

# Energy, Skill, and Outrage: How the Clinical Model Can Support Law Students and Clients as Drivers of Social Change

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I. Regnancy and Brief Legal Services.....	13
II. Opportunities Within the Clinical Student Model for Rebellious Lawyering and Policy Change.....	15
III. Reflections on Transformative Pedagogy in the Clinical Model .....	19

In *Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice*, Gerald P. López advocates for an inclusive model of progressive lawyering that acknowledges and employs the varying expertise of all the participants in the struggle for social change.<sup>1</sup> In a similar spirit, the East Bay Community Law Center (EBCLC) was founded in 1988 by Berkeley Law students who were immensely frustrated with the status quo of a legal education defined almost exclusively by the opaque expertise of legislators, judges, and academics. For thirty years, EBCLC has operated with a mission of progressive lawyering centered in the experiences and expertise of real clients and the students partnering with them. EBCLC's Consumer Justice Clinic (CJC) emerged during the Great Recession, after EBCLC began holding weekly open legal services clinics and clients unexpectedly expressed an overwhelming desire for assistance in exercising their rights when facing injustice by businesses, organizations, and the government.

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1. GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

Our goal in this article is to reflect on CJC's flawed, persistent, and never-ending efforts to revise our organizational practices and embody a rebellious vision. Specifically, as we reflect on this experience, we wish to highlight the unique opportunities presented by collaboration with students in a clinical direct-services setting.

## I.

### REGNANCY AND BRIEF LEGAL SERVICES

In *Rebellious Lawyering*, López describes progressive lawyering as “the regnant idea of the lawyer for the subordinated,”<sup>2</sup> which occurs when a lawyer “formally represents” clients through closed “legal” avenues, such as litigation, rather than educate the client about lawyering<sup>3</sup> and help clients gain control over their own lives.<sup>4</sup>

CJC has long been conscious of the dangers of re-inscription of oppressive hierarchies and disenfranchisement in the traditional clinical lawyer-student-client paradigm. But EBCLC remains the single largest civil legal services provider in Alameda County, creating what feels like an inextricable tension between increasing access to an elusive civil justice system and collaborative social change. The clinic has incorporated various strategies to center client collaboration and empowerment in its operations. Whether in community education workshops, phone consultations, brief services appointments, or litigation, the clinic prioritizes demystifying and prying open the civil justice system. We emphasize a self-help approach—presenting legal information in plain language through written materials and counsel, facilitating client self-identification of goals and action plans, and offering the technical support necessary to pursue them. When possible, we connect clients to existing policy or organizing movements. We also try to incorporate transparency at all stages: articulating fully what is driving decisions around access to services, the reasoning behind advice, resource limitations, and biases in our clinic and those driving the civil justice system.

But there are still countless ways that the prevailing regnant paradigm persists. CJC is a four-person team with three attorneys. Two of our attorneys and many of our law students are white, while nearly all of our clients are low-income people of color. In addition to numerous ongoing cases, CJC holds multiple on-site and community-based clinics a week, resulting in over 420 in-person appointments and 2,080 phone consultations a year. Amidst these tensions and overwhelming volume, a bias towards the established regnant

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2. *Id.* at 71.

3. *Id.* at 37.

4. *Id.* at 70.

systems often shapes CJC's attorneys' handling of an appointment or case, even when there is a client-centered intention.<sup>5</sup>

One example of our clinic's attempt to grapple with this began in February 2015. A clinical law student, Alicia Intriago, met with a client, Ms. Morgan,<sup>6</sup> at a brief services legal clinic.<sup>7</sup> Ms. Morgan contacted us after her employer garnished a significant portion of her wages in December 2014 pursuant to an execution of judgment they received. She had never before heard of a lawsuit against her but later learned that she had been sued in 2007 by a company that had purchased the right to collect on a credit card debt that belonged to someone else. This was not Ms. Morgan's debt. That lawsuit resulted in a default judgment against Ms. Morgan: a court order that is obtained when defendant fails to answer.

