Anti-Discrimination Disciplinary Rule*, 64 ALB. L. REV. 153 (2000) (discussing the modified New York Disciplinary rule that states in part that “A lawyer or law firm shall not...”). N.Y. COMP. CODES R. & REGS. Tit. 22, §1200.3(6) (2006). Although this rule looks like it prohibits discrimination mostly by lawyers against their employees, Begg argues that this law, in combination with discrimination cases, prohibits discrimination in case selection. Begg, *supra*, at 156. This rule, however, does not suggest that discrimination is necessarily a societal wrong and that a lawyer should take cases that would prevent discrimination or other matters that are just wrong. See also Spencer Rand, *Complying with the ADA: As Service Establishments, Law Offices Must Accommodate People with Disabilities*, 66 PHILADELPHIA LAW. 15 (2003) (arguing in part that we are covered entities under the ADA because we are not monitoring ourselves through our Model Rules and that until our Rules prohibit us from discriminating in client selection, attorneys are likely objects of legislation to guarantee that we do not do so).

Other professions have been willing to add to their ethical codes statements that suggest that discrimination by their professionals in client selection is unethical. One example is dentistry:

Section 4 Principle: Justice (“fairness”). The dentist has a duty to treat people fairly. This principle expresses the concept that professionals have a duty to be fair in their dealings with patients, colleagues and society. Under this principle, the dentist’s primary obligations include dealing with people justly and delivering dental care without prejudice. In its broadest sense, this principle expresses the concept that the dental profession should actively seek allies throughout society on specific activities that will help improve access to care for all.

Code of Professional Conduct


While dentists, in serving the public, may exercise reasonable discretion in selecting patients for their practices, dentists shall not refuse to accept patients into their practice or deny dental service to patients because of the patient’s race, creed, color, sex or national origin.

**American Dental Association, Principles of Ethics and Code of Professional Conduct** 6 (2005), available at http://www.ada.org/prof/prac/law/code/ada_code.pdf (emphasis in original). The code goes on to give an advisory opinion specific to treating people with blood borne pathogens like HIV and Hepatitis and finds it unethical to refuse to discriminate in treating people with these illnesses as well. *Id.* at 7 (Advisory Opinion 4.A.1).
Further, states have been slow to embrace even the aspirational goals of Model Rule 6.1. More than two-thirds of states have never adopted the suggested fifty hour requirement. Nineteen states have a version of Rule 6.1 that predates the 1993 revisions of the Rules. The pre-1993 Rule did not put a premium on serving the poor through *pro bono* work but equally valued meeting the requirement by working on improving the law or teaching continuing legal education classes. As there is no social justice definition, the lawyer might believe he is meeting his *pro bono* obligation by lobbying for lower taxes for attorneys. The lawyer might take cases trying to rid their state IOLTA accounts, perhaps having some rationalization that this will improve the law or the plight of the underrepresented. Similarly, an attorney trying to satisfy Rule 6.1 by representing charitable groups gets little guidance on how this improves the condition of the poor or disenfranchised. Further, donating money to an organization also fulfills *pro bono* obligations under many of these rules. Attorneys might meet their obligations by making substantial donations to a legal service organization but could also spend $20 to attend a legal services walkathon.

Only fifteen states and the District of Columbia have versions of rule 6.1 that ask attorneys to do fifty hours of *pro bono* work. The states that do so are Alabama, Arkansas, California, Colorado, the District of Columbia, Georgia, Hawaii (although twenty-five of those hours case be aimed at the public good generally), Kentucky, Louisiana, Maryland, Minnesota, Montana, New Mexico, Oregon (which asks for eighty hours), Texas, and Vermont. See American Bar Association's Standing Committee on Pro Bono and Public Service and the Standing Committee on Pro Bono, State by State Pro Bono Service Rules (chart), available at http://www.abanet.org/legalservices/probono/statetheercules.html.

Model Rule 6.1 formerly read as follows:

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.


For example, I had a Pennsylvania attorney state that he was doing *pro bono* work because he had incorporated the children's athletic league of a rich suburban town so that the town would not get sued. Pennsylvania is one of the states still operating under the 1983 version of Rule 6.1. Under that rule, he could fairly interpret this as completing his *pro bono* obligation. PA Rules of Prof'L Conduct R. 6.1 (1987) (amended 2004).

See Scott Cummings, *The Politics of Pro Bono*, 52 UCLA L. Rev. 1, 32 (2004) (suggesting that an attorney could read into an earlier version of Rule 6.1 that representing the poor is entirely voluntary and that even if a person wanted to take on the obligation of doing so, allowing work with charitable groups to discharge the obligation is an "open invitation" to allow one to believe that they have entirely discharged their obligation to the poor without ever representing a poor person). Cummings does not believe that further
Not only do the Rules fail to define substantive ideals of what social justice might be, they suggest that lawyers should be able to practice toward any goals at all with impunity. Model Rule 1.2 states "[a] lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities." This permission to engage in amoral practice allows attorneys to undertake legal representation without evaluating whether assisting their clients' goals is consistent with substantive definitions of social justice. Model Rule 1.2 absolves lawyers from sharing their clients' values or even practicing toward values that a lawyer finds important.

In addition to providing only minimal guidance to individual lawyers, the Model Rules of Professional Conduct do nothing to help the legal profession reach a consensus on social justice values. As lawyers, we are left without any common source for describing social justice. We cannot strive for something as a community if we have not defined it. We cannot even work toward access to justice if all we are iterations of the Rule, including the 2002 modification, made significant changes in this area. Id. at 32-33.

Some bar associations have tried to establish middle ground by demanding that their bar officers or others who are to be exemplars in the community work toward access to counsel. An example of this is the Philadelphia Bar Association, that recently amended its bylaws to provide that members of the board must be involved in pro bono work:

Section 216. Pro Bono Requirement.
(A) On or before July 5 of each year, each member of the Board of Governors shall provide written certification to the Assistant Secretary that during the 12-month period ending on June 30 of such year such member has satisfied, in addition to such member's service on the Board of Governors, one of the following:
(1) Has undertaken one new pro bono matter, which shall mean providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations; or
(2) Is employed on a full time basis by a public interest organization, or
(3) Has provided alternative support if such member is prohibited from handling a pro bono matter based upon his or her position or is prevented from handling a pro bono matter due to other circumstances. “Alternative support” shall mean service in activities for improving the law, the legal system or the legal profession or by financial support for organizations that provide legal services to persons of limited means.

Bylaws of the Philadelphia Bar Association, available at http://www.philadelphiabar.org/page/ByLawsArticle2?appNum=2&wosid=rcb9ylQoHP02kJKPQKHfpn0. That bylaw goes on to suggest that a member of the Board of Governors could be given a pro bono case if they have not certified that they have met this rule and disciplined for not following this rule. Similarly, the Philadelphia Bar Association has done things like give discounts to public interest attorneys for certain things, provided space at times to pro bono organizations, and allowed pro bono agencies to solicit their members.

32 Many have expressed the view that lawyers cannot allow themselves to ignore their own moral positions. One way that this could be incorporated in practice would be to amend Rule 1.2 or to add a new rule which would specifically tell attorneys that they should consider their moral beliefs. See Russell G. Pearce, Model Rule 1.0: Lawyers Are Morally Accountable, 70 Fordham L. Rev. 1805 (2002).
willing to say is that we "should" do so and if we relieve each other of that duty if we work on "improving" the law.

There is little that Susan can divine about whether to represent Ms. B or how to analyze her case with an eye toward social justice using the Model Rules. She can get from Rule 6.1 that there is a value to representing Ms. B if we determine that Ms. B could not access the legal system without our help. Based on federal poverty guidelines as they now exist, we can make a compelling argument that she would not be able to afford counsel. We cannot, however, work with Susan to decide if she is pursuing social justice if she accepts or declines the case. There is more to the question than whether the person is poor. There is nothing to distinguish Ms. B's housing problem from a dog bite case, a custody case, a criminal case, or a fishing license case. We cannot point our students to the Rules and have them develop their own sense of justice from it. As clinical teachers, we must look elsewhere to show our students that as professionals, we can strive toward social justice and can demand that our work is so aimed.

II. TALKING WITH STUDENTS ABOUT PROFESSIONAL OBLIGATIONS

One way to begin to have the discussion with students of why and how to practice toward social justice is to discuss other professional codes with them. In my classes, I do this by bringing up the NASW Code of Ethics as a prelude to the empowerment approach. However, as law students are often quite certain that they do not want to be social workers, it is not enough to look only at this code. We look at other professions as well and their codes to talk about professionalism and a social justice duty.

33 There are those that would argue that federal poverty guidelines are a bad way to assess whether a person is poor. As will be discussed later in this paper, I discuss the poverty line in class with my students. It has yet to be questioned among my students whether a person is likely to need help who is under the poverty line or who is under 125% of the poverty line, which is the cutoff for legal services that we share with Legal Service Corporation grantees. 45 CFR 1611.3(c)(1). Among other discussions we have include whether we should adopt other guidelines for our office to the extent we are allowed to do so that would be more consistent with a more reasonably set poverty guideline. I have shared with my students a review I wrote for the local bar association and for my student’s benefit of William Quigley, Ending Poverty as We Know It: A Constitutional Right to a Job at a Living Wage (2003), which includes an assessment of what would be a more fair poverty guideline. See Spencer Rand, There Oughta Be a Law: Steps can be Taken to Provide a Living Wage for Everyone in America, 67 Philadelphia Lawyer 54 (2004). Quigley suggests looking at guidelines developed by Six Strategies for Family Economic Self-Sufficiency, available at www.sixstrategies.com. We have used these guidelines to consider whether a person below guidelines described there should necessarily qualify for our services.

