The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change

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Concluding Essay:  
The Lawyer is not the Protagonist:  
Community Campaigns, Law,  
and Social Change

Jennifer Gordon†

Stories about law and social change can have a sameness to them. Yet in many ways, the tales told in this volume stand out from the crowd. Each story is shaped around a campaign undertaken by a community organization or coalition deeply engaged in the struggle for racial and economic justice. Attorneys appear as supporting players rather than main characters, seeking to help organizations build the power needed to achieve their goals. These lawyers translate information about the law into lay language, pressure opponents, defend the organization, open up spaces for community voice and action, and seek to establish new legal frameworks that demand greater government and corporate accountability to poor and working class people. Taken together, these stories suggest a promising vision for the role of lawyers in today’s community-based battles for social change.

I  
A Different Story

The conventional narrative goes something like this: the lawyer is the protagonist. A social problem exists and a group or individual calls on the lawyer to do something about it. The lawyer asks, what legal levers can I pull to fix this problem? She explores various possibilities, decides on a course of action together with her client, and proceeds. The legal strategy either wins, in which case the story is a successful one, or loses, in which case it fails. The central concern of the narrative is whether law is a useful tool for social change, or is more likely to derail it.
By contrast, at their core, the Articles published here are about places and the people within them. Miami, with its neighborhoods of poor African Americans and Black immigrants devastated by decades of bad government policies; within it, Umoja Village, fighting back in an effort to reconstitute the sense of community robbed from it.1 New York City, a metropolis where rapid gentrification at once creates opportunities for and threatens the expulsion of the immigrants and African Americans at its core.2 Inglewood in Los Angeles County, a working class city of African American and Latino families at the heart of the battle for decent jobs.3 Oakland, once a bulwark of the Black middle class, then a low income African American community, now poised to “develop,” and the question is, at what cost to its longtime residents?4

For all their uniqueness, we enter these cities at a moment when they are under pressure from the same complex of national and international forces. All of the facets of neoliberalism are on display: an increase in global economic competition, the elimination or privatization of domestic government functions, and the erosion of decent work through deunionization and deregulation. The result is an hourglass-shaped economy. At the top is a bulge of high-paying information-based jobs; in the middle, a decrease in stable middle-class employment; and at the bottom, the bulk of low-wage service jobs (often filled by undocumented immigrants). The hourglass has no place for the swollen ranks of the unemployed, who are disproportionately African American.

The poor and working class people of color concentrated in the neighborhoods that the Articles describe suffer the whiplash effects of these changes, which have left them worse off while improving the standard of living of the upper-middle class and the wealthy. At a time when many municipal governments have all but abdicated the planning process to private developers, inner cities abandoned by high-income residents in the 1970s and 1980s are now again becoming “desirable” neighborhoods in the eyes of those at the top of the hourglass. The people who remained in those areas are particularly vulnerable to displacement, and this trend further complicates their struggles for jobs, health care, housing, and education. In such contexts, then, the economic, political, and social marginalization of people of color is ongoing and pervasive. At the

same time, it should go without saying that these communities are made up of people who are rich in their gifts, human in their needs, and interconnected but diverse in their interests and views.

As we turn the opening pages of each Article, these broad shifts have crystallized in the form of a new threat: a move by a private actor (or, in one case, the government) that if allowed to come to fruition would result in lower wages, loss of housing, and the pollution or dissolution of established communities. In the name of community-building, the federal government destroyed public housing in Miami, and then walked away from its promise to rebuild, leaving hundreds homeless.5 Columbia University proposed expansion into West Harlem, threatening to trail gentrification and displacement in its wake.6 A chain of high-end New York City restaurants hired scores of immigrants and paid them sub-minimum wages, a problem pervasive in the industry.7 Wal-Mart planned a new store in Inglewood, California, undermining the fragile compact between retail outlets and unions in that state that provided thousands of the area’s working class residents with a living wage and health benefits.8 A new developer came to West Oakland, threatening to hasten the gentrification process already underway and leave the city’s Black residents out in the cold.9

The stakes are high. Even as they squeezed already suffering communities, these changes opened up an array of opportunities for intervention. The plot of these stories is driven by tension over whether the organization would be able to carry off the ju-jitsu move of first defeating the emerging threat and then turning it into a platform for new community benefits.

A. The Organization is the Protagonist

In these narratives, groups or coalitions are the protagonists. None of the authors speak of a single unit called “the community,” wise as they are to the dangers of assuming that people who live near each other and share markers of race or ethnicity are bound by a common conception of their interests. Instead, they focus on organizations committed to a particular (albeit inevitably contested) set of goals and view of justice. For all of their many differences, one common feature of these groups is their recognition that organizations engaged in the fight for social change cannot focus on

6. Foster & Glick, supra note 2, at 2007-11.
7. Ashar, supra note 2, at 1881, 1900-03.
race or class exclusively but must pursue racial and economic justice hand in hand.

In Miami, Anthony Alfieri highlights a range of groups at work, including the residents of Umoja Village, a collectively-run encampment of formerly homeless people erected to demand fair housing. Sameer Ashar introduces us to the Restaurant Opportunity Center of New York (ROC-NY), a worker center fighting for just treatment of restaurant employees, overwhelmingly workers of color in a largely non-union industry; while Sheila Foster and Brian Glick write of West Harlem Environmental Action (WE ACT), a twenty-year-old organization born of the battle to keep toxins out of West Harlem that has since expanded to promote a broad vision of environmental justice. In Inglewood, the protagonist is a community-labor coalition led by the Los Angeles Alliance for a New Economy (LAANE). As Scott Cummings notes, LAANE is a group known nationally for its successful living wage battles and its negotiation of some of the most successful community benefits agreements in the country. In Oakland, Angela Harris, Margareta Lin, and Jeff Selbin describe the coalition spearheaded by the community organization Just Cause Oakland. It was first launched to fight evictions as that city began to gentrify and is now leading a wider effort to guarantee that West Oakland's development will benefit the city's poor African American residents.

Each of these organizations had to plan a response to the threat its community faced. That response would be entirely dependent on the context, and so demanded research into a series of questions. Who were the players here? What was their history in this place and elsewhere? What position had various government agencies and actors taken in the battle, and what stake did they have? How could they be moved toward the group's side? What had other organizations tried in the face of similar threats, and why might those tactics be likely or unlikely to succeed here? How did this one struggle fit into the group's broader goals for change? In other words, within this setting and facing this particular cast of institutional and individual stakeholders, how could this organization build power to solve the problems it faced?

Out of this research grew plans for campaigns that were sensitive to local history, and built on local assets and players, while taking advantage of lessons learned by other movements around the country and indeed the world. A number of the groups came to pursue related strategies, made appealing or at least possible by the changing terrain described above. Several sought to negotiate community benefits agreements with

10. Alfieri, supra note 1, at 1841.
11. Ashar, supra note 2, at 1889.
12. Foster & Glick, supra note 2, at 2005.
14. Harris, et al., supra note 4, at 2102 n.130.
developers as a part of their campaigns, reflecting the need to work directly with private actors in places where the power of local governments had decreased.\textsuperscript{15} Labor/community alliances make appearances in four of the five Articles,\textsuperscript{16} illustrating unions' new willingness to work with community organizations on campaigns that do not directly result in a contract, in a context where the labor movement's future lies with the immigrants and workers of color who fill the service jobs that cannot be moved to another country. In light of the diffusion of power in the landscapes where they operate, all of the groups recognized that they had to move forward with a multifaceted strategy rather than on a single front, resulting in complex combinations of public education, politics, and organizing in each of the cases.

Beyond these similarities, other aspects of the campaigns were distinctive, reflecting local actors and geographies. In Miami's Umoja Village, we saw sustained public protest to force the government to build new housing for people displaced by the government's own interventions and publicity.\textsuperscript{17} In Inglewood, LAANE sought to keep Wal-Mart out of the city through a ballot initiative.\textsuperscript{18} ROC-NY used a combination of litigation and organizing tactics to force a restaurant owner to pay tens of thousands of dollars in back wages.\textsuperscript{19} In the case of WE ACT in New York and Just Cause Oakland in California, the groups triangulated between municipal officials and entities and a private developer to turn new development to the advantage of communities that would otherwise have been pushed out by it.\textsuperscript{20}

But weren't these supposed to be stories about law and social change? What happened to the lawyers?

\textbf{B. The Role of Law and Lawyers}

As it happens, in some of these stories, attorneys were present from the beginning, taking part in the decision to respond to the threat and in the research and planning that followed. In others, they entered later on as the group saw the need for their assistance. In neither case did the lawyer elbow the community group protagonist aside. Rather, her challenge was to help the group assess the local effects of political and economic changes taking place on municipal, national, and global levels; to strategize about how best to intervene in that landscape; and to figure out how legal tactics could bolster and protect the group's efforts to carry out the larger strategy.

\begin{itemize}
  \item\textsuperscript{15} Cummings, \textit{supra} note 3, at 1963, Foster & Glick, \textit{supra} note 2, at 2016-17, Harris, et al., \textit{supra} note 4, at 2111.
  \item\textsuperscript{16} Ashar \textit{supra} note 2, at 1890, Cummings, \textit{supra} note 3, at 1931, Foster & Glick, \textit{supra} note 2, at 2051, Harris, et al., \textit{supra} note 4, at 2098.
  \item\textsuperscript{17} Alfieri, \textit{supra} note 1, at 1841-45.
  \item\textsuperscript{18} Cummings, \textit{supra} note 3, at 1972.
  \item\textsuperscript{19} Ashar, \textit{supra} note 2, at 1916.
  \item\textsuperscript{20} Foster & Glick, \textit{supra} note 2, at 2054.
\end{itemize}
What doors could law open? What stories could it tell? What time could it buy? What promises could it exact? What power could it build? The range of possibilities that the lawyers considered here may have come from the usual legal toolbag: education about rights, causes of action, regulatory processes involving various federal, state, and municipal agencies and entities, possibilities for negotiating a deal, potential for legislative changes. But their core questions were different ones. They were not asking what legal levers can fix this problem, but how can legal levers put the group in a position to achieve its goals?

The legal strategies pursued by these groups reflect new obstacles and opportunities for interactions with the state. As with the campaigns as a whole, the attorneys here sometimes responded to the rise in private, market-based governance by regarding the state as less of a direct target and more of what Sameer Ashar terms an “audience” for the demands that the group was making of private actors.21 Ashar describes his clinic’s litigation for unpaid wages on behalf of ROC-NY’s members in these terms. In other Articles, law was used to gain leverage in a planning process where developers rather than municipal governments were the key decision-makers.22 As a result, while the groups participated in regulatory processes with planning boards and officials, they did so in ways calculated to coax developers to the bargaining table for negotiations over the terms on which private investment would take place; they did not believe that governments would deliver the sought-after benefits.

At the same time, none of these groups were willing to let the state off the hook for the fate of poor people. As federal agencies and judiciary have become more conservative, state and local elected officials, legislatures, courts, and agencies have become increasingly attractive audiences and even allies for community organizations. In these venues, the organizations have sought to create both “hard law” (legally-enforceable obligations) and “soft law” (recommended standards).23 Nonetheless, it seems fair to say that when they pursued legal change, their interventions clustered on the soft law side of shaping processes rather than creating enforceable rights. They sought to establish standards for good corporate citizenship (as with ROC-NY);24 to create procedures that mandate information-gathering, as with LAANE’s pursuit of the Superstores Ordinance as “a framework for assessing economic impacts as a starting point for discussions about how to maximize the benefits of big-box retail while minimizing its costs;”25 or to

21. Ashar, supra note 2, at 1918.
22. Foster & Glick, supra note 2, at 2037, Harris, et al., supra note 4, at 2111; Shah, supra note 5.
23. Ashar, supra note 2, at 1891; Cummings, supra note 3, at 1981-83; Foster & Glick, supra note 2, at 2071-73; Harris, et al., supra note 4, at 2119.
guarantee community participation in future decisions made by private actors, through efforts such as WE ACT's pursuit of legislative standards for community oversight of potentially dangerous biomedical research. In part this preference for soft law was the outgrowth of the groups' doubts about the government's commitment to enforcement of hard law measures, and their recognition that no law, hard or soft, would be enforced without significant community power behind the effort. But to a large extent, as several of the authors point out, the prevalence of these soft law frameworks was largely the pragmatic outcome of the relative political weakness of these organizations and the communities they represent. In these stories, the creation of a law, or the use of a legal power in a new way, was most important because it reshaped the playing field on which the campaign was carried out, not because it scored the goal itself.

