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## Welcome and Opening Thoughts

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## WELCOME AND OPENING THOUGHTS

FRANCES LEE ANSLEY<sup>1</sup>

As I think most of you in this room know, since September of 2021 I have been living with a diagnosis of terminal pancreatic cancer. For me and for my family it has been quite a ride in many varied ways that I don't need to go into here. But I do want to say that there have been many unexpected upsides to that ride, and among the sweetest is this symposium today.

It is not like Eric Amarante *told* me this event was about my cancer when he first called to relay the invitation a few months ago. He is certainly not that uncouth. But we all know my diagnosis is a big part of what's going on. After all, plenty of other people more deserving than I have finished a productive career without having such a fancy shindig organized in their behalf. The difference is that I have received big news that comes with some pretty dire statistics, and something like that gets people's attention. Add to that fact that after the diagnosis, the weeks and months kept going by, and I kept on abnormally ticking, so that meant an unusual amount of time for people to get ideas and for some generous gears to engage.

I decided last night that I would go head and put this matter on the table, because today I am feeling an urge to try to "name the moment" a bit. I am going to ask all of us to take a breath and think about what time it is now on April 14, 2023. Also to think about what place it is where we are standing, here in the home of the Tennessee Three.<sup>2</sup> Here on a site of the Trail of Tears and of the old Confederacy.

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1. Fran Ansley is Distinguished Professor Emerita at the University of Tennessee College of Law.

2. At the time of this symposium an extraordinary sequence of events was unfolding in our state. I offer the following chronology to give readers some sense of the context at the time, and the lead-up to our event:

March 27, 2023 – Three nine-year-old children and three adults in their sixties (two teachers and a school custodian) are killed in a mass shooting at a private religious school in Nashville. The shooter, a former student at the school, is armed with two assault weapons and a handgun, all purchased legally.

March 30 – Over a thousand students, parents, and others gather at the state legislature, loudly calling on the General Assembly to pass stricter laws on gun control. (Scheduled proceedings for that day included a hearing on a bill that would have expanded access to guns.) Three members of the Tennessee House of Representatives—

Here in the United States of America. Here on our dear imperiled planet. So if I am trying however inadequately to name both this place and this moment, I think I should acknowledge that this gathering today is in part a cancer moment. And I want to thank you for this cancer gift.

Thank you to whoever the unknown grapevine was that first started cooking up this whole idea; to the students of the law review who were adventurous enough to take it on and run with it; to the speakers—some of whom I have worked and played with for decades and some of whom I am only just now getting to know; to those of you who came in person today; to those of you watching out there somewhere in zoom land; and of course special thanks to my husband

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Gloria Johnson of Knoxville, Justin Jones of Nashville, and Justin Pearson of Memphis—all staunch supporters of stronger gun control, join the demonstration for a time, and then enter the Capitol, where they eventually walk down into the well of the chamber and commence a spirited call-and-response chant with protesters who have gathered in the gallery.

April 3 – Johnson, Jones, and Pearson have their ID-access to the Capitol revoked by the Speaker of the Tennessee House.

April 5 – Thousands of students and others across the U.S. rally and march to protest gun violence and call for legislative action in their own states.

April 6 – The House votes to expel Jones and Pearson, both young Black men. During these proceedings, the two are given lectures on civility and decorum by scolding Republican legislators, and they respond. Many of these interchanges promptly go viral. The vote to expel Johnson, a white woman, fails to garner the required supermajority by one vote, and thereby fails. Meanwhile, mass protest demonstrations outside the Capitol in Nashville resume and continue.

April 7 – Vice-president Kamala Harris pays a surprise visit to Nashville to meet with the three legislators, who have now become known as “the Tennessee Three.” The Three also join a phone call with President Joe Biden, who invites them to the White House for a visit.

April 10 – Metropolitan Council in Nashville votes unanimously to reinstate Justin Jones as his own interim replacement in the Tennessee House.

April 12 – In the same fashion, Shelby County Board of Commissioners unanimously reinstates Justin Pearson to his seat.

April 14 – Our symposium convenes.

and son and daughter and brother, all four of whom are here for this special occasion. Thank you and welcome.

Now... This is the point in the program where I was originally going to sit down. But a few days ago, it was decided that after voicing my grateful welcome I am to have a second task and opportunity this morning—to offer some Opening Remarks. In doing so, I will be taking the place of my old friend and fellow law professor, Lucie White—whose name, I know, was in the publicity and may still be on some of the posters outside—who many of you were hoping to hear from, and who would have been here with us if very good reasons had not kept her away.

Of course, I cannot really take Lucie's place. Who could? I suspect she would have touched on themes she knows the two of us share. She likely would have spoken of projects and students and co-workers from her days in Ghana and in Boston, two places where she has dug long and deep to understand the effects of extreme poverty and to search for ways of cracking its hold. She certainly would have spoken about race and racism and associated imperatives that she and I both unavoidably see through the lens of our white female upbringings in the U.S. South of the 1950s. You would have heard her eloquence and felt the stringent edges of her truth-telling commitments. It would have been a great start for our time together today.

Instead, I am going to give you something more modest—an overview about what is going to happen today—what the planners decided to include and why. And beyond that, I will name with regret some things that did not get included. Symposia do have their limits.

So first the general idea. This day is FOR me, but it is not supposed to be ABOUT me, or at least not that much about me after I finally do sit down. Instead, what the organizers set out to do was identify some issues and people and projects that have been abiding concerns of mine over the years, and then to ask a set of wonderful people—some from academia and some from the community—to tell stories and to lay out analyses. Some people will share memories of work they and I did together in the past, some will talk about their own work on related issues in the present, others will tell us what they see coming around the bend.

We settled on three panels, loosely oriented in our imagining as “Past, Present, and Future,” although as you will see they all interpenetrate to some extent, both chronologically and substantively. The matters the panels will take up are roughly:

- National neoliberal economic policy as it landed on factory workers and local communities in Tennessee and Mexico in the 1980s and beyond;
- Migrants from Latin America arriving in Tennessee in new numbers in the 1990s and beyond, and the emergence of migration as a major economic and political issue in our region and around the world; and
- Conflicts over memory and history as a recurring pattern in America's long, unfinished reckoning with race and racism.

Each panel will include attention to what people have tried to do in response to these matters, how their efforts have fared, and what seems to be on the horizon. When the panels are done, Professor Charles Lawrence III will join us from his home in Hawaii, via zoom, to offer closing reflections.

But before we move into that promised agenda, I need to tell you that despite the vast ground we will venture to cover today, many issues I greatly care about got left on the cutting-room floor. And I mourn every one of them.

Well, I mourn *almost* every one. There were a few pipedreams whose passing was probably a good thing. The planning team displayed great patience and wisdom in letting me float my trial balloons, and then waiting while some of the hazier imaginings died a natural death. For instance:

- The multicultural concert evening to precede or follow the symposium but the mechanics of whose promotion remained unclear?
- The month-long documentary film series leading up to this week?
- The photo gallery of special teachers and students and activists and scholars and practitioners, both living and dead, to whom I owe so much?

All drifted away on the breezes of spring. Thank goodness.

Can you picture what it might be like for a law review team to be working with someone in my health-status position, who also happens to hate closure of any kind, who always wants to add one more thing, and who still doesn't seem to be getting all that sick or even particularly tired yet? You had been thinking you were just going to be putting out a nice issue of your nice publication, and it turns out

you are joined through multiple messaging channels to some slightly deranged person with a massive unfinished life agenda, who has gotten the bit in her teeth and has begun—well there's no other way quite to say it—to organize her own fantasy memorial service.

And your small busy team is to be the logistics committee. And it's on your dime.

Hmm.

So, it's clearly no problem that some ideas for this symposium never came to fruition. But other omissions I do mourn. I am talking about matters I have struggled with intellectually and worked on practically for decades, many of them bearing urgently on the crisis moment where we stand. I am also talking about people—some present here today in person or online—with whom I have worked on any number of challenging projects that would make a terrific panel. Under these circumstances I want at the very least to acknowledge some of those matters before we move on to the business of the day. At the very least I should call their names.<sup>3</sup>

For instance, what about the multilayered story of energy in this region, including the terrible record of the Tennessee Valley Authority on fossil fuels past and present, and the myriad ways that extractive and unsustainable energy practices have for so long continued to wound the land and people of Appalachia?<sup>4</sup>

What about the need for feminisms that “look to the bottom” for central issues and solutions rather than focusing so hard on equal access to the top?<sup>5</sup>

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3. On the day of the symposium, I arrived at this point in my opening remarks, took a look at the wall clock, and was forced to recognize that “calling their names” was all I could do in the time then remaining. Accordingly, I jettisoned the accompanying brief paragraphs of elaboration I had originally imagined, sections where I had thought to share some examples of movement activity in Tennessee, Appalachia, and the broader South. This idea about elaborating arose in part because our activity down here so often goes underreported, and in part to give some credit where I acutely felt credit was due. These were sections where I had also imagined I could make glancing reference to my own and others' written work. In the text above, I have hewed to the discipline of no elaboration. Fair warning, however – my urge to elaborate has found refuge below, at page 512.

4. Footnotes 4–24 contain expansive discussions of their listed topics. For ease of reading and an effort to give the discussions their proper attention, these footnotes have been set apart. Please refer to the section at the end of this article titled “Expanded Footnotes,” where these footnotes are listed by number and topic.

5. *See id.*

What about teaching and pedagogy, in classrooms and the community?<sup>6</sup>

What about participatory research—its methods, its ethics, its worth, and its particular significance for university-based scholars?<sup>7</sup>

What about the embattled ground of desegregation and affirmative action?<sup>8</sup>

What about economic class and the part it plays in the social order and in efforts toward change?<sup>9</sup>

What about the role of arts and cultural expression in the movements we are trying to build?<sup>10</sup>

What about theological mysteries and callings—matters I have so rarely named?<sup>11</sup>

What about occupational health and safety—that most sharp and poignant of settings where we so clearly see profit put before people?<sup>12</sup>

What about defense of the public sector and the larger commons?<sup>13</sup>

And regardless of that roster of past projects, campaigns, and fields of study—what about the future?

All the issues I have written or taught or agitated about over the years—whether featured on a panel or left to sit mostly outside the frame today—are, needless to say, still unfolding, and they raise all kinds of questions about the future. For instance:

What about the future of the labor movement—and for that matter of work itself?<sup>14</sup>

The future of gun violence in our state and country?<sup>15</sup>

The future of elections and voting rights?<sup>16</sup>

The future of the gender binary and the on-going project of breaking its chains?<sup>17</sup>

The future of mass incarceration and its relationship to race?<sup>18</sup>

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6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*



The future of reproductive freedom and maternal health?<sup>19</sup>

The future of *everybody's* health in these crazy times?<sup>20</sup>

The future of AI?<sup>21</sup>

The future of war and its weapons?<sup>22</sup>

The future of capitalism and empire?<sup>23</sup>

The future of this planet, and all the life forms still living upon it?<sup>24</sup>

Okay, I know, you may think I am beginning to sound a bit unhinged. But you tell *me*. Am I wrong to be alarmed? Am I exaggerating the intensity and enormity of this moment? I don't think so.

Cancer patients are not the only ones thinking about gathering storms or deadlines on the horizon. Nor should they be.

\* \* \*

Despite all the regrets and memories and pressing questions I have just now gestured toward, of course the planners of this symposium had to make choices. So choose we did, and I hope by the end of the day you will share my great regard for the speakers and the other elements we chose.

But before turning to them, I have an additional topic I want to raise—another of my “one more things.” This one does not appear in so many words on your printed program. Nor did I call it out with my list of difficult omissions, because I did not need to do that, given that it will underpin much of what you will hear from panel speakers today. I expect it will also be expressed or implied in what Professor Lawrence says in his concluding remarks.