The National Association of Social Workers (NASW) Code is explicit that working toward social justice is part of what it means to be an ethical social worker. The social work profession is not only willing to say that social workers must work toward social justice; they are willing to define what social justice means. As Aiken and Wizner have pointed out, the social worker’s code of ethics has a consensus definition of social justice to which all social workers are to strive, meaning that a social worker would not be practicing ethically unless he or she strives toward it.\(^\text{35}\) The social work defines social justice as follows:

**Value**: Social Justice

**Ethical Principle**: Social workers challenge social injustice.

Social workers pursue social change, particularly with and on behalf of vulnerable and oppressed individuals and groups of people. Social workers’ social change efforts are focused primarily on issues of poverty, unemployment, discrimination, and other forms of social injustice. These activities seek to promote sensitivity to and knowledge about oppression and cultural and ethnic diversity. Social workers strive to ensure access to needed information, services, and resources; equality of opportunity; and meaningful participation in decision making for all people.\(^\text{36}\)

The NASW definition should be amazing to an attorney who is used to the Model Rules’ vague definition of practicing like a “public citizen” and hoping that by having a few of us giving access to the legal system we will somehow bring social justice to our world.\(^\text{37}\) The NASW Code actually defines some things need to be addressed: pov-

\(^{35}\) Aiken & Wizner, supra note 20. Among other things, Aiken and Wizner argue that social work teaches its students a passion for social justice that law school does not. Many in social work consider the founding principles of the profession to come from focusing on social justice. Aiken and Wizner take this on in the context of discussing students’ confusion about the social mission of our clinics and their sometimes plaintive complaint that we are asking them to practice social work when they want to practice law. They argue that taking on social work’s ideas of social justice and adapting them to our work is a good thing. They suggest that social work schools strive toward making social workers passionate advocates for justice while law school “is designed to neutralize passion by imposing a rigor of thought that divorces law students from their feelings and morality.” *Id.* at 73. They note that lawyers can hide behind the adversary system and choose to not consider whether they are serving social justice in their work while social workers are not permitted the same luxury, having a duty to refuse to act on behalf of a client whose requests do not serve the public interest. *Id.* at 77-79. They argue for “[s]ocial justice education” in law school to inspire students to work on behalf of the powerless. *Id.* at 73. They go on to describe what they would like lawyers who consider justice to be like, seeking to make lawyers the instruments of empowerment of socially responsible, self-determining clients by looking at clients’ problems holistically and seeking to use the community as a resource. *Id.* at 74-76.

\(^{36}\) NASW Code; Aiken & Wizner, supra note 20, at 65-66, 80-81.

Property, unemployment, and discrimination are wrong and unjust. Further, equality of opportunity is a value for which we should strive. The Code recognizes that it is important to give people the information, services and resources that they need to make real decisions that improve their lives. It is not just that social workers must provide access to social work services—social workers must strive to improve the world on the part of the disenfranchised and take up their causes. Social workers can look at this definition and gauge whether the work they are doing is striving toward social justice.

The NASW Code continues in Rules 6.01, 6.02 and 6.04 to demand action to back up the social justice value defined in the preamble. Rule 6.01 demands advocating for social welfare, including "advocat[ing] for living conditions conducive to the fulfillment of basic human needs and . . . promot[ing] social, economic, political, and cultural values and institutions that are compatible with the realization of social justice."38 Rule 6.02 demands "public participation" in setting social policy.39 Rule 6.04 demands taking "social and political action" to "expand choice and opportunity for all people, with special regard for vulnerable, disadvantaged, oppressed, and exploited people and groups" and "to prevent and eliminate domination of, exploitation of, and discrimination against any person, group, or class on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability."40 Rules 6.01, 6.02, and 6.04 not only define social justice but demonstrate that a social worker must be an active participant in making sure that the world becomes a better place. Each social worker must take aim at societal wrongs on which the profession agrees and each must take active steps to address those wrongs.

Had Susan been a social work student intern, she would have had a much better idea of her role in this case. She would be able to think of Ms. B as being from a disadvantaged, oppressed, or exploited group. She would have known that part of her role was to advocate for appropriate living conditions and expanded choices and that leaving Ms. B with no options was not acceptable. She would have thought about whether political options were required to try to expand the housing base for her client and others like her. She might not yet have known the method, but she would have known that she had to advocate for housing with the client.

Bringing social work's ideas to class is not necessarily enough because law students do not always value social work ethics. Because

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38 NASW Code, Rule 6.01.
39 NASW Code, Rule 6.02.
40 NASW Code, Rule 6.04.
social work is founded in part on establishing social justice, some students assume that what social workers say about social justice is not mainstream among professions. Many law students already feel that social justice is so central to the mission of the social work profession that having the NASW Code talk about social justice says more about social work than professionalism.

To help counteract these reactions, I have also brought the American Nurses Association (ANA) code of ethics to class. The ANA code has proven an interesting example because like lawyers, nurses do not define their work as solely helping the poor and disenfranchised and serving a more expanded client base. Further, like lawyers, nurses serve the rich and poor. But like NASW, the ANA has adopted a code that has a strong vision of social justice:

**Provision 8:** The nurse collaborates with other health professional and the public in promoting community, national, and international efforts to meet health needs.

**8.1 Health needs and concerns** – The nursing profession is committed to promoting the health, welfare, and safety of all people. The nurse has a responsibility to be aware not only of specific health needs of individual patients but also of broader health concerns such as world hunger, environmental pollution, lack of access to health care, violation of human rights, and inequitable distribution of nursing and health care resources. The availability and accessi-

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42 Other codes of ethics could have been used as well but many do not state things as explicitly as social work or nursing. For example, the American Medical Association’s Principles of medical ethics do not use the words social justice to define their responsibilities. Instead, they talk only of recognizing a responsibility to help support community health and do not say directly that one must act. American Medical Association, Principles of Medical Ethics (2001), available at http://www.ama-assn.org/ama/pub/category/2512.html (“A physician shall recognize a responsibility to participate in activities contributing to the improvement of the community and the betterment of public health.”)

Some codes that I have not used include that used by psychologists, which is similar to the law in suggesting that justice is ensuring access to professional services. American Psychological Association, Ethical Principles of Psychologists and Code Of Conduct VII (2002), available at http://www.apa.org/ethics/code2002.pdf (“Psychologists recognize that fairness and justice entitle all persons to access to and benefit from the contributions of psychology and to equal quality in the processes, procedures, and services being conducted by psychologists.”) However, even that code suggests that one should not discriminate in one’s work, presumably in relations with co-workers but also in selecting patients. Id. at Rule 3.01 (“In their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, socioeconomic status, or any basis proscribed by law.”)

One might wonder if social work and nursing define social justice as part of their work more than other professions because the profession includes and may be dominated by women. I will leave that to others to analyze.
bility of high quality health services to all people require both inter-
disciplinary planning and collaborative partnerships among health
professionals and others at the community, national, and interna-
tional levels.

8.2 Responsibilities to the public – Nurses, individually and collect-
ively, have a responsibility to be knowledgeable about the health
status of the community and existing threats to health and safety.
Through support of and participation in community organizations
and groups, the nurse assists in efforts to educate the public, facili-
tates informed choice, identifies conditions and circumstances that
contribute to illness, injury and disease, fosters healthy life styles,
and participates in institutional and legislative efforts to promote
health and meet national health objectives. In addition, the nurse
supports initiatives to address barriers to health, such as poverty,
homelessness, unsafe living conditions, abuse and violence, and lack
of access to health services.
The nurse also recognizes that health care is provided to culturally
diverse populations in this country and in all parts of the world. In
providing care, the nurse should avoid imposition of the nurse’s own
cultural values upon others. The nurse should affirm human dignity
and show respect for the values and practices associated with differ-
cent cultures and use approaches to care that reflect awareness and
sensitivity.43

As in social work, the description of social justice in the nursing
code is strong, even if different terms are used. Among other things,
the Code is willing to state that world hunger, environmental pollu-
tion, violation of human rights, poverty, homelessness, unsafe living
conditions, and abuse and violence are all bad things. There is a direc-
tive to support and participate in action for social change toward jus-
tice. Such action includes “participat[ing] in institutional and
legislative efforts.” Taking political stands and taking political action
in furtherance of social justice is not only considered a good thing but
is expected. All of these things are missing from our lawyer’s code.44

That nurses have a code that truly addresses social justice shows

43 American Nurses Association, supra note 41, at Provision 8.
44 Although beyond the scope of this paper, nursing has its own traditions of teaching
empowerment to its nurses and practicing toward empowering its patients See Ruth A.
Wittman-Price, Emancipation in Decision-making in Women’s Health Care, 47 J. of Ad-
vanced Nursing 437 (2004) (drawing on Friere’s concepts of oppression to discuss an
emancipation theory that recognizes the oppression of women in society and nurses in the
medical profession and arguing for patient free choice in medical decision making taking
into account the concepts of praxis, personal knowledge, and empowerment). See also
Ellen C. Rindner, Using Freirien Empowerment for Health Education with Adolescents in
Primary, Secondary, and Tertiary Psychiatric Settings, 17 J. of Child & Adolescent Psy-
chiatric Nursing 78 (2004) (using empowerment teaching ideas of generating group
themes through coparticipating with adolescents dealing with suicide prevention, posing
problems with them, and using praxis to come up with suicide prevention help).
that we are making excuses if we continue not to have such a definition for ourselves.\textsuperscript{45} I know of few lawyers who would like to say that they do not worry about justice because it is the province of social workers and nurses alone. Like nurses and social workers, we should be able to think about social justice and come up with a definition of our own.\textsuperscript{46} We need our students to learn that practicing with social justice in mind could be and should be in our professional standards and that we must demand of each other that we serve the needs of the poor and legally disenfranchised.\textsuperscript{47}

\textsuperscript{45} One might think that the Model Rules differ from the NASW Code and the ANA Code because lawyers use the Rules as an enforcement mechanism. One would wonder whether the NASW, the ANA, or state agencies would use failing to strive toward social justice as a reason for taking away the license of a social worker or nurse. I do not find this a strong argument, as we have many aspirational statements in our Rules (like the present Rule 6.1), and suggesting that we should strive for social justice does not necessarily mean we would disbar people who did not do so. Further, there should be a question about whether a person should be disbarred if they do things like discriminate against their employees or perpetuate abuse in their practice, which are not presently prohibited in our Rules. We could also consider whether taking steps toward social justice would be more strongly demanded by bar associations if our Rules suggested them, as they do \textit{pro bono} service.

