NEW YORK STATE BAR ASSOCIATION

WORKSHOP U.

Moving Towards Civil Gideon

2014 Legal Assistance Partnership Conference

Hosted by:
The New York State Bar Association
and The Committee on Legal Aid

NYSBA

NEW YORK STATE BAR ASSOCIATION
2014 PARTNERSHIP CONFERENCE

U. COMMUNITY LAWYERING: SHARPENING OUR THEORY & DEVELOPING OUR TOOLBOX

AGENDA

September 11, 2014
3:00 p.m. – 6:15 p.m.

3.0 Transitional CLE Credits in Ethics & Professionalism.
Under New York's MCLE rule, this program has been approved for all attorneys, including newly admitted.

Panelists:
Jennifer Ching, Esq., Project Director, Queens Legal Services/Legal Services NYC
Marika Dias, Esq., Managing Attorney, Make the Road New York
Reyna Ramolete Hayashi, Esq., Workers' Rights Attorney, Empire Justice Center
Kate Rubin, Managing Director, Civil Action Practice, The Bronx Defenders
Purvi Shah, Esq., Director, Bertha Justice Institute, Center for Constitutional Rights
Helena Wong, Member, CAAAV Organizing Asian Communities
Garrett Wright, Esq., Senior Staff Attorney, Community Development Project, Urban Justice Center

I.	**Overview**	**3:00 pm – 3:15 pm**
II.	**Icebreaker Activity: Reconnecting To Our Vision**	**3:15 pm – 3:30 pm**
III.	**Theory of Change: What Theories of Change Underlie Community Lawyering/Legal Work?**	**3:30 pm – 4:00 pm**
IV.	**Case Studies: Examples of Lawyers, Legal Workers & Organizers Currently Doing This Work**	**4:00 pm – 5:00 pm**

FIFTEEN MINUTE BREAK

V.	**Application To Our Work: Are We Building Or Fighting Power?**	**5:15 pm – 6:15 pm**

Table of Contents

Substantive Outline

U. COMMUNITY LAWYERING: SHARPENING OUR THEORY & DEVELOPING OUR TOOLBOX

OUTLINE

I. INTRODUCTION

A. Goals of the Workshop

1. Introduce a power-based approach to lawyering & legal advocacy
2. Meaningfully reflect on our work
3. Surface common challenges and collectively imagine solutions
4. Build community
5. Create social justice movements that can win!

B. Community Agreements

1. Step Up, Step Back
2. Speak from your experience—use "I" statements
3. We're all teachers and students
4. Assume good intentions
5. Be curious and open! You may not agree, but we would ask you to explore with us today the framework we are putting out.

II. ICEBREAKER: Reconnecting to Our Vision

In pairs with someone whom you don't know

A. How do you see yourself being part of social change through the law?

III. THEORY OF CHANGE: What theories of change underlie community lawyering/legal work?

Panelists Share Theories of Change from different perspectives

A. Intro to Community Organizing and Building Power

B. 4 Pillars of Social Justice Infrastructure: Miami Workers Center

1. <u>PILLAR OF POLICY:</u>
   Work that changes policies & institutions with concrete benchmarks for progress.
   a. Use participatory process to develop legislative priorities
   b. Communities decide impact litigation priorities
   c. Facilitate direct client and community engagement with elected officials
2. <u>PILLAR OF CONSCIOUSNESS:</u>
   Work that shifts political paradigms and public consciousness.
   a. Train community media spokespeople
   b. Conduct know-your-rights sessions with organizers that explain political/legal processes
   c. Investigate information gaps and arm leaders with facts for advocacy
3. <u>PILLAR OF SERVICE:</u>
   Work that directly serves oppressed people to stabilize their lives and promote

survival.

a. Represent community leaders on individual legal issues
b. Connect individual clients to community organizations
c. Offer legal clinics at community organizations

4. <u>BASE OF POWER:</u>
Work that achieves autonomous community power through building membership organizations and developing the capacity of grassroots leadership.
a. Grows as work in the pillars feeds into it

C. What are the limits of the law in points of tension between law/lawyering/litigation and these theories of change?

IV. CASE STUDIES: Examples of lawyers, legal workers, and organizers currently doing this work

Panelists Share Case Studies from different models & substantive areas of work

A. Case Study: Resisting Gentrification and Displacement on Delancey Street
1. Resource Ally Community Lawyering Model: Lawyers work with Organizers from Community Based Organizations

B. Case Study: Ban the Box in Rochester

C. Case Study: Ice Detainers Campaign
1. In House Community Lawyering Model: Layers and Organizers work together in the same organization

D. Community Lawyering in Traditional Legal Services Programs

E. Topics Covered:
1. **What is community-based lawyering/legal work?**
2. **What are different organizational models of community-based lawyering/legal work?**
a. Resource Ally Model – Urban Justice Center
b. In House Lawyering Model – Make the Road New York
3. **What are important skillsets to develop as community lawyers and legal workers?**
4. **What are the keys to clear, honest communication between legal workers and community organizers?**
5. **What roles can community lawyers/legal workers and other resource allies play in social change movements?**
a. Defend the right to organize and engage in civil disobedience (observation, intervention, representation)
b. Defend community based organizations from retaliation/ SLAPP Suits
c. Conduct know-your-rights trainings, community education
d. Conduct legal clinics
e. Create community-driven research/data collection
f. Utilize traditional and social media advocacy
g. Help win bottom-up policy changes through legislative and administrative

advocacy

h. Represent individuals, groups, and organizations in strategic litigation

i. Other views/ideas from audience?

F. What are community organizers' experiences with community-based lawyering?

G. What are the challenges to doing community-based lawyering/legal work and how do we overcome them?

V. APPLICATION TO OUR WORK: Are we building or fighting power?

Individuals Fill Out Worksheet
Small Group Dialogue
Large Group Fishbowl
Pairs: What are 3 things that you promise to do to incorporate community lawyering into your work?