What I am talking about has certainly been foundational for my own work and life. You might call it a theory of social change (though the gravitas of that label may not quite fit with the groping nature of my inquiries these days). You might better call it a central article of faith.

I have a strong conviction that only with the building of broad, democratic, inclusive, powerful, grassroots movements, led in

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19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

important part by people who are themselves subordinated and oppressed by current arrangements, will real change be possible. Only movements of that kind will be capable of uniting key strategic allies across difference. Only movements of that kind will be able to muster sufficient power to destabilize current systems as they are and to leverage openings for structural change.<sup>25</sup>

And yet the obstacles are breathtaking. The disincentives run deep. For me at least, the resulting logic is that helping to build such movements—in all their difficulty, messiness, vulnerability, and pain—is the most important thing a person can do in this world—or anyway, a person who, like me, is rooted in the camp of liberty and justice for all.

It happens that I have been questioning myself about this particular conviction during these recent cancer days of my life. Where did this idea come from, anyway, and why does my faith in it seem so unshakable, despite the many undeniable defeats that have been so evident a feature of the ground I have chosen, the landscapes I have moved in, and the projects I have taken on? I have concluded that it was planted quite early in my life.

I am a white female child of the U.S. South, born in 1946 in Atlanta, Georgia, someone with multiple Confederate soldiers among my direct and collateral kin. I grew up singing Dixie with clueless affection and derivative nostalgia.

Lest you get an overly simplistic impression, my Birmingham-born father and my Georgia-born mother raised me not only to sing Dixie but also to admire and revere Abraham Lincoln. My father, for instance, regularly had to struggle to master his tears when reciting Walt Whitman on Lincoln's assassination—something I loved to get him to do. And I would regularly tear up as well.

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25. Of course, I am hardly the only person to urge this view. See, e.g., MARTHA R. MAHONEY, JOHN O. CALMORE, AND STEPHANIE M. WILDMAN, *SOCIAL JUSTICE: PROFESSIONALS, COMMUNITIES AND LAW* (2002); Jennifer Gordon, *The Lawyer is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CAL. L. REV. 2133 (2007); Angela P. Harris, Jeffrey Selbin, & Margaretta Lin, *From "The Art of War" to "Being Peace": Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CAL. L. REV. 2073 (2007); Lani Guinier & Gerald Torres, *Changing The Wind: Notes Toward A Demosprudence of Law & Social Movements*, 123 YALE L. J. 2740 (2014); Charles Lawrence III, *The Fire This Time: Black Lives Matter, Abolitionist Pedagogy and the Law*, 65 J. OF LEGAL EDUC. 381 (2015); FRANCISCO VALDES, STEVEN W. BENDER, AND JENNIFER J. HILL, *CRITICAL JUSTICE: SYSTEMIC ADVOCACY IN LAW & SOCIETY* (2021).

Relatedly, I recall my mother in the early-to-mid 1950s expressing the view that had Lincoln lived, he almost certainly would have been gentler with, and more understanding of, the poor battered “South” (by which I have to figure she unconsciously meant the white South). She suggested that Lincoln of all people might have been able to navigate a less violent Reconstruction, a less bitter transition from wartime and its wounds, and therefore might have stirred up fewer resentments. In fact, she speculated, maybe some Southerners of equally sterling, kind, and reasonable character, people like, say, Robert E. Lee (to whom she believed herself to be related, and maybe she was, and therefore maybe I am too), could have helped Lincoln in that better sort of forgiving, reuniting, and gradualist process than what we ended up with.

In other words, I was born into a complicated social and ideological situation. Downright fraught, actually, when you think about it. Like most of us, I guess.

But it turned out that landing when and where I did was not only complicated, it was a stroke of great good fortune. Thanks to that time and place, I was blessed with exposure to a social movement of profound import, and to some extraordinarily special people. Some I am thinking of were close mentors, others I met more briefly, some were Black and some were white.<sup>26</sup> But all were in one way or another connected to the U.S. civil rights movement—or maybe I would rather call it the U.S. movement for racial justice—that was then pushing its way up through the traumatized and bloody ground of the Southeastern United States.

Right before my young eyes was a movement that was confronting and successfully bringing to the table the powers that were. Furthermore, it was doing this by centering and mobilizing those who were most oppressed and exploited. It was calling on people everywhere, high and low, North and South, to respond to a moral imperative too long suppressed and denied. And at the same time, it was demonstrating to people high and low, North and South, that the very people “on the bottom,” those so long kept down, were capable of disrupting a whole entrenched reality, demanding that it be

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26. Since I am in part using these remarks as a moment to look far back, let me call some names from those days of high school and early college. Kay and Richard Hocking, John and June Youngblut, Howard and Rosalind Zinn, Frances Pauley, Vincent and Rosemarie Harding, Julius Lester, Hector and Susie Black, Julian Bond, Pauline Minniefield, Al Lingo, James Bevel, Anne Braden.

abolished, and doing so in ways that had been up until that moment—I promise you—utterly unimaginable to many.

I was a young and marginal observer of all this,<sup>27</sup> but somehow I got imprinted. At that time, I had no idea of the external or internal challenges involved for those leading or supporting this work. I had few analytical tools to understand where the injustices of Jim Crow came from or what it might take to undo them. I certainly had no idea of the depth, complexity, and staying power of the undergirding structures of the socio-economic system that looked to many eyes like it was soon going to be radically transformed as desegregation and civil rights came to win the day. But I became a believer in a way that stuck, even after I began to understand more about the sobering nature of what we were up against. I became a believer not only in the need for deep change, but in the necessity, the possibility, and the beauty of collective action from below.

Within a few years after that early exposure, I had also become committed to a particular task within the larger Movement that by then I felt myself to be a part of, a task I saw as necessary in general, and as something toward which I had a particular responsibility. That task was the work of bringing more low-wealth white people into multiracial campaigns and movements fighting for racial and social justice. That calling has continued to attend and influence my choices to this day. I am no less convinced of its importance, despite a level of difficulty I find hard to overstate here in these United States in the year 2023.

Since the early days I have just been describing, I have learned about, and sometimes had the privilege of joining or at least supporting from the margins, a range of social movements and social-movement organizations. Some of those are evident on today's agenda and others not. Examples include what might in retrospect be called "intersectional currents" within second-wave feminism, also old-style and now new-style labor organizing, environmental justice movements in the coal fields and hazardous waste dumps of Appalachia, protests against police violence and mass incarceration, solidarity with anti-colonial, environmental, and anti-apartheid movements in other parts of the world including Central America, Palestine, and South Africa, and movements for the rights and dignity of LGBTQ+ people.

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27. Not as young, it should be noted, as some of the Black children set upon by police dogs and fire hoses in those days in Birmingham, one state over from mine.

Nowadays I find myself thinking more and more often about two great crises that my generation is leaving to the next, and about which I have done precious little, at least so far: the looming threats of war and climate catastrophe that hang so close above our heads this very morning. Shouldn't we elder humans be doing something serious about those things, no matter our other involvements? Daniel Ellsberg, who recently made a decision to go public about his own stage-4 pancreatic cancer diagnosis, observed to an interviewer in a remark that has stuck with me, "[M]y work of the past 40 years to avert the prospects of nuclear war has little to show for it. But I wanted to say that I could think of no better way to use my time, and that as I face the end of my life, I feel joy and gratitude."<sup>28</sup>

Looking back, it remains clear to me that what opened my heart and mind to all those other movements and then drew me to them, was as I have already said: the accidental blessing of being a witness to the great generative movement led by oppressed Black people that rose up during my childhood and young adulthood in the region where I was born and still call home. I also know that I am far from the only person who was put on this very path in the very same way.

Much more could and should be said and debated about this article of faith. For change agents to make smart decisions at forks in the road, they need more than vague references to an under-analyzed movement or hazy invocations of beloved community. The forces arrayed in defense of business as usual are formidable, despite the staggering evidence of the injustice and unsustainability of the status quo. Meanwhile the forces seeking to build movements capable of achieving change are hardly exempt from failures of our own, failures that must be studied and acknowledged if they are to be remedied or overcome.

Large and challenging matters, to be sure. I will leave them now for another time—and eventually, no doubt, in other hands. But given the fact that we are standing here in a law school, and I am looking back on a career in the legal academy, I do want to make one final point about social movements and what they need. It is a sad fact that lawyers—including many who are already convinced about the

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28. Alex Kinsbury, *Daniel Ellsberg Never Ran Out of Secrets*, N.Y. TIMES, Mar. 24, 2023. Daniel Ellsberg died on June 16, 2023. On the climate side, maybe this is a good place to mention Third Act, the still relatively new organization of elders (defined as over-60s) seeking ways to get active on global warming and to support youth who are leading the way, <https://thirdact.org/>. I understand a Tennessee chapter is in formation. May it prosper.

importance of working with and beside social movements—are seldom well equipped to do the work. I realize that sociologists and historians like those on the panels here today, along with many other disciplines and vocations populating the room, have their own versions of these challenges. But I do think we lawyers constitute in some ways a case with special disabilities. After all, such a great portion of legal training focuses on mastering the tasks associated with persuading decision-makers located somewhere “above,” through the expert use of skillful and coolly reasoned arguments that are clothed in special language difficult for ordinary people even to follow, and accompanied by elaborate shows of subservience to the authority of robed superiors and near-sacred texts.

I have long argued that this state of affairs poses a practical, pedagogical, and moral challenge for legal educators and practitioners alike. I am happy to say that others agree. Discussions and experiments are hardly new, but more than ever, they seem to be underway. In fact, people in this very room, or with us via zoom, are helping to advance the project in all kinds of creative ways.<sup>29</sup>

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29. See, Lucie White, *To Learn and Teach: Lessons From Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699 (1988); GERALD LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); Dean Rivkin, *Doing Environmental Justice in Appalachia: Lawyers at the Grassroots and the Aspiration of Social Change*, 96 W. VA. L. REV. 1109 (1994); William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N. UNIV. L. REV. 455 (1994); Luke W. Cole, *Macho Law Brains, Public Citizens, and Grassroots Activists: Three Models of Environmental Advocacy*, 14 VA. ENV'T. L.J. 687 (1995); 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); John O. Calmore, *A Call to Context. The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 FORDHAM L. REV. 1927 (1999); Loretta Price & Melinda Davis, *Seeds of Change: A Bibliographic Introduction to Law & Organizing*, 26 NYU REV. OF LAW & SOC. CHANGE 615 (2000-2001) (with a prefatory note from me); William P. Quigley, *Letter to a Law Student Interested in Social Justice*, 1 DEPAUL J. FOR SOC. JUST. 7 (2007); Dean Rivkin, Chris Irwin & Anne Passino, *Strip-Mining and Grassroots Resistance In Appalachia: Community Lawyering for Environmental Justice*, 2 L.A. PUB. INTEREST L. J. 101 (2010); LUCIE E. WHITE & JEREMY PERELMAN, *STONES OF HOPE: HOW AFRICAN ACTIVISTS RECLAIM HUMAN RIGHTS TO CHALLENGE GLOBAL POVERTY* (2010); *THE PARADOX OF PROFESSIONALISM: LAWYERS AND THE POSSIBILITY OF JUSTICE* 274 (Scott Cummings, ed. 2011); William P. Quigley, *Ten Questions for Social Change Lawyers*, 17 LOYOLA PUB. INT. L. REP. 204 (2012); Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, *Movement Law*, 73 STAN. L. REV. 821 (2021).

So for now let me put aside my final “one more thing,” and turn at last to some words about the upcoming panels and the logic of how they fit together. (I will not share biographies or accomplishments of these exceptional speakers yet because you will get those later.)