\textsuperscript{46} I use the term "legally disenfranchised" here and with my students as one way to talk about a person from an oppressed class. There are those who find the word "disenfranchised" unsatisfactory because it takes responsibility away from people who use their power to create the conditions under which other people have no say in the legal system, and consequently prefer the term "oppressed." As Donaldo Macedo wrote in his introduction to the of \textit{Paulo Freire, Pedagogy of the Oppressed}:

\begin{quote}
Imagine that instead of writing Pedagogy of the Oppressed Freire had written "Pedagogy of the Disenfranchised." The first title utilizes a discourse that names the oppressor, whereas the second fails to do so. If you have an "oppressed," you have an "oppressor." What would be the counterpart of disenfranchised? "Pedagogy of the Disenfranchised" dislodges the agent of the action while leaving in doubt who bears the responsibility for the action.
\end{quote}

Donald Macedo, \textit{Introduction} to \textit{Paulo Freire, Pedagogy of the Oppressed} 21 (30th anniversary ed. 2003). In using "disenfranchised," I suggest that our client base is legally disenfranchised. I am not trying to state that we should blame them for their disenfranchisement or suggest that those with more power do not bear blame.

\textsuperscript{47} One might look at the social work and nursing codes and believe that they are not extraordinary in that the descriptions of social justice that they give are not that radical. We ought to believe as a community that hunger, discrimination, and poverty are bad things. Although it may not be that daring or controversial, it is apparently too controversial to be in the lawyer’s code. Although we might rather that all these codes went further to describe social justice in more dramatic ways, we should take a lesson from what social work, nursing, and other professions have been able to do and how they have unified around these ideas. Looking at nursing along with social work allows us to help our students believe that many professionals believe in working toward social justice and that this can be part of our mission. It gives them definitions that they can look at to help them consider what social justice means to them. It allows us to look at the empowerment approach to allow them to consider overlaying our practice methodologies with social justice.
III. How the Empowerment Approach Works in Social Work

Learning about the empowerment approach developed in social work teaching and practice will help us to think about social justice and how theoretical ideas of social justice can be merged with a professional's practice. The empowerment approach fleshes out the definition of social justice in the NASW Code by providing a practical approach through which social workers can examine why oppression occurs. No matter what practice methods they use, social workers are required to address oppression. A strength of the empowerment approach is that it provides an overlay to all practice—it does not prescribe methods of practice, although it certainly favors those that include client involvement in defining the problem and working on the solution. It asks social workers to evaluate their work in the larger context of social justice in a way that lawyers can also apply to their work. It demands that we define social justice through the eyes of our clients and other community members. It addresses which clients we should take on, how we should include them, how we should design our practices, and what political responsibilities we have to further our client's interests. It compels us to think about power and how it affects our clients.

A. Why Look To Social Work

There are several reasons to look to social work for ideas about empowering clients. First, there is a strong tradition of working toward social justice in social work and working toward empowering clients. Although the terminology of empowerment was not used prevalently until the work of Barbara Solomon in 1976,48 the social work movement had many iterations of empowering people and theories since at least the settlement house movement of the late 1800's and early 1900's.49 That tradition has continued through the work of many including Pinderhughes, Gitterman, Germain, and Lee.50 Sec-

49 Associated by many with Hull House and Jane Addams, the settlement house movement brought social justice to people and communities by demanding that settlement house workers join with and become part of the communities in need. Settlement house workers moved into communities that lacked services, supports, and needed development. These workers did not tell the locals what to do or try to take over the community. Instead, they became part of the communities and worked with them to improve the lot of community together. Psychotherapy or healing methods were not considered by these workers—there was not an idea that people needed treatment. Instead, people and communities developed together to improve the lot of the client base. Id.
50 See supra note 8.
ond, social work has a field placement model that demands practical clinical education in which student interns go to agencies and work with clients as part of their training. Although that training is more elaborate in many cases than the clinical training offered in law schools, their model of working with clients on the same problems with which they will be working with them when they graduate is similar to the legal clinical education model.

I am not arguing that social work is perfect and that all social workers and social work schools focus on empowerment strategies. Presently, there is a dispute in social work about whether social work is focused enough on empowering clients, promoting communities, and striving toward the NASW’s stated social justice goals. Although many see these as the original goals of social work practice, many do not see them as today’s goals. In *Unfaithful Angels: How Social Work Has Abandoned Its Mission*, Harry Specht and Mark E. Courtney argue that social work is a divided profession that has become so dominated by people wanting to do psychotherapy that it has lost much of its social justice mission. They see the move to psychotherapy as a mistake made early in the 20th century as a response to Flexner’s attacks on social work as a profession due to social work’s lack of a unique professional methodology and Mary Richmond’s social diagnosis being better at defining problems than resolving them. Without modes of practice, social work had to turn to some-

51 Council on Social Work Education, Educational Policy and Accreditation Standards, available at http://www.cswe.org/ (2004). In order to graduate from an accredited school, a BA student must do 400 hours of field work and an MA student 900. Id. at 13 (Accreditation Standard 2.1.1).

52 Interestingly, one of the explicitly stated goals of this training to go along with practice skills is to “reinforce students’ identification with the purposes, values, and ethics of the profession.” Id. at 10 (Education Policy 4.7.). This would suggest that social work empowerment models are ripe for the teaching in their clinical settings.

53 For an interesting history of the social work as it developed from settlement house movements on one side and Charitable Organization Societies on the other, see Michael Katz, *In the Shadow of the Poorhouse: A Social History of Welfare in America* (10th anniversary ed., 1996).

54 Harry Specht & Mark E. Courtney, *Unfaithful Angels: How Social Work Has Abandoned Its Mission* 124 (1994). As evidence of this domination, they point to studies of NASW members in California that 39% of NASW members in California said that psychotherapy is their primary practice and that up to one-third of students entering social work school do so with the goal of practicing psychotherapy as opposed to the work they would like to see of developing resources and communities.

55 Id. at 87; Abraham Flexner, Assistant Secretary, General Education Board, New York City, Remarks at the National Conference of Charities and Corrections in Baltimore Maryland, as part of the Education for Social Work Program, Is Social Work a Profession? in *Official Proceedings of the Annual Meeting* 576 (1915), available at http://www.hti.umich.edu/cgi/t/text/pageviewer-idx?c=nosw;cc=nosw;idno=ACH8650.1915.001;view=image;seq=0000597.

56 Specht & Courtney, supra note 54, at 80; Mary E. Richmond, *Social Diagno-
thing and chose psychotherapy. They add that this bent toward psychotherapy strengthened in the 1950's and 1970's due to several factors, including social workers changing their goals from solving social problems to maximizing the autonomy of social workers, making money, and providing counseling services for the poor and for those that can pay them to live in a comfortable manner.  

According to Specht and Courtney, the focus on psychotherapy leads to several problems, including thinking of individuals served more like patients than clients, suggesting that social problems are a person's fault.  

Once the problems of the poor are defined as needing to pull themselves up by their own bootstraps or needing mental health treatment, the poor become less "deserving" of our help. Why should we give welfare to people who are really failed individuals? In many ways, psychotherapy is antithetical to the idea of trying to work with communities to improve community conditions. Therapeutically oriented social workers do not work toward social justice—they work toward fixing the minds of individuals so that they can happily live in society as it exists.

More disturbing to some than social work therapists are the even less appetizing social workers who—consciously or not—see themselves as paternalistic advocates or instructors of the poor. These people do not see strengths in their clients or even therapeutic fixes that could bring some semblance of humanity to their clients from within. Instead, this tradition, which has been called seeing the social worker

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57 The authors cite a study where these the goals of protecting the livelihood of social workers is much more important to social workers than providing for social needs of their clients. SPECHT & COURTNEY, supra note 54, at 126.

58 Specht and Courtney point to a very interesting political statement made by the Family Society of Philadelphia in 1930 where they went back and reclassified cases of clients that were getting individual help like psychotherapy and found that over half of the cases could be as easily and perhaps more fairly explained as cases where the true need was to address economic hardship. Id. at 97.

59 A great example of this problem is given by Specht and Courtney when they describe an attempt in California in the 1990's to address the problems of the poor by improving their self-esteem while at the same time cutting their welfare benefits. Id. at 57. Although some of their unhappiness with this seems to stem from their contempt of the self-esteem movement, a social worker who believes in pushing self esteem or a mental health cure is much more likely to see their client as somehow flawed and less in need of community economic and social support.

