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A Celebration of CUNY School of Law Scholarship: Introduction

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INTRODUCTION

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City University of New York School of Law (“CUNY Law”) has long nurtured a tradition of engaged social justice scholarship that has supported its mission to prepare lawyers to practice “law in the service of human needs.” CUNY Law’s commitment to educating lawyers for public interest practice is anchored by a curriculum that encourages critical doctrinal analysis, innovative approaches to problem solving, and an appreciation of the power of language to engage and focus our attention, and, in inspired moments, to move and persuade us. This socially engaged intellectual practice among CUNY Law faculty, students, and graduates, and the linkage of that practice with writing, is pervasive. It is reflected in the faculty’s incorporation of a writing- and writer-centered pedagogy across the curriculum,¹ and in the substantial record of social justice scholarship produced by CUNY Law students.² It is manifested in the faculty’s contributions to progressive publications,³ blogs

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¹ *Writing at CUNY Law School: A Pervasive Approach*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/legal-writing/everyone/faculty-pedagogy.html> (last visited Apr. 10, 2013).

² *Students as Legal Scholars: Published Works*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/legal-writing/everyone/student-articles.html> (last visited Apr. 10, 2013).

³ See, e.g., Michelle Anderson, *Rape Law Reform Based on Negotiation: Beyond the Yes and No Models*, in *CRIMINAL LAW CONVERSATIONS* 295 (Paul H. Robinson et al. eds., 2009); Paula Berg, *Ill/Legal: The Meaning and Function of the Category of Disability in Antidiscrimination Law*, 18 *YALE L. & POL’Y REV.* 1 (1999); Beryl S. Blaustone & Carmen Huertas-Noble, *Lawyering at the Intersection of Mediation and Community Economic Development: Interweaving Inclusive Legal Problem Solving Skills in the Training of Effective Lawyers*, 34 *WASH. U. J.L. & POL’Y* 157 (2010); Susan Bryant, *The Five Habits: Building Cross-Cultural Competence in Lawyers*, 8 *CLINICAL L. REV.* 33 (2001); Angela Burton, “*They Use it Like Candy*”: *How the Prescription of Psychotropic Drugs to State-Involved Children Violates International Law*, 35 *BROOK. J. INT’L L.* 453 (2010); Janet Calvo, *A Decade of Spouse-Based Immigration Laws: Coverture’s Diminishment, but Not its Demise*, 24 *N. ILL. U. L. REV.* 153 (2004); Nina W. Chernoff & Joseph B. Kadane, *Preempting Jury Challenges: Strategies for Courts and Jury System Administrators*, 33 *JUST. SYS. J.* 47 (2012); C. John Cicero, *The Classroom as Shop Floor: Images of Work and the Study of Labor Law*, 20 *VT. L. REV.* 117 (1995); Douglas Cox, *Archives & Records in Armed Conflict: International Law and the Current Debate over Iraqi Records and Archives*, 59 *CATH. U. L. REV.* 1001 (2010); Lisa Davis & Julie Mertus, *Citizenship and Location in a World of Torture*, 10 *N.Y. CITY L. REV.* 411 (2007); Frank Deale & Rita Cant, *Barack Obama and the Public Interest Law Move-*

and commentary,⁴ symposia,⁵ faculty- and student-drafted amicus briefs⁶ to federal courts and international tribunals, the work of