*Panel I*<sup>30</sup>

The first panel is called “Plant Closings and the Global Economy.” It is slotted into the Past position because my work on plant closings dates from my very first days in the legal academy. I was a rookie law teacher for sure, but I had figured out enough to understand that I needed to develop what’s known in academia as “a scholarly agenda.” Given the orientation I have just described, I wanted to develop that agenda in tandem with some kind of local social movement or social-movement organization. I wanted to increase the chances that my

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30. Some of my own writing relevant to Panel I includes: *U.S.-Mexico Free Trade from the Bottom: A Postcard from the Border*, 1 *Tex. J. of Women & the L.* 193 (1992); *North American Free Trade Agreement: The Public Debate*, 22 *GA. J. INT'L & COMP. L.* 329 (1992); *Standing Rusty and Rolling Empty: Law, Poverty and America's Eroding Industrial Base*, 81 *GEO. L. J.* 1757 (1993); *The Gulf of Mexico, the Academy, and Me*, 78 *SOUNDINGS* 68 (1995); *Southern Women and Southern Borders on the Move: Tennessee Workers Explore the New International Division of Labor* (with Susan Williams) in *NEITHER SEPARATE NOR EQUAL: WOMEN, RACE AND CLASS IN THE U.S. SOUTH* 207-244 (Barbara Ellen Smith ed., 1999); *Rethinking Law in Globalizing Labor Markets*, 1 *U. PENN. J. LAB. & EMPL. L.* 369 (1998); *Putting the Pieces Together: Tennessee Women Find the Global Economy in Their Own Backyards*, in *WOMEN WORKING THE NAFTA FOOD CHAIN: WOMEN, FOOD & GLOBALIZATION* 141-160 (Deborah Barndt, ed., 1999); *Inclusive Boundaries and Other (Im)possible Paths Toward Community Development in a Global World*, 150 *U. PENN. L. REV.* 353 (2001); *Labor Markets, Income Inequality and Globalization*, 15 *GEO. J. POVERTY L. & POL'Y* 475 (2009); *Going South and Coming North: Migration and Union Organizing in Morristown, Tennessee*, a multi-media essay, part of a series on "Migration, Mobility, Exchange, and the U.S. South" published in *Southern Spaces*, an interdisciplinary on-line journal at Emory University, May, 2011, <http://southernspaces.org/2011/going-south-coming-north-migration-and-union-organizing-morristown-tennessee> (with Anne Lewis) (one of the 100 most-accessed articles on the Southern Spaces site, June 2015-June 2016); *Talking Union in Two Languages*, in *TRANSFORMING PLACES: LESSONS FROM APPALACHIA* (Steve Fisher and Barbara Ellen Smith, eds, 2012). For two op-eds on free trade, one early and one late, see Fran Ansley, *Proposed Free Trade Pact Opposed as World-wide Trickle-down Theory*, *KNOXVILLE NEWS-SENTINEL*, Aug. 29, 1993; and Fran Ansley, *Free Trade Issues Remain Vital to Presidential Race*, op-ed in *KNOXVILLE NEWS-SENTINEL*, Oct. 27, 2016.

professional investment in research and writing would actually meet a concrete community need and be connected to a project aimed at movement-building. Plus, it was beginning to dawn on me that at least if things worked out, maybe I could end up with part of my job description being to hang around with people and causes I respected and admired.<sup>31</sup> It quickly became clear to me that the nascent plant-closing movement that had begun showing its face in the South would be a good fit for my interests. So I started going to meetings and other events of the Tennessee Industrial Renewal Network (TIRN).<sup>32</sup>

Several members of Panel I—Luvernel Clark, Doug Gamble, Susan Williams and myself—will offer memories and reflections about the work of TIRN, with particular attention to a series of worker-to-worker exchanges between *maquiladora* workers from Mexico and factory hands from Tennessee. We will also screen a documentary short about the first of TIRN's southbound trips in 1991, a trip on which Luvernel, Susan and myself were all participants.<sup>33</sup> Then to help us take a longer view of this experiment in citizen investigation and cross-border solidarity and to bring some of its themes into the present, Jennifer Gordon will offer reflections from her current work on the role of trade agreements in advancing or

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31. I will forever be grateful to Marilyn Yarbrough, my first dean, for helping me find university funding for some of my early plant-closing research. Likewise to Howard Lesnick who helped administer a fund for labor research that awarded me a small grant that allowed me to accompany the trip featured in Panel I without having to lean on the shoestring budget of the group that organized the trip. And finally to my wise friend and adviser, Juliet Merrifield, for informing me to my delight that there was a perfectly good academic term for what I proposed to do on that first cross-border trip, which was to shoulder the role of "participant-observer."

32. For more on the over-all work of TIRN, see, Linda Bloom, *Taking Charge after Plant Closings*, RESPONSE MAGAZINE (September 1991) pp. 14-16; EVE S. WEINBAUM, TO MOVE A MOUNTAIN: FIGHTING THE GLOBAL ECONOMY IN APPALACHIA (2004).

33. For more on TIRN's exchange trips in particular, see Laura Simmons, *Mexicans Criticize Job Conditions*, KNOXVILLE NEWS SENTINEL, 1991; Lyda Philips, *U.S., Mexican Workers Lose as Firms Exploit Cheap Labor*, NASHVILLE BANNER, Feb. 22, 1991; *Workers Meet Over the Border*, in LABOR UNITY (newspaper of Amalgamated Clothing & Textile Workers Union), Sept-Oct 1991; Mathew Franck, *Mexican Worker: NAFTA Has Led to Exploitation*, KINGSFORT TIMES, July 17, 1997. Some of the work described in Panel I was briefly discussed by Milner Ball in CALLED BY STORIES: BIBLICAL SAGAS AND THEIR CHALLENGE FOR LAW (2000), Chapter 16, "Rachel's Tears."



retarding workers' rights in the even more thoroughly globalized economy and global value chains of today.<sup>34</sup>

After Panel I, we will have a brief lunch break, buffet style at the tables in the hallway. As recently as a couple of months ago we believed that Margaret Montoya would be here today and would address us during lunch. For good reasons involving the safety and well-being of her family, Margaret had to tell us she was not going to be able to attend after all, but I want it to be said that we are thinking of her and missing her today.

*Panel II*<sup>35</sup>

Our second panel, "Justice for Migrants at Work and in the Community," is designated as the slot for the Present, and true enough, since my retirement in 2007 I have been particularly active on questions of migration, and that involvement continues up to the

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34. Alvaro Santos, et. al., *The Role of Law in Global Value Chains: A Research Manifesto*, 4 LONDON REV. OF INT'L L. 57 (2016), <https://doi.org/10.1093/lri/lrw003>; Jennifer Gordon, *Global Labour Recruitment in a Supply Chain Context*, ILO (2015), [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_377805.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_377805.pdf).

35. Some of my own writing relevant to Panel II includes: *The New Immigration in Tennessee*, CENTER NEWS, CENTER FOR RESEARCH ON WOMEN, University of Memphis, pp. 9-10, Fall 1999; *Constructing Citizenship Without a License: The Struggle of Undocumented Immigrants in the U.S. for Livelihoods and Recognition*, in INCLUSIVE CITIZENSHIP: MEANINGS AND EXPRESSIONS 199 (Naila Kabeer, ed. 2005) (reprinted in STUDIES IN SOCIAL JUSTICE, Vol. 4, Issue 2, pp. 165-178, Windsor, Ontario, Canada 2010); *Local Contact Points with Global Divides: Labor Rights and Immigrant Rights as Sites for Cosmopolitan Legality*, in LAW AND GLOBALIZATION FROM BELOW: TOWARDS A COSMOPOLITAN LEGALITY (Boaventura de Santos & César A. Rodríguez, eds., 2005); *Doing Policy from Below: Worker Solidarity and the Prospects for Immigration Reform*, 41 CORNELL J. INT'L LAW 101 (2008); *Educating Workers about Labor Rights and Global Wrongs through Documentary Film*, 41 SUFFOLK U. L. REV. 715 (2008); *Conclusion: Toward a Just and Humane Immigration Policy*, in GLOBAL CONNECTIONS & LOCAL RECEPTIONS: NEW LATINO IMMIGRATION TO THE SOUTHEASTERN UNITED STATES (Fran Ansley & Jon Shefner, eds. 2009); *Going South and Coming North: Migration and Union Organizing in Morristown, Tennessee*, a multi-media essay, part of a series on "Migration, Mobility, Exchange, and the U.S. South" published in Southern Spaces, an interdisciplinary on-line journal (May, 2011), <http://southernspaces.org/2011/going-south-coming-north-migration-and-union-organizing-morristown-tennessee> (with Anne Lewis) (one of the 100 most-accessed articles on the Southern Spaces site, June 2015-June 2016).

present. The reception of migrants from Latin America in this state, and particularly their integration into the workforce on such glaringly unequal and unjust terms, was of great interest to someone like me, longtime partisan of both civil rights and labor rights and someone interested in immigrant justice, actively on the lookout for intersections between racial wrongs and labor wrongs.

But the time lapse between Panel I and Panel II is less neat than our periodization may suggest. It was in early talks with some of the very workers I met through TIRN's trips to Mexico that I first began to hear about new migrants in our state. At that time, in 1990 or 1991, the signs were not yet so evident in Knoxville that a new demographic was afoot in the Southeast, that we were about to witness an episode in racial formation taking place right before our wondering eyes.<sup>36</sup> But many of the workers TIRN was meeting came from a short distance northeast of here, in small towns like Morristown and Greeneville. It was natural enough that these folks were interested in TIRN, because those places had a substantial presence of factories churning out consumer electronics and auto parts, two key labor-intensive industries that had begun to pull up stakes and decamp for lower wages that employers could pay south of the border. The workers left behind in all this churning sometimes kicked up sand, and in those efforts sometimes came into contact with TIRN as they looked for allies and for answers to their many angry and disoriented questions.

What I learned from these small-town workers on our trip to the border was that they had begun to notice "these people"—these brown-skinned, Spanish-speaking people—in the grocery stores and the gas stations of home. These were no longer the seasonal migrants they had been dimly aware of in earlier years, the people tucked away all week in sleeping quarters on some nearby tomato farm. No, these people were still a bit in the shadows, but they were driving cars, accompanied by families, and starting to get work at places like the local chicken plant, or at the temp agencies that had begun serving as the main hiring halls for people of any race seeking work in factories in those small towns north of here. These informants recognized their "look" as soon as we got to Mexico, and began saying how this trip was helping them to understand northbound migration—not just southbound capital flight and the movement of factories to the maquiladoras.

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36. See, MICHAEL OMI & HOWARD WINANT, RACIAL FORMATION IN THE UNITED STATES (2014).

These comments brought me my first glimmers that a new kind of migration might be heading to Tennessee. This was not long at all after TIRN had first begun to learn about the *maquiladora* program in Mexico, the dawn of free trade agreements and all the rest—all those topics you will hear about from speakers on Panel I. But at this point, TIRN members began to see that migration was the flip side of plant closings, just another part of the accompanying fall-out from the flight of industrial capital to low-wage havens in Mexico. It was no longer necessary to raise money to take a TIRN trip to Reynosa or Juarez for Tennessee workers to make contact with people from Mexico. Those folks were coming right here—many of them driven off subsistence farms by rules embedded in the same NAFTA legal infrastructure that was facilitating the flight of industrial capital in the other direction.<sup>37</sup>

So the issue of migration was directly tied to the issue of plant closings for me. And both of those issues were also tied to that earlier agenda of mine: trying to find ways of working with low-wealth people to better understand and find common cause with people who were on the other side of some kind of dividing line.

Just as the persistent division between low-wealth Black people and low-wealth white people in the South was a racial one, the new lines of division I saw emerging were also very clearly about race, albeit no longer a binary division of Black versus white. In addition, now the dividing lines were not only about race, but were also about nation. Meanwhile, the laws that were maintaining and policing this newly visible division were enforcing a hierarchy within workplaces that could be tracked by race. They laws were no longer purely domestic, no longer overtly about race or color. Now they were cast as rules about immigration, national security, territorial borders, crime, and terrorism. These immigration-related rules served to intimidate and discipline immigrant workers. Most worrisome, these new instruments of labor discipline were far from delegitimized among the American public or its blue-collar workforce.<sup>38</sup>

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37. See, BILL ONG HING, *ETHICAL BORDERS: NAFTA, GLOBALIZATION, AND MEXICAN MIGRATION* (2010).