60 Just like Aiken and Wizner write about the law student coming to school expecting to save the world, Aiken & Wizner, supra note 20, at 67, some social workers come to social work school hoping to empower clients and leave without learning those skills. One social worker who found that his training did not connect his clinical work with empowerment and social justice is Stephen Rose, who wrote about discovering that he needed to make this connection once he went into practice. See Stephen M. Rose, Reflections on Empowerment-Based Practice, 45 SOC. WORK 403 (2000).
as the benefactor, suggests that clients are victims who cannot manage their lives and need the social worker's expertise to do so. These social workers feel they are better at managing the lives of their clients and planning for them.\textsuperscript{61} The clients remain incompetents who need managing.\textsuperscript{62} Although one could argue that psychotherapy could at least have the tangential goal of empowering clients by healing patient/clients into people who can exercise power, it would be much more difficult to argue that social workers as benefactors do so.

However, despite problems in social work, social workers and social work students have several advantages when looking at social justice over lawyers and law students. A large percentage of their practitioners believe in the value of empowerment and practice methods that empower clients. This can be seen in part by the influence the empowerment approach to social work has had on the national organization's definition of the role of the social worker.\textsuperscript{63} The NASW Code has been developed to include the social justice mission and to promulgate it in an ethical code to which all social workers are held. By virtue of having this code, social workers and social work students have something to which they can aspire. A law student looking at the ABA Model Rules can only believe that maybe someone should give access to the legal system to poor people. A social work student can look at the NASW Code and know that their profession wants them to work toward a well-defined social justice mission. Moreover, there is a large enough group of people concerned about social work education to require courses on social justice issues be included as a standard for accrediting social work degree programs.\textsuperscript{64} This educational requirement has encouraged social work educators to develop approaches and methodologies that demand that social workers strive toward social justice in their personal and professional life.

Whether all social workers practice toward social justice is very relevant for social work but may not be as relevant here—it is enough

\textsuperscript{61} This is described in SIMON, supra note 48, at 6, citing Elaine Pinderhughes, Empowerment of Clients, supra note 8, at 331-38.

\textsuperscript{62} Some have speculated as to what this says about the social worker's own sense of powerlessness. They feel the social worker as benefactor feels so overwhelmed by their clients' issues that they can help them get their bills paid or model for them how to act like someone from the social worker's own community but cannot help the clients as they learn to adapt to their world. SIMON, supra note 48, at 6.

\textsuperscript{63} As discussed supra at notes 58-59 and accompanying text, Specht and Courtney are unhappy with the number of social workers who see social justice as their primary goal. However, if one-third of them see psychotherapy as the reason why they trained to be social workers when entering school, one would think that many of the rest of them do so to promote social justice. SPECHT & COURTNEY, supra note 54, at 124.

\textsuperscript{64} See COUNCIL ON SOCIAL WORK EDUCATION, supra note 51, which requires among other things training in "Populations-at-risk and Social and Economic Justice." Id. at 9 (section 4.2).
to say that the empowerment approach is good and has a lot to teach us about how law can be practiced. Its models as described below are ones lawyers should investigate and law students should consider.

B. Social Work's Empowerment Approach

The general emphasis of the empowerment approach is to require social workers to develop a sense of social justice and then analyze their social work interventions based on whether they push social justice on behalf of the client and the community. Working toward social justice is defined as working to reduce power imbalances between clients, between clients and the community, and between communities and larger communities and governments.

In *The Empowerment Approach to Social Work Practice*, Judith A.B. Lee describes 8 principles upon which the empowerment approach is based, which are paraphrased below:

1. All oppression is bad. One group’s oppression is not worse than any others’. All oppressed groups and all people should unite to work on all oppression.\(^{65}\)

2. To understand a client’s problem, a social worker must take a holistic view. A social worker must work with the client to see the problem in context of the community, both to see whether it is a problem that is permeating the community and affecting others and to see if the solution to the problem can


A conundrum in attempting to reconstruct progressive social work is to bring together a body of thought that emphasises solidarity among subordinate populations as a means of liberation with a body of thought that emphasises differences and cultural relativity among the same subordinate populations as a means of liberation. It seems to me that the task of progressive social work reconstruction cannot avoid the identification of universalisms, but that any universalism must respect and be in accordance with the basic tenets of postmodernism. I propose three such universalisms: (1) a universal celebration and promotion of difference and diversity; (2) development of a set of universal but transcultural human needs; and (3) recognition of oppression as the major source of social problems which, in turn, leads to anti-oppressive social work as the framework for progressive social work theory and practice. . . .

I propose a third universalism that is part of the lived reality of all subordinate groups—oppression as an explanation for social problems which, in turn, necessitates an anti-oppressive approach to social work practice that includes developing solidarity among people who suffer from dominant–subordinate relationships.

See also Barbara Heron, *Gender And Exceptionality In North–South Interventions:Reflecting On Relations*, 13 *J. OF GENDER STUDIES* 117 (2004), in which Heron discusses the problems of considering the problems of oppression of one group, women, while ignoring other oppressions, in this case race, and both the unfairness and difficulties of working on one without understanding the problems of the other.
3. People empower themselves and our job is to assist them. Social workers do not swoop in to save the day. A social worker is meant to work with people and communities to help them define their own problems and potential solutions. The best results are for clients to resolve the issues through their own actions, although social workers have skills that can be used to help clients resolve their needs.

4. People with similar problems need to work together. There is strength in working as a community to resolve problems. Many or most problems can be resolved through working with or within the community.

66. This part of the empowerment approach incorporates parts of several models including the ecological model of social work, which sees the client as part of a system on which the client impacts and that impacts on the client. Michael Ungar, in making his own argument for modernizing the ecological approach, provides a good summary of the ecological model which includes descriptions of the thought of some of its leading advocates including Carel Germain, Alex Gitterman, Salvador Minuchin, and Urie Bronfenbrenner. Michael Ungar, A Deeper, More Social Ecological Social Work Practice, 76 Soc. Service Rev. 480 (2003).

That the concept of community influence in social work practice is strongly prevalent is made clear by the demand that social work’s empirical research be designed to more clearly determine what is a community and what measures can be designed to see how interventions affect these communities and people in them. See Claudia Coulton, The Place of Community in Social Work Practice Research: Conceptual and Methodological Developments, 29 Soc. Work Res. 73 (2005).

67. See Theresa J. Early & Linnea F. GlenMaye, Valuing Families: Social Work Practice With Families From A Strengths Perspective, 45 Soc. Work 118 (2000) (seeing social work as a resource help focus families on their strengths, define their own problems and organize some of their actions so that they can handle problems of family members within the community). See also Lorraine Gutierrez, Working with Women of Color: An Empowerment Perspective, 35 Soc. Work 149 (1990) (empowerment “comb[ines] a sense of personal control with the ability to affect the behavior of others, a focus on enhancing existing strengths in individuals or communities, a goal of establishing equity in the distribution of resources, an ecological (rather than individual) form of analysis for understanding individual and community phenomena, and a belief that power is not a scarce commodity but rather one that can be generated in the process of empowerment.”)

See also Dennis Saleebey, The Strengths Perspective in Social Work Practice: Extensions and Cautions, 41 Soc. Work 296 (1996), in which he writes:

The strengths approach requires an accounting of what people know and what they can do, however inchoate that may sometimes seem. It requires composing a roster of resources existing within and around the individual, family, or community.

It takes courage and diligence on the part of social workers to regard professional work through this different lens. Such a “re-vision” demands that they suspend initial disbelief in clients.

68. See Letha A. Chadiha, Portia Adams, David E. Biegel, Wendy Auslander & Lorraine Gutierrez, Empowering African American Women Informal Caregivers: A Literature Synthesis and Practice Strategies, 49 Soc. Work 97 (2004) (discussing story-telling as a way to get people to understand that they have similar problems and to work as a collective on such issues as supporting each other in working on legislative advocacy to learn to access community resources).
5. Social workers need mutual reciprocal relationships with clients. It must be recognized that both social workers and clients come to the relationship with ideas and with skills. Clients stand with each other and with social workers to fight against oppression.69

6. A social worker is to help clients to "find their own word." Following Freire's ideas,70 a social worker is to help a client frame the client's world in her own language and not allow herself to be defined by those that have power over her. In the language of someone oppressing the client, the client may be called bad or considered ill-suited for the world and the problems the client faces. Using different language can give power to the oppressed.71

7. People do not choose to be oppressed. A social worker should help clients understand that they need not be victims but should work on being the victors in battling oppression. This promotes individual growth and allows for people to become more proactive.72

69 One way that this idea plays out in social work is in people struggling to ensure that their clients are co-partners in group settings and that they participate in the formation of groups, the setting of agendas, and that they eventually take control of those groups. For an example of someone struggling with this, see Marcia B. Cohen, Overcoming Obstacles to Forming Empowerment Groups: A Consumer Advisory Board for Homeless Clients, 39 Soc. Work 742 (1995), in which a social worker struggled with fully incorporating clients she calls "indigenous" to the community in a consumer advisory board.

70 See Freire, supra note 46. One of the concepts of this work is that teachers and students are co-learners in the process of addressing oppression in the community. It has been interpreted here and elsewhere to imply coequal status between professional and the client. Using the term "client" here is not perfect, as although it is correct in implying that the professional is working with a member of the community and the goal is in part assisting that member, the client is of equal status in the relationship and working together with the professional to accomplish community goals.

71 One place finding one's word can be seen most strongly is in the Independent Living movement. People with disabilities in this movement choose to reject a medical model of seeing the person as sick and demand to be viewed under a social model, where they are seen as people who among other things have a disability. See Stuart Bracking & Ross Cowan, Gateshead Personal Assistance Pilot Project: It's My Life--An Introduction to Independent Living, available at http://www.independentliving.org/docs4/bracking1.html ("Under the social model, Disabled people have impairments which affects their bodies. The Disability is the disadvantage or lack of opportunity caused by the social, physical and attitudinal barriers which society places in their way.")