A. Analyzing Our Work

1. Who is your client/community? What change do they want?
2. What larger social movement(s) is their struggle related to? How do your clients/community think things are going to change? What's their Theory of Change?
3. What is your Theory of Change? Is it the same or different than the individuals/groups you're working with?
4. Who are you accountable to? How do you know you're accountable?
5. What has come up (what have you learned) about your power & privilege as a lawyer, legal worker or law student during this case/campaign?
6. Did you miss any opportunities to build the power of directly impacted people? Explain.
7. What can you do to better support the "base of power" in the future?
8. What are three things you want to do or three questions you want to reflect on when you go home? (Write answers on post-its)

B. Assessing Our Tactics

1. List the tactics you used/are using to manifest the change your clients want.
2. Does the tactic work to build the base of a movement, by 1) connecting the individual to a community, or 2) connecting communities together or, 3) connecting the individual/community to a social movement? Y/N
3. Does the tactic work to connect movements together? Y/N
4. Does the tactic work to connect the community/movement to someone with institutional power (e.g., political official, civil servant, journalist)? Y/N
5. Does the tactic deepen the level of political analysis in a community (e.g., will it spur discussions or raise questions of institutions with power and the community's own power vis-à-vis those institutions)? Y/N
6. Does the tactic build skills within the community (e.g., help community members understand how policy is shaped, how to engage with the media effectively, how legal processes work, or how to conduct community-based research to use for identifying issues and the causes of those issues; or develop leadership/management skills, such as

public speaking, writing, goal-setting)? Y/N

7. Does the tactic encourage more members of a community to take on leadership/active roles in the movement or campaign? Y/N
8. Does the tactic allow the community to take a step towards reframing the public narrative on their issue(s)? Y/N
9. Does the tactic allow the community to recognize its own power vis-à-vis the oppressor –the government institution, a corporation, etc.? Y/N
10. Does the tactic take into account whether the community wants to increase their public exposure or protect themselves from public exposure and does the tactic help accomplish that? Y/N
11. Does the tactic lend legitimacy to the community and/or its leaders? Y/N
12. Is the tactics employed in a transparent enough manner that the community will be able to seek accountability from the lawyer or others working with them and in a way that encourages the community to call for such accountability? Y/N

Appendices

Appendices Table of Contents

Appendix A

COMMUNITY LAWYERING
CASE STUDIES

CASE STUDY: RESISTING GENTRIFICATION AND DISPLACEMENT ON DELANCEY STREET

By Helena Wong, CAAAV and Garrett Wright, Urban Justice Center

The Community Development Project (CDP) at the Urban Justice Center strengthens the impact of grassroots organizations in New York City's low-income and other excluded communities. CDP partners with community organizations to win legal cases, publish community-driven research reports, assist with the formation of new organizations and cooperatives, and provide technical and transactional assistance in support of their work towards social justice.

CAAAV: Organizing Asian Communities works to build grassroots community power across diverse poor and working class Asian immigrant and refugee communities in New York City. Through an organizing model constituted by five core elements- base building, leadership development, campaigns, alliances, and organizational development- CAAAV organizes communities to fight for institutional change and participates in a broader movement towards racial, gender, and economic justice.

In 2008, organizers from CAAAV: Organizing Asian Communities contacted the Community Development Project (CDP) at the Urban Justice Center about two buildings in Chinatown that had just been purchased by a new owner again. Tenants at 55 and 61 Delancey Street had been organizing with CAAAV, with occasional support from CDP, for several years as part of a campaign against the prior owner, a slumlord who milked the building by refusing to provide heat, hot water and repairs. Prior to the slumlord buying the buildings, all of the tenants were working-class Chinese and Latin@ families who had resided in the buildings for many years. After experiencing years of harassment and intentional neglect, with many of their neighbors already pushed out, the tenants organized a rent strike and demanded repairs. The tenants' campaign was ultimately successful, resulting in the landlord finally providing repairs and a significant rent credit to the tenants for his breach of the warranty of habitability.

In May 2008, the buildings were sold to Madison Capital, a predatory equity firm that specializes in purchasing "underperforming" residential buildings (i.e. buildings where rent increases are limited by some form of rent-regulation). Almost immediately, Madison launched a concerted campaign of racist harassment against the Chinese tenants in an effort to force them to leave their rent-stabilized apartments and thus allow the landlord to triple or quadruple the monthly rents. The owner called the police to attempt to break up lawful tenant meetings in the building; commenced frivolous eviction proceedings; rejected rent payments; refused to make repairs; and tore down Chinese cultural symbols from tenants' doors. Tenants organized with CAAAV to fight back against these discriminatory and harassing tactics and after two months, contacted CDP to explore possible legal options.

CDP first sent a cease-and-desist letter to Madison and arranged for a meeting with one of Madison's executives and CAAAV organizers and tenants. After Madison's intransigent refusal to address the tenants' concerns, the tenants decided to pursue a lawsuit under the newly passed Tenant Protection Act (TPA). This New York City law provides tenants with the right to sue their landlord for harassment and to seek injunctive relief and civil penalties. At the time that CDP filed the case, there had been no group harassment cases filed yet under the TPA in Housing Court.

The case was commenced in February 2009 and lasted until a settlement was reached in January 2010. Throughout the litigation process, lawyers, organizers, and tenants met at the building on a regular basis to discuss tenants' demands, developments in the case, and the implications of interim court orders and stipulations. Garrett Wright was the primary CDP attorney on the case and Esther Wang was the primary CAAAV organizer on the campaign.

As the case approached a final trial date, the tenants decided that a settlement on favorable terms was preferable to the risks and uncertainties of trial. Some tenants were initially concerned that a settlement agreement would not be very effective, as they felt the landlord needed to be punished by an official court finding of harassment in order to deter its conduct. Because the settlement was so-ordered by the court, we were able to assure the tenants that violations of the settlement would be enforceable via a contempt motion.