In addition, there were times when the groups pursued the intervention of a judge, a legislature, an elected official or an agency because they saw the legal victory itself (the enforcement of an existing law or the creation of a new standard) as important in the context of the campaign. ROC-NY, for example, viewed litigation on behalf of its restaurant worker members as necessary both to compensate members and for its potential contributions to the larger campaign. The larger effort included encouraging a new group of workers to join the organizing effort, pressuring the chain to comply with ROC-NY's broader demands, and setting an example for other employers in the industry.

These lawyers also used litigation to achieve organizing aims in ways that were essentially indifferent to the outcome in court. In Miami, lawyers from Florida Legal Services and the Community Economic Development and Design Clinic at the University of Miami School of Law brought a lawsuit challenging a developer's plan to build a high-end apartment complex in a historic Black neighborhood, on the grounds that the developer had not sought a required environmental impact report. As Florida Legal Services Staff Attorney Purvi Shah stated at the Colloquium held in conjunction with this symposium, the primary goal of the litigation was not to get a judge to rule that the developer had to pursue the report process, but to buy time for community organizations to build a campaign to defeat the apartment complex and preserve the neighborhood. In Inglewood, LAANE hired a private law firm to challenge Wal-Mart's ballot initiative, which, if passed, would have guaranteed the company the virtually unfettered right to build a superstore in the city. Although the

26. Foster & Glick, supra note 2, at 2072.
27. Ashar, supra note 2, at n. 49 and 1914-16.
28. See Shah, supra note 5.
29. See id.
attorneys doubted that the claim would be victorious in court, LAANE pursued it because, as Cummings says,

even if the lawsuit proved unsuccessful, it could serve two beneficial purposes. First, an early filing would put Wal-Mart on notice that even if it won election, it would face a strong legal challenge that would at the very least tie up the plan in court for some time. In addition, LAANE viewed the lawsuit as a way of generating additional media visibility and grassroots momentum for...public relations and voter mobilization efforts.31

Finally, at points in some of these campaigns, the lawyers involved recognized that traditional legal actions had little to offer. For example, WE ACT’s lawyers initially considered litigation around land use issues in order to bring Columbia to the negotiating table, but ultimately decided that the most productive role for law students and attorneys would be to support effective community intervention in the processes that would decide the terms of Columbia’s expansion.32 They undertook large-scale community education efforts, trained community members to testify at hearings, staffed working groups for a Local Development Corporation (developing proposals for the negotiation of the community benefit agreement), and advocated for mechanisms to ensure community oversight of Columbia’s bioresearch.33 The lawyers in West Oakland played a similarly educational and facilitative role with regard to the coalition seeking to bring the developer to the table there.34

These Articles come to a close, as articles must, but in truth they are tales without end. Their conclusions have a provisional quality, birds perched on a wire, ready to take off again. The real story continues, as the community moves on to fight an even newer manifestation of the problem, and the lessons of the last battle are applied to the next one.

II

WHAT IS THE LAWYER, IF NOT THE PROTAGONIST?
REFLECTIONS ON THE ARTICLES AS COMMUNITY LAWYERING STORIES

A. On the Model Itself

These Articles and the work they document stand on ground well fertilized by earlier collaborations between lawyers and social movements, combined with new insight emerging from the representation of smaller worker centers, racial and environmental justice organizations, and community economic development efforts. They are consistent with a

32. Foster & Glick, supra note 2, at 2027.
33. Id. at 2070-73.
34. Harris, et al., supra note 4, at 2116.
model that I describe elsewhere as *law in the service of organizing.* In brief, such attorneys do not think that public interest law alone will create social change. They understand the problems that communities face as the products of economic and political shifts on the national and global levels that have intensified the systemic marginalization of their members based on both race and class. All of them believe that change toward a more just world happens when communities organize, build enough power to shift the terms on which decisions about their future are made, and eventually enough power to enforce those promises. At the same time, they concur that good lawyers and thoughtful, creative legal strategies have important supporting roles to play in those struggles.

Toward this end, as the Articles in this volume testify, such lawyers largely partner with community organizations rather than representing isolated individuals. At times those partnerships involve direct representation of the groups (or their members) in litigation, advocacy, or transactional work, and at other points the relationship is more informal or fluid. These lawyers measure the success of their work in relation to how much power the groups develop and how much closer it brings them to achieving their vision. In this view, law is one of many tools in the arsenal of social change tactics. It can neither be condemned nor endorsed in the abstract, and the forms of its deployment, its usefulness, and its pitfalls must always be worked out in relation to a particular organization or movement set in a particular context.

During the course of the Colloquium organized around these Articles, some participants began to refer to this approach as “campaign-based” lawyering. That is an appealing label, in particular for its reinforcement of the idea that for such attorneys and their clients, victory in the legal strategy is measured by its contributions to the overall campaign, not (or not only) by the substantive outcome of the legal action. My only concern, and the reason that I do not adopt the phrase wholesale, is that it suggests a sporadic quality rather than the fuller, more “integrative” (to use Foster’s and Glick’s term) approach that characterizes much of this work. “Campaign-based” lawyering fails to capture the ways that a number of the lawyers devoted to this work engage an organization continually or repeatedly over time, working with it on strategic and transactional matters even when their services are not required for a campaign, constantly seeking to understand the organization’s context, vision, and goals as all three evolve.

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B. On Expertise

This sort of lawyering requires a high degree of legal expertise. Law students who want to support organizing efforts frequently tell me they are worried that the legal reasoning and technical skills of law school will not be that useful to them in their careers. What they really need, they say, is organizer training, and they hope I can recommend a good one. Organizer training is important. But if these stories teach us anything, it is that to do this work well requires great legal skill. The organizations need lawyers who are technically sophisticated: the best possible attorneys in wage and hour law, planning and zoning law, affordable housing law, land use and environmental regulation, and constitutional law. In addition to technical ability, the lawyers must have flexibility, and the capacity to master new areas of law as community groups develop new campaigns.

Meanwhile, the groups need attorneys who are also—not instead, but also—sophisticated in their understanding of how law and organizing work together. As the authors point out, this second sort of sophistication includes an understanding of how to translate information about the law so that it is intelligible and useful to community groups as they make decisions about how legal strategies might help their work, as well as the translation of community needs and organizational demands into legal causes of action and policy interventions. It rests on the ability to negotiate the relationship between the group’s organizing goals and the lawyer’s professional obligations to her client, which may pull in opposite directions. It requires a thoughtfulness about both the perils and the potential of insisting on rights as a part of an organizing effort, recognizing that talk of rights focused solely on winning lawsuits or government benefits can de-mobilize community organizing but that rights talk (and rights claims) linked to collective action can be a powerful narrative indeed. And above all, it demands close attention to developing a legal strategy that is responsive to the context in which a campaign is taking place and to the goals of the organization the lawyer represents, a strategy that is as likely as possible to support, not derail, the achievement of those goals.

It is worth pausing to note the number of different arrangements through which such lawyering took place in each of these stories. Most of the organizations discussed were in an ongoing relationship with one or more lawyers from the law school clinics or legal services offices represented here. Clinics (particularly but not exclusively those dedicated to community economic development) have emerged over the past decade as a particularly flexible, creative, and sustained set of partners for

37. Foster & Glick, supra note 2, at 2005; Harris, et al., supra note 4, at 2119.
38. Ashar, supra note 2, at 1910; Harris, et al., supra note 4, at 2119.
39. Ashar, supra note 2, at 1922-23.
community organizations. Beyond that, organizations drew lawyers from multiple sources depending on their needs, whether serially or simultaneously. They might contract with private attorneys for one-shot representation in an area of specialized expertise, as the Oakland group did when it garnered pro bono representation from a law firm familiar with the California Environmental Quality Act as well as laws relating to development, housing, and planning and zoning, or as LAANE did when it hired a private firm with constitutional and environmental litigation experience to defeat Wal-Mart’s ballot initiative. An organization might also choose the full integration of a lawyer as in-house counsel, as in Foster’s and Glick’s description of WE ACT’s integrative lawyering model. Each position has its strengths. Foster and Glick argue, for example, that “[c]ollaborative partnerships between community-based organizations and outside lawyers/firms operate most effectively for discrete legal issues and policy projects. They are less effective in contributing to the kind of complex, long-term political-legal-organizing work required to deal with the political economic roots of persistent patterns of race and class inequality.” Not all groups agree that full integration is desirable; some intentionally keep lawyers at arms’ length. But all see different kinds of lawyers as important for different purposes.

C. On Domination

The campaign-based model shifts focus away from some of the concerns that have preoccupied scholars of law and social change for decades—for example, the fear that lawyers will inevitably dominate and even derail community efforts. In these Articles, anxiety about domination has faded from the foreground to the background. To hear the lawyers tell it, much has to do with the strength, savvy, and clarity of the community organizations for which they are working. Those groups are in charge; they are the protagonists, after all. The authors’ sense of relief at having found a

40. Jeff Selbin has suggested to me that this may be so because of clinics’ access to resources, their relative independence, the way their pedagogical function both demands and provides time for active reflection, and the emergence of a “new generation” of clinicians who are dedicated to this mode of lawyering. As a result, “clinics are places that can (should) more easily take risks, challenge assumptions, and experiment with new relationships and delivery models.” Email from Jeff Selbin, Faculty Director, East Bay Community Law Center, to the author (May 15, 2007 7:32 p.m. EST) (on file with author)

41. In this regard, it is significant that all of these stories take place in large cities that offer non-profit organizations many potential forms of legal support, including well-developed pro bono programs in the private bar, numerous law school clinics, and both publicly- and privately-funded legal services organizations. Organizations in rural areas or smaller cities are likely to have a much more constrained set of options for representation.

42. Harris, et al., supra note 4, at 2104 n.133.

43. Cummings, supra note 3, at 1965.

44. Foster & Glick, supra note 2, at 2070-72.

45. Foster & Glick, supra note 2, at 2059.
strong organizational client is palpable. As Cummings says regarding the Wal-Mart site fight, “LAANE, in particular, was a relatively powerful community organization, drawing political clout and resources from its labor affiliation, and governed by politically savvy and influential leaders . . . Thus, the existence of a strong community organization counteracted the tendency toward lawyer domination.” Foster and Glick describe WE ACT as “a strong, established, community-based policy/organizing/advocacy/research organization that previously outsourced its legal needs.” Ashar contrasts his experience with ROC-NY with the classic domination story, noting that ROC-NY “organizers and workers held lawyers accountable, and lawyers were relatively free to engage in the work without inhibition and fear that they would dominate their individual or organizational clients.”

It is only fair to acknowledge that relatively few locations benefit from the convergence of strong and savvy community organizations and lawyers with both the funding and the commitment to do this sort of work. But on both fronts, the numbers are increasing. And where the two do come together, it permits the development of ongoing collaborations in which the lawyer can offer her opinion without fear that it will be adopted uncritically, and in which the organizations know that the lawyer is committed to figuring out how law can best advance the group’s overall goals. These collaborations ride on the lawyers’ capacity to recognize, and be comfortable with, the fact that they are not the protagonists of these stories, but that they bring important skills to the table.

D. On the Many Tensions that Remain

These groups still must face concerns about law and lawyers usurping community power. It is a reality that lawyers, with our privilege, our access to power, and our closely held set of tools, all too often have negative effects when we intervene in community processes. As Harris, Selbin, and Lin remind us,

“[l]awyering relationships - like all relationships - cannot be purged of power or the possibility of coercion and complicity with group domination. The issue of power pervades all aspects of the community lawyer’s job, from decisions about whether to take on a case to the nature of the lawyer-client relationship to tactical and strategic issues within a particular case.”