72 Not choosing to be oppressed is a key element of this and other ideologies on which this part of the empowerment approach is based. Feminist theory has discussed this issue similarly in many areas affecting women, including areas like spousal abuse, where women do not have free choices to leave their oppressors for many reasons, including economic but also social reasons that expect women to remain in these situations. See Susan Wendell, Oppression and Victimization; Choice and Responsibility, 5 Hypatia 15 (1990) (discussing perspectives on oppression that recognizes the mistake of taking the oppressor's viewpoint and assuming that a victim asks to be victimized and advocating for viewing
8. Social workers are to maintain a social change focus, working with clients to connect to wider issues and working together on them.73

Social workers employing an empowerment approach analyze an individual's problem or circumstance by looking at how power structures within each family, community, and larger society have affected the individual and how those structures have contributed to the problems.74 They do not immediately assume that the structures are right or that they are unalterable. They look for healthy structures from which to draw power in the community. They look to see where they can insert themselves into existing power structures to change them for the better by altering the power balance. In some cases, clients are seen as needing to change but that is not the perfect model—it is better if a balance between oppressing forces and the client can be attained by changing the oppressor or having the oppressor accept the client. Social workers are taught to act with clients to better client positions, instead of seeing themselves as powerful outsiders who act on the situation. They see the community as a source of power.75

The approach does not prescribe particular social work interventions that are appropriate. However, as the approach does not allow for thinking of a client as deficient, it may make some interventions more suspect than others. For example, a social worker might use behavior modification less often than another method.76 With behavior oppression as involuntary but conquerable). The Independent Living movement is also a good example of people not choosing to be oppressed but having conditions thrust upon them.

73 *LEE, supra* note 8, at 59-61. Other writers have come up with similar models of practice designed to empower clients. One of the more popular is in GITTERMAN & GERMANN, *supra* note 8, which includes a ten step model which focuses on empowering practice, personal and collective strengths, partnering with your client with clients making important decisions while recognizing the "[p]ervasive significance of social and physical environments and culture." *Id.* at 26.

74 There are some who would argue that individual work is not an effective way to do empowering social work and would demand beginning from within the community. Specht and Courtney's last chapter is dedicated to the idea that individual social work has failed and that we should set up community centers to deliver social care, calling individual approaches "amoral." *SPECHT & COURTNEY, supra* note 54, at 170.

75 Not only do they look to see what can be done with the individual and community but they draw on this experience and look for systemic problems in the power structure. They are taught to follow another NASW ethic that requires that social workers take political action to address oppression based on power imbalances. *See* 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) (describing one lawyer's attempt to organize a disempowered group (immigrants) around issues that are discovered case by case).

76 In behavior modification, a social worker would decide what an adaptive behavior is and develop a system of rewards to induce an adaptive client behavior. It has been used for many purposes. A look at the latest Behavior Modification journal suggests that be-
modification, the social worker is in part deciding without the client what is best for the client and setting up a reward system that will allow the client to come to a point that the social worker thinks is appropriate.\textsuperscript{77} Social work interventions are most effective if they have the end of clients thinking for themselves, including reflecting on their lives and problems and acting in a way that they decide is appropriate and empowering.\textsuperscript{78}

Instead of prescribing methods, the empowerment approach demands that social workers familiarize themselves with the community, that they evaluate along with their clients what outcomes comport with social justice, and that they work toward those outcomes. Being familiar with the community and the history of the community is not just a matter of book learning or academic interest but is a part of practice. The empowerment approach recognizes that a professional looking at a problem from the outside cannot define the problem well or find appropriate solutions, and it instructs social workers to go to client groups to help identify the problems facing the community; thus, the power comes from the community. Most basically the approach requires that the professional understand that the client base is not some odd sort of *them* that needs help but rather is part of *us* that we must value and include in our definition of our own community.

These concepts are so important to effective practice that they are included not only in non-clinical classes discussing social justice and awareness but in clinical classes themselves. Lee's book, designed for practice classes, has an entire chapter on the history of the poor and sections discussing discrimination and oppression of particular classes with which social workers are likely to deal, including African American families, women, and gay and lesbian communities.\textsuperscript{79} Both knowing this history and going into the community and learning about it with and from your clients is important. Without it, it becomes impossible to understand the oppressions that one is trying to dismantle.

\textsuperscript{77} On the other hand, there are times in social work that people following the empowerment approach support techniques like behavior modification. Lee describes a few cases where she felt that behavior modification was a good way to get someone back on the right path toward self determination. Lee, supra note 8, at 153-54.\textsuperscript{78} Id. at 38-40. Specht and Courtney might question whether some of the teaching of oppression pushes helping politically "in" groups instead of work on behalf of the poor generally. See Specht & Courtney, supra note 54, at 148-49.\textsuperscript{79} Lee, supra note 8, at ch.4 and 175.
After learning about oppression generally and as it affects the client, the client and social worker evaluate what outcomes comport with social justice. It is very easy to know that a problem is based on an injustice. It is something else to have your resolution to the problem deal with the injustice.80

Some tenets of the empowerment approach are to include as part of social work interventions the goal that clients develop a positive, potent sense of self, and that they learn with the social worker about social and political realities of the situation.81 Power imbalances are to be reduced with interventions.82 The method of getting there, whether it is coteaching, mediating, motivating, counseling, organizing, or asking critical questions is secondary.83 However, decreasing the power imbalances is not a fully successful solution unless the client has developed a sense of power from it and an understanding of the situation, including a critical awareness.84

When looking at the issue of power, the approach looks at powerlessness not as someone lacking power but in having others who have more power use it against the person.85 This enforces the idea that there is nothing wrong with the client, who should not be blamed for the problem.86 It is further enforced by suggesting that the best solutions to problems of oppression may not be having the client adapt to the situation or fit in but having the situation change so that the person can remain the being they are and want to be.87

The approach demands political action with the community that the social worker serves. Part of helping a client gain power is taking actions in the community and in all levels of government to make sure that clients have the power they need.

IV. HOW TO OVERLAY THE EMPOWERMENT APPROACH ON PRACTICE AND CLINICAL LEGAL TEACHING

Adding social work's empowerment approach to clinical legal

80 See Rose, supra note 60, for a discussion on the possible separation of practice with dealing with oppression.
81 LEE, supra note 8, at 34.
82 Id. at 33, citing SOLOMON, supra note 8. Reducing power imbalances with interventions is the point of the empowerment approach.
83 LEE, supra note 8, at 61-63.
84 Id. at 89, citing FRIERE, supra note 46, on how to help develop critical awareness.
85 LEE, supra note 8, at 177-78.
86 There is a long history in social work of working to ensure that that oppressed people are not blamed for their oppression. William Ryan was a leading thinker in this area. WILLIAM RYAN, BLAMING THE VICTIM (1971). His concepts are clear in the works of the Independent Living movement and feminist theory discussed in notes 71 and 72.
87 The concept is one of adaptation as opposed to accommodation. See LEE, supra note 8, at 177-78.
teaching allows us a way to help our students to think about whether social justice is implicated in the cases we handle. By stressing power imbalances as a potential cause of legal problems and by teaching that addressing those imbalances might resolve those problems, we can help our students view our clients more positively as people who have abilities. We can help them learn to harness those abilities to help clients achieve power over themselves and their lives. It allows us to see a student’s role as a power enabler. The empowerment approach has implications both for both individual client work and for legislative advocacy and community work. For individual client work, it suggests that we should look at power imbalances that impact a client’s situation and use legal and non-legal means to resolve the situation. For legislative advocacy and community work, it suggests looking at the law as having been created by those with more power and trying to change the law to address the power imbalances that the law perpetuates.

Three key tenets of the empowerment approach can help structure how we help our students evaluate and approach legal cases:

1. **Respect for the client as someone who can have power**: Students should learn respect for clients including personal respect for a client as a conscious individual who has the potential for personal empowerment. This respect allows the student to reject the concept of the client as a helpless victim and yet recognizes the extent to which

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88 Some have looked at empowerment in social work as it relates to law. Robert G. Madden & Raymie H. Wayne, *Constructing a Normative Framework for Therapeutic Jurisprudence Using Social Work Principles as a Model*, 18 TOURO L. REV. 487 (2002) (suggesting social work and the development of the social work profession as a model for therapeutic jurisprudence as well as considering social work goals and parts of the empowerment approach in considering when therapeutic goals of practice should be considered in the course of legal representation). Others have looked at empowerment strategies more fully in the community development context. Audrey G. McFarlane, *When Inclusion Leads to Exclusion: The Uncharted Terrain of Community Participation in Economic Development*, 66 BROOK. L. REV. 861 (2001) (discussing the real value of citizen participation in economic development projects and the need for such projects to give meaningful roles to citizens on projects to set the agenda of the project and truly affect how projects are implemented). Similarly, some look at community organizing and attempt to combine it with law in suggesting that lawyers can most empower communities by combining grassroots work through organizing with legal strategies. See Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001). Non-clinical faculty have also considered teaching empowerment theory to their students. See Solorzano & Yasso, *supra* note 3, at 599 (teaching Freire’s theory in the context of critical race theory). Among other things, the authors discuss naming the problem in critical terms, id. at 599, and teaching praxis theory of problem posing by moving from naming the problem to determining the cause, making an action-plan, and then reassessing the problem. *Id.* at 605. They go on to look at an “algebraic approach to resistance” where people are seen as addressing social justice the more we look at the world with a critical consciousness and the more we are motivated to take action to achieve social justice by recognizing failures in the way things work now. *Id.* at 606-10.
the client is subject to powerful forces beyond individual control.

2. Identification of the problem in terms of power imbalance: The student must learn to identify the specific individual problem prompting the initial interview and also to evaluate the problem as a potential systemic societal wrong. This should include identification of the root cause of the problem wherever possible.