The final settlement agreement prohibited the landlord from engaging in some of the most egregious harassment (such as calling the police on tenant meetings and refusing to issue electronic key cards to lawful apartment occupants) and established a schedule for repairs. The issue of the removal of Chinese cultural symbols was resolved by an agreement that all tenants could display decorations on their door for 45 days before and after the Chinese New Year, Christmas, Hanukah, and Kwanzaa. However, the landlord refused to negotiate over the provision of any monetary settlement including rent credits.

To date, there appears to have been no violations of any of the provisions of the settlement by the past or current owner. This can be attributed to the tenants' and CAAAV's vigilance which has been successful at forcing both Madison and the new owner to refrain from overtly harassing conduct.

Challenges for CDP, CAAAV, and the Tenants

The campaign against Madison was also challenging for CDP and CAAAV. One of the problems that arose during the course of the case was the strain on both organizations' capacity to provide interpretation at meetings and translation of written documents (such as settlement proposals). CDP and CAAAV did not explicitly discuss our mutual expectations at the beginning of the campaign, and thus neither organization was prepared to exclusively provide interpretation and translation services. CDP did not have any housing attorneys or paralegals with Chinese language fluency, which increased the burden on CAAAV to provide Chinese-speaking organizers or volunteer interpreters.

There also was not a clear understanding at the outset about how long the litigation might take, and this resulted in organizers and tenants experiencing frustration at lengthy delays that often accompany such

contentious litigation. When the case was filed, CAAAV, CDP and the tenants participated in a press conference with local elected officials to try to increase media awareness about Madison's conduct and about the general issue of landlord harassment in Chinatown and other rapidly gentrifying neighborhoods. CAAAV continued to encourage the tenants to pursue other non-litigation tactics during the course of the case. However, due at least in part to the large amount of time that tenants had to spend in attending meetings about the case, discussing settlement options, and providing access to the landlord for interim repairs, many tenants did not have much additional time available to attend protests or take on additional risks such as rent strikes.

Furthermore, because CAAAV was providing interpretation for the litigation discussions, the role between CAAAV and CDP became blurred. When CAAAV organizers came to the building, the tenants thought they were there to talk about the litigation. One lesson was thus that more separation between CDP and CAAAV was needed so that CAAAV can pursue an organizing strategy. Otherwise, tenants often believe that the litigation alone will ultimately provide them with the winning strategy. Winning or losing a legal case often also has as much to do with the resources of the parties and their lawyers as with the law itself. However, there is a lot of confusion about this because of what people are led to believe about the law and the American justice system, which produces an expectation that the courts will fairly dispense justice regardless of a party's wealth or resources. The litigation process thus came to overshadow other methods for tenants to take direct action themselves against the landlord and this may have contributed to some of the tenants' frustration at the slow pace of progress in the case.

Because the tenants had not worked with Garrett before the litigation, there was also an issue of developing a relationship of trust between Garrett and the tenants. CAAAV's long standing relationship with the tenants allowed it to function as a cultural and linguistic intermediary between CDP and the tenants and enabled a faster development of trust than would otherwise have likely happened. However, this intermediary role also placed additional resource burdens on CAAAV staff.

After the settlement of the case, staff from CDP and CAAAV spoke about these issues and agreed to develop clearer agreements in the future about our mutual expectations and the division of labor on campaigns. This has resulted in CDP and CAAAV having a stronger working relationship and a better understanding about our organizations' capacities and roles in our recent collaborations.

The Limits of the Law and the Naturalization of Gentrification and Displacement

Another set of challenges was related to the inadequacies of the law itself and the overall political and economic context of struggles against gentrification in contemporary New York City. The TPA was strenuously opposed by landlord lobby groups and the final version of the bill was thus not as strong as tenant advocated had originally envisioned. One of the major criticisms of the TPA is that it contains a provision that entitles landlords to seek attorneys' fees against tenants who have brought "meritless" claims. CDP thus had to counsel the tenants that one risk at trial could be a dismissal of their case as "meritless" and the issuance of a potentially sizeable monetary judgment against all of the tenants.

The TPA also doesn't permit tenants to recover any monetary damages but does allow courts to issue injunctions against harassing conduct and award civil penalties to the City. However, the fact that tenants cannot be compensated for the actual damages (including lost income due to work absences for court appearance; pain and suffering; and emotional distress) caused by landlord harassment is likely one reason why the law is still underutilized. It also means that landlords have less of a financial incentive to stop their harassing behavior.

The TPA's definition of harassment is also unduly restrictive with regards to baseless eviction proceedings. The TPA defines such harassment as a landlord's commencement of "multiple, frivolous" proceedings against a tenant. Therefore, a single frivolous eviction case does not apparently constitute harassment under the TPA, even though a single case may be all that is necessary for a landlord to intimidate a tenant into vacating their apartment. Unfortunately, after the execution of the settlement agreement, the landlord continued to pursue eviction proceedings (that it of course alleged were "meritorious") against some of the tenants. CDP represented one tenant in a non-primary residence holdover that was eventually dropped by the building's new owner, who purchased the buildings from Madison in 2012.

Madison and the new owners also pursued other tactics that, while arguably lawful, resulted in tenants being hit with large rent increases, making their apartments less affordable and increasing the chances that they would be forced to move out of the building. The primary method of extracting large rent increases from rent-stabilized tenants is for a landlord to do work that would qualify as a Major Capital Improvement (MCI) with New York State Homes and Community Renewal. CAAAV and CDP provided assistance to tenants in their opposition to Madison's application for a MCI, and the tenants were successful in getting portions of the proposed rent increase denied.

The landlord also repeatedly approached tenants about taking buy-out offers to surrender their apartments and move out. If done in a non-harassing manner, such offers can also be legal under the existing state of the law.