Nor, of course, have these groups eradicated tensions within the broader communities they represent. Cummings discusses the danger of the union partners in community/labor coalitions muscling the newer and more
fragile groups out of decision-making. Harris, Lin, and Selbin note the division among African Americans in Oakland over the development plan, with Black entrepreneurs and homeowners favoring the proposal that the coalition of Black renters opposed. Foster and Glick discuss a similar divide in West Harlem.

Furthermore, new challenges may emerge when lawyers become so closely allied with community organizations. They may be tempted to overlook deficits of democracy and accountability within the groups themselves out of their gratitude for having found a strong community partner and their commitment to the group’s overall goals. Their decision to work exclusively with the organized segments of a community may intensify the vulnerability of that same community’s often worse-off unorganized members.

What gives me hope, however, is the predominant attitude about the conflicts that do arise. In place of the almost paralyzing anxiety that characterized scholarship about these concerns for decades, these authors have a calm matter-of-factness that recognizes the tensions as inevitable and even valuable, a source of insight. As that great lyricist Leonard Cohen once wrote,

Forget your perfect offering
There is a crack in everything
That’s how the light gets in.

These conflicts recur, the Articles affirm. They are part of the work and even sometimes a productive part of the work, and we will do our best to understand and address them and learn from them. Then we will move on.

IN CONCLUSION

Is the old story dead? Far from it. In Sameer Ashar’s words, “It cannot be said that lawyering is no longer ‘regnant.’ It seems predestined that there will always be regnant lawyers who pursue established modes of practice and rebellious lawyers who deliver legal services in new forms to more effectively achieve social justice ends.” In the intertwined fight against racism in all of its manifestations, and for economic justice in all of its manifestations, is another story emerging? Absolutely. The Articles in this volume eloquently tell the tale.

51. Harris, et al., supra note 4, at 2107.
52. Foster & Glick, supra note 2, at 2024.
53. LEONARD COHEN, Anthem, on THE FUTURE (Sony Music Entertainment, Inc. 1992).
54. Ashar uses the terms “regnant lawyering” and “rebellious lawyering” introduced by Gerald López in his book REBELLIOUS LAWYERING (1992); see Ashar, supra note 2, at 1906 n.119.
In Progress:
Online Discussion on the Foreclosure Crisis
Join at any time. For free registration, go to http://groups.google.com/group/clearinghousereview_foreclosure

Online Discussion on Affirmative Advocacy and Leadership Development
Join at any time. For free registration, go to http://groups.google.com/group/clearinghousereview_affirmativeadvocacy

Opening in August:
Online Discussion on Section 8 Voucher Termination Hearings
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Online Discussion on Long-Term Care for the Elderly
Details to be announced in September

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A Human Rights Strategy to Eliminate Discrimination Against Women
Massachusetts' Health Care Reform
Race-Conscious Community Lawyering
Ending Poverty and Reducing Inequality
AND A NEW COLUMN:
Ethics and Legal Aid

Use Contract Law to Enforce Third-Party Beneficiary Claims Against Vendors and Agencies

Taking action to end poverty
The growing cultural diversity throughout the country is leading to the forced integration of cultural, social, and political mores between people and systems in the United States. Over time the interaction of cultural differences will result, I hope, in a more tolerant and aware society. However, the newly emerging multiracial communities in states other than California and New York lead to a tension between cultural isolation and acculturation and assimilation. This tension comes from adjustment by new population groups to the structure of American society and is found not only between ethnic and racial population groups but also within ethnic population groups themselves. Nonnative arrivals struggle in adapting to a sudden upheaval of norms: structural, cultural, social, and political. Public interest advocates can decrease the burden placed on newly arrived population groups to adapt to American society. We can also create awareness about our society’s obligation to incorporate values and practices of diverse population groups into our own systems and decision making. Here I describe community lawyering as a strategy to develop cultural competence between our client population and the systems with which our clients interact by providing them with the tools and resources necessary to establish a presence in their communities. Citing the Sacramento Hmong Mediation Council as an example, I discuss some community-lawyering principles that can apply to any racial or ethnic population for whom we provide advocacy.

Background

Historically, Hmong people experienced persecution by the Chinese, French, and Communist government of Laos. They most recently became refugees after serving for the U.S. Central Intelligence Agency in the Vietnam War and were forced to flee their native country of Laos to avoid persecution by the Vietnamese and Laotian governments. The migration from Laos, to Thai refugee camps, to life in the United States since 1975 has been traumatic for many Hmong. The multi-stage resettlement and geographic shift to the United States created tension between young and old, between men and women, and among clans. The trauma is compounded by the forced interaction among Hmong people, law enforcement, social services, and the American courts. The Hmong community gains its strength from culture, but the community began to break down as the Hmong were no longer isolated from other population groups and systems as they were in Laos or Thailand.

One method the Hmong community concluded could help acculturate its members to American structures, but simultaneously maintain its culture, was to incorporate Western legal and cultural principles into their cultural dispute resolution system. The traditional model of Hmong dispute resolution is embedded in the clan-based structure of the community. The system includes family elders, clan elders, and council elders. Family and clan elders function as negotiators who listen and attempt to resolve a variety of intra- and interclan disputes. For more complex disputes or interclan disputes, a council representing each of the clans gathers to determine how to resolve the problem. Much like the role of the judge in American courts, the elders hear evidence and ask questions in an endeavor to seek the truth, allocate fault, and determine the resolution or punishment. As more Hmong people had contact with the American court system, they realized that they were not legally bound by the elders’ decisions. The strength of the community began to break down as conflicts arose between a system that recognized cultural values but whose decisions were not legally binding and a system whose decisions were legally enforceable but not culturally competent.

Principles of Community Lawyering

Community lawyering, as a skill, is not the natural instinct of the new public interest lawyer. With the limited practical experience we gain in law school, our expectations are often to use the traditional model of lawyering to seek justice for our clients. This model describes our roles as litigators, negotiators of claims, and counselors to clients in their transactional or dispute resolution decision making. In a practice that emphasizes one-on-one attorney-client relationships, the traditional direct service strategy alone creates a dependence on the attorney as the holder of the knowledge necessary to solve the problem. The traditional methods can benefit our clients and their legal needs but may not lead to the fulfillment of many of our legal aid goals such as


4Hmong people are a relatively new ethnic population in the United States. Much of the information here about Hmong people and the impact of resettlement comes from my interaction with Hmong community members and service providers in Sacramento, California, since 2003.

5Associated Press, Hmong Murder Shows Hate Crime Prosecution Rare, April 30, 2007, http://wcco.com/topstories/hate.crime.prosecution.2.367128.html (a white-on-Hmong murder is suspected to have occurred in retaliation for a Hmong-on-white shooting); see also Anne Faehman, THE SPIRIT CATCHES YOU AND YOU FALL DOWN: A HMONG CHILD, HER AMERICAN DOCTOR, AND THE COLLISION OF TWO CULTURES (1997) (a young Hmong girl with epilepsy is forcibly removed from her home by child protective services; her social workers and the health care system lack cultural competence).


7Ascanio Piomelli, Appreciating Collaborative Lawyering, 6 CLINICAL LAW REVIEW 427, 438 (2000).

8Wexler, supra note 6, at 1053.
as empowering our clients to identify and defeat the causes of poverty.9

The concept behind community lawyering is to develop inside the client population a sustainable knowledge base that allows the population to build foundations for opportunity from within. The attorney is a tool people can choose to use in creating their own resources for achieving equality or negotiating the systems with which poor people come into contact on a regular basis. Community lawyering has many names: collaborative lawyering, community development, client empowerment, and lay lawyering.10 The common thread among them is that the clients, not the attorneys, play a central role in resolving the issues that have an impact on their opportunities to succeed.

Another critical component of community lawyering is creating cultural competence—a set of beliefs, values, and skills built into a structure that enables one to negotiate cross-cultural situations in a manner that does not force one to assimilate to the other.11 Without this competence, the systems with which our clients interact will continue to exclude them from an equal opportunity to utilize the systems as they were designed to serve people in America. A lack of cultural competence is to ignore that diversity in beliefs, values, and attitudes influences how people determine their self-worth and abilities to interact within American society.12 Legal aid programs are no exception to institutions that need to be culturally competent and must examine how we are providing service to communities of color.13 So that groups understand how to adapt to their surroundings, cultural competence about American structures and values must be developed within our client communities. In the case of the Hmong dispute resolution program, we would aim for the court to be cognizant of the values of the Hmong refugee community and consider them both in their personal interactions as well as their decision making. Similarly we would want the refugee community to be aware of how the law determines value and fault so that its members can access the courts for their purposes.

**Entrance into the Community**

By definition, a community lawyer is part of the community. The traditional model of lawyering places the burden on the client to seek out the attorney. If the client does not make it to the attorney, the attorney does not know, or must seek out, the client. Alternatively, under the community-lawyering model, the attorney would leave the office and attempt to integrate herself into the communities served. In doing so, she is in a position of keeping her finger on the pulse of community issues as they affect particular sectors of the population. By building a relationship with people, before her services are needed, she becomes accessible to people who otherwise would not have a legal advocate as part of their repertoire.

Often the attorney does not belong to the community she is attempting to serve. She must become conscious of her own biases and instinct to take the lead in the situation. In what is termed as “mindful lawyering,” the attorney can better approach the community by understanding the need to develop adequate attorney-client communication to prevent divisiveness.14 She must then train herself in

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9The mission statement of Legal Services of Northern California is to assist and empower clients to identify and defeat the causes and effects of poverty by using all available resources. See Legal Services of Northern California, www.lsc.info/ Mission%20Statement (last visited April 19, 2008).


11Mayia Thao & Mona Tawatao, Developing Cultural Competence in Legal Services Practice, 38 CLEARINGHOUSE REVIEW 245 (Sept.–Oct.2004).

12Id. at 246.

13See Mona Tawatao et al., Instituting a Race-Conscious Practice in Legal Aid: One Program’s Effort, 42 CLEARINGHOUSE REVIEW 48 (May–June 2008).

14Angela Harris et al., From “The Art of War” to “Being Peace”: Mindfulness and Community Lawyering in a Neoliberal Age, 95 CALIFORNIA LAW REVIEW 2073, 2114 (2007).
of contacts from unfamiliar people. The advocates investigated the legal needs and maintained contact with the community-based organizations to create ways for the advocates to become an as-needed resource to the service population.

The range of needs was great: language competence, public benefits, immigration, and accessible legal services. The advocates worked to integrate themselves into some community-based organizations to build a bond with the organizations. By having a physical presence, getting to know staff, and maintaining regular communication, the advocates began to gain trust. Here the advocates and service providers developed cultural competence, one about the other, to understand how to articulate the community’s needs. By becoming conscious of the differences among ethnic Asian population groups, the ethnic background of advocates themselves, and the legal culture, the advocates and community-based organizations could better express the role of a legal advocate and how the advocates and community-based organizations could work together.

Mindful of asserting their privilege of class, education, and notions of justice, the advocates let go of their instinct to tell the community what the community needed.

From this outreach, one LSNC attorney developed a close working relationship with the Hmong community in Sacramento to create a culturally appropriate dispute resolution program. The dynamics among the normally highly isolated Hmong community in Sacramento were changing as people became more settled in America and the Office for Refugee Resettlement funded their resettle-
Faced with a lot of negative press, Hmong leaders were grappling with how to adjust to systems of justice that did not correspond with cultural practices. The timely legal services outreach allowed Hmong leaders to develop an understanding of the American legal system and LSNC to develop a greater awareness of one of its client groups.

Building a Fundamental Knowledge Base Within the Community

Community lawyering involves working with clients to assist them in navigating the ways about immediate problems. One goal is to leave behind a knowledge base in the community so that people can take their seat at the table when political, social, and economic decisions are being made. A community lawyer recognizes that the needs of the community may not be legal in the traditional sense: that litigation or related advocacy may not always be the solution. The lawyer recognizes that her time with any particular client population is finite and that she will eventually leave or be taken away. Part of the solution then becomes working with community members to create awareness of methods to develop and implement resources that enable people to interact with political systems and government agencies.