ment: A Preliminary Assessment, 10 CONN. PUB. INT. L. J. 233 (2011); Raquel J. Gabriel, *Minority Groups and Intimate Partner Violence: A Selected Annotated Bibliography*, 19 ST. THOMAS L. REV. 451 (2007); Natalie Gomez-Velez, *Public School Governance and Democracy: Does Public Participation Matter?*, 53 VILL. L. REV. 297 (2008); Yasmin Sokkar Harker, "Information is Cheap, But Meaning is Expensive": *Building Analytical Skill Into Legal Research Instruction*, 105 LAW LIBR. J. 79 (2013); K. Babe Howell, *Broken Lives From Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*, 33 N.Y.U. REV. L. SOC. CHANGE 271 (2009); Ramzi Kassem, *From Altruists to Outlaws: The Criminalization of Traveling Islamic Volunteers*, 10 UCLA J. ISLAMIC & NEAR E.L. 85 (2011); Dinesh Khosla & Patricia Williams, *Economies of Mind: A Collaborative Reflection*, 10 NOVA L. REV. 619 (1986); Sarah Shik Lamdan, *Protecting the Freedom of Information Act Requestor: Privacy for Information Seekers*, 21 KAN. J. L. & PUB. POL'Y 221 (2012); Donna Lee, *The Law of Typicality: Examining the Procedural Due Process Implications of Sandin v. Conner*, 72 FORDHAM L. REV. 785 (2004); Julie Lim, *Seen it All, Heard it All, Done it All. Is it All Worth it?*, AALL SPECTRUM ONLINE, Feb. 2013, at 20, <http://www.aallnet.org/main-menu/Publications/spectrum/Spectrum-Online/embedment.html> (last visited Apr. 10, 2013); Stephen Loffredo & Don Friedman, *Gideon Meets Goldberg: The Case for a Qualified Right to Counsel in Welfare Hearings*, 25 Touro L. REV. 273 (2009); Shirley Lung, *Exploiting the Joint Employer Doctrine: Providing A Break for Sweatshop Garment Workers*, 34 LOY. U. CHI. L.J. 291 (2003); Alex Berrio Matamoros & Mary Ann Neary, *Librarians, Legal Research, and Classroom iPads—A Winning Combination*, AALL SPECTRUM, Sept.–Oct. 2012, at 27; Andrea McArdle, *Using a Narrative Lens to Understand Empathy and How It Matters in Judging*, 9 LEGAL COMM. & RHETORIC: JALWD 173 (2012); Elizabeth Newman, *Bridging the Justice Gap: Building Community by Responding to Individual Need*, 17 CLINICAL L. REV. 615 (2011); Ruthann Robson, ed., *THE LIBRARY OF ESSAYS ON SEXUALITY AND LAW* (Ashgate 2011); Joseph Rosenberg, *Poverty, Guardianship, and the Vulnerable Elderly: Human Narrative and Statistical Patterns in a Snapshot of Adult Guardianship Cases in New York City*, 16 GEO. J. ON POVERTY L. & POL'Y 316 (2009); Merrick Rossein, *The Costs of Resolving Employment Disputes Through Arbitration: Are Arbitration Agreements that Require Employees to Share Costs Enforceable?*, in *ADR & THE LAW* 2003 (20th ed. 2003); Jonathan Saxon, *Connecticut Practice Materials: A Selective Annotated Bibliography*, 91 LAW LIBR. J. 139 (1999); Richard Stottow, *The Ethics of Exclusion in Infertility Care*, 2 J. OF CLINICAL RES. & BIOETHICS 114 (2011); Sarah Valentine, *When Your Attorney Is Your Enemy: Preliminary Thoughts on Ensuring Effective Representation For Queer Youth*, 19 COLUM. J. GENDER & L. 773 (2010); Alan M. White, *Credit and Human Welfare: Lessons from Microcredit in Developing Nations*, 69 WASH. & LEE L. REV. 1093 (2012); Deborah Zalesne & David Nadvorney, *Why Don't They Get It?: Academic Intelligence and the Under-Prepared Student as "Other,"* 61 J. LEGAL EDUC. 246 (2011); Steven Zeidman, *Padilla v. Kentucky: Sound and Fury, or Transformative Impact*, 39 FORDHAM URB. L.J. 203 (2011).

⁴ See, e.g., Ruthann Robson, Co-editor, CONSTITUTIONAL LAW PROFS BLOG, <http://lawprofessors.typepad.com/conlaw/> (last visited Apr. 17, 2013); Caitlin E. Borgmann, Editor, REPRODUCTIVE RIGHTS PROF BLOG, http://lawprofessors.typepad.com/reproductive_rights/ (last visited Apr. 10, 2013); Douglas Cox, *The CIA and the Unfinished National Archives Inquiry*, JURIST (Oct. 3, 2012), <http://jurist.org/forum/2012/10/douglas-cox-cia-records.php>.

⁵ See, e.g., Cynthia Soohoo, *Hyde-Care for All: The Expansion of Abortion-Funding Restrictions Under Health Care Reform*, 15 CUNY L. REV. 391 (2012); Julie Goldscheid, *The VAWA Civil Rights Provision: Shaping It, Saving It, Litigating It, Losing It*, 11 GEO. J. GENDER & L. 543, 548–51 (2010); Jeffrey Kirchmeier, *Dead Innocent: The Death Penalty Abolitionist Search for a Wrongful Execution*, 42 TULSA L. REV. 403 (2006).

⁶ See, e.g., Victor Goode & David M. White, Brief for N.Y. State Black and Puerto

faculty-led law centers,⁷ and the distinguished work of CUNY Law's graduates as practitioners,⁸ scholars,⁹ and members of the bench.¹⁰

This engaged scholarly tradition within the CUNY Law community is evident in the issue of the *City University of New York* ("CUNY") *Law Review* that I am privileged to introduce, an issue that commemorates the Law School's thirtieth anniversary. Typically, the *Law Review* features the work of public interest scholars, practitioners, and students representing a broad swath of institutional and professional affiliations. The current issue, however, is distinguished by the fact that the scholarship it showcases consists almost entirely of the work of CUNY Law faculty, graduates, and students. In terms of subject areas, the range of the articles and published remarks is broad. Yet, in a number of dimensions, the crosscutting nature of this work is particularly notable.