However, the legality of these tactics show that many lawmakers and courts continue to operate with the assumption that the gentrification and displacement of low-income communities of color is some kind of natural process determined solely by private market forces. In fact, such displacement is far from natural and is usually aided and abetted by state action, including via public subsidies to developers of luxury housing, rezoning, legislation designed to increase landlord profits (such as MCI rent increases, renewal lease rent increases, and other statutory rent increases), the use of eminent domain, and racist policing of public spaces (such as the NYPD's discriminatory Stop-and-Frisk and "Broken Windows/Zero Tolerance" policies).

The tenants at 55 and 61 Delancey still continue to fight for their rights to safe and affordable housing. The tenants certainly have achieved many victories through their constant organizing and legal battles, including obtaining rent concessions and forcing multiple landlords to relent on the most blatant forms of harassment. However, the tenants' struggles will likely continue so long as the buildings remain

under the ownership of predatory equity landlords who look to maximize their profits by forcing rent-regulated tenants out of their apartments.

MEDIA:

http://cityroom.blogs.nytimes.com/2009/02/18/harassment-is-focus-of-chinatown-tenants-suit/

Harassment Is Focus of Chinatown Tenants' Suit

By JENNIFER 8. LEE Published: February 18, 2009 11:00 am February 19, 2009 5:15 pm

http://www.theepochtimes.com/n2/united-states/chinatown-violence-13117.html

Chinatown's Residents Face Gentrification and Harassment

By JOHNATHAN WEEKS Published: March 5, 2009 @ 12:41 am

CASE STUDY: BAN THE BOX IN ROCHESTER

Reyna Ramolete Hayashi, Empire Justice Center

NEED: One out of every four adults has an arrest or criminal record. Approximately 70% of employers currently ask in their job application whether an applicant has been convicted of a crime. If an applicant replies "yes", regardless of their skills and qualifications, in most cases, they will never be considered.

CAMPAIGN: Help the City of Rochester pass "The Ban the Box Ordinance" to allow people with a conviction history to compete fairly for employment. This ordinance will increase fair hiring practices, reduce crime and recidivism, and allow all members of our community to meaningfully contribute to our local economy and achieve financial independence for themselves and their families.

SUMMARY: The Ban the Box Ordinance requires the City of Rochester, its contractors, and private employers located in the City to delay consideration of an applicant's conviction history until after an initial interview or conditional offer of employment, when they have determined the applicant's qualifications meet the requirements for the job.

SOCIAL CHANGE:

- Short Term: Allow people with criminal records to obtain employment
- Long Term: End mass criminalization and incarceration of communities of color and the poor

PILLAR OF POLICY	PILLAR OF CONSCIOUSNESS	PILLAR OF SERVICE
• SMART: Safer Monroe Area Reentry Team called for a series of community meetings on Ban the Box, inviting directly affected people, reentry advocacy organizations, community, and faith based organizations • Community campaign to pass Ban the Box Ordinance in City of Rochester • Assisted coalition in drafting ordinance based on model ordinances around the country and on peoples' lived experiences of discrimination	• Conducted research and developed community education materials and fact sheets on barriers to employment and benefits of ban the box policy • Developed media and legislative strategy that put directly affected people front and center • Trained directly affected people and community members to talk to the media and to people in power • Helped create public forums for community people to talk directly to decision makers/ city council members • Conducting know-your-rights sessions with directly affected people about the new law and exercising their rights	• (LAWNY) Represent people with criminal records who are being discriminated against in employment • (Judicial Process Commission) Assists people coming out of incarceration, hosts workshops and forums for directly affected people, obtains certificates of relief/good conduct, obtains I.D., mentoring program

BASE OF POWER

Rochester Ban the Box Coalition

RESOURCE PAGE:

http://www.empirejustice.org/policy-advocacy/collaborations/ban-the-box-in-rochester.html#.U_teidjjgdX

MEDIA:

http://wxxinews.org/post/new-ban-box-ordinance-aims-help-more-locals-find-work

New 'Ban the Box' Ordinance Aims to Help More Locals Find Work

By MICHELLE FAUST Published: 9:08 AM FRI MAY 23, 2014

BAN THE B☑X IN ROCHESTER

Give Everyone a Fair Opportunity to Compete for Jobs

NEED: One out of every four adults has an arrest or criminal record. Approximately 70% of employers currently ask in their job application whether an applicant has been convicted of a crime. If an applicant replies "yes", regardless of their skills and qualifications, in most cases, they will never be considered. Such discrimination not only decreases economic opportunity and public safety, but also violates New York State law and Equal Employment Opportunity Commission (EEOC) fair hiring recommendations.

SOLUTION: Help the City of Rochester pass "The Opportunity to Compete Ordinance" to allow people with a conviction history to compete fairly for employment without compromising safety and security on the job. This ordinance will increase fair hiring practices, reduce crime and recidivism, and allow all members of our community to meaningfully contribute to our local economy and achieve financial independence for themselves and their families.

SUMMARY: The Opportunity to Compete Ordinance would require the City of Rochester, its contractors, and private employers located in the City to delay consideration of an applicant's conviction history until after an initial interview or conditional offer of employment, when they have determined the applicant's qualifications meet the requirements for the job.

KEY FACTS:

- It applies to the City of Rochester, its contractors, and private employers located in the City with four or more employees.
- Sensitive positions that require background checks by law or in law enforcement are exempt.
- Employers may still inquire about criminal convictions, but only after the initial interview when the applicant is deemed qualified for the job.
- It reinforces an employer's legal discretion to focus on applicants' skills and qualifications, screen out disqualified candidates, and hire the most qualified applicant for the job.
- It brings employers into compliance with New York Correction Law Article 23A, which prohibits discrimination based on criminal convictions, and EEOC Guidance on enforcement of Title VII of the Civil Rights Act, which prohibits discrimination based on race and national origin.
- Twelve States, the District of Columbia, and 62 U.S. cities and counties (including Buffalo & New York City) have adopted similar policies with bipartisan support.
- Employers and human resources departments across the country with similar policies attest to the ease of implementation, the streamlining of resources, the benefit of expanding their pool of qualified workers, and increasing the diversity of their workforce.