3. Assessment of solutions in terms of empowerment strategies: The student should learn to evaluate potential avenues of legal and non-legal recourse including individual solutions but also community actions and responses, political action and the like. The student must respect the community and learn the ability to draw strength from connecting with it by respecting and joining with it to help the client. From neighborhood centers to social service centers to informal issue oriented groups, students must know what is going on in the community and be ready to take advantage of it to help clients.

A. Respecting The Client As A Person Who Can Have Power

Students will not be able to work toward addressing power imbalances unless they both 1) respect their clients and 2) think that their clients can handle power. They must believe that their clients can make good decisions and evaluate positions effectively.89 This includes allowing clients to define problems in their own terms. It also includes not "blaming the victim," meaning that the student must find ways to view the client as one who does not choose to be oppressed but who has been affected by conditions created by circumstances beyond them. It allows a student to believe that when they are changing the balance of power in their client's favor they are somehow righting it.

On some levels, respecting one's client should not seem strange to legal practice. Respect is implicit in the decision-making role that our clients retain to direct their legal action. Even the most directive attorneys recognize the client's right to make key decisions in their cases. Even though many attorneys think they know what settlements are best and believe that their legal acumen may help them make better choices than their clients in some cases, they know they must allow their clients to make settlement decisions for themselves.90

89 See Linda G. Mills, Commentary: Killing Her Softly: Intimate Abuse And The Violence Of State Intervention, 113 HARV. L. REV. 550, 555 n.24 (1999) (defining empowerment as "a clinical policy and programmatic posture that assumes that battered women are in the best position to decide how to respond to the violence in their lives, unless they are otherwise found incompetent").

90 MODEL RULES OF PROF'L CONDUCT R. 1.2 (2002) ("A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter"). Lest an attorney believe that they do not have to listen to their client because the client may not know
Clinical teachers often teach models that give even greater deference to and respect for clients. Among others, client-centered lawyering teaches respect for clients in its tenet of laying out legal options for clients and letting them decide what is the best strategy. Respect for clients is perhaps more strongly held among those who follow the “rebellious lawyering” model, where clients become copartners in legal work and are seen as people able to do much lawyering for themselves.

The empowerment approach demands this type of respect for clients and perhaps more. Respect begins in this approach by having an optimistic view of oppressed clients. Clients from oppressed groups are not people with horrible failings that leave them unable to navigate the world. Clients have the power in them; with an attorney, they can perhaps wield it better than if they did not have our help. They are not to be judged based on their present position.

Respect comes further from viewing many problems of the poor as products of oppression. As such, problems that the poor face are not their fault, but are strongly determined by the situations in which they find themselves. Were students to blame their clients for their predicaments, they would have no reason to trust that the client is capable of making valid decisions. They would have less incentive to want to help clients who have damaged themselves. For example, without the empowerment approach, a student might not want to help HIV patients who got HIV from using intravenous drugs and may not feel that she was providing social justice by doing so. The empowerment approach demands that she look at the causes of problems from a systemic view and change the system so that her clients are treated more fairly.

About the settlement offer, Rule 1.4 requires that terms of settlement be told to the client. MODEL RULES OF PROF’L CONDUCT, R. 1.4 (2002). One would also think that some amount of respect for the client is necessary for attorneys to be satisfied with their work.


Social work’s idea about not blaming the victim and considering societal causes for the legal and non-legal problems clients face has been discussed as a motivating factor for attorneys to work with oppressed groups. See Charles J. Ogletree, Jr., Beyond Justifications: Seeking Motivations To Sustain Public Defenders, 106 HARV. L. REV. 1239 (1993) (empathy for clients of public defenders as one motivation for continuing to do the work). See also Daniel S. Shah, Lawyering for Empowerment: Community Development and Social Change, 6 CLIN. L. REV. 217 (1999) (discussing the government blaming the poor for their problems in the community development context and the need to consider this in a lawyer’s work).

For that matter, it would be very difficult to be client centered or practice rebellious lawyering. See Binder, supra note 91, and Lopez, supra note 92.
In Susan’s assessment of Ms. B’s case, Susan is betrayed by blaming Ms. B for her problems. Susan may not blame Ms. B for being a paraplegic.\textsuperscript{95} However, Susan finds it very difficult to believe that a person like Ms. B is being wronged by her landlord. It is perfectly alright with Susan that the landlord wants to rent a substandard home at a higher rate than Ms. B can afford. It seems reasonable to Susan that the landlord paternalistically assesses what is best for Ms. B and wants her to leave for her own good (and his). Susan thinks that Ms. B should be able to resolve things better on her own and should just move on with her life—why won’t she come to our office? Why can’t she just figure out a way to have money and stay where she is or move elsewhere? There must be some place for her that she should be willing to accept.

Susan also has trouble because along with not respecting Ms. B, Susan does not see Ms. B as a person who can exercise power. People from oppressed groups can be downtrodden and appear so. They do not look like power entities, particularly to law students who may have as their vision of power an attorney wielding a large salary and a law book or gavel. The empowerment approach demands working with clients as co-actors. It demands learning about the client’s world from and with the client. Decisions are made together. Actions are taken in joint consultation with the client taking the lead in many situations, in some cases to work with them to develop their sense of power but in others because the power comes from them. They can use a lawyer’s skill in analyzing legal problems and taking legal action but they have their own analytical and action skills that should be considered in the mix.

Susan needs to see that Ms. B has done a great job in analyzing the situation. Ms. B is right that it is not fair. She has accurately determined that her landlord holds a powerful position and that she needs an attorney to begin to set the balance more in her favor. She is connected with groups that she can access for extra resources on the problems. She can make the landlord uncomfortable in his position

\textsuperscript{95} An interesting problem I have encountered in my disability clinical has involved interns blaming clients for their impairments. My clinical setting primarily serves clients who are HIV positive, people who have cancer, and people with disabilities. Although I somewhat expected that interns might blame people who are HIV positive, as in many cases a client may have contracted the disease by having unprotected sex or injected IV drugs, some interns seem to blame cancer patients for their illness as well. In contrast, some interns have an entirely different reaction to people with disabilities and have been particularly paternalistic toward them, perhaps seeing them as powerless people who have been wronged. This is a problem itself, both as it is inappropriate and because it makes it difficult for students to see the clients as potential sources of power. I spend a lot of time in my clinical dealing with these attitudes and find that they need to be overcome to some extent before something like the empowerment approach or other social justice models can work.
by publicizing her condition. She can decide whether legal action is in her interest and direct some of the litigation. There is much that she can do. None of this would be evident to an student unless the student thought of Ms. B as a possible font of power.  

In the case upon which I drew the example of Ms. B, I wanted Susan to experience the sense of community describing social justice. The closest I could come to this was to have the class model this. We brought the case of Ms. B to our case discussions. Students related what they saw in the community and the harshness that they had seen people in Ms. B's condition treated. Susan began to see this. A better learning tool would have been to have this discussion with some of the community groups with which we work, although in Susan's case, it would likely have been easier to have heard it from students first, learning about the class' vision of social justice and then seen how it comported with one in the community.  

B. Identifying the Problem in Terms of Power Imbalance  

When evaluating cases to determine if a student is addressing a social justice issue, the empowerment approach suggests beginning by determining if the client is a member of an "out-group." Determining that a potential client is a member of an out-group includes determining if the client is part of a group that suffers from some of the wrongs that many professionals would define as violations of social justice. For example, people are members of this group who are poor, who are of a class that is often discriminated against, or who suffer domestic violence. Like social work approach, I do not want students to weigh degrees of oppression, but instead to value working with

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96 It should not be assumed that believing in the client's strength's means ignoring a client's flaws and the community's flaws. Not blaming the client does not mean accepting that everything they do is perfect. In fact, some of my students' most difficult experiences come when they attempt to integrate a desire to help a client with the realization that the client may have made some mistakes to cause the problem. Although the empowerment approach absolutely requires that a person's strengths should be sought out and emphasized, it further demands getting to know the client and the community well and noting the imperfections each has. As Wendell discusses, one can view oppression from the oppressor's view by blaming the victim or by some victim's views that it is someone else's fault, but it might be most appropriate to view oppression from the position of a responsible actor, who can make some decisions on their own, or as an observer/philosopher, who tries to get the bigger picture. See Wendell, supra note 72.  

97 Although there are other definitions of out-groups that focus on peer relationships (in-groups versus out-groups) or which describe out-groups as people coming in from the outside to work with depressed groups, this paper uses out-groups differently. For the purpose of this paper, out-group refers to minority groups that due to their ethnicity, race, gender, or another factor are oppressed by others not of that group. See Bruce S. Jansson, The Reluctant Welfare State: American Social Welfare Policies: Past, Present, and Future (5th ed. 2004) (developing and perhaps coining this definition of out-groups).
groups that are oppressed.\(^9\)

For example, in Ms. B's case, it is relatively easy to see that she is part of several out-groups. She is a person with a disability. She is on a fixed income that is at about the poverty level. She is African American. These factors have contributed to her problem and have allowed people who are not disabled and poor and who are mostly not of color to oppress her.

If a client is a member of an out-group, the approach asks students to evaluate if the client is being oppressed by a member or members of another group or if their situation is exacerbated because of it. Ms. B's case holds several reasons to believe that she has legal needs based on her status. Ms. B is being oppressed by her landlord and by the people who have set up the law to favor people like her landlord. Ms. B has a disability that has left her with limited housing options. The income that we have decided is appropriate for her to receive through the Social Security system is substantially below what a person with a disability needs, even though there is no question that she would have a very hard time working competitively. She is subject to a landlord who has money and the law on his side and who is using his status as a person with property to control where and how she can live.