But Ms. Morgan had never been informed about the judgment or the lawsuit; rather, the process server who filled out the proof of service simply lied and, quite outrageously, stated that he had personally served Ms. Morgan—describing her as a twenty-nine-year-old “Caucasian woman.” Ms. Morgan would have been forty-eight years old at the time of service and is African American. While it might be surprising that a process server would file a proof of service under penalty of perjury that contains false facts, this abusive practice is ubiquitous enough to have earned its own name: “sewer service.”

Once a default judgment is entered, a creditor can collect, most commonly by garnishing a person's wages or levying their bank account(s). This can have devastating effects, as funds needed to pay rent, buy food, and clear pending checks and debits are taken with no prior notice. Once seized, Ms. Morgan did not have access to this portion of her wages for weeks, causing her to struggle to pay her rent, car payment, and other credit obligations while she fought the collection through a claim of exemption. Sometimes it takes as long as four months to get funds returned through this process, and because of tight filing timelines, funds levied from a bank account may never be recovered. Ms. Morgan, like many of our clients, was outraged to learn that the civil legal system has a process to codify what is essentially a legal fiction—regardless of whether the facts alleged in the underlying claim ever happened or even involved the person being sued, it becomes a legal truth through judgment with devastatingly real consequences.

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5. Indeed, even a client-centered approach does not ensure regnant systems are not being reinforced. *See id.* at 281.

6. Ms. Morgan's first name has been omitted to preserve her privacy.

7. Brief services legal clinics in EBCLC's Consumer Justice Clinic offer one-time appointments scheduled between a law student and a client, supervised by an EBCLC attorney. Facts are gathered, the legal issue is spotted, and relevant legal counsel or suggestions for next steps and referrals are given. Sometimes brief research or writing tasks (e.g., drafting demand letters, writing lawsuit answers, and filling out other forms) are completed. Calls may also be placed to gather additional information or negotiate a settlement.

Despite the gravity of the injustice, Ms. Morgan lacked any accessible remedy under the current law. Because her case had “concluded” more than two years ago, it did not fit the narrow criteria permitted under the civil procedure for filing a motion to set aside the default judgment. A set aside motion, while not easy, can be completed by a client pro se if given instructions and advice from a brief services clinic like EBCLC’s. Instead, to address the fraud that occurred in the underlying default judgment and allow Ms. Morgan the opportunity to defend herself in the original lawsuit, she would have to bring a suit in equity, an entirely separate lawsuit against the debt buyer. In other words, because no legal services organization had the capacity to represent Ms. Morgan in a suit in equity, she would have to undergo the time and expense of hiring an attorney to represent her in a new lawsuit for the sole privilege of defending an earlier lawsuit based on a debt that was not hers and that was never even served on her in the first place.

Committed to supporting Ms. Morgan in seeking justice despite the door to judicial remedy being effectively closed, Alicia and her supervising attorney, CJC Director Sharon Djemal, worked with Ms. Morgan to write a letter to the debt buyer outlining the injustices she had suffered and urging the debt buyer to voluntarily set aside the judgment. At the time of Ms. Morgan’s case, Sharon was overstretched as the sole attorney supervising EBCLC’s entire Consumer practice. Because Ms. Morgan could not afford a private attorney, the clinic was well aware that if the letter was unsuccessful, the clinic and Ms. Morgan’s predicament would for all practical purposes hit a dead end. The judgment, even though it was based in a lie, gave the debt buyer’s claim the legitimacy needed to forcibly collect from her, leaving Ms. Morgan with no option but to accept the reality of the unjust debt. Fortunately, the debt buyer in Ms. Morgan’s case agreed to set aside the judgment. But Sharon and Alicia knew that not every impacted person would be as fortunate as Ms. Morgan.