SPONSOR: Councilmember Adam McFadden

SUPPORT: Action for a Better Community • Bethany House • Catholic Family Center • Center for Employment Opportunities • Center for Youth • Coffee Connection • Community Place of Greater Rochester • Delphi Drug & Alcohol Council • Empire Justice Center • Foodlink, Inc. • FR=EE Facing Race Embracing Equity • Genesee Valley Chapter of the NYCLU • Grace House Rochester • Judicial Process Commission • House of Mercy • Huther-Doyle • IBERO • Instant Monogramming, Inc. • Legal Assistance of Western New York • Metro Justice • Mind Evolution • Pathway Houses of Rochester NY • POWER People Organizing for Worker Empowerment & Respect • Poor Peoples' Coalition • Project Urge • Recovery Houses of Rochester • Rochester Area Labor Council, AFL-CIO • Rochester Interfaith Jail Ministry • Spiritus Christi Prison Outreach • Worker Justice Center of New York • YWCA • 1199 SEIU United Healthcare Workers East •

Judicial Process Commission

Empire Justice Center
Making the law work for all New Yorkers

SMART
Safer Monroe Area Reentry Team

BAN THE B☑X IN ROCHESTER

The Opportunity to Compete Benefits Us All

Benefits to Community:

- Builds a safer community, resulting in less crime and recidivism and increased rehabilitation. A study found that only 8% of former felons who were employed for a year committed another crime, compared to NY's 40% rate of re-incarceration.
- Promotes justice and fairness in our community. Approximately 70% of committed crimes are related to substance or alcohol abuse and about 5% are for violent crimes.
- Decreases the number of people on public assistance, due to expanded work opportunities.
- Decreases taxpayer cost for public safety and incarceration. Public safety is the second largest expense in our County Budget, amounting to $216 million per year.
- Promotes employment in diverse communities. Racial disparities in arrests, convictions and sentencing have led to the overrepresentation of people of color in the criminal justice system. Screening out job applicants with criminal records disproportionately impacts communities of color.
- Revitalizes our local economy and reduces concentrated poverty. Center for Employment Opportunities' 239 job placements since 2010 generated over 2.5 million in earnings and 89% of wages accrued to neighborhoods where 20% or more of the residents live below poverty.

Benefits to Employers:

- Helps employers comply with EEOC guidance on enforcement of Title VII of the Civil Rights Act, which prohibits discrimination based on race and national origin. The EEOC recommends that employers eliminate policies that exclude people from employment based on any criminal record.
- Reduces employer liability under NYS Correction Law Article 23A, which prohibits discrimination against people with criminal convictions and requires employers to consider (1) whether the offense impacts the applicant's ability to fulfill the job's primary duties, (2) the amount of time that has passed since the offense, (3) the applicant's age at the time of the offense, (4) the seriousness of the offense, (5) the applicant's rehabilitation and good conduct, and (6) the degree of risk the applicant poses to the employer's property and the safety of others.
- Increases the number of qualified applicants. 15-20% of working-age men have a criminal record.
- Streamlines resources, allowing employers to conduct background checks only for qualified applicants later in the hiring process. Minneapolis, MN found that delaying the criminal background check until the job offer stage decreased transactional work for staff and did not slow down the hiring process.
- Promotes a diverse workforce, expanding employment of qualified African-Americans and Latinos.
- Employers may receive a Work Opportunity Tax Credit of up to $2,400 for eligible people hired.
- Employers may be eligible for Federal Bonding Insurance – up to $25,000 – to protect employers from employee-caused financial loss as an incentive to hire ex-offenders and other at-risk job applicants.

Benefits to Individuals:

- Enhances dignity and self-esteem, allowing applicants to be judged on their qualifications, rather than past mistakes, race, or national origin. Only about 10% of all applicants who disclose their criminal record on job applications are interviewed. Independent of skills and experience noted in a job application, people with a criminal record are 50% less likely to be called for a job interview.
- Encourages applicants to be honest in disclosing a criminal record after the initial interview.
- Empowers individuals to obtain necessary education and job skills by working with parole and reentry organizations to connect them with the appropriate education and vocational training.
- Supports family reunification, financial security and independence for individuals and their families.

CASE STUDY: THE "ICE OUT OF RIKERS" CAMPAIGN

Marika Dias, Make the Road New York

The Problem: Even prior to the roll out of the Secure Communities program in 2012, New York City's Department of Corrections (DOC) was facilitating the immigration enforcement efforts of the Department of Homeland Security's Immigration and Customs Enforcement (ICE). ICE officers were present at Rikers Island; they were given access to immigrant prisoners for interviews and investigation; and the DOC would comply with ICE detainers, which are requests that a local law enforcement agency detain a person for 48 hours beyond when they would ordinarily be released so that ICE can apprehend that person. This cooperation between the city and ICE led to thousands of deportations of undocumented individuals, many of whom were either not convicted of any criminal offenses at all or who had very minor criminal records. Then in May 2012 Secure Communities was rolled out nation-wide with no opt-outs. This fingerprint matching system created an additional point at which undocumented immigrants faced the risk of deportation, that being after any sort of arrest by the police (even if no charges were ultimately pursued).

The Campaign: A coalition of grassroots organizations, law school clinics, and lawyers joined together for the ICE Out of Rikers Campaign. It is an on-going campaign (ICE officers are still in Rikers and the City still cooperates with ICE to some extent). However, the campaign was successful in achieving two rounds of legislative changes that increasingly limited the City's cooperation with ICE. The first local law, restricted which detainers DOC will honor and also established rules that ICE officers must comply with when speak to immigrants at Rikers. The second local law was passed after the roll-out of Secure Communities. It further restricted the situations in which the City will honor ICE detainers and it expanded our detainer laws to also cover NYPD's cooperation with ICE.