The empowerment approach demands looking at problems on both micro and systematic levels and evaluating how power is affecting the relationship of parties generally. This requires looking at whether members of out-groups have been disadvantaged by people with more power based on the collective action of groups more powerful than them to create the world the way they would like it to be. It can mean looking at our unemployment and welfare system as an intricate system of rules designed, not on how poor people see themselves, but on ways that people who have money decide to deliver needed income and services to the poor.\(^9\)

Allowing those who have money decide the way that money is distributed is an example of a power imbalance affecting an out-group. There is a large body of discussion around whether welfare benefits are distributed the way that people who are suffering from lack of income and services would distribute that money. For example, a person might need to convince himself and government workers that he has a disability to get help, even though the reason he is poor and his own self concept is not that of having a disability but of striving to make ends meet in the face of family obligations and a job market that does not value all people's skills. See Alfieri, supra note 12 (discussing the value of looking at how clients see themselves rather than accepting the description of those in power).

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\(^9\) See Mullaly, supra note 65.

\(^9\) Allowing those who have money decide the way that money is distributed is an example of a power imbalance affecting an out-group. There is a large body of discussion around whether welfare benefits are distributed the way that people who are suffering from lack of income and services would distribute that money. For example, a person might need to convince himself and government workers that he has a disability to get help, even though the reason he is poor and his own self concept is not that of having a disability but of striving to make ends meet in the face of family obligations and a job market that does not value all people's skills. See Alfieri, supra note 12 (discussing the value of looking at how clients see themselves rather than accepting the description of those in power).
“valued” categories defined by “the word” of others impacts on out-groups.100

Not only should students be looking for power imbalances in the law, they should be looking at power imbalances in the legal system. They should look for ways that people in power, who are likely to be on one side of an issue, have worked to structure the legal system. In many cases, the system itself is particularly designed to disfavor the out-group.

Ms. B’s case provides the opportunity for Susan to see this through the landlord/tenant law that her landlord will use if he chooses to evict her. The law, which has been heavily influenced by people who own land, allows landlords not to renew a lease for any reason that can be made to look nondiscriminatory. It allows for unilateral evictions at the end of a lease term for any reason, regardless of the tenant’s circumstances. In Ms. B’s case, due to her income, Ms. B is a member of a class that is likely to be unable to afford to own property; she is unlikely to move from leaseholder to landowner. As a perennial renter, Ms. B will likely be at the mercy of landlords for all of her life who will choose to rent to her or renew her lease at their whim at whatever rent they choose. This will mean that the landlord will often be able to call the shots, as in Ms. B’s case when the landlord decides either paternalistically or self-interestedly that Ms. B must leave her home of thirty years.

The court system that Ms. B would confront in Philadelphia and elsewhere would similarly reflect that it was created by landlords to work in a landlord’s favor.101 Filing a court action has been made easy

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100 For example, our public assistance programs in Pennsylvania give $630.40/month to a person with a disability, $316/month to a mother and child, and $205/month to a person who is not working and in fact gives nothing to that person unless they can prove that they have at least a temporary disability. There are those that believe the design of this system is based on concepts of whether the poor are “deserving” of our help while others think that it is based on wanting to encourage those that can work and support themselves to do so. Although concepts of the deserving poor, who often are seen as those that cannot work or who have been put in their recent plight of poverty by a natural disaster, disease, or something beyond their control, is an old concept that we might choose to associate with Elizabethan Poor Laws or 19th century American views from Charitable Organization Societies, many would argue that much of the New Deal, the War on Poverty, and the 1996 Welfare Reform laws were based on this theory. See Roger A. Freeman, Does America Neglect Its Poor?, 56 VITAL SPEECHES OF THE DAY 514, 516 (1990) (“That is why we must distinguish between what we used to call the ‘deserving poor’ and what we now call the ‘behaviorally poor’ - persons who are poor because of their own actions or inaction.”) Others would argue that we distribute welfare as a way to encourage work—if you cannot work, you can get welfare but if there is any chance that you could, you will get nothing or so little that it will behoove you to find work quickly.

101 This is not unique to Philadelphia. For a description of Baltimore’s rent court, see Barbara Dezdek, Silence in the Court: Participation and Subordination of Poor Tenants’ Voices in Legal Process, 20 HOFSTRA L. REV. 533 (1992). In the article, she focuses on the
for landlords: fill in the blank forms with all the allegations required to evict someone that are available at the court. The procedure is made simpler for landlords by making eviction a summary proceeding in residential cases, giving landowners easy access to court and depriving tenants of court protections. The summary nature of the proceedings deprives tenants of certain forms of discovery and of other procedures meant to protect parties in presenting their cases. Once in court, tenants are confronted by a court that evicts people who show up a few minutes late for their court date, a feature which is particularly harsh where most of the court systems that the poor must access in the legal system, like family court, often start hours late. Although forms exist to reopen cases for showing up late, reopening is not routinely done—even if the tenant manages to do so, she would have to show a likelihood of winning before the judge would consider reopening the case.

If the tenant shows up on time for court, her case will be continued for a short time so that the landlord’s attorney can bring her into a settlement room. In that room, the landlord’s attorneys can take the often unrepresented tenants and convince them of the hopelessness of their cases and get them to agree to court orders including possession orders. It is rare that I have found a client proceed pro se and not end up with a possession order against her. The law and the legal system have been set up by landowners to minimize the rights of leaseholders. Surely had the system been designed by the out-groups (or simply by those acting in the interest of social justice), these inherent injustices would not have existed. Were Susan to discover what Ms. B

plight of poor black women and states that legislation designed to give the poor a voice in landlord/tenant matters has not done so and notes that virtually all tenants are unrepresented and get a chance to say and do very little to protect their rights.

102 Eviction is made a summary proceeding by giving jurisdiction to the Municipal Court. 42 PA. CONS. STAT. §1123 (2006). These cases must be heard within 30 days of filing. Philadelphia Municipal Court Civil Procedure Rule 113 (2006).

103 For our clients with disabilities, it is often difficult for them to navigate this system, although the Municipal Court places notices on its summonses that notify one of the ability to request an accommodation. One must wonder whether accommodations like those suggested in the Municipal Court’s Rules, like having a hearing by telephone, gives one with a disability the same access to court, although the notice leaves open at least the possibility of the hearing being moved to a remote location. Philadelphia Municipal Court Civil Procedure Rule 137 (2006).

104 Motions to reopen a default judgment must be filed within 10 days, meaning that clients have a relatively short time to seek help and file a response. PA. R.C.P. 237.3 (2006). Further, the case is not automatically reopened unless the tenant can allege that there is a meritorious defense—the judge may see no possibility of the tenant winning and may deny the motion without a hearing on the merits of the case.

105 In investigating whether this is a fair description of landlord/tenant court in Philadelphia, I spoke with Michael J. Carroll, Esq., a landlord/tenant specialist for Community Legal Services, our largest legal services provider in Philadelphia. In a confirmatory email,
would encounter in the eviction process on her own, she would learn of the many problems based on the way the court is designed and might represent her accordingly.

C. Assessment of Legal Recourse in Terms of Empowerment

As discussed above, the empowerment approach does not necessarily prescribe legal practice methods—rather, it asks students to look at each client’s situation within his/her community to assess whether problems are based on power imbalances and to work with clients and the community to resolve those imbalances. As such, a major tenet of the empowerment approach is that the ends of legal representation—addressing power imbalances—are more important than the means. One might address power imbalances by taking a landlord/tenant case to allow Ms. B to survive a difficult legal system. One might also help Ms. B by negotiating a fairer lease for her. One could file a fair housing complaint to bring other players into the mix that might balance the situation due to the substandard conditions. One could find community resources for her that would make her apartment accessible for her and make it worthwhile for the landlord to keep her longer so that his apartment can have the value of the improvement. Under the empowerment approach, whatever method

he wrote:

[P]ro se tenants fare badly when they enter the mediation room with counsel for the landlord... I would go so far as to add that they also fare badly, although maybe not as badly, when they go to mediation with a pro se landlord. Tenants are almost always persuaded to consent to judgments for possession, even if they get a rent reduction and time to move that is more than the 21 days they would receive if they contested the case, lost and did not appeal. I do not have much direct experience with mediators. I rarely use them, but I see a lot of mediated agreements after they are entered. I would be happy to be confronted with evidence that they do not try to give possession to the landlord in the majority of the cases but that is my impression based upon my experience.

I cannot quarrel with your overall point that the system favors the landlord. I do not think that the players even think they are being unfair. They just view the equities in favor of the landlord, whom they perceive to be an aggrieved small business person, often victimized by unscrupulous—or just poor—tenants. Another factor that I could make only an educated guess on is that most of the players in the system who have any influence or power to make decisions, set policy, etc. are more likely to be landlords than tenants, if they are either one.

Email from Michael J. Carroll, Esq., Landlord/tenant specialist, Community Legal Services to Spencer Rand, (Oct. 2, 2005) (on file with author). Others have suggested to me that I am being unfair in my assessment. I understand from other attorneys' experiences that the settlement rooms are not always as daunting as they have appeared to me and my clients who have gone pro se. There are mediation programs that may allow for an impartial person to ensure that the rights of the tenant are not entirely trampled upon. For the purposes of this article, it is most important that if my perception is correct, a student should be encouraged to intervene more readily in the court system after knowing what their client may face without their representation.
could be used to address the power imbalance would be appropriate and should be considered.

1. Working With Clients And Becoming Part Of The Community

Some individual legal methods might be more empowering than others. Better methods of practice would induce the client to wield power. As described earlier in this paper when discussing respecting clients, a student who was client centered or followed the rebellious lawyering model would be following more empowering models. The student should be certain to allow the client to pick between legal strategies. The student does better when he or she collaborates with clients to analyze situations and work together to effect legal strategies.