## II.

### OPPORTUNITIES WITHIN THE CLINICAL STUDENT MODEL FOR REBELLIOUS LAWYERING AND POLICY CHANGE

Paulo Freire long ago theorized that the only possible path towards collective liberation was a pedagogy that created a radically new relationship between teacher, student, and society, in which the oppressed liberate themselves and their oppressors as well.<sup>8</sup> López similarly insists that collective freedom can only be achieved when the regnant idea of the lawyer-client relationship is replaced with a “rebellious idea of lawyering against subordination,” in which clients are involved in both addressing specific legal problems as well as

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8. PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* 44 (1970).

problems arising from broad and unequal distributions of power.<sup>9</sup> In a clinical context, a pedagogy of the oppressed and practice of rebellious lawyering are both complicated and enriched by the triangulation created by the clinical student.

Around the time of Ms. Morgan's case, Sharon and Alicia began to notice just how many similar cases were coming through the door and suspected that debt collectors were skirting the law by waiting until the end of the two-year period in which a set aside could be brought to attempt the first collection action. As a result, unaware debtors who had never received notice of the judgment or underlying lawsuit in the first place were uniformly timed out of bringing a motion for relief under the streamlined statutory process. It was grossly evident that there was both a power imbalance in this abuse of the law and the lack of available affordable legal representation to combat it.

Irrevocably shaped by Ms. Morgan's experience, Alicia was outraged and unwilling to move forward in her legal education without challenging the endemic practice. She reasoned that if the problem was so common and the current law sanctioned such abuse and deprived victims of relief, then the law itself must change. In fall 2014, Alicia worked with Sharon to draft legislation to lengthen the amount of time in which a defendant can bring a motion to set aside in these circumstances. Because the clinic was specifically concerned with debt buyers gaming the set aside process laid out under Section 473.5 of the California Code of Civil Procedure as a debt collection tactic,<sup>10</sup> the new bill was structured as an addition to California's Fair Debt Buying Practices Act (FDBPA).<sup>11</sup> Alicia also enlisted Ted Mermin, Executive Director of the Public Good Law Center and Interim Director of the Berkeley Center for Consumer Law & Economic Justice, and Alicia's former instructor of her Consumer Protection Law course. Having been instrumental in the drafting and passing of the FDBPA, Ted helped find a sponsor for the new bill. In January 2015, Senator Bob Wieckowski introduced Senate Bill (SB) 641 in the California State Senate.<sup>12</sup>

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9. LÓPEZ, *supra* note 1, at 37.

10. CAL. CIV. PRO. CODE § 473.5 (1970). By depriving defendants of the opportunity to know about and contest debt collection lawsuits, debt-buyer plaintiffs were able to obtain default judgments and forcibly collect debts irrespective of the merits of their case. And by waiting to take collection action and not raising notice until after the statutory period laid out in Section 473.5 of the California Code of Civil Procedure had passed, debt buyers also deprived defendants of the most accessible way to challenge unlawful default judgments.

11. CAL. CIV. PRO. CODE § 1788.50 *et seq.* (2014).

12. See *Overview of the Legislative Process*, <http://www.leginfo.ca.gov/bil2lawx.html> [<https://perma.cc/77NS-MFYG>] (last visited Aug. 28, 2018) (detailing the legislative process in California); *History, SB-641 Debt buying: default judgment (2015–2016)*, [https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill\\_id=201520160SB641](https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201520160SB641) [<https://perma.cc/6QK5-E36Z>] (last visited Aug. 28, 2018) (detailing the legislative history of SB 641).

This is a point where the story could still unfold within a regnant vision of justice. Although valuing the perspectives and experiences of clients inspired the idea for broader policy change, the legislative path we took was, in many ways, a traditional one. The clinical model allowed a student new to legal practice—sensitive to the injustice and her client’s desire to challenge the system—to think beyond the limitations of individual cases and towards a transgressive collaboration with greater social impact. But the research and writing were still accomplished by a student in a policy class at a preeminent legal institution without client involvement, the statutory language was later mostly re-written by an experienced attorney, and the proposed bill was brought to a prominent legislator by another experienced attorney and policy expert.