<table>
<tr><td colspan="3">SOCIAL CHANGE
• Short Term: Eliminate New York City's cooperation with the immigration enforcement efforts of ICE
• Long Term: Eliminate the practice of deporting undocumented immigrants</td></tr>
<tr><td>PILLAR OF POLICY
• Passing Local Detainer Laws: Drafting and gaining passage of two local laws to limit the City's cooperation with ICE.
• Guiding the implementation of these local detainer laws by both Department of Corrections and the New York Police Department
• Continued advocacy for a further set of laws that will eliminate the City's cooperation with ICE</td><td>PILLAR OF CONSCIOUSNESS
• Know Your Rights trainings in low-income immigrant communities.
• After the first round of legislative changes, an accessible Know Your Rights pamphlet in English and Spanish.
• A media and legislative strategy that put directly affected people front and center.
• Public events including City Council hearings, protest marches and rallies, and press conferences.</td><td>PILLAR OF SERVICE
• Comprehensive immigration services including strategic advocacy to persuade ICE to release immigrants rather than detaining them and representation in removal cases.
• Utilizing case studies from our casework to highlight the need for policy changes
• Legal support for protests and civil disobedience activities.
• Monitoring the implementation of the detainers laws through the immigration services we provide</td></tr>
<tr><td colspan="3">BASE OF POWER
Grassroots organizations with diverse memberships, including Make the Road New York, and faith-based coalitions.</td></tr>
</table>

MEDIA:

http://www.gothamgazette.com/index.php/public-safety/744-concerns-raised-over-city-role-in-deporting-immigrants

Concerns Raised over City Role in Deporting Immigrants

By LARRY TUNG Published: May 2, 2011

https://es.noticias.yahoo.com/ny-firma-ley-evitar%C3%A1-deportar-inmigrantes-inocentes-214528333.html

NY firma ley que evitará deportar a inmigrantes inocentes

Por CLAUDIA TORRENS (Associated Press) Published: 11/22/2011

THE IMMIGRATION DISCRETION ACT of 2011

A NEW LAW TO KEEP IMMIGRANT FAMILIES TOGETHER

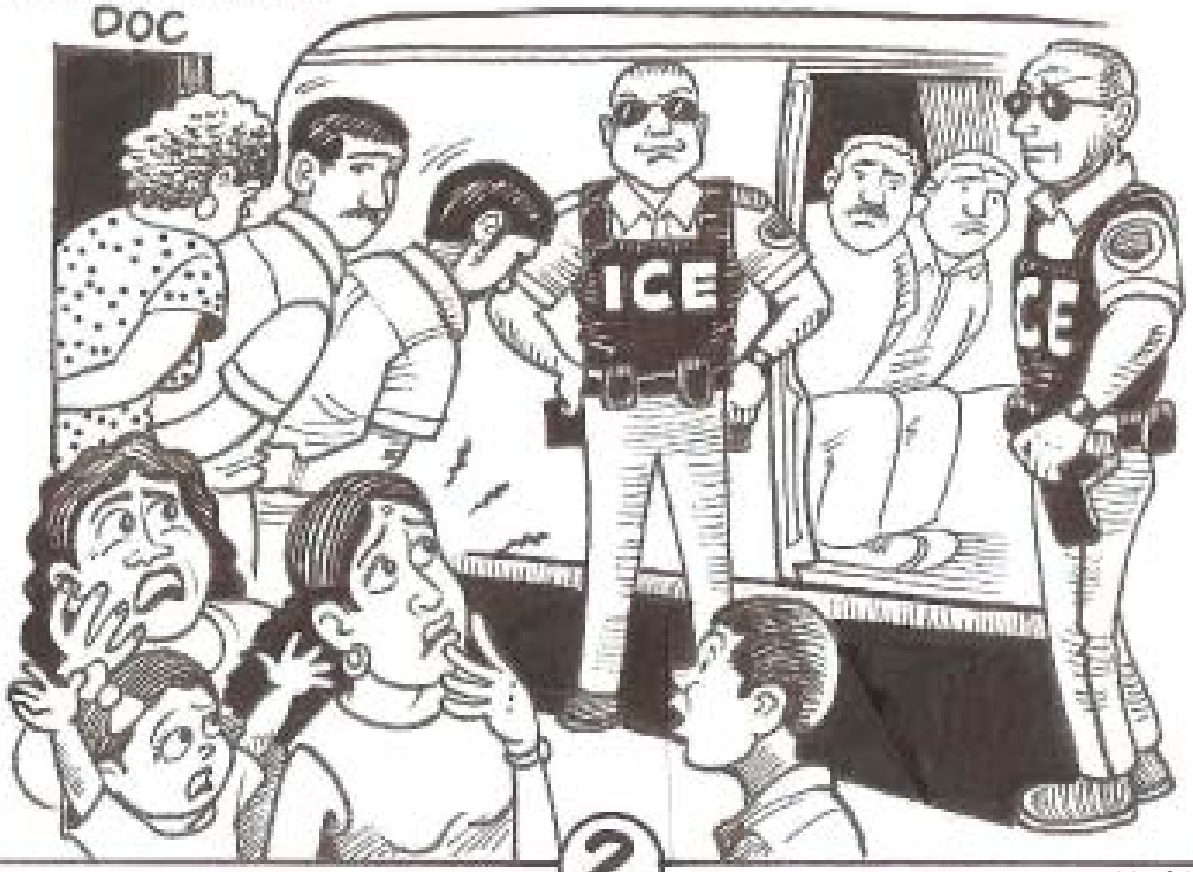
NEW PROTECTIONS FOR IMMIGRANTS IN NEW YORK CITY JAILS

CONTENTS:

FOR MORE THAN **20** YEARS, MANY UNDOCUMENTED IMMIGRANTS WHO ENDED UP IN **NEW YORK CITY** JAILS (DEPARTMENT OF CORRECTION, DOC) WERE TRANSFERRED TO IMMIGRATION AND CUSTOMS ENFORCEMENT (**ICE**) AND PUT IN DEPORTATION PROCEEDINGS.