Through community town hall meetings, LSNC learned that one of the challenges in the Hmong community was interacting with the court system. Primarily in family court, Hmong people did not understand—because of language and cultural barriers—court processes, proceedings, and decision making. Through the traditional legal model, we assessed the potential for a language access lawsuit under federal and state civil rights laws. The Hmong community resisted adversarial measures and requested instead that we assist them in bettering their cultural dispute resolution process so that it could be endorsed by the California court system and laws.

Our program conducted extensive training about Western mediation, California law, and court systems for many Hmong community members and elders. Language, age, and gender were challenges faced. How could an English-speaking person describe the principles of mediation, concepts of justice, and fairness to primarily elder Hmong men whose perception of justice and fairness differed? How could a young non–Hmong female earn the trust of a community where she was an outsider? Through months of trial and error, the community and the advocate patiently worked together to teach each other about dispute resolution processes and value-motivated outcomes. The advocate learned about Hmong systems and how to analogize Western systems so that they made sense to Hmong people.

A small delegation of Hmong community members and attorneys working with them traveled to St. Paul, Minnesota, to learn about the Hmong mediation program there. The idea behind the trip was for both the community members and the attorneys to interact and learn from Minnesota Hmong people, lawyers, and judges about how to create a program. By maintaining the client-lawyer dynamic, the Hmong delegates were able to inform, translate for, and gain acceptance by, the Hmong community in St. Paul. The attorney delegates were able...
similarly to inform, translate for, and gain acceptance by, the judicial and legal community—all were players in developing the Minnesota program. Together the team could bring back information to Sacramento to develop a local model.

Equipped with the history and knowledge from Minnesota, the Sacramento delegation returned ready to build a program. The seemingly slow progress of the program development thus far had been purposeful. We hoped that, by involving the Hmong leaders in developing a community resource, training about principles of Western mediation and creating a knowledge base about program development, Hmong people could increase their skill sets and create a meaningful service in their community.

In essence, for the attorney to develop a knowledge base in the community, she acted as a translator. By first developing her own foundation of knowledge about Hmong culture, she was able to translate the legal terms and concepts into terms and concepts that created a better understanding among the Hmong community about how to maintain its cultural practices and incorporate California law and dispute resolution processes. By learning about the Hmong language and culture from Hmong people, she could understand better how the community described its practices and she could then try to make the American system of justice more comprehensible.

**Developing Community Relations**

Sometimes the role of the advocate is to negotiate relationships, or to guide discussion using her unique role as an outsider. LSNC and the Hmong group could not be the only players in the development of the cultural mediation program. What the Hmong leaders sought was an established relationship with the judicial system to legitimize their decisions. However, they did not have the connections to the judicial systems, resources to develop a viable nonprofit incorporation, and finances. What they also lacked was perspective on how to maintain their own cultural practices while interacting with Western ones. One service we could provide was to broker relationships and discussion between the Hmong group and our resources as well as facilitating discussion within the Hmong community regarding acculturation.

Knowing that partnership with the state superior court for Sacramento County was crucial, we set out to determine what the court’s requirements would be to adopt a Hmong mediation program as one of its alternate dispute resolution resources. Using the long-standing relationship between LSNC and the bench, we surveyed judicial officers to find out how the court understood Hmong culture, where culture could serve a role in judicial rulings, and what principles of equity the court would refuse to accept as a cultural norm. We learned that, based on the press or their limited interaction with Hmong people through the court system, some judges had misperceptions about Hmong values. Many indicated that they believed partnering with the Hmong community to raise awareness among the bench about this community would assist them in making the court more accessible and in making more culturally competent decisions. One judge with close ties to Hmong people committed to adopting the mediation program as one of her community-focused projects.

The first community relationship we brokered was between Hmong men and Hmong women. Traditionally women are very well respected within Hmong families. However, when a family decision is presented, the male presents the decision on behalf of the family. The court refused to consider the Hmong mediation program if women were not equally allowed to speak as men. LSNC and the Hmong mediation team met to discuss gender roles, to consider if women mediators would decrease the acceptance of the program within the community, and to identify women mediators. We were cautious to facilitate the discussion by sharing American concepts of gender roles without disrespecting those

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of Hmong people and without imposing
or influencing the committee’s decision
to include women for the sole reason of
obtaining the court’s blessing. The plan-
ing team ultimately determined that
women mediators would not fundamen-
tally change the culture and successfully
recruited women to the team.

The second community relationship we
brokered was between Hmong elders and
younger generation Hmong. Tradi-
tionally Hmong clan elders are the arbiters of
dispute between people. Our work with
both Hmong elders and Hmong youth
made clear that a major source of tension
throughout the transition to life in the
United States was between generations.
The younger generation, after learn-
ing in school, realized that some of the
Hmong ways conflicted with American
values of family, freedom, and fairness.
As the younger generation struggled with
negotiating traditional Hmong family
and American ways, the elder generation
struggled to maintain cultural methods
and values. This generational strain led
to conflicts—the type of dispute that a
culturally appropriate dispute resolution
model could resolve if it were cognizant
of both Hmong culture and American
culture. Again, the advocate’s role was to
walk the fine line between observing as
an outsider to offer context and avoid-
ing undue influence during community
decision making. The planning team de-
termined that a multigenerational team
would benefit the program and be diver-
sified by age.

LSNC brokered relationships between
other community organizations and the
Hmong community. Asian Legal Services
Outreach is partnered with the mediation
planning committee to provide financial
support and legal advice and consulta-
tion. Asian Resources Incorporated is
a partner incubating the mediation pro-
gram and providing infrastructure for
meetings and fund-raising. The Supe-
rior Court, County of Sacramento, Com-

munity Focused Court Planning Com-
mittee works with the mediation program
to conduct training about court rules and
processes within particular jurisdictions,
currently in the family law court.

The uniqueness of doing community
lawyering is that we serve in roles we are
not used to playing. We must take crash
courses in language and culture to be
more cognizant of community politics,
values, and systems. However, by sharing
an outsider perspective and brokering
new relationships, community lawyers
can open otherwise closed channels of
communication and enable people and
systems to coexist.

Framing Outcomes and Letting Go

The Sacramento Hmong mediation plan-
ing committee recently filed its articles
of incorporation and is now a legal entity
known as Sacramento Hmong Mediation
Council. Drafting the bylaws, we trained
the board of directors in establishing the
foundations of a business. After years of
training, planning, and meeting, Hmong
community members and their partners
created what, we hope, will be a culturally
appropriate alternative dispute resolution
program. The council is fund-raising,
consulting with the court about cultural
interpretations of events, and selecting
and training its mediators. The partner-
ships with other legal and nonprofit ser-
vice agencies are well developed and will
continue until the council is a fully func-
tioning not-for-profit organization.

So where does the attorney go now? For
the past four years one advocate worked
in one community and generated direct-
service cases, outreach, community eco-

mic development projects, and a me-
diation program. Does she still have a
role? Can her energy be placed elsewhere
to share a knowledge base with another
community seeking to create its own re-

29Asian Legal Services Outreach meets the needs of the Asian and Pacific Islander community by coordinating outreach,
education, and advocacy in the provision of legal services and educational programs and by building coalitions (see Asian
Legal Services Outreach, www.alsosac.org (last visited May 15, 2008)).

30Asian Resources Incorporated provides multiple social services needed in the Sacramento community to empower
everyone served to become a vital part of a changing, diverse society (see Asian Resources, www.asianresources.org (last
visited May 15, 2008)).
sources to serve its needs? Will her old community let her go, or has she become so entrenched in its operation that she is now a community member? And if she is so entrenched, has she then defeated the goal of serving as a tool to build a foundation rather than a box that keeps the pieces together?

The difficulty—and the challenge—that the community lawyer faces is to let go. There comes a time when the community can and should be able to achieve its goals without her. When is that point reached? When the attorney and the clients are comfortable with the mutual relationship they have built, the attorney can go in one or the other direction. She can continue focusing her energy on a particular community, on their particular cases, and seeing to it that the community understands the multifaceted use of legal aid. Or she can begin to extract herself and redirect her energy to a new community where once again she places herself in the position of an outsider, uncomfortable with her presence, but making available her skills in an effort to empower another community to seek justice or equality. Either is a worthwhile goal. Both achieve the mission of empowering low-income people of color to identify their needs and develop and sustain resources to meet those needs.

Community lawyering at heart is the advocate being able to realize that before she is an attorney, she is a human being: perhaps poor herself once, an immigrant, of color, or simply seeking justice through her chosen career. We need to expose our ignorance about the people we serve, our inability to know the solutions to all problems, and our own class, social, and ethnic biases. Like any human relationship, community lawyering is reciprocal trust building that does not always need to be outcome-driven. In recognizing the humanness of our work, we can better develop relationships with our clients such that exposing their needs and knowledge gap is not an uncomfortable and invasive. Instead our awareness can equip our clients with strategies to bolster their voices for the opportunities they seek.

31Zuni Cruz, supra note 28, at 563–64.
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ARTICLE: COMMUNITY LAWYERING - THE ROLE OF LAWYERS IN THE SOCIAL JUSTICE MOVEMENT

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* Director of Community Justice Project of Florida Legal Services, J.D. University of Southern California, B.S. St. Joseph's University. The author has been a lawyer since 1972, practicing in California and Miami. In 2006, I was joined in that practice by two young committed lawyers and the three created the Community Justice Project of Florida Legal Services in Miami to undertake a conscious, self reflective "community lawyering" practice. Many of the reflections of this article come from the experiences of that project, the original lawyers, and their successors, as well as the prior experiences of the author. I would like to express my gratitude to Amy Duncan and the associate editors who worked on this article for their excellent suggestions and encouragement. I also want to particularly thank my current and former colleagues in the Community Justice Project, including Purvi Shah, Jose Rodriguez, Jennifer Newton and Meena Jagannath for their inspiring work and their insights and reflections on the work, many of which are reflected in this article.

Text

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Within the past decade there has been a renewed interest in a style of practice we call "community lawyering." ¹ I use the term "renewed" because it involves a return to some of the values and practices of

legal advocates in prior mass struggles, such as the labor movement, \(^2\) the civil rights movement, \(^3\) and the earliest \(^4\) stages of federalized legal services. The term has come to be used very broadly with a myriad of individual descriptions, strains and tendencies, each with their own pedigree. The most unifying feature seems to be a deep unease with the degree to which the representation of poor and working people has been individualized, atomized, depoliticized and divorced from any leadership by real organized constituencies with their own substantive and political goals. It is accompanied by a realization that meaningful systemic change cannot result from this depoliticized and atomized approach. This has resulted in the search for a law practice that recognizes the centrality and leadership of the organized constituency in achieving meaningful change.

The range of descriptions of this type of lawyering varies widely. William Quigley, a long time Professor of Law at Loyola University New Orleans College of Law and former Director of the Center for Constitutional Rights, describes the need for "revolutionary lawyering" and "reflective activism," which is centered on a series of principles and practices calling for solidarity with others struggling for justice, and a refusal to accept the status quo as a given. \(^5\) Ellen Hemley, who has developed Continuing Legal Education for community lawyering, describes it as "a wide range of community-building and advocacy-related" activities "through which advocates contribute their legal knowledge and skills to support" community identified initiatives that return power to the community: \(^6\) "its goal is to support lasting changes that bring about social justice." \(^7\)

Within the broad range encompassed by these descriptions, many lawyers and legal advocates across the country (and internationally) are working through their own definitions - driven largely by their own history of involvement and their unique relationships with their local communities. \(^8\) Whatever the individual definition, central to all advocates, is a recognition of the importance of leadership by organized constituent groups within the communities served. Additionally, it is important that the advocates' skills be used not only to gain benefits for those communities but also to consciously build organizational power and community leadership. In implementing these central principles, each advocate confronts similar questions and tries to determine her own answers while maintaining a commitment to these central principles.

While there has been much academic reflection on the need for a renewed commitment by social justice lawyers to support organizing efforts and organized constituencies, there has been less written by legal advocates struggling to put those principles into practice, particularly outside of the narrow clinical context, and even less reflection on the lessons learned in developing that practice. \(^9\) Unfortunately, there

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\(^2\) See Drew D. Hansen, The Sit-Down Strikes And The Switch In Time, \(46\) Wayne L. Rev. \(49, 50\) (2000).