38. Efforts I have joined to try to alter that stubborn fact have included workshops with garment and textile workers and university employees about “the new migration” to Tennessee, as well as its roots in “push factors” south of the border and its impact on immigrant workers; also a series of campaigns aimed at pressuring Congress to pass the repeatedly re-introduced “POWER Act” (Protect Our Workers from Exploitation and Retaliation Act), which would provide temporary immigration

Muneer Ahmad will open Panel II by helping us all see how a panel on labor rights and a panel on immigration are indeed part of the same story—not just in my personal saga, but in the bigger story of what is happening in today’s geopolitical economy. Sherley Cruz will describe how low-wage immigrant workers in Tennessee are poorly protected by the systems that are supposed to support and enforce labor standards. Cecilia Prado will describe some of the organizing she has done and lessons she has learned in the U.S. South—both in Mississippi after the big raids on poultry plants in Mississippi and here in Tennessee.<sup>39</sup>

Meghan Conley will speak about the criminalization of immigrants and some of the intricate ways our local sheriff’s office has wired itself into the federal machinery of mass deportation. JJ Rosenbaum will tell some stories about past projects she undertook when representing immigrant workers in Tennessee, and how immigration law was deployed against workers trying simply to collect their unpaid wages at a cheese factory in Middle Tennessee. She will then bring us back around to “the global economy” of Panel I by sharing some of her current efforts at Global Labor Justice, supporting workers in Asia and elsewhere who are trying to build worker power in local factories and along global value chains.

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relief for immigrant whistleblowers speaking out to invoke and defend U.S. labor standards in American workplaces. H.R. 2169, 112th Cong. (2011-2012).

39. For more on the Mississippi raids, see Angela Stuesse, *The Poultry Industry Recruited Them. Now ICE Raids are Devastating Their Communities*, WASH. POST, Aug. 9, 2019; and Richard Fausset, *After ICE Raids, a Reckoning in Mississippi’s Chicken Country*, N.Y. TIMES, Dec. 28, 2019. On the earlier raid in Bean Station, Tennessee, see Maria Sacchetti, *ICE Raids Meatpacking Plant in Rural Tennessee; 97 Immigrants Arrested*, WASH. POST, April 6, 2018; Jonathan Blitzer, *In Rural Tennessee, a Big ICE Raid Makes Some Conservative Voters Rethink Trump’s Immigration Agenda*, THE NEW YORKER, April 19, 2018.

*Panel III*<sup>40</sup>

I guess I don't have to observe that the third and final panel of the day, the one we designated as our slot for the Future, will dutifully try to point forward in harmony with its name. But like the other panels, it spills beyond its allotted time frame. After all, its title is "The Future of Teaching & Learning about America's *Past*," so by definition, it will include significant looking back. And given the startling events of recent weeks with the Tennessee Three (that is, with Justin Jones of Nashville, Justin Pearson of Memphis, and my friend Gloria Johnson from here in Knoxville, who just now graced us with her presence), I guess I don't need to say that Panel III will also be very much about the present moment.<sup>41</sup>

We are standing in a state that has enacted a "divisive concepts" statute,<sup>42</sup> whose legislature has been busy for years making it harder to take down Confederate monuments displayed in public places,<sup>43</sup> and in a state many of whose school boards are busy banning books about our racial past, present, and future.<sup>44</sup>

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40. Some of my own writing relevant to Panel III includes: *Stirring the Ashes: Race, Class, and the Future of Civil Rights Scholarship*, 74 CORNELL L. REV. 993 (1989); *Race and the Core Curriculum in Legal Education*, 79 CAL. L. REV. 1511 (1991); Book Review, Center News, Center for Research on Women, Memphis State University (1992) (reviewing *THE ALCHEMY OF RACE AND RIGHTS*, 1991, by Patricia Williams); *A Civil Rights Agenda for the Year 2000: Confessions of An Identity Politician*, 59 TENN. L. REV. 593 (1992); *Classifying Race, Racializing Class*, 68 U. COLO. L. REV. 1001 (1997); and *Recognizing Race in the American Legal Canon*, in *LEGAL CANONS* 238-265 (J.M. Balkin and Sanford Levinson, eds., 2000).

41. See notes 2 and 15 above for more on the Tennessee Three and the "present moment" as it existed on April 14, 2023.

42. TENN. CODE ANN. § 49-7-1901, et. seq. ("divisive concepts ... exacerbate and inflame divisions on the basis of sex, race, ethnicity, religion, color, national origin, and other criteria in ways contrary to the unity of the United States of America and the well-being of this state and its citizens.")

43. TENN. CODE ANN. § 4-1-412 ("no memorial regarding a historic conflict, historic entity, historic event, historic figure, or historic organization that is, or is located on, public property, may be removed, renamed, relocated, altered, rededicated, or otherwise disturbed or altered.")

44. See, e.g., Angela Latham, "Wild West" of Book Bans: New Legislation, Complaints Lead to Increasing Debates, *THE TENNESSEAN*, May 15, 2023, <https://www.tennessean.com/story/news/politics/2023/05/15/wild-west-of-book-bans-new-legislation-complaints-lead-to-increasing-debates/70200690007/>

For me, Panel III's theme will bring the whole symposium back full circle to the kinds of discussions that opened my heart and mind to questions of justice back in my youth and first set me on this road. Later, during my earliest days in the academy when I was first getting involved in the movement against plant closings, I was also writing about racism—especially about anti-Black racism, and about my own efforts to learn and teach about white supremacy's past, present, and future in America. For all those reasons, I was glad when the student editors of the law review selected this panel topic as one of their top picks for the Future slot, and I hope you will be too.

Rob Bland will open Panel III by introducing us to a little-known early contributor to debates and conversations within what he calls “the African American public sphere” as it was constituting itself during the Reconstruction era, a time with eerie echoes of events unspooling in our state today. Enkeshi El-Amin will tell about a community-history project she led in Knoxville, one rooted in oral histories and archival research about a former neighborhood known as “The Bottom,” a Black community that was eventually destroyed by successive waves of urban renewal. Sharing images and stories of that project, she will also talk about why she sees this kind of local memory retrieval as an important contribution to the struggle over the meaning of America's past, and a little about an amazing community space she helped to create, located in East Knoxville and called “The Bottom.”<sup>45</sup>

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45. First let me quote from the Bottom's own webpage:

Founded in 2020 by Dr. Enkeshi El-Amin, a community sociologist studying race, place, and Black Appalachian communities, The Bottom was named after the Black neighborhood in East Knoxville that was demolished in the 1950s by repeated waves of urban renewal and carried out in a context of institutionalized racism. Dr. El-Amin's efforts were joined by those of other black women in Knoxville who also sought to do meaningful work educating the community about the process of that neighborhood's destruction by the forces of “community development” and “renewal.”

Today, The Bottom describes itself as “a collective project that stands as ‘a multi-use space to reclaim and reimagine Black space in Knoxville.’” In my humble opinion “multi-use space” doesn't really convey the full reality. On its website, for instance, we learn that the Bottom houses a tea-room, a research room, a podcast studio, an art studio, a space for sewing classes and fabric projects, as well as a black empowerment bookstore, along with a kitchen. a generous front porch with comfortable rocking

Jessica Wilkerson will talk about her own work as a class- and race-conscious feminist historian who has chosen the methods of an oral history that looks consistently to the bottom to unearth events and forces often ignored to our detriment. Finally Van Turner, one of our law school's own, will tell about a different kind of community history project, one where he and a pair of other inventive and gutsy lawyers, together with various Memphis allies, were able to achieve the removal of the statue of Nathan Bedford Forrest (Confederal general and founder of the Ku Klux Klan) who had been looking down from his rearing equestrian mount in a public park in Memphis where it had towered ominously over residents of that city, flanked by Confederate battle flags, since its original installation in 1905.

And finally, at the very end of what may end up feeling like quite a long day, we will hear from Professor Charles Lawrence. However tired any of you may be by the time we arrive at that moment, I hope you will resolve to stay for his closing words. Although I do not know what he is going to say, I feel confident in assuring you that you will not regret sticking around to hear and see him.

I hope these Opening Remarks and this preview have made clear why I am so happy and proud to bid you welcome to what I know will be a special time for me, and I hope will prove so for all of you as well.

Thanks again.

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chairs, and a welcoming backyard featuring a weather-resistant display of archival photographs with accompanying text that memorialize the center's namesake neighborhood. Some of us had the pleasure of dining outdoors in that backyard on Magnolia Avenue last night, and we are eager to hear more from Enkeshi today about the history of this remarkable new community institution. I would also like to share the group's mission statement here:

The mission of the Bottom is to build community, celebrate culture, and engage the creativity of Black people through curated events, community projects, ongoing programming, shared resources, and physical space. At the Bottom, community leaders, artists, educators, students, cultural workers, activists, and entrepreneurs blend culture, politics, and social issues in strategic and engaging ways. We strive to cultivate a sense of belonging and safety for Black people who come from different classes, and from different religious, sexual orientation, and gender backgrounds.

**EXPANDED FOOTNOTES**

## 4. Appalachian Energy

A great deal of work went on back in the 1970s trying to get TVA to stop stripping Appalachian coal. Opponents *did* win some inadequate but important controls and reforms, and advocates did succeed in getting TVA to back off its reckless dream of building a “breeder reactor” to make plutonium here in the Valley. Even then we were urging TVA that instead of doing more strip-mining, more nuclear reactors, and more dams, it should double down on conservation and renewable energy. Still today, TVA plans to build new power plants fueled by natural gas. Why on earth is TVA not now the nation’s natural leader and innovator in developing a bold and effective response to the urgent crisis of climate change rather than tailing so shamefully behind? See Lisa Friedman, *Largest Federal Utility Chooses Gas, Undermining Biden’s Climate Goals*, N.Y. TIMES, Mar. 17, 2022.

For a few glimpses of anti-strip-mining activism back in the day, see George Vecsey, *Eastern Kentucky Anger Rises as Strip-Mining of Coal Grows*, N.Y. TIMES, Aug. 1, 1971; Ben A. Franklin, *Strip-Mining Foe in Hearing Clash*, N.Y. TIMES, Oct. 27, 1971; Mary Beth Bingman, *Stopping the Bulldozers: What Difference Did It Make?*, in *FIGHTING BACK IN APPALACHIA: TRADITIONS OF RESISTANCE AND CHANGE* (Stephen L. Fisher, ed., 1993); *WHO OWNS APPALACHIA? LANDOWNERSHIP AND ITS IMPACT* (University Press of Kentucky 1983); *What’s Done to the Land Happens to the People: The Story of Becky Simpson and a Struggle for Environmental Justice*, at You Got to Move Shorts, <https://yougottomoveshorts.com/> (excerpted from the film YOU GOT TO MOVE, by Lucie Massie Phenix and Veronica Selver, 1985); Dean H. Rivkin, *Lawyering, Power, and Reform: The Legal Campaign to Abolish the Broad Form Mineral Deed*, 66 TENN. L. REV. 467 (1999); and TO SAVE THE LAND AND PEOPLE (Appalshop Films 1999). For more recent perspectives, see Appalachian Voices’ website, *I Love Mountains*, <http://ilovemountains.org/>; and James Branscome, *Commentary: TVA Owes Eastern Kentucky Reparations for Strip Mining’s Role in Flooding*, THE DAILY YONDER, Aug. 15, 2022.