CUNY Law Professor Natalie Gomez-Velez's¹¹ article on the

Rican Legislative Caucus as Amicus Curiae Supporting Respondents, *Grutter v. Bollinger*, 539 U.S. 306 (2003) (No. 02-241), 2003 WL 554403.

⁷ CUNY School of Law currently hosts three centers that promote scholarly exchanges and serve as clearinghouses for data and research concerning issues of social justice and equity: *Center for Diversity in the Legal Profession*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/academics/social-justice/cdlp.html> (last visited Apr. 10, 2013) (Professor Pamela Edwards, Director) (dedicated to studying diversity within the legal profession as well as the issues faced by people of color who practice or wish to teach law); *Center on Latino and Latina Rights and Equality*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/academics/social-justice/clore.html> (last visited Apr. 10, 2013) (Associate Judge Jenny Rivera of the New York Court of Appeals, former Director) (focusing on issues affecting the Latino community in the United States, with the goal of developing progressive strategies for legal reform); *Center for Urban Environmental Reform*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/academics/social-justice/cuer.html> (last visited Apr. 10, 2013) (Professor Rebecca Bratspies, Director) (promoting full participation of communities in environmental decisions that affect them).

⁸ For instance, CUNY School of Law graduate Jonathan Libby successfully argued before the Supreme Court a challenge on First Amendment grounds to the Stolen Valor Act, which criminalized falsely stating that one is a recipient of a military medal. For additional background on the case, see Nina Totenberg, *Can 'I Earned The Medal Of Honor' Get You Jailed?*, NPR (Feb. 22, 2012, 12:01 AM), <http://www.npr.org/2012/02/22/147211850/can-i-won-the-medal-of-honor-get-you-jailed>.

⁹ See, e.g., Joy Rosenthal, *An Argument for Joint Custody as an Option for All Family Court Mediation Program Participants*, 11 N.Y. CITY L. REV. 127 (2007).

¹⁰ Examples of CUNY School of Law alumni who have become judges include the Hon. Bryanne Hamill, Hon. Rita Mella, and Hon. Edwina Richardson-Mendelson.

¹¹ As a past Associate Dean for Academic Affairs at CUNY Law School, Professor Gomez-Velez has been especially attentive to identifying the connections that exist between the Law School's academic program and post-graduate initiatives that share an emphasis on professional education for excellent social justice lawyering. In memorializing these connections in writing, this article contributes to the dissemination of knowledge about innovative educational practices that CUNY Law School has long participated in.

Law School's LaunchPad for Justice and other approaches to partnering with courts and communities incorporates the concept of the longitudinal law school: it recognizes that a law school dedicated to preparing students for social justice lawyering—even a school such as CUNY Law that has a robust lawyering and clinical education program—must continue its support of students beyond graduation day. Particularly for those graduates who establish law practices and provide legal support to underserved persons and communities, the initial learning curve concerning doctrinal law, an appropriate lawyering model, and law office business practices can be steep, and the process of learning is ongoing.

Thus, the need among recent graduates for mentoring, continuing legal education, practical advice, and opportunities to realize economies of scale through shared access to resources requires a law school to take steps to help sustain a justice-driven legal practice over the long term. Professor Gomez-Velez's article illuminates how CUNY Law's Community Legal Resources Network ("CLRN") has spearheaded such efforts to support experiential education beyond the conferral of the law degree. Its LaunchPad for Justice project combines immersion of recent CUNY Law graduates in New York City Housing Court practice with access-to-justice aims. In addition, CLRN's Incubator project helps novice lawyers develop a business as well as a lawyering model, and connects small firm work with larger justice initiatives.

The article by CUNY Law graduates Karen Gargamelli and Jay Kim contextualizes the idea of the longitudinal law school. It is offered as a Public Interest Practitioner Section ("PIPS") piece, a unique editorial feature of the *CUNY Law Review* that supports development of articles by practitioners engaged in innovative legal work in the tradition of CUNY Law's commitment to social justice lawyering. In it, the authors describe the evolution of Common Law, an organization they founded that provides group legal education and more tailored individualized legal services to support pro se litigants and facilitate community organizing. Their article illustrates the importance of innovative post-law school projects such as CLRN's Incubator program. This initiative offered Common Law's founders the physical and intellectual space to develop a lawyering model supporting foreclosure defense and providing a critical educational perspective that connects clients' individual legal proceedings with systemic abuses in the mortgage and financial services sector.