\(^3\) See, e.g., Taylor Branch, Parting the Waters: America in the King Years 1954-63 524-56 (1988) (discussing C. B. King's work).


\(^6\) Ellen Hemley, Supporting Local Communities Through Community Lawyering, 45 Clearinghouse Rev. 505, 505-06 (2012).

\(^7\) Id.


\(^9\) See, e.g., Cummings, supra note 1, at 1617. See Lai, supra note 1, at 2.
is often little time in these practices for recording the type of critical reflection described by Professor Quigley. And perhaps there may be too much humility, as practitioners are painfully aware how far their practice strays from ideal community lawyering.

The purpose of this article is not to add to the excellent academic reflections on community lawyering, but rather to report on some of the critical reflections of one small group of advocates struggling to consciously implement a community lawyering practice within a larger traditional public interest context. While much of the article is descriptive, its goal is to pull from these descriptions some prescriptive values and practices that arise from the practical application of our "community lawyering" principles. We understand that there are real and significant differences between communities and their struggles for equality. But we also increasingly understand that there are common lessons that lawyers can learn in their efforts to assist those struggles. In the following descriptions of our work, we attempt to define the common lessons we have observed.  

I. PUBLIC INTEREST LAWYERS AND SOCIAL JUSTICE

It seems reasonable that a first step in supporting social change would be to possess an understanding of how social change occurs. Leaders in social change movements are often quoted regarding their understanding of the dynamics of change. Unfortunately, many legal advocates, while deeply committed to social justice, have only a vague, largely unexamined notion of how they believe change occurs. These deeply committed advocates generally entered law school with an idea that being a lawyer would somehow make them more central participants in the struggle to achieve social justice. They had been educated to believe that lawyers and the law were integral to social change. They endured the mind-numbing routines of law school as a necessary step in achieving a role in that process. After law school, they may have had the good fortune to be able to practice in a legal services or other public interest practice, often handling numerous individual clients. Some of the clients' legal problems were serious, some trivial, some challenging, and some mundane. All were vitally important to the client.

For the first couple of years, the sheer terror of being trusted with any client's problem was sufficient to fully occupy the new lawyer's time. But, over time, these lawyers would see their clients return again and again. As the practice continued, they would come to understand that these clients had a desire to be involved in the process. They came to see that the relationship between lawyer and client was not merely a transactional exchange, but a relationship built on trust, respect, and a shared commitment to addressing their clients' problems.

This article is an attempt to heed this admonition from Professor White.

See Lucie White, Paradox, Piece-Work, and Patience 43 Hastings L.J. 853, 855 (1992) (stating, "theory becomes a habit of ongoing conversational reflection about how to describe problems, make alliances, devise strategies and thus move together toward a better world").

See, e.g., The Publ'ns Div., New Delhi, The Collected Works of M.K. Gandhi 241; See also http://www.gandhitopia.org/forum/topics/a-gandhi-quote ("If we could change ourselves, the tendencies in the world would also change. As a man changes his own nature, so does the attitude of the world change towards him."); Dr. Martin Luther King Jr., Letter from Birmingham City Jail (April 16, 1963) ("Freedom is never voluntarily given by the oppressor; it must be demanded by the oppressed."); Cesar Chavez, Address to the Commonwealth Club in San Francisco (Nov. 9, 1984) ("Once social change begins, it cannot be reversed. You cannot un-educate the person who has learned to read. You cannot humiliate the person who feels pride. You cannot oppress the people who are not afraid anymore."); Paulo Freire, Pedagogy of the Oppressed: 30th Anniversary Edition 65 (2006) ("It is only when the oppressed find the oppressor out and become involved in the organized struggle for their liberation that they begin to believe in themselves. This discovery cannot be purely intellectual but must involve action; nor can it be limited to mere activism, but must include serious reflection[,]").
again with similar problems. Hundreds of new clients appear requesting legal assistance on legal problems identical to those suffered by dozens of previous clients.  

[*379] Eventually the young social justice lawyer can become very frustrated since she fails to see any real connection between her work and any meaningful change in her clients’ communities. Tenants are being evicted simply because they don't have the money to pay the rent.  

Using her legal skills, the lawyer can prolong the tenancy, informing the court and the jury about the client's family and the abominable housing conditions. But at the end of the day, the tenant generally leaves, the property remains unrepaired, and the next tenant becomes a potential future client. The initial client/tenant may return in six months threatened with eviction from another abominable apartment.  

Similar scenarios can be described in cases involving health care, disability, veterans' benefits, etc. Over time these advocates increasingly recognize that the most fundamental problems of their clients may have no legal solution.

Generally, as they become more experienced, most legal advocates also become more specialized in narrow substantive areas that further narrowly limit the number of potential clients. Whether they continue to handle individual cases or "graduate" to handling class actions or other "more important" cases, specialization allows the lawyers to avoid clients they are least likely to be able to assist and to develop greater expertise for those whom they do assist. This substantive specialization and focus can allow the young lawyer to feel more expert and productive. But it also dramatically restricts the lawyer's contact with people possessing problems outside of the lawyer's area of expertise, and dramatically limits her experience of the clients' larger world. And seldom does it allow the attorney to achieve any meaningful systemic change. For example, a young housing rights lawyer may represent only tenants with federal vouchers. However, she knows most poor tenants are not receiving voucher assistance, are living in substandard conditions, paying most of their income in rent, and being evicted solely because their work hours were cut? they had unexpected bills, lost their job, or lost a partner. Thus, to the extent that she talks to the community, she often sees little correlation between the most serious problems as that community might define them and the narrow housing voucher-related problems that she deals with on a daily basis. She also quickly learns that there is not even a rough correlation between what is legal and what is just.

12 See Gary Bellow, Turning Solutions Into Problems: The Legal Aid Experience, in NLADA Briefcase 106 (Aug. 1977), available at http://www.garybellow.org/garywords/solutions.html. See also Marc Feldman, Political Lessons: Legal Services for the Poor, 83 Geo. L.J. 1529 (1995). While these authors' observations support my general descriptions of what is often termed "public interest" practice, the descriptions contained in this article are based largely on my own experiences and observations throughout my past forty years of practice.


14 See generally Bellow, supra note 12. See Feldman, supra note 12, at 1548-49.

15 See generally Bellow, supra note 12. See Feldman, supra note 12, at 1543-44.


17 For an excellent critique of the false and harmful dichotomy of "service" versus "impact" cases which underly much of the lawyer-centrist work criticized in this article see Rebecca Sharpless, More Than One Lane Wide: Against Hierarchies Of Helping In Progressive Legal Advocacy, 19 Clinical L. Rev. 347, 358-59 (2012).

This presents a fundamental dilemma for any advocate seeking to achieve social justice through her legal practice. After several years of practice, the flow of clients does not change, nor do their circumstances. The committed advocate may simply change her expectations, obtaining satisfaction in helping individuals and families through short-term dilemmas, sometimes obtaining solutions with longer-term individual impacts. Or she may participate in cases, such as class actions, that are intellectually stimulating and offer a possibility of narrowly focused changes in the law or an increase in benefits to a larger group of individuals, but have little or no impact on the imbalance of power, which might prevent such harm in the future. 19

There is sometimes the possibility of actually representing a group of clients? tenants in a building or a mobile home park, or a group of day laborers? and obtaining some longer lasting relief, which is something that begins to look like systemic change. However, these efforts often overwhelm the individual lawyer, with the clients? expectations often far exceeding any potential legal outcome and the group often dissolving long before the end of the legal case. 20

Some of these committed new lawyers may have come to law school already possessing an important recognition that [*381] fundamental solutions must involve larger social movements. 21 They participated in marches and organizing efforts in housing rights, immigration reform, and workers? rights struggles in college, law school, and then afterwards. They may have dreamed of participating as lawyers in these efforts. However, as their public interest practice progresses, they often see those dreams as increasingly unrelated to their day-to-day law practice. Seldom are such political activities encouraged as a vital part of a new lawyer?‑s training. 22 Lawyers may even be told that their funding renders their participation in these activities illegal. 23 Few advocates are provided with an environment in which lawyering skills in support of such organized efforts are practiced, developed, and encouraged.

These lawyers may feel particularly frustrated because they were raised in a popular culture that glorified the crusading lawyer who singlehandedly changed lives and communities. Older advocates, myself among them, who grew up in the 1960s and 1970s, were indoctrinated with the idea that lawyers and litigation were the keys to all sorts of social change movements. After all, hadn't civil rights lawyers singlehandedly

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19 See sources cited supra note 12.


22 Id.

23 Many funding sources, including the Legal Services Corporation (LSC), have severe restrictions on who can be represented and how they can be represented. For example, LSC prohibits organizing, soliciting, representing incarcerated individuals, conducting class action lawsuits, and lobbying by lawyers funded in whole, or in part, with LSC funds. Alan W. Houseman, Restrictions By Funders And The Ethical Practice Of Law, 67 Fordham L. Rev. 2187, 2188-2193 (1999); see also Selena Spain & Jean Wiley, The Living-Wage Ordinance: A First Step in Reducing Poverty, 32 Clearinghouse Rev. 252, 266 (1998) (examining the tensions created by funding restrictions in trying to work in campaigns that involve influencing local governments); see William P. Quigley, The Demise Of Law Reform And The Triumph Of Legal Aid: Congress And The Legal Services Corporation From The 1960's To The 1990's 17 St. Louis U. Pub. L. Rev. 241, 264 (1998) (discussing a more pessimistic, but no less realistic view of the impact of the LSC restrictions on the practice of community lawyers).
changed society through a series of skillfully crafted courtroom victories? The younger generations have been similarly taught that lawyers have singlehandedly won environmental reforms, closed sweatshops, freed wrongly condemned inmates and outed governmental corruption. They went to law school aspiring to find their generation's version of Brown v. Board of Education, which they believe will forever change the social landscape.

Unfortunately, most of this adulation of lawyers and litigation in achieving social change is from the point of view of the lawyers themselves, who are often far removed from the communities that they supposedly transformed. To the extent these stories actually describe examples of real, lasting change, they ignore the intense organizing work that was instrumental in actually securing or institutionalizing the change.

Less lawyer-centric examinations have shown that the African American civil rights movement in the United States won far more enduring victories in the streets of Selma than in the Supreme Court. In Professor Michelle Alexander's book, The New Jim Crow: Mass Incarceration in the Age of Colorblindness, she describes how racial justice advocacy in the United States, from the earliest struggles to the civil rights struggles, revolved around grassroots organizing and the strategic mobilization of public opinion. In fact, integration failed to follow Brown and it was not until the next decade during the organized people's movement that actual change began to occur. In Professor Gerald Rosenberg's book, The Hollow Hope: Can the Courts bring About Social Change?, he demonstrates that the actual social gains in civil rights for African Americans and women correlate not with the court victories, but rather with the popular struggles. This mirrors the early labor movement, which accomplished its victories largely through bloody and generally illegal strikes rather than in the courtroom. These analyses support the idea that significant social change results from organized struggles outside the courtrooms rather than judicial decisions made inside.

In fact, these legal victories often diverted attention and energy from the real struggles for change. Professor Alexander argues that a mythology resulted from the Supreme Court's Brown decision in that litigation and lawyers were the central players in bringing about social change. She then observes: "As public attention shifted from the streets to the courtroom the extraordinary grassroots movement that made civil rights legislation possible faded from public view. The lawyers took over." The result was a reliance on the lawyers and a distancing from the grassroots organizing that had brought about those changes in the first place.

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24 See Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness 225-27 (2012); Derrick Bell, Litigation, And The Search For The Promised Land, 76 Geo. L. J. 229, 232 (1987) (describing the belief that the civil rights gains of the 1960s were the result of carefully planned litigation).

25 See A Civil Action (Touchstone Pictures 1998); Erin Brokovich (Universal Pictures 2000); Amistad (DreamWorks Pictures 1997); The Chamber (Universal Pictures 1996); Conviction (Fox Searchlight Pictures 2010); Raymond H. Brescia, Line In The Sand: Progressive Lawyering, "Master Communities," And A Battle for Affordable Housing In New York City, 73 Alb. L. Rev. 715, 724-29 (2010).