Other aspects of TVA’s practices, from the need for relief for low-income ratepayers to the impacts of dam-building also came under fire in those days. See e.g., Zygmunt J. B. Plater, *THE SNAIL DARTER AND THE DAM: HOW PORK-BARREL POLITICS ENDANGERED A LITTLE FISH AND KILLED A RIVER* (2013), and Zygmunt J. B. Plater, *A Jeffersonian Challenge from Tennessee: The Notorious Case Of The Endangered “Snail Darter” Versus TVA’s Tellico Dam—And Where Was The Fourth Estate, the Press?* 80 TENN. L. REV. 501–542 (2013). (On a personal note, let me add that before he was denied tenure, Zyg Plater was my challenging and supportive Property teacher at UT law school in the 1970s and an inspiring role model when it came to faculty involvement with local communities (including farmers and the Eastern Band of Cherokee Indians) who needed help litigating rural land use, cultural preservation, and environmental issues.)



The longer history of coal in Appalachia is deep, and even a small introduction would be far beyond the capacity of a footnote. Here I will note that I had some memorable times before law school interviewing former miners and their families about long-ago strikes and other unrest among coal miners in Tennessee. See *East Tennessee Coal Mining Battles*, 1 SOUTHERN EXPOSURE 112 Vol. 1, No. 3 & 4 (1974) (with Brenda Bell); and *Interview with Barney Graham, Jr.*, 4 SOUTHERN EXPOSURE 136 (1976) (with Sue Thrasher). Later experiences are recounted by my husband and me in *Singing Across Dark Spaces: The Union/Community Takeover of Pittston's Moss 3 Plant*, in FIGHTING BACK IN APPALACHIA: TRADITIONS OF RESISTANCE AND CHANGE (Stephen L. Fisher, ed, 1993) (reprinted in Staughton Lynd and Alica Lynd, NONVIOLENCE IN AMERICA, A DOCUMENTARY HISTORY (1995)). See also Fran Ansley, Book Review, 11 J. APPALACHIAN STUDIES Nos 1 and 2 (Spring/Fall 2005) (reviewing Richard A. Brisbin, Jr., A STRIKE LIKE NO OTHER STRIKE: LAW AND RESISTANCE DURING THE PITSTON COAL STRIKE OF 1989-1990, (2002)).

##### 5. Feminism that “Looks to the Bottom”

One of my central feminist commitments has been to keep at the center of my attention women who are subordinated not only by their gender, but also by other aspects of their social/geographical location—race and class often uppermost among those other aspects in my own thinking, but of course not the only potentially relevant vectors. (For an article of mine that focused in part on unravelling some of these matters, see, *A Civil Rights Agenda for the Year 2000: Confessions of An Identity Politician*, 59 Tenn. L. Rev. 593 (1992).) Regardless of vector, I am less interested in the glass ceilings that too often unfairly hold women professionals down and too often dominate discussions of “women’s issues” in law school. I am more interested in the fragile glass floors that threaten to collapse under the feet of most women—those whose situations are precarious enough to make glass ceilings kind of beside the immediate point.

A publication I always make sure to include in my CV is a long-ago contribution to the first edition of OUR BODIES, OURSELVES. That 1970 edition was created by the Boston Women’s Health Collective and published non-commercially by the New England Free Press on stapled newsprint. The booklet was initially entitled “Women & Their Bodies,” but it was quickly reprinted in 1971—with the same text, but with the seriously improved title, “Our Bodies Ourselves”—after demand for the first issue went quickly through the roof. I don’t deserve much credit at all for the initial publication, much less for the later expansion and internationalization of the OBOS project, since I was not part of the group—mostly young mothers recently smarting from experiences in doctor-dominated childbirth—who made the publication happen. Nor was I remotely any kind of expert! But I mention it here as an early manifestation of my desire to build an inclusive women’s movement. When given an opportunity to read the first draft and offer comments, I was already at a point where I was trying to be aware of which women’s perspectives were reflected in the work of “women’s liberation,” and whose perspectives might be getting left out. I told the group that it seemed like they had given too little attention to concerns of younger women and older

women. In a spirit emblematic of those highly non-professionalized days in our movement, I was immediately invited by the group to contribute a chapter on sexually transmitted diseases. So I went straight to the public health department, got a bunch of brochures, and wrote my chapter! It still makes me smile to think of it.

In coming to the commitment just described, I have been deeply influenced by many people, but I want to mention several particularly challenging and inspiring women and their work. Surely it was Anne Braden's "Free Thomas Wansley: A Letter to White Southern Women" (1972), <https://newsreel.org/guides/Anne-Braden-Southern-Patriot-Resources/Anne-Braden-A-Letter-to-White-Southern-Women.pdf>, written at a time when I was active with the Southern Conference Educational Fund (SCEF), a group Anne helped to lead, that got my brain working hard on the entangled race-gender nexus and its meaning for all white women, but especially for those of us in the South. (Admittedly, I already had some foundation in these matters from reading Lillian Smith's remarkable work, both in *STRANGE FRUIT* (1944), and in *KILLERS OF THE DREAM*. (1962).)

A few years later, one of the most exciting things about coming into law school teaching when I did was the exhilaration of reading the new current of scholarship that was beginning to flow from the recently desegregating professoriate of many disciplines—more than a few of whom were critical intellectuals on fire about race and/or gender. Many of those people were feminists intent on excavating subordination and privilege *within* categories of domination and subordination—women fiction and non-fiction writers like bell hooks, Alice Walker, and Toni Morrison. Some, I discovered to my delight and amazement, were legal scholars. In the latter category I think with special gratitude and appreciation of Mari Matsuda's article, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987) and Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987); both published the year I was earning my LL.M. in preparation for a job search in the legal academy, and both of them vastly expanding my idea of what legal scholarship could mean or do. Those articles were followed by Regina Austin, *Employer Abuse, Worker Resistance, and the Tort of Intentional Infliction of Emotional Distress*, 41 STAN. L. REV. 1 (1988) and Kimberlé Crenshaw's *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331-87 (1988), both published the year I began teaching here at the College of Law. The next year came Crenshaw's *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 UNIV. CHL. L. F. 139. Other sources to which I feel I owe a particular early debt on these questions are Matsuda's later book, *WHERE IS YOUR BODY?* (1997) with its memorable injunction to "ask the other question." See also Suzanne Pharr, *HOMOPHOBIA: A WEAPON OF SEXISM* (1997). A later book bringing together many essays and interviews by Helen Lewis stretching over the course of years, is Helen Matthews Lewis, *HELEN MATTHEWS LEWIS: LIVING SOCIAL JUSTICE IN APPALACHIA* (Patricia D. Beaver and Judith Jennings, eds., 2012).

## 6. Classroom and Community Teaching

For some of my own writing about teaching in and beyond the classroom, see *Race and the Core Curriculum in Legal Education*, 79 CAL. L. REV. 1511 (1991); *Starting with the Students: Lessons from Popular Education*, 4 S.CAL. REV. L. & WOMEN'S STUD. 7 (1994); *Inclusive Teaching Methods Across the Curriculum: Academic Resource and Law Teachers Tie a Knot at the AALS*, 31 U. S.F. L. REV. 875 (1997) (with David Dominguez, Laurie Zimet, Charles E. Daye & Rodney O. Fong); *Recognizing Race in the American Legal Canon*, in LEGAL CANONS 238-265 (J.M. Balkin and Sanford Levinson, eds., 2000); *Going On-Line with Justice Pedagogy: Four Ways of Looking at a Website*, 50 VILLANOVA L. REV. 875 (2005) (with Cathy Cochran) (a digital copy of the website described in that article is at <https://works.bepress.com/frances-ansley/>); See also, *Educating Workers about Labor Rights and Global Wrongs through Documentary Film*, 41 SUFFOLK U. L. REV. 715 (2008).

My debts to others about teaching are so many. Those to Highlander people and others who draw on traditions of popular education are surely obvious. See, e.g., MYLES HORTON & PAULO FREIRE, WE MAKE THE ROAD BY WALKING: CONVERSATIONS ON EDUCATION AND SOCIAL CHANGE (Brenda Bell, et al., eds. 1990); NINA WALLERSTEIN & ELSA AUERBACK, PROBLEM-POSING AT WORK: POPULAR EDUCATOR'S GUIDE, (2004) and its companion volume, PROBLEM-POSING AT WORK: ENGLISH FOR ACTION (for ESOL teachers) (2004). But there are many others—some of my own teachers during formal schooling (too many to name), those with whom I had the too-rare pleasure of co-teaching (I think of John Gaventa, Mónica Hernández, Helen Lewis, Linda Parris-Bailey, Lucie White); a wonderful crew from the Carnegie Academy for the Scholarship of Teaching and Learning (including Jane Aiken, Vernon Burton, Roberto Corrada, Craig Nelson, Mary Romero, Gerald Shenk, David Takacs, and Lucie White again).

Some other writings about teaching and learning that have been especially important to me include Charles Lawrence III, *The Word and the River: Pedagogy as Scholarship as Struggle*, 65 S. CAL. L. REV. 2231 (1992); Howard Lesnick, *Being a Teacher, of Lawyers: Discerning the Theory of My Practice*, 43 HASTINGS L. J. 1095 (1992); Margaret Montoya, *Mascaras, Trenzas, y Greñas: Un/Masking the Self While Un/Braiding Latina Stories and Legal Discourse*, 17 HARV. WOMEN'S L.J. 185 (1994); Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality,"* 4 CLINICAL L. REV. 1 (1997); and Claude M. Steele, *Thin Ice: Stereotype Threat and Black College Students*, THE ATLANTIC (Aug. 1999). Certain casebooks that meant a great deal to me—first as a student and later as a teacher—include: DERRICK BELL, RACE, RACISM AND AMERICAN LAW (1973); GARY BELLOW & BEA MOULTON, THE LAWYERING PROCESS: MATERIALS FOR CLINICAL INSTRUCTION IN ADVOCACY (1978); and JOSEPH SINGER, PROPERTY LAW: RULES, POLICIES AND PRACTICES (1997). See also JOSEPH SINGER, THE EDGES OF THE FIELD: LESSONS ON THE OBLIGATIONS OF OWNERSHIP (2001).

## 7. Participatory Research

Exciting things are happening with participatory research methodologies at the University of Tennessee today, and it made me happy to hear some of them mentioned at the symposium. Examples include the Community-University Collaborative Research Initiative, <https://diversity.utk.edu/curci/>, and the new Appalachian Justice Research Center, which was announced from the podium at the symposium by two of its instigators, Wendy Bach (Law) and Michelle Brown (Sociology).

For some of my own writing about participatory research, see Fran Ansley, *Maquiladora Worker Exchange Project, Tennessee Industrial Renewal Network*, in GRASSROOTS PARTICIPATORY RESEARCH: A WORKING REPORT FROM A GATHERING OF PRACTITIONERS (Lee Williams, ed., 1997) (with Susan Williams); *Researching for Democracy and Democratizing Research*, CHANGE MAGAZINE, Jan./Feb. 1997, pp. 46-53 (with John Gaventa); and *Who Counts? The Case for Participatory Research*, in LABORING BELOW THE LINE: THE NEW ETHNOGRAPHY OF POVERTY, LOW-WAGE WORK, AND SURVIVAL IN THE NEW ECONOMY 245-270 (2002). I am indebted to other legal scholars who have integrated participation methods into their scholarship, and here want to lift up in particular Jane Larson and Guadalupe Luna for our many exploratory conversations and their sterling work in Texas *colonias*. See Jane Larson, *Free Markets Deep in the Heart of Texas*, 84 GEO. L. J. 179 (1995); Guadalupe T. Luna, "Agricultural Underdogs" and International Agreements: The Legal Context of Agricultural Workers Within the Rural Economy, 26 N.M. L. REV. 9 (1996).