Beyond this, as the empowerment approach demands finding strength in the community, the student should be looking to work with the client and the community to resolve issues. Working with clients and communities helps students to harness the strength of community members willing to look after each other. This is also true as other members of the community might have problems similar to the client’s.106

Students can enhance community involvement by connecting with local groups relevant to the clinic’s frequent clientele. For example, in my clinical setting, which focuses on serving people with HIV, cancer, and physical disabilities, my interns have gone to social service and medical service centers where people with those medical issues congregate and collaborate. One such group is our local Center for Independent Living. In addition to talking with support groups made up of the Center’s consumers, students have met their community advocacy groups, which are statutorily required to be at all Centers for Independent Living and are made up of people with disabilities and staff members. We have gone to HIV and cancer support groups and listened to people describing legal and societal problems as they see them and describing the sources from which they draw strength to deal with these issues.

In addition to groups that have organized themselves around client traits that are likely to make them oppressed, we have found issue-oriented groups organized around problems they face. We have of-

106 There are some great examples of group work in Lopez, supra note 92, that point this out, including one of an attorney failing to empower clients. The attorney is willing to work with a housing group but does not find a way to connect with or share work with tenants. An example of a better attempt at empowering clients he discusses is an attorney who truly mixes with a community group working to bring out voters to work on community issues.
ferred students the chance to attend meetings of these groups to learn about them and think about how they can add their legal skills to help. One of those groups is a housing coalition in Philadelphia that is pushing for affordable housing and focuses on issues surrounding housing generally.

A way less compatible with the empowerment approach has been to have students meet with professionals that work with oppressed groups. Although this is not working with the oppressed groups themselves, it has been a substitute way to get a feeling for what people from out-groups are going through and to connect with other professionals to help these out-groups. Examples of this have included giving in-service trainings and later meeting with case managers or other professionals that serve clients from out-groups. This is clearly second rate if only because it is hearsay and is allowing others to interpret the needs of out-groups to our students. It does, however, give students concrete ways to begin to understand and to work on the issues of out-groups. Similarly, students have met with attorneys in bar association committees or at meetings of public interest attorneys to talk about problems faced by out-groups. This is again at least one step removed from being in the community and working together with clients. It does, however, help students see examples of attorneys who work on issues of out-groups in their private practice and their public interest jobs. It allows them to learn from practicing attorneys about where they can fit in and help out-groups take collective action. Although it does not establish connections for our students with people from out-groups, it gives students a group with which they can connect as their clients’ representative to work on issues of oppression. It is an imperfect but often more plausible way for connection to the community to happen.107

2. Taking Cases That Change Power Structures

Just as some practice methods may be better than others, students may best embrace the empowerment approach if they are working on issues that have the effect of giving people more power. For example,

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107 I raise this possibility with some caution because I have had some mixed experience with bar association groups and their understanding of working with the community. One example was bringing a group of students to a bar association group that was discussing the possible ramifications of a case before the US Supreme Court that examined the right to access to the courthouse despite wheelchair use. The case become Tennessee v. Lane, 541 U.S. 509; 124 S. Ct. 1978; 158 L. Ed. 2d 820 (2004). In discussing how people with disabilities need access to courts, the attorneys began talking about how they should address this with litigation and how they were a grassroots campaign. As far as I knew, no one had spoken to anyone with a disability before they decided that this would be an issue on which to focus. My students and I were left to discuss where the “grass” was and how we would incorporate people with disabilities if we were going to get involved.
students seeing the potential injustices in a landlord/tenant case can understand not only that a disruption of social justice has occurred in the case, but that there are places where they can insert themselves to address the larger system that creates the injustice. Maybe there are ways to frustrate the ease at which the landlord can choose to evict the tenant to prevent the landlord from bringing an eviction action so quickly. For example, in our jurisdiction, a landlord cannot file an eviction action if there are housing code violations or if there is reason to file a fair housing complaint and one is filed.\(^{108}\) Maybe a student would be more likely to represent a client in a questionable case if aware of the coercive courtroom settlement procedures. Maybe the student can look to address local court issues like scheduling early morning eviction calendars at which clients have difficulty appearing with court staff, and can bring pressure to stop the practice. Maybe the student can see the reasons for rent control and other measures for which the student might think political action could be appropriate.

Similarly, working with people with disabilities to help make the world more accessible to them would fit this model. An intern might get housing for a person with a disability who might otherwise be institutionalized—being able to remain part of the community is certainly giving someone more power. Appealing a denial of accessible bus transportation (paratransit) so that a person is not forced to stay home empowers the client for similar reasons. Another is getting Medicaid to pay for goods or services that improve mobility, like a wheelchair, or an attendant to care for basic needs at home.

A case in which a client is left in a more powerful position versus an opposing party or the community also fits this model. For example, this can happen in a landlord/tenant case that teaches a judge about a particular area of law that he might apply again in a similar situation. It can also happen in an SSI case that influences how an ALJ, the Appeals Council, or a federal judge rules in cases similar to the client's.

D. Non-representation Ways To Help Incorporate The Empowerment Approach In Legal Teaching

The empowerment approach helps teach students to think about social justice in their representation, and this article suggests ways of

\(^{108}\) Philadelphia Municipal Court Civil Procedure Rule 134 (2006) demands that eviction proceedings are continued until the Fair Housing Commission has heard any complaint that was filed prior to the eviction matter and allows Judges to forward an eviction case to the Fair Housing Commission if rent is not owed and there is are housing code violations or if the tenant alleges the eviction is retaliatory.
pursuing issues of social justice through and during individual case representation. However, several other strategies can help bring the empowerment approach to students.

1. Bring Social Justice Imperatives To Practical Concerns Regarding Office Priorities

In order to have students think about which types of cases have social justice implications, I have asked students to assist in setting case priorities for our office by doing client needs assessments. Students have designed written needs assessments surveys that they have given clients in group presentations. They have then analyzed the assessments to determine what sorts of problems our clients describe that we may not be handling. We also do oral needs assessments when we have given presentations by asking people in the group to share with us the types of problems they see in the community. We have used this information to discuss office priorities and to involve students in issues of importance to the community.

An example of this occurred when our students went to our local Center for Independent Living and talked to clients there about power of attorney issues. Our program had traditionally worked on powers of attorney for people in hospital settings, in part due to the requirement that hospitals discuss such documents with their patients. My students and I thought that people with disabilities would not necessarily be interested in this type of work— we thought we would get a lot of accessibility and discrimination issues as well as public benefits concerns rather than power of attorney needs. Upon meeting with groups, it became clear to the students that for many persons with disabilities, their independence was threatened in the community by their physical inability to perform financial tasks and occasionally by the perception of others that they were unable to manage their own affairs. After hearing this, students and I decided to focus part of our service on drawing up power of attorney documents for this population. We also learned we had to spend time learning how to effectively revoke these documents. Similarly, we needed to create documents that described to potential third parties with which our clients do business that the client did not want an agent but was capable of managing their own affairs.

We have had similar experiences when groups have suggested to us problems they have had with being cut off from paratransit services and with people not being able to get housing due to poor credit. Interns have discussed these issues, taken some cases, and discussed whether social justice would be better served by handling the individual cases or if the clinic should focus on these issues in a broader way.
2. **Publicize Social Injustice And Encourage Others To Become Involved**

   I have talked with interns about sharing their beliefs about social justice with others. In part to demonstrate my personal connection and commitment to these issues, I wrote an article for our local bar journal trying to bring the plight of our client base to light with members of the bar\(^{109}\) and another asking the bar to consider representing people with disabilities and the poor.\(^{110}\) I have shared each of these articles with students.

3. **Discuss With Students How To Invest Future Limited Pro Bono Activities For The Greatest Good**

   I have discussed with interns the work that public interest *pro bono* firms are asking their volunteers to do in terms of whether the work being requested is promoting social justice. Many of our interns will not have the opportunity to direct their entire practice toward social justice but may be able to take *pro bono* cases. We have discussed the type of *pro bono* work that people do and evaluated whether taking such cases would be how they would spend their limited *pro bono* hours if they were asked to help. An example of this is a local agency that has asked private attorneys to do name changes. As a former *pro bono* director, I know that there are certainly reasons to ask to have these name changes done. Clients sometimes want them very badly and sometimes have very good reasons to want them. For example, some find that in domestic violence cases or in cases where people are changing their gender identities, name changes are vital. Further, attorneys do not mind doing them because they are simple paper proceedings, and having the attorneys do these procedures gets the attorneys involved with the *pro bono* organization to which they may volunteer time on other matters or donate money. On the other hand, in many cases, changing someone’s name will not alleviate a power imbalance or work toward some other definition of social justice. Student interns can begin to realize that this may not be the best use of their time if they want to work toward social justice.

   This is not to say that we do not discuss the need for attorneys to handle straight access cases. We have also discussed the severe shortage of attorneys to handle custody, support, and abuse cases and ways that one might evaluate if the cases themselves are social justice cases. We have discussed, however, the difference between doing this and working on cases that may meet a student’s ideas of social justice.


\(^{110}\) Rand, *supra* note 25.
V. Conclusion

We all have Susans in our clinical classes. Not having practiced law, many of our students need help learning how to apply their legal skills with social justice in mind. With our help, our students can listen to their clients and allow them to define their problems while helping our students learn about problems in their community. Our students can involve their clients in the process of their case and consider their clients a partner in their practice. Our students can be involved in the community.

Using the empowerment approach in their practice, they choose to take cases that they believe will help other people. They can set aside some or their entire legal career toward working toward social justice. They can learn what social justice is and operationalize it so that the work they are doing is not amoral. They can become attorneys that make a difference.