27 Alexander, supra note 24, at 225-27.


29 See Hansen, supra note 2, at 50.

30 Alexander, supra note 24, at 225.
Others echoed this view. Lani Guinier, quoted by Professor Alexander, further describes the legal takeover as a participant:

In charge, we channeled our passion for change into legal negotiations and lawsuits. We defined the issues in terms of developing legal doctrines and establishing legal precedent; our clients became important, but secondary, players in a formal arena that required lawyers to translate lay claims into technical speech. We then disembodied plaintiffs claims in judicially manageable or judicially enforceable terms, unenforceable without more lawyers... . We not only left people behind; we also lost touch with the moral force at the heart of the movement itself. 31

Many non-lawyers involved in the day-to-day struggles of social movements are more scathing in their criticism of lawyers. Professor Quigley, in interviewing grassroots organizers in Louisiana, found reactions ranging from healthy distrust to contempt. Ron Chisolm, an experienced organizer, summed up the views of many organizers:

Lawyers have killed off more groups by helping them than ever would have died if the lawyers had never showed up... . In my [twenty-five] years of experience, I find that lawyers create dependency. The lawyers want to advocate for others and do not understand the goal of giving a people a sense of their own power. Traditional lawyer advocacy creates dependency and not interdependency. 32

As a result of these harsh observations and critiques, self-reflective legal advocates can find themselves lost without any meaningful road map. If lawyers are not central to social change, if lawyers can be so destructive, then maybe they will do more harm than good by involving themselves as lawyers in social justice struggles.

II. THE COMMUNITY LAWYERING PERSPECTIVE

The central tenet of "community lawyering" is that social change comes about when people without power, particularly poor people or oppressed people, organize and recognize common grievances. Social change can only be lasting when it is led and directed by the people most affected. It is this organizational work, leadership development and power building that is and has been key. This is our theory of social change. It has been demonstrated over and over again in the civil rights movement, the workers' rights movement, the housing movement and the immigrants' rights movement. Community lawyering is supportive of this grassroots organizing and mobilization for social justice. Those involved in community lawyering understand that these organizing efforts may be the only real route to long-term social change.

It follows then that community lawyers believe that leadership must come from within our client/partner organizations. Real, lasting change can only result from an oppressed group itself identifying its grievances and developing demands and a strategy for achieving them. They can decide whether to change their situation, their plan and execute that campaign for change. It is only then that legal advocates can begin a discussion to determine if they can be helpful and if their help is desired.

The understanding that a lawyer's role in change is supporting community organizations and other organized groups of people (i.e., worker/tenant associations, immigrant/community coalitions, and

31 Alexander, supra note 24, at 226.

unions), who win benefits and shift power through collective action and strategic campaigns, is central to all types of community lawyering. True sustainable change comes from building large-scale, democratic organizations focused on building the power and conscious leadership of poor and working people. [*385] Community lawyering can assist fundamental and long-term change only through supporting grassroots organizing in all its aspects: community education, organizational development, and leadership development.

Those involved in community lawyering practices accept and internalize the criticisms of lawyer-centric advocacy campaigns. We also have seen organizations destroyed and opportunities for significant change lost through lawyer-centric campaigns. However, we strongly believe that there is a role for lawyers in social justice movements and we try to develop practices which incorporate that role. Our legal work is not central, or often even necessary, but it can be important and has historic precedent in the roles lawyers have played and continue to play both here and abroad in workers, housing and immigrants' rights struggles.

Unfortunately, simply removing the lawyer-centric models from our practice, while limiting potential harm, does little to define how we can be helpful. Even a clear understanding of the dynamics of social change does not dictate an affirmative role for lawyers. This intellectual understanding must be backed up by the actual practice. While the intellectual principle may be simple to state, its operation is far more complex. It can be difficult to find ways in which we can be truly helpful to social justice organizing campaigns without falling into the destructive lawyer-centric models glorified in our culture.

The purpose of this article is to chronicle as simply and humbly as possible our struggles to create an intentional, non-lawyer-centric, supportive practice in aid of social justice organizing campaigns. It is an attempt to present our principles, interspersed with some actual applications of those principles. We lay out our choices, not as correct, but simply as the decisions that we made, with the reasoning underlying them and the consequences to the extent that we can see them. However, we believe that certain practices have emerged from our work that are worth considering as applicable in a broader context.

We have found it useful to organize our lessons and our struggles around three basic inquiries: who do we work with, what do we do for them, and how do we do it.

A. Our Partners - Who Do We Work With?

Our work has focused on working with community [*386] organizations and other organized groups (i.e., worker/tenant associations, community coalitions, and unions) that are committed to building power through collective action and strategic campaigns.

i. Partners With Organizing Capacity. Our work has been focused on groups who are sophisticated in mounting and directing campaigns and have a history of organizing. We have tried very hard to work with groups and organizers with a clear sense of the dynamics of an organizing campaign. Our experience is that relatively sophisticated organizing groups are able to avoid the pitfalls of working with lawyers, while newer or less experienced groups are much more prone to see lawyers and lawsuits as the "silver bullets," regardless of the nature of the campaign.

A level of experience with organizing campaigns is also important because the maximum utility of our legal work is in support of an organizing campaign. Without an understanding of the development and implementation of organizing campaigns, it is difficult, if not impossible, to maximize the potential of our...
legal skills. Of course, as explained later, it is also vitally important that the lawyers have a clear sense of how organizing campaigns work.

Each of the groups we work with strives to be democratic, works in poor communities of color, consciously organizes, and is primarily an advocacy organization. All of these groups ebb and flow in campaigns, staff, and need for legal assistance. As explained in the next section, we work with groups that have a campaign or project in which we can be useful and that we can stay in contact with thereafter.

ii. Partners Without Organizing Capacity. We have worked on several occasions with organizations that have less internal cohesion and direction and, on occasion, tenant groups limited to a single building. While these efforts have generally resulted in positive short-term results, they have rarely resulted in any long-term organizational growth or systemic change. Building organizational strength and cohesion is a difficult process requiring skill and dedication. It rarely happens without dedicated and knowledgeable organizing infrastructure.

We have no organizer on staff. We have tried on a few occasions to operate as both organizer and lawyer when there was [*387] no one in the group willing to take responsibility. Because some of our staff had experience organizing prior to law school, we felt empowered to try. Unfortunately, our experience is that such a dual role is almost always a failure. First, both organizing and legal advocacy are full time efforts. Trying to juggle them results in shorting one side or the other. But, more importantly, the roles of a lawyer and an organizer in an organizing campaign are very different. A major role of a community lawyer is attempting to delegitimize all the preconceived notions of the lawyer as savior and litigation as the answer to problems. Thus the lawyer is constantly trying to de-emphasize the centrality of the work of the lawyer and emphasize the importance of organizing and working together. Our observation is that the dual role makes that virtually impossible. Members of an organization are often steeped in our lawyer-centric culture and easily default to a reverence for lawyers and law. Thus any time the lawyer/organizer speaks to a group, they are perceived by the group as a lawyer, which further enshrines the centrality of the lawyers. Any empowerment and leadership development ?the core elements of organizing?becomes almost impossible.

iii. Communities Without Partners. Given our paradigm, we have been asked what a legal advocate should do if they work in a poor or working class community without any community organizations. In response, it is initially difficult to imagine a community with no community organizations. Are there no churches, no unions, no student, parent or school related organizations? I would propose that there are always community organizations with indigenous leaders in any community. However, community lawyering demands a very close relationship with the community in order to locate and relate to the indigenous community leaders/organizers. It requires accepting the community and its organizations as they exist and with the agendas that they have developed.

Sometimes the problem is that an advocate is searching for a community organization focused on a particular substantive area. Thus the expertise or focus of the lawyer dictates an assessment of the level of community organization. However, a community lawyer must respect the decisions of a community. For example, if a community is organizing itself around a struggle with the excessive discipline of their African American children, lawyers have no right to demand people organize around affordable housing. Indeed, it can be destructive to the local leadership. [*388] Legal advocates desiring to assist those community struggles must develop expertise that is useful to the struggle or be rendered irrelevant.
iv. Our Capacity. Our initial goal was to become the go-to legal resource for grassroots organizing campaigns involving low-income communities of color in Miami. Thus, the groups we worked with were geographically limited to south Florida and principally Miami-Dade County. This created significant synergy, as many of the organizations and organizers with whom we worked knew each other and worked closely together. We did not expressly limit the substantive goals of the groups with whom we worked. However, much of our initial work focused on either housing/community development related campaigns or immigrant/worker related campaigns. This reflected our own expertise as well as the issues of most serious concern to the community organizations with whom we worked. These communities were suffering from the impact of uncontrolled development and gentrification, demolition of low-income housing, immigration enforcement and criminalization, and exploitation of low wage workers. Thus, those were the substance of the campaigns with which we worked.

Unfortunately, organizations involved in social change generally do not have an agenda that corresponds to a narrow legal specialty. Even those organizations whose work falls within a substantive area, such as landlord-tenant or foreclosure law, often need legal assistance in other areas, such as land use law, environmental law, or Constitutional law, in support of their campaigns. The types of legal expertise required to support these extremely varied demands are a major challenge for a project consisting of only three lawyers.

Organizing campaigns seldom ride on the backs of legal expertise. Most campaigns proceed without lawyers or, if litigation is a necessary component, use pro bono help from major law firms. However, these firms will seldom be sensitive to the larger goals of the campaign and frequently such assistance ends in conflict and confusion. If lawyers are to be helpful, powerful community organizations need legal assistance (as well as all other types of assistance) that will follow them seamlessly through various stages of a campaign and will not be limited by narrow substantive specialties or geography.

For us, while substantive diversity has always been a major [389] challenge, more recently the geographic diversity of our partners and their campaigns has presented an increasing challenge. As these groups have grown more sophisticated they have understood the need to expand their influence to the state level. This is a natural progression from local organizing efforts. For example, groups organizing homeowners in foreclosure in various communities were faced with state legislature attempts to gut the foreclosure process. They were forced to create state level legislative campaigns to defeat these measures. 33 A successful campaign to pass a Wage Theft Ordinance in Miami-Dade County was met with an effort to pass state legislation barring such local efforts. 34 Thus the coalition supporting such ordinances was forced to learn about state-level education, coalition building and lobbying. Perhaps most dramatically, immigrant groups were faced with the imminent threat of statewide legislation importing Arizona type anti-immigrant legislation and were forced to mount a massive state level response. 35 Each of these


35 In 2011, the Florida Immigrant Coalition led a statewide campaign that opposed passing legislation, modeled after Arizona law, that would dramatically restrict immigrants' rights in Florida. The campaign in opposition included almost daily events at the State Capitol in Tallahassee, as well as an unprecedented statewide grassroots lobbying campaign. Ultimately, despite passing several committees, the bill
initial grassroots lobbying efforts was successful and resulted in some of the most significant legislative victories in recent Florida history. 36

These statewide campaigns created a challenge for us. On the one hand, we desperately wanted to continue being of service to these immigrant, wage theft and anti-foreclosure coalitions. Many of the traditional public interest lawyer/lobbyists had difficulty relating to grassroots efforts that did not see lawyers as central. At one televised legislative hearing, the statewide homeowner foreclosure coalition that had brought numerous people to the capitol to testify were calling our office six hundred [*390] miles away for advice. It forced us to rethink our own limitations and our approach to statewide advocacy. Traditional statewide public interest policy advocacy/lobbying resources have a history of working in parallel formations with constituent groups, but seldom working for these groups. These public interest policy/lobbying advocates are often uncomfortable taking direction from anyone other than themselves or their fellow lawyers, which creates significant difficulty due to the fact that leading and empowering community organizations is a core component of any community organization's philosophy.