## 8. Desegregation and Affirmative Action

It seems my entire "professional" life, both as a law student from 1976 to 1979, and as a law teacher from 1988 to 2007, was spent engaged in struggle over affirmative action and the desegregation of higher education in both its student body and its teacher and staff corps. While I was in law school, the *Bakke* case was decided by the Supreme Court. Although fears were rife among defenders of affirmative action that the Supreme Court might announce an outright prohibition of affirmative action, this did not happen. Instead, in 1978, the court blinked and upheld a modified version of California's previously robust program, holding that "quotas" were out, but race could be gingerly used as one among many admissions criteria in higher education if the aim was to achieve "diversity" in the student body, a quality the Court believed could benefit all students and was therefore not unjust. We defenders felt the decision in *Bakke* was a clear defeat for our vision of racial justice and we were acutely disappointed at its milquetoast version of both desegregation and racial repair.

At about the same time, a student group at the law school learned of a long-standing desegregation case called *Geier*, first brought against the University in 1968, and by then being administered under a consent decree that included a remedial affirmative action program. We set about trying to inform our fellow students of the fact that our law school was under the watchful eye of a federal district judge in Nashville who had imposed a stipulated order on the University of Tennessee as a remedy for its previous *de jure* practices, (For more on the *Geier* case, see Sonja Renee

Jackson-McCoy, *A Study of the Rita Geier Case: Efforts to Desegregate Three State Universities in Tennessee from 1990-2006* (2008), <https://oatd.org/oatd/record?record=oai%5C:dc.etsu.edu%5C:etd-3356>; and Carlos Gonzáles, *A Long Journey to Justice*, Tennessee Bar Association Law Blog, Dec. 2017. My 1976 entering class at the law school contained the first significant cohort of desegregating Black students to enter the institution, and we activists found it highly frustrating to see those students generally faring poorly in an environment where there was not a single Black professor or administrator in the school, and precious little appreciation for the kind of academic, cultural, and personal support their situation loudly called for. Our student group worked to press for faster progress and more creative programming. In the course of that effort, I recall that we managed to hurt the feelings of several well-meaning administrators who felt they had worked hard for years to press on toward desegregation at UT—decidedly against the current—and that conditions were slowly but measurably improving. We were sympathetic but undeterred.

During that time, *Weber v. Kaiser Aluminum*, 415 F.Supp. 761 (E.D.La. 1976) was decided. This case was brought by a white male factory worker in Alabama to challenge a collective bargaining agreement that gave Black workers at his factory a type of slightly protected seniority in the plant as a way of avoiding lay-offs that would have drained the factory of many Black workers hired and slotted into jobs formerly unavailable to them after passage of Title VII of the Civil Rights Act of 1964, a statute that prohibited racial discrimination in employment and had opened the doors to many people of color seeking jobs in previously predominantly-white, unionized plants across the country. *Weber* eventually worked its way up to the Supreme Court, and students here followed the case with great interest—in part because blue-collar employees at the Alcoa Aluminum plant in nearby Blount County were governed by virtually the same collective bargaining agreement that was at issue in *Weber*, and we thought it would be a great shame if Kaiser and the United Steelworkers were told in the name of “anti-discrimination” that they were prohibited from reaching an agreement to achieve some kind of rough parity in the numbers of Black workers holding trainee positions in the crafts. (Prior to the challenged contract, Black workers made up only 2% of the craft trainee positions in the Kaiser plant, despite constituting 39% of the local labor force in Alabama.) After all, aluminum production was an important industry that had only recently been opened up in any real sense to Black job seekers. Our Affirmative Action Committee did interviews back then with Black Alcoa factory hands whom we met through a supportive Black student at the law school who attended church in Alcoa. She had heard many stories from fellow congregants there about Alcoa Aluminum recruiting them in the 1930s from their homes in the Deep South, and then transporting them to East Tennessee. First these internal migrants were assigned only to outside jobs wrangling mules. Later they were brought inside the plant, but restricted to the sweltering “pot rooms” where few other employees wanted to work. We heaved a huge sigh of relief in 1979 when the Supreme Court allowed that desegregating union contract to stand.

Soon enough, however, by the time I got a job teaching here, post-*Bakke* constitutional challenges to affirmative action in higher education had begun marching across the landscape, throwing civil rights advocates into action as we

agitated to strengthen and expand the racial justice projects of desegregation and affirmative action and to defend them from the assaults of a blinkered color-blindness theory of racial redress. I was happy to learn about the Society of American Law Teachers (SALT), and to join their efforts in vigorous defense of affirmative action. The most fun I think I ever had at an AALS meeting was in 1998 in San Francisco when some 1500 law professors gathered out front of the main conference hotel, donned sleazy synthetic gowns and cheap mortarboards, and launched ourselves into a march to defend affirmative action, headed up enthusiastically by Willie Brown, then mayor of the City, and led in spirited singing by Bay Area folksingers Francisco Herrera and John Fromer, both of whom Candie Carawan had told me about, and who—sure enough—were more than happy to contribute their considerable talents to the action that day. Among the songs we sang I remember especially “We Who Believe in Freedom Cannot Rest.” For other memories of that march, and more, see, Margaret Montoya, *A Brief History of Chicana/o School Segregation: One Rationale for Affirmative Action*, 12 BERKELEY LA RAZA L. J. 159 (2002).

The next legal challenge to affirmative action in higher education that made its way across the landscape was *Hopwood v. Texas*, filed in 1992. In that case the district court in 1994 issued an opinion upholding the affirmative action program then in effect at the University of Texas. However, in March, 1996, the Fifth Circuit overturned that opinion and ruled that Texas could not use race in admissions whether the goal was “to achieve a diverse student body, to combat the perceived effects of a hostile environment at the law school, to alleviate the law school’s poor reputation in the minority community, or to eliminate any present effects of past discrimination by actors other than the law school.” 78 F.3d 932 (5th Cir. 1996). The University of Texas appealed that ruling, and supporters of affirmative action immediately began preparing a campaign to persuade the Supreme Court to reverse the Fifth Circuit’s decision. However, in July 1996, the Supreme Court surprised observers by denying certiorari. An uneasy pause ensued.

The following year, 1997, saw two new cases begin to make their way through the courts. They were the *Gratz* case (challenging the University of Michigan’s affirmative action program in undergraduate admissions) and the *Grutter* case (challenging Michigan’s affirmative action program for admission to the law school). Students elsewhere organized as intervenors, determined to raise deeper questions about the justice of affirmative action and to put forward what they viewed as stronger arguments than reliance on *Bakke*’s logic, which they viewed as weak. The case was in the Sixth Circuit, and Cincinnati is not that far from Knoxville. So in 2001, a carload of students and I set forth to attend the oral arguments there and to meet with the students who had successfully won entry into the case as intervenors. They were leaning hard on the view that *Gratz* and *Grutter* were more about *Brown v. Board* than they were about *Bakke*, and they called upon prominent historians to help them make that case—people like John Hope Franklin and Eric Foner. It was an amazing opportunity to watch assertive lawyering and bold framing of legal arguments in action. For more on this student intervention, see Margaret Montoya, *id.*, at 160-162.

In 2003, *Gratz* and *Grutter* finally did make it to the Supreme Court. This time the law school chipped in to help pay for a bus to take a group of UT students, faculty,

and community members to Washington to rally on the steps of the Supreme Court Building in support of affirmative action in higher ed and professional schools. (“Educate! Don’t Segregate!” we chanted as I greeted law professor friends and beamed at rowdy law students, all raising our voices and calling on the Court to do the right thing. The justices ended up ruling in those cases that although diversity in higher education was indeed a compelling interest, the undergraduate program at issue in *Gratz* was not narrowly tailored enough to withstand scrutiny. However, it also ruled that the program at the law school did pass muster in that regard. Our sigh of relief this time was decidedly subdued. See, David L. Chambers, Charles E. Daye, Margaret E. Montoya, Athena D. Matua, Frank Wu & Sheldon Zedeck, *Who Gets In? The Quest for Diversity after Grutter*, 52 BUFFALO L. REV. 531 (2004); and Sumi Cho, *From Massive Resistance, to Passive Resistance, to Righteous Resistance: Understanding the Culture Wars from Brown to Grutter*, 7 J. CONSTITUTIONAL LAW 809 (2005).

Soon thereafter, in 2006, the plaintiffs in Tennessee’s *Geier* case voluntarily dismissed their lawsuit. In doing so, they gave up a case whose roots were firmly in *de jure* segregation and whose justifications for affirmative action could therefore be confidently grounded in remediation of past wrongs rather than the race-conscious social engineering for the future that many affirmative action programs were accused of aiming at. For me, it was a sad day to see the sturdy *Geier* plaintiffs throwing in the towel just as I was deciding to step back from teaching at this university. Scholarships and faculty diversity positions here had for years been funded with help from “*Geier* money,” sent us by the legislature under the terms of the *Geier* decree. The existence of the on-going case and its stipulated order had given history-minded teachers like me a helpful way to introduce students to the workings of past segregation and alert them to the kind of reasoning long—and still!—deployed to justify it.

Since that voluntary dismissal of the *Geier* case, we have watched as another squeaker case (*Fisher II*) made it narrowly through the ever-shrinking eye of the Supreme Court’s affirmative-action needle. But most observers have long been convinced that for years we have been on the cusp of losing affirmative action in higher education altogether, and the prospects have done nothing but dim. On June 29, 2023, two months after our symposium, with the Supreme Court’s ruling in *Students for Fair Admissions vs. President and Fellows of Harvard College* striking down both Harvard’s and UNC’s admissions programs, it is hard to argue with that view, even though the Court did (barely) stop short of explicitly overturning *Grutter*.

For some of my own writing on affirmative action, see Student Comment, *Cost Allocation in Title VII Remedies: Who Pays for Past Employment Discrimination?*, 44 TENN. L. REV. 347 (1977); *Stirring the Ashes: Race, Class, and the Future of Civil Rights Scholarship*, 74 CORNELL L. REV. 993 (1989)(excerpts reprinted in CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR (Richard Delgado & Jean Stefancic, eds, 1997); *Classifying Race, Racializing Class*, 68 U. COLO. L. REV. 1001 (1997). For other commentary, see Duncan Kennedy, *A Cultural Pluralist Case for Affirmative Action in Legal Education*, 1990 DUKE L. J. 705; CHARLES LAWRENCE III & MARI MATSUDA, WE WON’T GO BACK: MAKING THE CASE FOR AFFIRMATIVE ACTION (1997);

Charles R. Lawrence III, *Two Views of the River: A Critique of the Liberal Defense of Affirmative Action*, 101 COLUM. L. REV. 928 (2001).

#### 9. Economic Class and the Social Order

For some of my work specifically trying to tease apart and rebraid the concepts of race and class—both as they function in U.S. society and in movement building—see *Stirring the Ashes: Race, Class, and the Future of Civil Rights Scholarship*, 74 CORNELL L. REV. 993 (1989). On affirmative action's fraught relationship with race and class, see the foregoing, as well as *Classifying Race, Racializing Class*, 68 U. COLO. L. REV. 1001 (1997). For a beautiful and open-hearted description of one effort at public-school integration from the ground up, one that gently and courageously takes on some of the tough issues with class that can emerge within communities of color, see Charles Lawrence III, *Forbidden Conversations: On Race, Privacy, and Community (A Continuing Conversation with John Ely on Racism and Democracy)*, 114 YALE L. J. 1353 (2005). See also Angela P. Harris & Emma Coleman Jordan, *ECONOMIC JUSTICE: RACE, GENDER, IDENTITY, AND ECONOMICS; CASES AND MATERIALS* (2005).