- DEPARTMENT OF CORRECTION (DOC) RUNS NYC JAILS - RIKERS ISLAND AND ALL OTHER JAILS.
- **ICE** IS THE AGENCY THAT DEPORT IMMIGRANTS.
- **DOC** TRANSFERS IMMIGRANTS TO **ICE** SO **ICE** CAN DEPORT THEM.

MOST OF THE PEOPLE TRANSFERRED ARE DEPORTED, MANY ONLY AFTER SPENDING MONTHS OR YEARS IN **ICE** DETENTION FACILITIES. IT OFTEN DIDN'T MATTER IF THEY WERE GUILTY OR NOT GUILTY, HOW LONG THEY HAD LIVED IN THE **UNITED STATES**, OR IF THEY HAD FAMILY HERE.



¡THAT HAS CHANGED!

IN **MARCH** OF **2012** A **NEW LAW** WILL TAKE EFFECT THAT PROTECTS CERTAIN IMMIGRANTS FROM GETTING TURNED OVER TO ICE AFTER THEIR CRIMINAL CASE IS DONE.

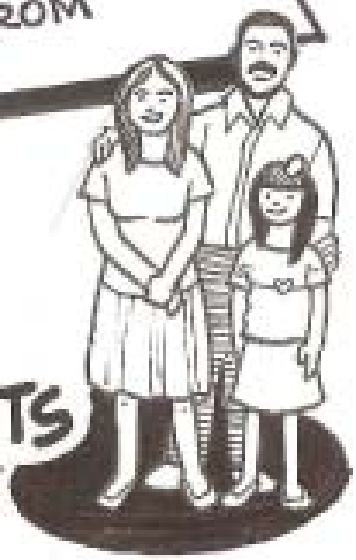
UNDER THIS LAW, NEW YORK CITY WILL REFUSE TO HAND OVER CERTAIN PEOPLE AND ALLOW THEM TO RETURN TO THEIR LIVES. IF THE PERSON QUALIFIES UNDER THE LAW DOC WILL NOT TRANSFER THEM TO ICE, AND THE PERSON WILL GO HOME TO THEIR FAMILY.

WE HOPE THAT THIS NEW LAW WILL KEEP THOUSANDS OF NEW YORKERS WITH THEIR FAMILIES OVER THE COMING YEARS.

AS OF MARCH 21st 2012

NEW YORK CITY DEPARTMENT OF CORRECTION WILL PROTECT ALL IMMIGRANTS FROM ICE WHO:

1. HAVE NOT BEEN CONVICTED OF A CRIME.
2. ARE NOT A DEFENDANT IN A PENDING CRIMINAL CASE - YOU DO NOT STILL
3. HAVE A CASE SOMEWHERE ELSE THAT HAS NOT BEEN FINISHED.
4. DO NOT HAVE ANY OUTSTANDING CRIMINAL WARRANTS.
5. DO NOT HAVE AN OUTSTANDING WARRANT OF REMOVAL OR PRIOR ORDER OF DEPORTATION FROM IMMIGRATION.



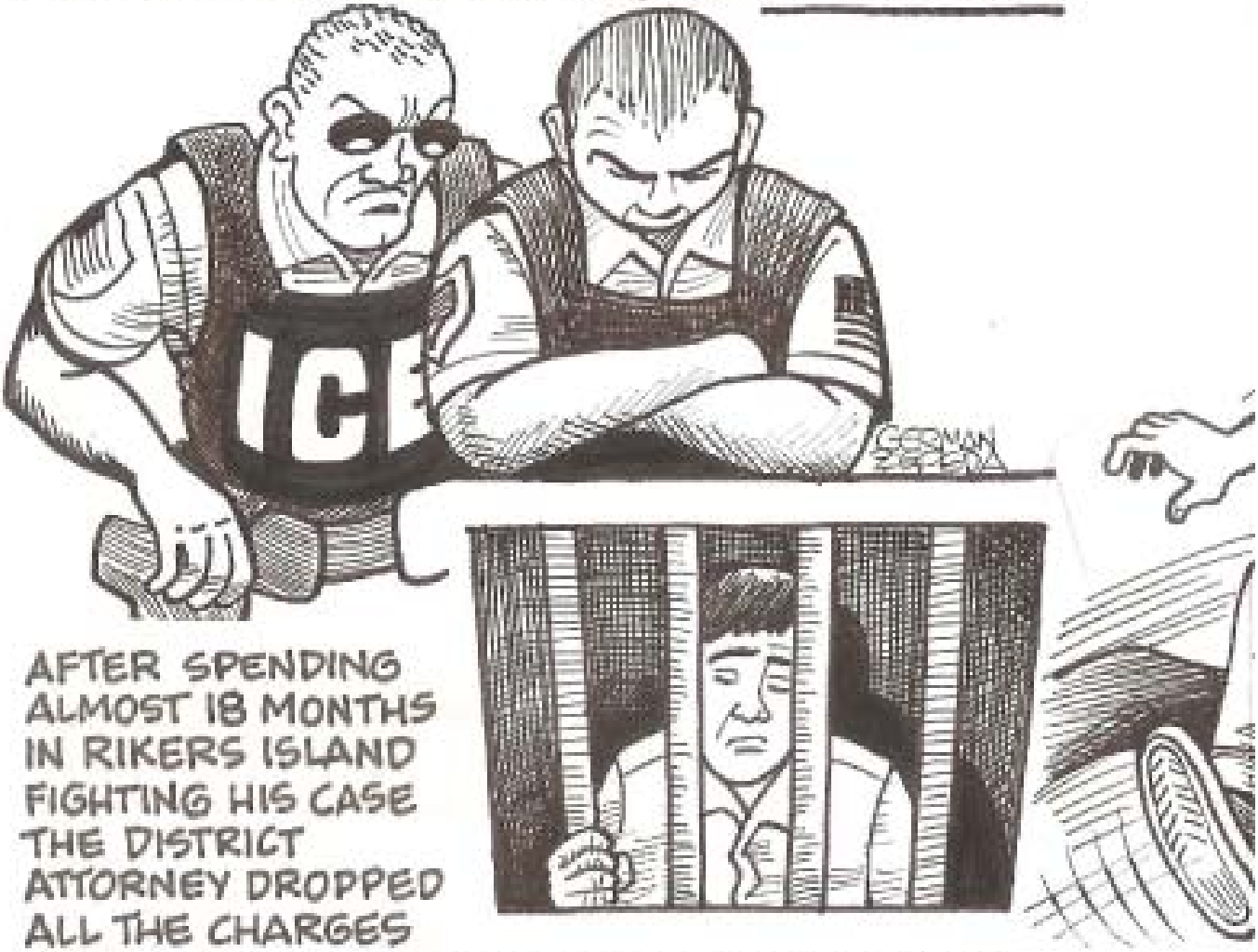
THE CITY WILL BE REQUIRED TO PROTECT THESE **UNDOCUMENTED IMMIGRANTS** AGAINTS ICE SO THEY CAN STAY WITH THEIR FAMILIES.