An optimum solution could be to add community lawyering resources dedicated to these statewide campaigns. Currently, we are engaged in educating our lobbying colleagues to utilize our skills and relationships with statewide community organizations as a more powerful model of representation than the untethered "public interest" model. 37

B. What Do We Do For Our Organizational Partners?

i. Substantive Goals. Substantively, we assist our partners with infinite variety. Depending on the campaign goals and our relationship with a particular organizer/organization, we support a campaign with a variety of tactics including litigation, policy advocacy, research, community education, and infrastructure/institution building. We have: conducted know-your-rights trainings; presented at public forums to advance campaign demands; worked with members to develop their public-speaking and writing skills; litigated individual cases on behalf of workers and residents; litigated actions on behalf of classes of workers, tenant associations or the base-building organizations themselves; assisted groups in drafting or wording policies or legislation; researched and provided technical assistance to develop a campaign strategy; and provided transactional and corporate advice to new and existing organizations.

While public interest/legal service providers tend to focus their representation through substantive priorities and expertise, the problems of communities are not so limited but often present [*391] issues far more complex than any narrow substantive area of public interest expertise. Certainly many community advocacy organizations tend to focus on a particular type of member, e.g., organizing public housing tenants or day laborers. But this does not mean that their campaigns will be limited to any specific substantive law claims. For example, we have used environmental law to assist campaigns in opposition to immigration detention centers as well as inner city high rises. We have used relocation law and civil rights statutes to assist campaigns to prevent the demolition of public housing.

36 Id.
37 See John Bouman, Power of Working with Community Organizations: The Illinois FamilyCare Campaign?Effective Results through Collaboration, 38 Clearinghouse Rev. 583 (2005) (describing the tensions of working with community organizations that have separate agendas).
Given that there are only three attorneys in our project, the need for varied substantive expertise creates enormous difficulties. It requires attaining and retaining expertise in a wide variety of substantive areas or potentially losing relationships with organizing partners. Within the past several years we participated in the following: a campaign against a proposed immigration detention center, arguing that it was violative of the National Environmental Policy Act (NEPA); a campaign challenging a proposed high end condominium project proposed in a low income neighborhood, based on violations of the local zoning code and also violative of NEPA; drafting a local wage theft ordinance and participated in a campaign to obtain its enactment; a campaign to establish a moratorium on mobile home park conversions utilizing local land use laws; a statewide lobbying campaign to defeat a proposed statute that would dramatically limit homeowners' rights in foreclosure; challenges to the manner in which the state was implementing the minimum wage law; and challenges to the manner in which the City of Miami Beach was implementing its Living Wage Ordinance. We are currently participating in a number of campaigns to improve the working conditions of local taxi drivers - including legislative changes to the relationship between the drivers and the taxicab companies. We are also currently assisting in the development of a community based organizing strategy designed to preserve communities by assisting in representing tenants in foreclosed buildings, homeowners in foreclosure and other interested neighborhood residents in preserving the human capital of the neighborhood. In each of these we relied, to a greater or lesser extent, on the substantive expertise of committed public interest or pro bono lawyers and, in the course of representation, developed our own expertise. But the bottom line is, if you want to be useful to community organizing campaigns you must be able to adapt to the needs of the campaign and try not to force the campaign to adapt to your expertise.

ii. Campaigns and Organizing. We also believe that in order to be helpful to organizers and organizing campaigns it is extremely helpful to understand the dynamics of organizing. Many "public interest" lawyers have represented groups of clients in class actions or other types of class claims. These seldom involve much interaction with any more than one or two class members regardless of the size of the class. Landlord-tenant representation can sometimes involve closer interaction with groups of tenants living in the same building subject to a mass eviction or substandard conditions. A committed public interest lawyer might leaflet the building and call a meeting to explain basic law to the tenants. There might even be an attempt to get the tenants to attend the court hearings so the judge can witness their interest. Ultimately, the case settles with the tenants either individually or collectively resolving their claims? oftentimes by moving.

While this may provide benefits for the individuals, it is not what we mean by "organizing," nor does it accomplish the goal of "organizing." At best, it may be considered "mobilizing," a term used to describe efforts to get a number of people to attend an event. In contrast, "organizing," as we use that term, refers to a more sustained process whereby people come to understand and articulate a campaign's goals and empower themselves to continued action on behalf of those goals.

Organizing, like lawyering, follows some well-defined paths and organizers apply a number of fairly common tactics to different factual situations, which must be understood and appreciated by lawyers attempting to work with and support organizing campaigns. Lawyers occasionally utilize some of these tactics, but for different reasons. By understanding the purpose of these tactics, lawyers can adjust their work to maximize its impact. What follows is a brief overview of some of the most commonly used organizing campaign tactics and brief examples of how we have assisted organizers with respect to each.

1. Organizing/Base-Building Tactics
These include a wide array of outreach and member development strategies, including door-knocking, one-on-ones, [*393] town-hall meetings, leadership development efforts, and know-your-rights trainings. Lawyers can be powerful allies in base building. Public interest lawyers often provide "know your rights" trainings for client groups and participate in other public presentations. These trainings and presentations can be used in conjunction with organizational events to introduce the organization, build the organizational power, or simply provide added benefits to the organization members.

In addition, joining these events with organizing work makes them far more interesting and understandable. The "know your rights" events by lawyers are often dry recitations of the law. Many lawyers, in giving these presentations, fail to mention the practical difficulties in implementing these rights, leaving the individuals with a false sense of individual power. Conversely, other lawyers lay out the difficulties in excruciating detail, leaving the individuals with no hope. Both of these approaches can be the natural reaction of lawyers providing advice on rights they fear will be of little practical use in obtaining justice for the individual unrepresented client.

However, by consciously linking these trainings to organizing efforts and always insuring that organizational representatives are included in any public presentations, an attorney can dramatically increase the impact of her work on organizational development.

When presented in an organizing context, lawyers can talk about the dramatic impact of packing a courtroom with neighbors and organizational members. They can segue their talk into discussions of organizational campaigns to obtain both individual results and long term changes. Organizers can add presentations by group members who have prevailed through collective action. Rather than the organizing discussion being an add-on to the lawyer's presentation, it can be central? communicating to the participants that organizing is the central component of effective change. 38

Organizing campaigns will also always have an outreach [*394] component. Lawyers often have access to outreach resources, such as law students, who often love the opportunity to go door to door and talk to individual families.

2. Communications & Media Tactics

A central component of many organizing campaigns challenging the status quo involves efforts to shift the public debate and reframe it in terms that are friendly to the organizing campaign. These tactics are particularly familiar to lawyers who frequently have heightened access to the press and public spokespeople. While theoretically simple, it is perhaps the most difficult in practice for lawyers to give up their positions of privilege and instead allow the campaign to determine both the message and the messenger.

Lawyers can create forums (through litigation and policy advocacy) and those forums can be utilized to further get the message out. One of those forums is a press conference. The media is accustomed to covering the filing of lawsuits and similar legal demands. Traditionally there is a statement by the lawyer, and possibly the client, a fact handout, and sometimes a background statement. The challenge is to turn that paradigm on its head. The community organization calls the press conference, and the lawyer takes a

38 Some organizers don't like lawyers participating in their meetings. Nevertheless, lawyers can operate as a draw and the lawyer discussions can be handled outside of the regular meeting.
back seat. The organization explains any legal demands in conjunction with, or instead of, the attorney. The community organization develops talking points and spokespeople. To the extent that the attorney speaks to any media outlet, they subordinate their message to the message or the messenger of the campaign. It means that no messaging - whether leaflets, press releases, blogs, or op-eds - is utilizing the often powerful media resources of the lawyer without the direction of the organizational partner.

Lawyers, who deal so much with language, often feel that they can best develop and deliver any message. However, they ignore that the messenger is the most significant part of any message. It is vital to any organizing campaign that the organized constituency takes leadership in delivering the message. A heartfelt statement by a member, based on their personal experience, is worth infinitely more to the organization and its members, as well as to the public, than any well-drafted lawyers’ press release. Similarly, every court hearing, often seen as simply a duel between lawyers, can instead be an organizing event packed with members and a schedule of events and [*395] speakers.

Far more important than creating press conference opportunities, lawyers can force public hearings in which the organization itself can participate as a principal. We have successfully fought for a public participation process as part of environmental reviews and zoning hearings. While generally considered relatively meaningless procedural events, they can become major organizing and messaging events in the hands of skilled organizers. By creating political opportunities for a larger community debate, a community lawyer can help the organization influence the outcome, even when the litigation results in no direct impact on a project.

Leadership development is also part of any successful power building campaign. Every event-whether internal, external, public, or private-provides opportunities for organizational leaders to grow. Lawyers spend large parts of their lives in public and private meetings. In the hands of organizers, these events provide opportunities for leadership development and additional events in which the organizational members are seen as the true spokespeople, rather than the lawyers. All meetings with decision makers traditionally handled or headed solely by lawyers should be lead by organizational leaders. But, there are also a myriad of lawyer speaking engagements at law schools, bar groups, or other community leadership groups. Many advocates consider this a chore, but speaking arrangements can be transformed into part of an ongoing communication campaign by including or substituting organization and community leaders. This not only creates new introductions and additional forums, but also makes the event far more interesting to all involved.

We must finally mention that lawyers simply possess a great deal of information regarding existing public forums, such as when the county commission meets, where and when the agenda is posted, and what rules exist regarding speaking and signing up to speak. Simply sharing this information with organizations, which have little experience in these forums, assists them in feeling experienced and being empowered.

3. Policy Advocacy Tactics

Many, if not most, organizing campaigns are designed to influence public policy-whether it be elected government officials or unelected agency heads. These targets wield enormous power [*396] over poor and disadvantaged communities and are, at least nominally, democratic institutions, with leadership more subject to public pressure than private corporations. In addition, unlike courts, lawyers are not necessary to participate.
We have all seen public interest lawyers speaking before commissions, school boards, town councils, etc., with little impact. Sometimes there are a few supporters in the audience, sometimes none. Yet there is probably no forum in which community organizing can have a greater impact. Each event can be an opportunity for an organization to exercise its power and leadership by packing the hall, picking the speakers, and otherwise conducting the presentation. This does not mean an attorney cannot speak; there are often important legal points. But the lawyer is speaking as the legal representative of the larger group and not as its spokesperson.

Lawyers should never underestimate the value of their information on what body has power to amend a policy, how often they meet, how their hearings work, who has power within that body, etc. Lawyers, like it or not, are the priests of the current system and possess enormous knowledge about how it works. They can either use that knowledge to preserve their privilege or put it at the service of the communities they serve.

Lawyers can also assist organizations in translating the organization's policy proposals into legislative language, as well as translating the legal language of existing policies into plain English. They can counter legal opinions that hinder proper consideration of the organization's proposals. They can also conduct supportive legal and factual research. But, ultimately, all policy proposals must come from the community's actual experience and must be understood, and defended by the community.

In addition, lawyers must ensure that organizations are aware that the most effective public policy advocacy occurs not in the public arena, but in formal and informal conversations with decision makers. Indeed, it is in these meetings that policy makers gather most of their information. Lawyers, lobbyists and others in power are familiar with these meetings. Lawyers can assist organizations in obtaining these meetings, preparing for the meetings, drafting policy proposals and, if necessary or desired, can even accompany organization members. However, to conduct these meetings without using them to build the organization, its leadership, and its power, does a disservice to both the policy goal and the organization.

4. Direct Action Tactics

Organizations often engage in direct action—including rallies, marches, protests, sit-ins, taking over property, making repairs to buildings—to dramatize or emphasize their demands. Lawyers often shy away from participating in these activities because they may include confrontational activities that can result in arrests. However, experienced lawyers can be invaluable in providing relevant information to minimize any adverse potential before and during the event. While lawyers sometimes negotiate with police, law enforcement personnel, or private security, experienced organizers are often much better at handling security because they are closer to the demonstrators, are often seen as less threatening to police, and are more able to deescalate any unanticipated situation. However, should there be arrests or confrontations, it is essential that there be lawyers in a position to provide assistance.

5. Legal Tactics

39 It is extremely difficult and requires significant preparation for a lawyer to attend these meetings without becoming the focus of the meetings.