#### 10. Arts and Expression for Movements

My maternal grandmother was an oil painter, and I was raised to revere arts, crafts, and cultural expression more broadly. Theater was especially important to me as a young person, and since those days I have continued to be convinced that theater has great power in many different settings, including formal educational environments, organizing campaigns, and other locales from prisons to church basements and the street. Some of what I consider my most successful teaching asked students to learn from and teach with artistic methods, and over the years I had students who paired up with visual artists, playwrights, dancers, digital storytellers, and musicians. For their work with my students I am especially grateful to Linda Parris-Bailey and Knoxville's own Carpetbag Theater. (For background on the American Festival Project (AFP), an alliance that included Carpetbag Theater as one of its core groups, see Linda Frye Burnham, *Reaching for the Valley of the Sun: American Festival Project's Untold Stories*, 44 THE DRAMA REVIEW 75 (Fall 2000). AFP helped make possible the artist/law-student collaborations that later so enriched a couple of my classes.) Sources I have relied on for inspiration on the role of the arts in education and in social change include: DEBORAH BARNDT, FERNE CRISTALL, & DIAN MARINO, *GETTING THERE: PRODUCING PHOTOSTORIES WITH IMMIGRANT WOMEN* (1982); VIOLA SPOLIN, *THEATER GAMES FOR THE CLASSROOM: A TEACHER'S HANDBOOK* (1986); AUGUSTO BOAL, *GAMES FOR ACTORS AND NON-ACTORS* (1992); DIAN MARINO, *WILD GARDEN: ART, EDUCATION, AND THE CULTURE OF RESISTANCE* (1998); AUGUSTO BOAL, *LEGISLATIVE THEATER: USING PERFORMANCE TO MAKE POLITICS* (1998); *WILD FIRE: ART AS ACTIVISM* (Deborah Barndt, ed., 2006). Keith Aoki's remarkable bringing of art into legal scholarship via graphic novel formats will always stand as an



inspiration and joyride for me. See, e.g., KEITH AOKI, JAMES BOYLE, & JENNIFER JENKINS, *BOUND BY LAW? TALES FROM THE PUBLIC DOMAIN* (2006).

#### 11. Theological Mysteries and Callings

I got to teaching too late to have met Robert Cover, but I was certainly inspired by his writing and interested in the way it seemed his religious tradition was informing his work, e.g., *Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4 (1983). I did get to teaching in time to know some others who wrote about arguably “theological” matters in a way that I found helpful and who were unfailingly kind to a younger scholar interested in their thinking. See, e.g., MILNER S. BALL, *LYING DOWN TOGETHER: LAW, METAPHOR AND THEOLOGY* (1985); MILNER S. BALL, *THE WORD AND THE LAW* (1993); Milner S. Ball, *Jurisprudence from Below: First Notes*, 61 TENN. L. REV. 747 (1994); DERRICK BELL, *GOSPEL CHOIRS: PSALMS OF SURVIVAL IN AN ALIEN LAND CALLED HOME* (1997); MILNER S. BALL, *CALLED BY STORIES: BIBLICAL SAGAS AND THEIR CHALLENGE FOR LAW* (2000); and Howard Lesnick, *No Other Gods: Answering the Call of Faith in the Practice of Law*, 18 J. L. RELIG. 459 (2002-2003). Some theologians from beyond the legal academy whose work has challenged me include GUSTAVO GUTIERREZ, *A THEOLOGY OF LIBERATION: HISTORY, POLITICS, AND SALVATION* (1988); DOROTHEE SÖLLE, *THEOLOGY FOR SKEPTICS: REFLECTIONS ON GOD* (1995); and two books by Helen Matthews Lewis: *IT COMES FROM THE PEOPLE: COMMUNITY DEVELOPMENT AND LOCAL THEOLOGY* (1995) (with Mary Ann Hinsdale and S. Maxine Waller); and *MOUNTAIN SISTERS: FROM CONVENT TO COMMUNITY IN APPALACHIA* (2003) (with Monica Appleby).

#### 12. Occupational Health and Safety

The fact that people’s bodies and very lives are regularly sacrificed for their employer’s bottom line has never ceased to rivet my attention. Just out of law school I worked for a firm pursuing product liability claims against asbestos manufacturers on behalf of construction workers disabled or dead from asbestos disease. More recently, for several years in the twenty-teens, I was active with the Knox Area Workers’ Memorial Day Committee, and lead author of a set of annual reports on workplace fatalities in Tennessee (see “Tennessee Workers Dying for a Job,” editions in 2013, 2014, 2015, and 2016), and of a targeted report on the deaths of workers—many of them immigrants—on publicly funded bridge projects around the state (see also, “Safety Before Schedule: A Closer Look at Preventable Worker Deaths on Tennessee Bridge Construction Projects,” 2013). In all this work we benefited greatly from the support and encouragements of the National Council on Occupational Safety and Health (National COSH). Since 2019, I have participated in solidarity actions to support workers in and near Knoxville who were injured by coal ash exposure during the years-long clean-up of the 2008 massive ash spill at TVA’s coal-fired steam plant in Kingston, the largest industrial spill in U.S. history. (See Kristen Gallant, *Vigil Held in Knoxville for Kingston Coal Ash Workers as Lawsuit Continues*, WATE.com, May 31, 2022, [www.wate.com/news/local-news/vigil-held-in-knoxville-for-kingston-](http://www.wate.com/news/local-news/vigil-held-in-knoxville-for-kingston-)

coal-ash-workers-as-lawsuits-continues/) and Brianna Knisley, *We Won't Give Up on Justice for the Kingston Coal Ash Workers*, *Appalachian Voice*, June 10, 2022, <https://appvoices.org/2022/06/10/kingston-workers/>).

For just a few of the many songs that focus on occupational injury and disease and have sustained groups working on these issues, see Sweet Honey in the Rock, *More Than a Paycheck on We Just Come to Work Here, We Don't Come to Die*. (Collector Records 1980), and others rooted specifically in the South, see, e.g., Si Kahn, *Go to Work on Monday One More Time*; Nimrod Workman, *Coal Black Mining Blues*; Hazel Dickens, *Mannington Mine Disaster*; and *TVA Coal Ash Spill*, a “musical documentary” by Tennessee singer-songwriters Jay Clark and Maggie Longmire, on YouTube, <https://www.youtube.com/watch?v=AFQ1tuWvGiY>. For a beautiful book that captures Earl Dotter’s extraordinary work photographing dangerous occupations and the impacts of occupational injury and disease on workers and their families, many of them in the U.S. South, see EARL DOTTER, *LIFE’S WORK: A FIFTY-YEAR PHOTOGRAPHIC CHRONICLE OF WORKING IN THE U.S.A.* (2018).

### 13. The Public Sector and Larger Commons

Back in the ‘90s, even those of us who were mostly focused on the problems of workers in the private sector had begun to realize the importance of public-sector workers for the future of the labor movement. I was surprised and curious when one of my trips to Mexico exposed me to the multi-issue activism of teachers’ unions in that country. As for the public safety net, Bill Clinton’s dismantling of welfare in the name of “reform” inspired a number of cross-disciplinary projects aimed at defeating that project emerged in Tennessee as elsewhere. Helen Lewis and I co-taught a course on welfare reform, helped and advised by people like Gordon Bonnyman at the Tennessee Justice Center, Paul Campbell in UT’s school of social work, and Neil McBride then with Rural Legal Services of Tennessee. We were joined for a memorable workshop at Highlander by Lucie White and some of her students and by a group of women from Tennessee and Virginia who were veteran recipients of welfare themselves and who agreed to help us and our students understand the system’s functioning. For some writing from this era see William Quigley, *Backwards to the Future: Welfare Reform in the Millennium Using Poor Law Principles from the Middle Ages*, 9 *STAN. L. & POL. REV.* 101 (1998); and *HARD LABOR: WOMEN AND WORK IN THE POST-WELFARE ERA* (Joel Handler and Lucie White, eds., 1999) (for which I wrote an afterword, “What’s the Globe Got to Do with It?”).

Since that time, a storm of neoliberal austerity measures and ideological attacks have taken aim at everything from public health to libraries and public schools. (See JON SHEFNER & CORY BLAD, *WHY AUSTERITY PERSISTS* (2019).) On the other hand, there are invigorating signs of resistance to these trends as well. Before 2000, for instance, United Campus Workers (UCW) did not exist, but today, having built from its early beginnings here on the Knoxville campus, it has a serious presence on campuses across the state, and it has become one of the most effective voices taking stands in support of public services, in defense of public workers, and in advocating for the benefit of union organizing for university and other public-sector workers, in

addition to pushing back against “the privatization of everything.” (See DONALD COHEN & ALLEN MIKAEILIAN, *THE PRIVATIZATION OF EVERYTHING: HOW THE PLUNDER OF PUBLIC GOODS TRANSFORMED AMERICA AND HOW WE CAN FIGHT BACK* (2021). I consider it a badge of honor that I was a union partisan back in UCW’s infancy in the early 2000s (see <https://ucwtn.org/history>, and Fran Ansley, *Hourly Workers Lay Claim to Civic Space and Seek Faculty Allies*, University of Tennessee Faculty Senate Newsletter, Winter 2003), and I am happy to witness its strength today—still far from what we need, but light years from where we began.

#### 14. The Future of the Labor Movements

When my husband and I first moved to East Tennessee in the early 1970s, we sought out organizations whose mission included justice for workers on the job. We were especially hoping to find people within industrial unions who were interested in building labor-faith-community coalitions to work together on broad issues of social and economic justice. By 1976, the Amalgamated Clothing and Textile Workers Union (ACTWU) emerged as a friend in these endeavors. At a regional and national level, they were the union that ran the high-profile campaign against the J.P. Stephens Company (tagged then as the “most recidivist labor-law violator in America”) a campaign upon which the academy-award-winning film, “Norma Rae,” was eventually based. Here in Knoxville, their district headquarters was housed in a large building near the center of town, a space that welcomed a broad range of events and gatherings there, from annual cross-union Labor Day events to panels of newly arrived immigrant workers telling stories of abuse on the job. When garment and textile jobs began hemorrhaging in earnest to the global South, ACTWU became a co-founder of the Tennessee Industrial Renewal Network that tried to push back against plant closings, a story we try to cover to some extent in Panel I.

Today, the union landscape in Knoxville is radically changed. ACTWU no longer exists. It survived in new forms by merging with other unions to form first UNITE, and then UNITE HERE, but its historical base in the region evaporated, the old, much-loved district headquarters building made of cinderblock was closed, and groups like Jobs with Justice, Allies of Knoxville’s Immigrant Neighbors, the Tennessee Immigrant & Refugee Rights Coalition (TIRRC), and United Campus Workers, along with a couple of other local unions, were forced to find other places to maintain offices and hold meetings. The largest union in Knoxville representing industrial workers was gone, and the other unions that had come out of the old CIO tradition of industrial unionism were shrinking as well, hit by off-shoring, by automation, and by a badly worsening overall climate for union organizing and collective bargaining. Currently, the main union presence in our area is made up of building trade unions (still organized along craft lines), plus a new generation of workers in previously unorganized sectors who are doing their part in the fight to reinvent the labor movement for the 21st century. This new generation includes employees in public higher education, who are inventing ways to organize, act, and win campaigns like a union, despite the Tennessee legislature’s refusal to grant a protected right to collective bargaining to public employees in our state.

The new generation also includes people from service sectors like retail and hospitality, long left out of the organized labor movement, but surely important to the future of work, and as well as workers in emerging industries that did not even exist until recent decades. For instance, workers who have recently won NLRB elections in the Knoxville area include Starbucks baristas at multiple locations, workers at a small but thriving local food coop, others at a second-hand book chain, and a diverse team of workers at a new solar installation company. All of them, no surprise, are now having to fight soberingly hard to achieve first contracts.

But these relative newcomers are not the only ones who are thinking about reinvention and the increased importance of labor-community coalition-building. For instance, many of us are girding our loins to support the Teamsters union in their fight for an improved contract at UPS later this summer. They will especially need strong shows of solidarity if they find it necessary to go on strike, which is looking more and more likely. It has been heartening to see these IBT guys turning out for quickie barista strikes at Starbucks places around town in recent months. They are showing themselves ready for this solidarity stuff to be a two-way street.