This is not, however, where the story ends. In spring 2015, another clinical law student, Elena Pacheco, met with Ms. Randall,<sup>13</sup> who was trapped in a similar situation to Ms. Morgan’s. Ms. Randall’s bank account had been entirely emptied without warning because of a debt buyer lawsuit from 2007 that she had never heard of before. Again, this first collection attempt and the notice that came with it occurred after it was too late to move to set aside the judgment. The process server in Ms. Randall’s case had also lied on the proof of service, which stated that he had left a copy of the lawsuit with a member of Ms. Randall’s household who does not exist and swore that he had placed a copy of the lawsuit in the mail addressed to Ms. Randall. She never received anything. Fittingly, EBCLC was familiar with this particular notorious process server. He had similarly lied about serving several other clients, each of whom also had a default entered against them for lawsuits that they never knew about. Strikingly, on each proof of service the process server’s signature appeared to have been signed by a different person.

Elena and Ms. Randall informed the debt buyer that she had never been served and did not know about the lawsuit before the levy. After seeing the compelling evidence, the debt buyer ultimately agreed to set aside the judgment. But Ms. Randall was not content with the resolution of her individual case and was eager to contribute to the policy effort. When SB 641 went to the Assembly Banking and Finance Committee for hearing in July 2015, months after Ms. Randall’s case had been successfully resolved, Elena and Ms. Randall traveled to Sacramento together so that Ms. Randall could meet with key legislators and testify in front of the committee. Going into the hearing, Assemblymember Sebastian Ridley-Thomas, whose vote was particularly critical to the bill’s success, expressed significant doubt. After the hearing, he was so moved by Ms. Randall’s story that he stopped her after to ask for a photo with her—even though

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13. Ms. Randall’s first name has been omitted to preserve her privacy.

he did not necessarily benefit from the optics, as she was not a constituent. He thereafter wholeheartedly endorsed SB 641.<sup>14</sup>

Unsurprisingly, debt buyer industry lobbyists fiercely resisted the bill. Throughout the summer of 2015, CJC's law students, attorneys and clients exactly rebutted every false assertion that the debt buyers conjured up. Students drafted letters and reports in support of the bill and coordinated with clients and community members to galvanize support. Two students, Lauren Freeman and Darby O'Donnell, contacted clients to testify before the Assembly Judiciary Committee in support of SB 641. When none were available, Lauren and Darby themselves travelled to the Capitol to speak with legislators and their staff. Lauren appeared before the committee, reading the powerful testimony of her seventy-six-year-old client who could not be there in person.

For a time it seemed like the bill would not pass, but the debt buying industry's indiscriminate greed came back to haunt it. Illustrating that this abusive practice could happen to anybody, Republican legislator Jeff Stone stated during debate on the Senate's final concurrence vote that he too once had a debt attempted to be collected against him that was not his. He said that he would not only support the bill but also urge other legislators to join him.

On October 11, 2015, Governor Jerry Brown signed SB 641, now codified as Civil Code Section 1788.61.<sup>15</sup> The final law gives a consumer that has a default judgment entered against her by a debt buyer the ability to move to set aside the judgment within six years of entry of judgment; in cases of identity theft or mistaken identity, a consumer can move to set aside the judgment at any time, so long as the motion is filed within six months of first learning of it.<sup>16</sup>

Then an incredible coincidence occurred. In early 2016, Lauren Freeman, the student who had testified in Sacramento in support of SB 641, became the first person to invoke the law. She met with a client whose wages had been garnished for a debt she had never heard of before. Again, a notorious process server had filed a proof of service falsely stating that the paperwork had been left with a person who does not exist and that a copy had been mailed when it was never received. Although it would have been past the period to set aside under the old law, it was now possible under Civil Code Section 1788.61. Under Sharon's supervision, Lauren drafted the first motion ever filed to set aside under the new law and passionately argued it in court. Lauren was successful and the judgment against her client was set aside.