40 Our project does not provide criminal defense assistance and has only very rarely been involved in advising groups over civil disobedience resulting in unanticipated arrests.
Notwithstanding all of the above, organizations regularly employ legal/litigation tactics in organizing. In our experience the role of affirmative litigation, such as class actions, injunctions, etc., is almost always tactical. It creates forums. It can shape public opinion. It can provide a stage for dramatizing and demonstrating issues and demands. Injunctive relief, particularly preliminary injunctions, can delay the progress of a project while the organizing and education around the community's concerns take place. However, seldom does affirmative litigation result in a definitive community victory. Indeed, more often it distracts from the underlying struggle to achieve a lasting political victory. It delays any decision for years and distracts everyone's attention. Litigation often terminates any discussions that may have been taking place between the community leaders and the decision [*398] makers. Thus, to undertake litigation without coordinating and supporting a community organizing initiative is often counterproductive, if not irresponsible.

Also, the legal claims in any litigation, while often sounding similar to the community demands, are often legally or practically significantly different. This only becomes apparent to the community at the time of settlement or judicial decision? when the "victory" of the lawsuit fails to address the community's basic demands. Finally, sophisticated defendants are turning litigation against the plaintiffs, using it as an excuse to undertake intrusive discovery into the affairs of the plaintiff organization. With courts increasingly unwilling to protect plaintiffs from these attacks, significant resources are diverted in a defensive struggle.

Nevertheless, the tactical advantages of affirmative litigation should never be overlooked. Most important of these tactical advantages is the potential for delaying an adverse decision while organizing advances the public debate and the possibility of a political victory. Affirmative litigation creates a powerful communication piece to dramatize the underlying debate. Sometimes legal claims can force changes in a project that, although entailing only minor improvements, may render an objectionable project or policy infeasible, but any advantage must always be weighed against the negatives. No matter how much a community is educated that their "victory" will not come through the courts, affirmative litigation has an immediate, powerful, game changing attraction. Yet experience dictates that affirmative litigation, without concurrent political organizing, rarely results in a long-term victory for community demands.

Defensive or protective litigation can often be useful. Protecting tenant leaders from eviction or homeowners from foreclosure can often provide short-term meaningful and symbolic victories. In addition, handling a number of individual cases, such as individual wage claims or evictions, can significantly support an organizing campaign. Most importantly, it can provide real additional benefits to organizational members, incredibly useful information and statistics, and pressure greatly in excess of major litigation. Similarly, litigation to obtain public records can provide useful information to support a communications or policy campaign.

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6. Other Tactical Help

a. Providing Time

Many organizing campaigns are designed to oppose a planned policy or project that will significantly harm the affected community. Often the affected community is kept in the dark about the details of the project until the last possible moment. Thus, these campaigns are almost always playing catch up. Legal advocates can often create some time for community leaders to educate their fellows and build support by
ensuring that the governmental or private powers comply exactly with every procedural and substantive requirement. Often these requirements were placed in the law specifically to require a fuller debate, but have been rendered meaningless by uncaring or unsympathetic decision makers. Many mandate some type of public participation, which, if identified and enforced, can be a powerful tool in the hands of a community organization. At least they can provide additional time to build public opposition to a project.

b. Utilizing Routine Types of Cases

I have often heard comments by advocates to the effect that it would be impossible to import the values of community lawyering into their practice because: (a) they handle a volume of small individual cases, or (b) they are private practitioners who must charge, or (c) some other constraint on their practice prevents them from utilizing these practices. It is important to remember that the essential element of community lawyering is that it is in support of, and lead by, an organizing effort. Any type of advocacy can be adapted to support an organizing effort if there is an intentional and planned effort to do so. Take for example an advocate required by her employer to handle a high volume of landlord-tenant practice. If the advocate is aware of a community organizing effort involving tenants, she can work with a tenant organizing effort and fill her docket with cases associated with that effort. In addition, her community education efforts can be in support of the community organization conducting the organizing and she can provide know-your-rights trainings to the staff and the members. She can even influence the practices of her fellow advocates, further increasing the resources available. All of these efforts, if done in an intentional and supportive manner, can provide priceless assistance to an organizing effort. Thus, while it is easier if you have the freedom to take on cases in different substantive areas, requiring different levels of resources, you must shape your advocacy, whatever its makeup, to best serve the needs of an empowered community. And do not ever be afraid to simply ask how you might be most useful, with whatever limitations presented.

C. How Do We Work With Our Partners?

As important as what we do, is how we do it. Through every case, we hope to be expanding the collective knowledge skill base within the community organization. We believe that our clients (whether organizational or individual) are partners-not just in name, but in leadership, control and decision-making. The lawyer-client relationship is rife with power dynamics that do not evaporate simply because the long-term goals of the lawyer are aligned with that of the organizer or client. Therefore, we also believe that community lawyers must be engaged in a regular practice of self-scrutiny and self-reflection. If a lawyer wants to practice law in a respectful, responsible and accountable manner, we believe she has to be constantly evaluating her work to determine if it perpetuates the very systems of oppression that she is fighting. Poor communities of color face multiple and intersecting injustices and good lawyering requires a deep understanding of race, class, and power.

This working relationship plays out in some very specific ways that differ dramatically from the manner in which many public interest lawyers work with groups. A typical public interest lawyer may be interested in expanding access to food stamps for low-income immigrant children. She will seek out an organization also interested in food issues and have them find individuals to act as plaintiffs for a potential lawsuit and as examples of needy children. Our work is to assist community organizing campaigns accomplish their campaign goals, including organizational and substantive goals. Thus, the organization must be constantly providing the leadership and the campaign strategy. Consistent with our understanding of the nature of change, a victory is only lasting if it is political, i.e., a result of a shift in the power
A lawsuit, even a lawsuit that results in an order requiring additional food stamps for immigrant children, is not effective unless it also results in the building of organizational and political strength to maintain and implement the victory.

As a result, we seldom engage in classic "law reform" cases [*401] designed to win an all-encompassing legal victory. Frequently, we engage in litigation or advocacy which simply provides forums for highlighting the demands of the organization and building organizational strength. For example, one community organization discovered that the local government had developed a plan to redevelop their neighborhood in a manner which they believed would eliminate most of the local small businesses and would produce no new affordable housing or community friendly uses. The plan, which was already largely completed, was to be financed with federal transportation funds. The community organizations immediately began to mobilize to develop a counter-proposal but needed both time and a process, which would allow consideration of their input. A legal challenge to the perfunctory environmental impact statement, which the local government had produced, resulted in an order from the federal funding agency to redo the environmental analysis. We then worked with the community organization to demand public hearings as part of the environmental process. The community organization used the time to galvanize the local community and effectively used the public hearings to both voice an alternative vision and demonstrate public support for that vision. The end result was a radically different plan with community supported elements.

Our understanding of the campaign strategies of our clients also informs the way we structure our representation. Community organizations with whom we work tend to have fairly clear organizing campaigns, each with fairly set goals and staff. We have tried to be retained for specific campaigns where the community organizations and ourselves can lay out a specific plan of action with specific goals. We have generally not operated as "house counsel" or engaged in open-ended representation with these groups, although we have always maintained ongoing contact through community coalitions and task force work. We have tried to maintain a model in which there are clear parameters to our relationship, as we believe it furthers a model in which the community organization/client controls and leads the fight. It also allows us to shepherd our resources for campaigns where we can provide useful assistance.

Thus, for example, we have worked with a community organization in a multiyear campaign against the demolition of public housing. Within that campaign there were other smaller campaigns to fill vacant units, and to modify the waiting list, all [*402] separate from, but related to, the larger struggle. The overall campaign, as well as each smaller one, had its own goals, strategies and tactics. The overall campaign lasted for over ten years and involved every aspect of an organizing campaign? outreach, media, local and national advocacy, and coalition building, etc. We assisted the organization throughout the campaign with litigation, education, advocacy, etc. However, there was always a clear understanding that we were working on the Save Our Homes campaign, or one of the other smaller campaigns and not on other actions or the internal work of the organization. Similarly, we assisted an immigrant coalition in a fight against the construction of a massive immigration detention facility in South Florida. Again, while we have a close working relationship with the organization, we had a clear understanding as to the parameters of our employment. Candidly, this model has been less rigid and less successful with less sophisticated organizations in which our role has been more ongoing and less well defined. This has led to increasing demands on our services and far less clear differentiation of roles.

Our Own Agenda A fundamental question that we have struggled with throughout our existence is whether we, as an organization, have an agenda other than the agenda of our organized partners. Flowing
from our work to support the campaigns of our partners, there is a strong tendency for us to argue that we have no agenda of our own. If we are professionals then we serve our clients and their organizing agendas. Following that view we are just like doctors or automobile mechanics, largely technocrats, making our skills available to serve our client constituencies.

Our initial adherence to this principle was also partly a reaction to the strong substantively driven agendas of more traditional public interest organizations. These organizations are often extremely cautious in working in coalitions of member driven organizations. While they will ascribe this caution to protecting the independence of their client representation, it more often appears that it is simply a fear of loss of control over their narrow substantive agenda. They fear any loss of independence in advocating strongly for these very specific goals, which might result from working with (or for) broad based, democratic organizations. 41

**[*403]** Our experience is that many community organizations strongly oppose working in concert with, or being represented by, legal organizations that have an independent substantive agenda. Many community organizations have had experiences where their larger goals are trivialized or ignored by the lawyers? both in litigation and in the public arena. Many are approached by lawyers requesting a specific type of person, injured by a specific policy in a specific way, solely to facilitate the lawyer's legal challenge to that policy. Strangely, our view that our work must be accountable to actual organizational constituencies that have the strength to lead and direct that work is much closer to the traditional lawyer-client relationship than many of the "public interest" models in which clients are only nominally involved.

However, while we have argued that we are not driven by a substantive agenda, we do choose the groups we work with and we choose the campaigns we provide legal support to, so it is disingenuous to describe our work as solely a representation of organized constituencies. We ultimately must take responsibility as political actors making choices with real world consequences. As a step in providing some principles for our decision-making process, we developed a set of criteria by which we evaluated our choices. These included, among others, the degree to which the campaign would result in tangible benefits received by low income families and communities, the degree to which the campaign built the power of the community organizations, the degree to which it was likely to change the terms of the debate in favor of the needs of low income minority communities, the degree to which it helped build the next generation of community lawyers, and the degree to which it sustained our organization. One could certainly debate the legitimacy of this criteria and the legitimacy of the determination. One of our next steps is to create a community board to assist with the determination of these criteria.

This same conflict arises in another area. We, as attorneys, are significant repositories of knowledge and experience. We may have dozens of years of experience interacting with local, state, and national governmental bodies and their policies. How do you make that knowledge available without further reinforcing the centrality of lawyers? While that information may indeed be useful to a campaign, it is almost impossible to divorce the message from the messenger. Time and again I find myself not opening my mouth because I know that whatever I say will be **[*404]** given a weight far beyond its worth and, more dangerously, will undercut the leadership development of the organization. On the other hand, it is important that all useful information be taken advantage of. Where to draw this line has been a fundamental and long-standing struggle. Perhaps my best advice is to develop sufficient mutual trust that allows for information flow in a partnership fashion through the organizers. But, I am not at all

41 Bouman, supra note 37.
comfortable that I have any clear or satisfactory response to this other than to say, "When in doubt keep your mouth shut."

III. CONCLUSION

Throughout the country there is increasing sophistication to grassroots social justice activism. Contrary to popular culture, lawyers are not seen as central, or even necessary, to these social justice movements. Social justice lawyers must struggle to remain relevant and helpful.

This article attempts to describe the practice of one group and the principles they have extracted from that struggle. While the practice does not elevate the role of the lawyer, it nevertheless requires the most sophisticated of legal skills. It is not limited to any substantive area or type of practice. Rather its principles are adaptable to all practices. It also requires lawyers to learn the practice and ideology of organizing and the organizers with whom it works. It rejects legal labels and constructs, such as "service" or "impact" cases, and instead adopts the goals and language of the organizers.

This article is not so much a prescription as it is an invitation for social justice lawyers to reflect on their own practice, determine to what extent the principles that we describe are relevant and/or helpful, and to further refine and develop those principles. It is hoped that it can further the discussion among experienced practitioners and encourage young lawyers to reflect on and improve their practices.

"The radical, committed to human liberation...does not consider himself or herself as the proprietor of history or of all people, or the liberator of the oppressed, but he or she does commit himself or herself, within history, to fight at their side." ?Paulo Freire, Pedagogy of the Oppressed

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