The community education that Common Law's CUNY-trained

lawyers provide continues a long-established practice in CUNY Law's clinical programs and is a key component of community lawyering. In her Note on wage theft, CUNY Law alumna Lauren Dasse¹² offers a further example of the utility of community education as an instrument of social justice lawyering. Wage theft is a constellation of exploitative practices that disproportionately affect low-income workers. Analyzing the enhanced enforcement provisions of New York's recently adopted Wage Theft Prevention Act, the Note addresses the need for lawyers to supplement judicial and administrative enforcement efforts with educational outreach to other advocates, social services staff, and workers themselves to ensure the efficacy of the new law.

In its focus on enlightened legislation, Lauren Dasse's Note highlights the importance of legislative remedies in the social justice lawyer's toolkit. Bronx Defenders Managing Attorney Justine Olderman's remarks from the *CUNY Law Review*-sponsored panel, "Bail: Incarcerated Until Proven Guilty,"¹³ address the work that social justice lawyers must do when legislative protections are not properly enforced. It is particularly apt that the *Law Review* feature Ms. Olderman's participation in this panel: The Bronx Defenders and the CUNY Law School Clinics share a special focus in taking a holistic approach to representing clients, including attention to the collateral social and legal consequences of being arrested.¹⁴ Moreover, CUNY Law graduates currently serve as staff attorneys and/or have interned at The Bronx Defenders, and The Bronx Defenders attorneys have taught as adjunct faculty at CUNY Law. Ms. Olderman's discussion considers legislation that was adopted in New York decades ago to ensure that bail determinations would not become a mechanism through which a person who is charged with a crime remains incarcerated during the pendency of a case, with all the attendant consequences that incarceration can visit upon an accused, simply because he is without resources. Olderman observes that although the criteria for bail determinations in the current law appropriately focus on the likelihood that

¹² Editor-in-Chief, 2011–2012 *CUNY Law Review*.

¹³ Justine Olderman, Managing Attorney of Criminal Practice, The Bronx Defenders, Remarks at the *CUNY Law Review* Panel: Incarcerated Until Proven Guilty (Feb. 23, 2012).

¹⁴ *Compare Holistic Defense*, THE BRONX DEFENDERS, <http://www.bronxdefenders.org/our-work/holistic-defense> (last visited Apr. 10, 2013), with *Criminal Defense Clinic*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/academics/clinics/criminal-defense.html> (last visited Apr. 10, 2013), and *Immigrant and Non-Citizen Rights Clinic*, CUNY SCHOOL OF LAW, <http://www.law.cuny.edu/academics/clinics/immigration.html> (last visited Apr. 10, 2013).

an accused would return to court, not the risk of re-offending or of being a danger to the community, courts routinely fail to apply these criteria. Thus, she emphasizes the need for advocacy and education to ensure that the bail statute is enforced according to its letter.

The ameliorative potential of reform legislation for social justice lawyers is examined as well in Amy Robinson-Oost's¹⁵ analysis of New York State's proposed SAFE Parole Act. Arguing that the state's Parole Board currently operates with too much discretion, this Note demonstrates why proposed amendments that would remove as factors for parole consideration the severity of a parole applicant's offense and the applicant's prior convictions are more reflective of the goals of a parole system: to evaluate one's rehabilitation and readiness for re-entry into society.

The work featured in this issue demonstrates the range of scholarship that engages the public interest. CUNY Law Adjunct Professor Michael Macchiarola's assessment of the Security and Exchange Commission's practice of entering into consent judgments certainly falls within that purview. Although recognizing that courts typically give deference to the determinations of administrative agencies, Professor Macchiarola argues that courts that are asked to oversee a consent judgment must have sufficient access to the underlying facts of cases proposed for settlement to enable these courts to evaluate whether the settlement is fair, reasonable, adequate, and in the "public interest." Thus, a more robust level of judicial review than simple deference is appropriate.

As this brief summary indicates, the articles published in this issue exemplify engaged scholarship in a social justice tradition. Social justice scholarship is in part concerned with empowering communities, and for this endeavor education and outreach are crucial lawyering tools. Social justice lawyering is also proactive with respect to the workings of public institutions—courts, legislatures, and administrative agencies—in the effort to support clients and client communities effectively. That the CUNY Law community is so well represented among the authors of articles examining the role of both public institutions and civil society is telling; it reflects the extent to which this engaged community values scholarly writing as a crucial component of its social justice work. That valuing, I would suggest, is linked to the very sustainability of social justice lawyering, which over time needs the intellectual space that justice-driven scholarship affords for both advocacy and reflection.

¹⁵ Managing Editor, 2012–2013 *CUNY Law Review*.

The scholars, teachers, students, and practitioners from CUNY Law are committed to engaged social justice work over the long term and have claimed that intellectual space, as the scholarship in this issue makes abundantly clear.