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14. See *Votes, SB-641 Debt buying: default judgment (2015-2016)*, [https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill\\_id=201520160SB641](https://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201520160SB641) [<https://perma.cc/6QK5-E36Z>] (last visited Aug. 28, 2018) (detailing the voting history in both chambers for SB 641).

15. CAL. CIV. CODE § 1788.61 (2016).

16. SB 641, 2015 Cal. Stat. Ch. 804.

Without a doubt, Civil Code Section 1788.61 would not have become a law without CJC's collaboration with Ms. Randall, who advocated tirelessly in a way that only someone who has experienced a particular injustice can. And the idea for the bill would not have sprouted without open partnerships between clinical law students and their clients. Freire describes "authentic help" as a project where all who are involved help each other mutually, growing together in the common effort to understand the reality which they seek to transform."<sup>17</sup> Such collaboration both resolved the client's individual legal problems and also unearthed how debt buyers were leveraging existing civil procedure to strip consumers of their due process rights and strip meager assets from low-income communities.

### III.

#### REFLECTIONS ON TRANSFORMATIVE PEDAGOGY IN THE CLINICAL MODEL

Several transformations occurred through the fight to pass SB 641. First, as is often the case when attorneys are open to collaboration with clients, our law student Elena (now a practicing attorney) described her relationship with Ms. Randall as one in which she was the one to learn something profound:

By far the most gratifying part of the process for me was witnessing Ms. Randall give her testimony for the committee. At the time I thought, here is this woman, poised and driven, literally giving a voice and a face to the thousands of people who have fallen victim to the same predatory practices; and what's more, here is a body of elected officials listening to that voice for the purpose of ending those practices. It was a moment that exemplified how our democratic system should work. I was humbled to play a small role in it.

The clinical structure, shaped around a learning-by-doing-and-reflecting model, demands structured opportunities for reflection and growth. In *Teaching to Transgress: Education as the Practice of Freedom*, bell hooks encourages, "conditions of radical openness exist in any learning situation where students and teachers celebrate their abilities to think critically, to engage in pedagogical praxis."<sup>18</sup> For hooks, "commitment to engaged pedagogy is an expression of political activism."<sup>19</sup>

Here, our clinic's case rounds and writing reflections also created a space for all of our students, beyond those involved in Ms. Morgan's and Ms. Randall's particular cases, to accept López's call to "candidly come to grips with" how we

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17. PAULO FREIRE, *PEDAGOGY IN PROCESS: THE LETTERS TO GUINEA-BISSAU* 8 (1978).

18. BELL HOOKS, *TEACHING TO TRANSGRESS: EDUCATION AS THE PRACTICE OF FREEDOM* 202 (1994).

19. *Id.* at 203.



do our work and what we would have to do to change it.<sup>20</sup> Although our intentions may not fully align with our actions, and it is a daily effort to resist the pull of seemingly “natural or inevitable” regnant tendencies, we have found the regular practice of self-reflection to be invaluable in striving to embody hooks’s transgressive pedagogical praxis and López’s egalitarian and democratic approaches to lawyering.<sup>21</sup> In this way, rather than a hindrance, a student-centered clinical model becomes an opportunity or pathway to facilitate and sustain a collaborative practice that transcends traditional client-centered approaches.

Freire insists that for pedagogy to be truly liberating, “the oppressed must be their own example in the struggle for their redemption.”<sup>22</sup> Indeed, through their advocacy, not only did Ms. Morgan and Ms. Randall contribute to legal resolutions of their cases and statewide policy solutions, but the process of self- and community-advocacy (on their own terms, rooted in their experiences) itself transformed them. Ms. Morgan reflected:

I am proud to know that I inspired a significant change in our judicial system. All of the tremulous days of not meeting the expectations of paying rent, car payments, and other credit obligations, were not in vain. My hardship sparked in my student advocate the fight to correct an unjust law.