In other words, Knoxville is very much a place where people are wondering about the future of work and the prospects for a labor movement equipped to meet the moment. Activists are reading things like ERICA SMILEY & SARITA GUPTA, *THE FUTURE WE NEED: ORGANIZING FOR A BETTER DEMOCRACY IN THE TWENTY-FIRST CENTURY* (2020); JOHN WOMACK JR., *LABOR POWER AND STRATEGY* (Peter Olney & Glenn Perusk, eds., 2022); see also, JANE F. MCALEVEY & ABBY LAWLOR, *RULES TO WIN BY: POWER AND PARTICIPATION IN UNION NEGOTIATIONS* (2023); and a report by Thomas Kochan, et al, *U.S. Workers' Organizing Efforts and Collective Actions: A Review of the Current Landscape* (Worker Empowerment Research Network, 2022). Likewise, folks are scanning websites such as The Future of Work at <https://clje.law.harvard.edu>.

#### 15. The Future of Gun Violence

Guns—yet another important matter about which I have seldom written a word. So many issues, so little time. For sources on the recent explosive controversy in Tennessee over gun violence, see note 2 above. For a few examples of contemporary news coverage of those events, see Joe Hernandez, *What We Know about the Deadly Shooting at a Nashville Elementary School*, NPR NEWS, March 28, 2023; Nadine Yousif, Brandon Drenon, & Melisa Goh, *Lawmakers Expelled: What to Know about the "Tennessee Three"*, BBC NEWS, April 3, 2023, <https://www.bbc.com/news/world-us-canada-65182502>; Vivian Jones & Melissa Brown, *Tennessee Capitol Protest Explainer: Here's What Did and Did Not Happen*, NASHVILLE TENNESSEAN, April 4, 2023; Lexi McMenamin, *Tennessee Democrats May Get Expelled from State House over Gun Violence Protests*, TEEN VOGUE, April 6, 2023; Noah Robertson, *Six Decades after Civil Rights, a New Era of Protest in Nashville*, CHRISTIAN SCIENCE MONITOR, April 11, 2023; John Wagner, *Biden Welcomes "Tennessee Three" to White House to Discuss Gun Control*, WASHINGTON POST, April 24, 2023.

#### 16. The Future of Elections and Voting Rights

The time since I entered law teaching has been marked by repeated crises for voting rights. January 6, 2021, was surely a low point, but hardly the only one. I will refrain from attempting a list here or naming articles produced by colleagues as the crises unfolded. My own efforts at defending the right to vote have focused less on scholarship, and more on teaching and local door-knocking. It was my former student, Van Turner, a speaker today on Panel III, who first alerted me to some particular local problems. He came to my office one day bearing reports about his alarming experiences trying to register Black people to vote in Knoxville. Whenever he was in economically distressed neighborhoods—which of course are exactly the Knoxville neighborhoods where one can be most assured of encountering Black people, and exactly the neighborhoods where people’s interests were often the least protected by their own duly elected officials—he told of people he approached who repeatedly turned him away, telling him that they were ineligible to register. The obstacles they faced were rooted in past criminal convictions. At times, the person’s right to vote was also blocked under Tennessee law by monetary fines accumulated as a result of encounters with the criminal legal system. Van’s and my hope that we could design a simple, user-friendly, one-page handout geared to helping people regain their voting rights led to our initiation into the intricate and sometimes all but impenetrable thicket that faces people with prior criminal convictions who seek to regain their right to vote in this state, even after they have served their time. Eventually students initiated a Voting Rights Restoration Project that at least served to educate some of us, but the task was uphill then and it remains so now, despite excellent and important work by Professor Joy Radice and students at UT’s own Legal Clinic, who have ventured into this terrain as they build on past experience helping people with past convictions navigate the cumbersome expungement process. Working with Van on his voter registration efforts was an important lesson for me on the racialized nature of mass incarceration and its impact on access to electoral power for Black people.

#### 17. The Future of the Gender Binary and Breaking its Chains

I remember with some bemusement from my present vantage point being moved and educated by something Patricia Cain wrote long ago (But what was it? And when did I actually see it—was it in the 80s? the 90s? Where can I track it down in order to grab a citation and also take another look? Sigh ... ) The bit I remember getting my attention was Pat’s claim that gender should be viewed more as a continuum than a binary, that people actually lie scattered along a complex spectrum of traits and proclivities, not necessarily ensconced in one pole or the other of some great male/female divide. I remember thinking at the time (whether at Pat’s implication, or from my own leaning, I am not sure) that this was a kind of comforting thought when it came to framing issues for my fellow Tennesseans. It is a view of the situation that says we are all in this together, that the reality is not one in which there are two fixed and “normal” poles where the vast majority of people are firmly located, while a smattering of deviants fall somewhere in between. I say I am bemused about this

memory now because so much has happened in the meantime to excavate and change the climate on these issues—politically, socially, and intellectually—enough change for me to see clearly that the disorientation involved in getting beyond the gender binary, even if one is earnestly down with the program, is not always “comforting.” Rather, it can be deeply challenging. My own complex struggles with gender pronouns, for instance, are only the tip of the iceberg. Recently I have been going through old course materials in an effort to shed some of the paper that has accumulated in my basement. I found the following exercise. It was intended as a teaching tool about affirmative action, and I still think it was kind of clever in that regard. But it also doesn’t seem exactly like it would or should fly in today’s classroom, given its deep and unexamined assumption about the gender binary. See Fran Ansley, *One-Page Affirmative Action Assignment* (on file with author).

For samples of local news on contested gender issues, see Jonathan Allen, *Tennessee Governor Will Sign Bills Restricting Drag, Transgender Youth Treatment*, REUTERS, Feb. 28, 2023; and Brooke Migdon, *Tennessee Advances Bill to Ban Textbooks that “Promote” and “Normalize” LGBTQ+ Lifestyles*, THE HILL, Mar. 9, 2022, <https://thehill.com/changing-america/respect/equality/597561-tennessee-advances-bill-to-ban-textbooks-that-promote-and/>.

#### 18. The Future of Mass Incarceration and Race

I steered away from criminal defense as a young lawyer and new mother in the late 1970s, shuddering at the thought of having someone’s liberty depend on me. But the bloated and filled-to-bursting criminal legal system (including its evolving “crimmigration” wing that you can read about below as part of Panel II) is surely too big to ignore for anyone trying to understand racial history or racial subordination in this country. In my view, legal professionals have a special responsibility to look at these realities and to call out the way criminal law and crimmigration law have flowed in behind the great 1960s renunciation of *de jure* discrimination to help reconstruct Jim Crow in brand-new and deeply same-old forms—once again using legal rules both to carry out and to legitimate the project. Michelle Alexander’s *THE NEW JIM CROW: MASS INCARCERATION IN THE ERA OF COLORBLINDNESS* (2010) grabbed me by the nape of the neck on this point, as it did many others who, like me, had not been paying adequate attention or seeing the obvious analogies. Today I believe it is much rarer for white observers to miss or minimize this point, in part thanks to the work of movements like Black Lives Matter, as well as educational projects like Bryan Stevenson’s Legacy Museum in Montgomery. But the future is far from clear, and fear of crime—especially of Black crime—continues to play a deeply pernicious role in American life and politics.

#### 19. The Future of Reproductive Freedom and Maternal Health

On the local front, see Phil Helsel, *Fire that Destroyed Knoxville Planned Parenthood Was Intentional, Officials Say*, CBS NEWS, Jan. 7, 2022; Victoria Knight, *Postcard from Knoxville: Two Tennessee Abortion Clinics, Awaiting High-Court*

*Ruling, Grapple With Uncertainty*,” KFF HEALTH NEWS, June 17, 2022, <https://kffhealthnews.org/news/article/tennessee-abortion-clinics-uncertainty-supreme-court/>; Frank Gluck, *Tennessee’s near-total abortion ban goes into effect Thursday*, THE TENNESSEAN, Aug. 25, 2022.

#### 20. The Future of Everybody’s Health

See Tyler Whetstone, *Knox County Commission Strips Board of Health of Its Pandemic Powers*,” KNOXVILLE NEWS-SENTINEL, Mar. 29, 2021; and Dr. Kathryn Crawford, *Tennesseans are Dying Waiting on Our \$1.4 Billion for Medicaid Expansion*, KNOXVILLE NEWS-SENTINEL, May 7, 2021.

#### 21. The Future of AI

“Yikes” is about what I can muster on this one.

#### 22. The Future of War and Weapons

Sitting here as we do, 30 minutes from Oak Ridge, once nicknamed “Secret City,” I suppose terrifying weapons of war should be always on our minds. See Science & Security Board, *Bulletin of Atomic Scientists, 2023 Doomsday Clock Statement*, <https://thebulletin.org/doomsday-clock/current-time/>. Too often, of course, they are not. Oak Ridge was one of two sites where the Manhattan Project’s reactors were built, and it was home to a massive uranium enrichment laboratory and to the plant that made the fuel for the atomic bombs dropped by the United States on the cities of Hiroshima and Nagasaki, Japan. For many years a stalwart group of anti-nuclear activists has vigiled, marched, petitioned, researched, folded paper cranes, written letters to the editor, conducted workshops, engaged in civil disobedience, and otherwise worked together under the banner of the Oak Ridge Environmental Peace Alliance to call on the U.S. government and others around the world, to stop building or refurbishing and maintaining nuclear weapons. Some of this work is described in Ralph Hutchison, *Stop the Bombs: Local Organizing with Global Reach*, in *TRANSFORMING PLACES: LESSONS FROM APPALACHIA* (Steven L. Fisher and Barbara Ellen Smith, eds. 2012) at p. 19. See also Dan Zak, *The Prophets of Oak Ridge*, WASH. POST, April 30, 2013, <https://www.washingtonpost.com/sf/wp-style/2013/09/13/the-prophets-of-oak-ridge/>.

#### 23. The Future of Capitalism and Empire

It seems we may no longer have time to patiently explore the question of whether social-democracy-style reforms could in proper circumstances sufficiently tame the excesses of late-stage racial capitalism to make such reforms worth fighting for. See, e.g., NAOMI KLEIN, *THIS CHANGES EVERYTHING: CAPITALISM VERSUS THE CLIMATE* (2014). The enforced taboo on open criticism of capitalism—sometimes even on speaking its name—has been a costly ideological presence in our midst for far too long in any case. For someone who aspires to be a public intellectual capable of

communicating with “ordinary people” in my part of the country, criticizing capitalism and empire are fraught undertakings, to say the least. But surely we Americans have been disabled long enough by a history of treating open discussion of these matters as sufficient grounds for social exclusion or worse. Hence my decision to name them here.

#### 24. The Future of the Planet and its Life Forms

See Carmen G. Gonzalez, *Climate Justice and Climate Displacement: Evaluating the Emerging Legal and Policy Responses*, 36 WISCONSIN INT'L L. J. 366 (2019); Angela P. Harris, *Vulnerability and Power in the Age of the Anthropocene*, 6 WASH. & LEE J. OF ENERGY, CLIMATE, & THE ENV'T 97 (2014); APH KO, *RACISM AS ZOOLOGICAL WITCHCRAFT: A GUIDE TO GETTING OUT* (2019). For some words from an inspiring young climate scientist and activist who lasted at Oak Ridge for about a year before she lost her job (during which time she was generous enough to give my 11-year-old grandson a relaxed and highly informative phone interview for a school project—how cool is that?) see, Rose Abramoff, *Opinion: I'm a Scientist Who Spoke Up About Climate Change. My Employer Fired Me*, N.Y. TIMES, Jan. 10, 2023, <https://www.nytimes.com/2023/01/10/opinion/scientist-fired-climate-change-activism.html>.