When accepting the “Advocate of Justice” award at CJC’s Million Dollar Jubilee in October 2016,<sup>23</sup> Ms. Randall also reported that her experience advocating for the bill’s passage empowered her and bestowed on her a deep sense of fulfillment for helping to change an unjust law. Ms. Randall carried that feeling forward and has made it her mission to share that empowerment with everyone she meets who has been victimized by the law. Over the following years, Ms. Randall has testified in support of other legislative proposals and has supported countless people through their own self-advocacy, at times referring them to EBCLC.

And while Sharon had engaged with individual clients to craft their own solutions to their legal problems throughout her then sixteen years of legal practice, she had now experienced collaborating with clients to effect larger social change. Sharon went on to work with clients, students, and community groups to successfully advocate for the passage of several more consumer-

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20. Gerald P. López, *Transform—Don’t Just Tinker With—Legal Education (Part II)*, 24 CLINICAL L. REV. 247, 279 (2018).

21. See HOOKS, *supra* note 18, at 202; *see id.*

22. FREIRE, *supra* note 8, at 54.

23. EBCLC’s Consumer Justice Clinic’s Million Dollar Jubilee was a celebration for staff, students, clients, and community partners in honor of the clinic securing the discharge of over one million dollars in client debt over the period of 2014–2016. To date, the clinic has discharged or received refunds for over \$2,389,150.

related statutes<sup>24</sup> and to help form a coalition of legal service providers, the California Low-Income Consumer Coalition (CLICC), to organize with low-income consumers and lobby for their interests in the state legislature.

Our experience with SB 641 illustrates that attorneys do not and should not have a monopoly on using the legal system to foster social change. Clients deftly sounded the bell of injustice, identified solutions, and organized alongside legislators, attorneys, and students to bring tangible change to California civil procedure.

The clinical law students' energy, skill, and—most importantly—outrage, led them to do what experienced attorneys had never attempted despite years of fighting the same battles ad nauseam. In reflecting on his own process of resisting the unjust and reigning approach about how to live and work, López cites “youthful energy” as what propelled him forward, even when he didn't yet know how to pull apart the reigning scheme and recognize how individual elements come together to feel “seamless, natural, and even inescapable.”<sup>25</sup> Hooks also describes students as a force, “eager to break through barriers to knowing” and “willing to surrender to the wonder of re-learning and learning ways of knowing that go against the grain.”<sup>26</sup> Here, too, clinical students embody the power of a fresh perspective—one that enables them to combine their enthusiasm, training, and common sense to challenge injustices that may already feel inescapable to an otherwise-experienced attorney.

It's really easy to aspire to radical equity and really hard to achieve it. CJC has a long way to go in improving the centeredness of client experience, agency, activism, and partnership in our clinic. But the work of resisting regnancy in our current system of civil legal justice will never be done for any legal practice. Since the first days of EBCLC, we have had the unique opportunity and responsibility to collaborate with clinical students and clients to challenge our institutions and practices to shape our lives and vocations in ways both personally rewarding and collectively valuable. Thankfully, embracing student resistance as a source of energy and accountability in the ongoing process of self-awareness and reflection sustains the rebellious clinical legal praxis we strive to be.

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24. Examples include Assembly Bill 2819 (a collaborative effort between EBCLC's Housing practice, CJC, and various clients and tenant community groups, which mandates that an unlawful detainer can only be shown on a credit report if judgment is entered in favor of the landlord within sixty days of filing or, if plaintiff wins at trial, by court order) and Senate Bill 298 (proposing to create a set amount of funds automatically exempted from bank levy, ensuring that consumers have enough funds continuously in their checking account to cover basic living expenses while a formal Claim of Exemption process is pending).

25. Gerald P. López, *Living and Lawyering Rebelliously*, 73 *FORDHAM L. REV.* 2041, 2042 (2005).

26. HOOKS, *supra* note, at 18.