IF YOU KNOW PEOPLE IN RIKERS ISLAND, MAKE SURE THEY SPEAK TO THEIR LAWYER ABOUT THIS NEW LAW BEFORE THEIR DAY IN COURT.

An Example: Eduardo's Story

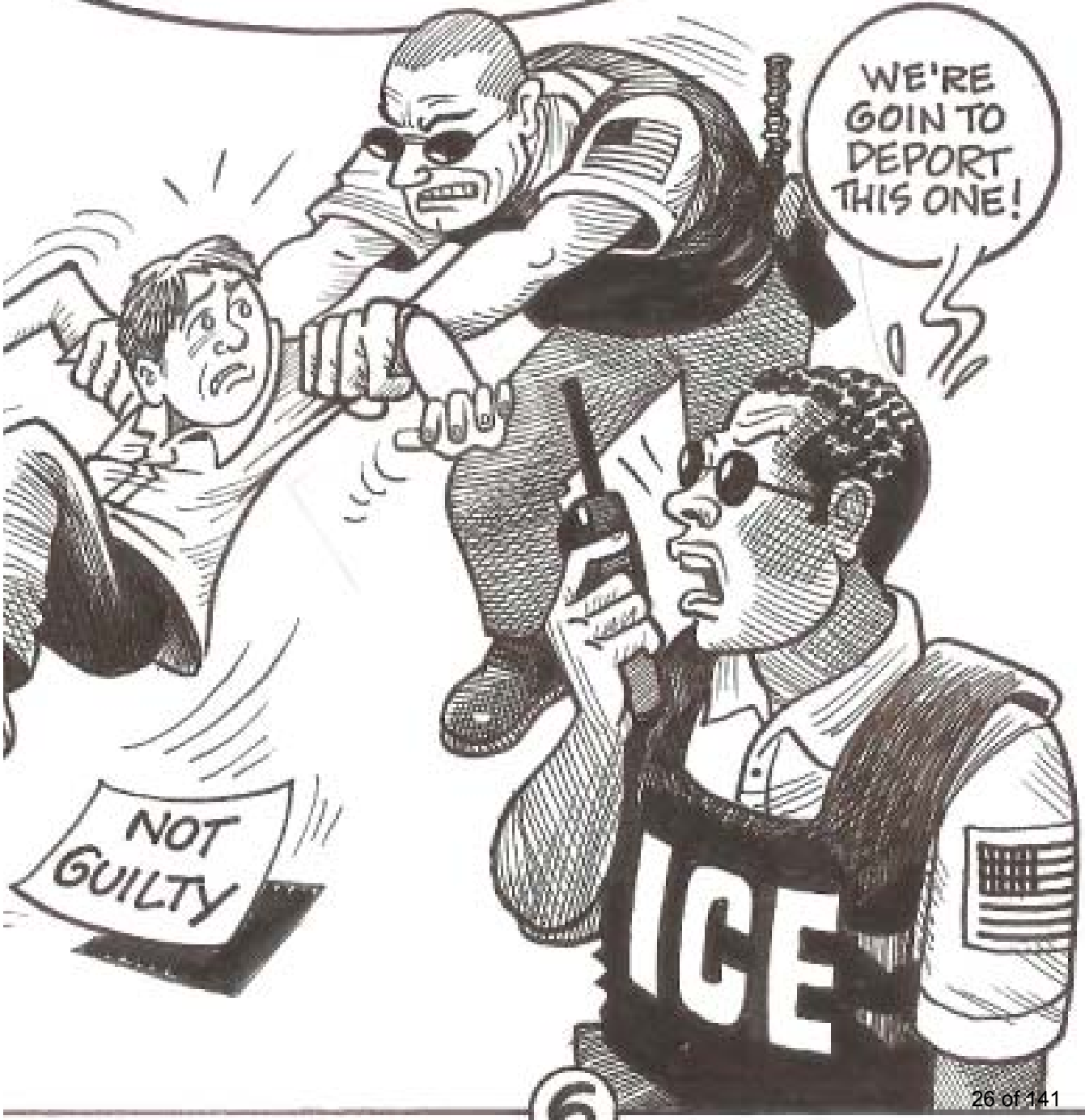
WHAT HAPPENED BEFORE THE BILL WAS PASSED

WHEN HE WAS 18 YEARS OLD, EDUARDO WAS WRONGFULLY ARRESTED AND CHARGED WITH A CRIME. HE WAS TAKEN TO RIKERS ISLAND. THERE, ICE ASKED RIKERS TO HOLD HIM THAT EVEN AFTER HIS CRIMINAL CASE WAS FINISHED SO THAT ICE COULD PICK HIM UP AND TRY TO DEPORT HIM.



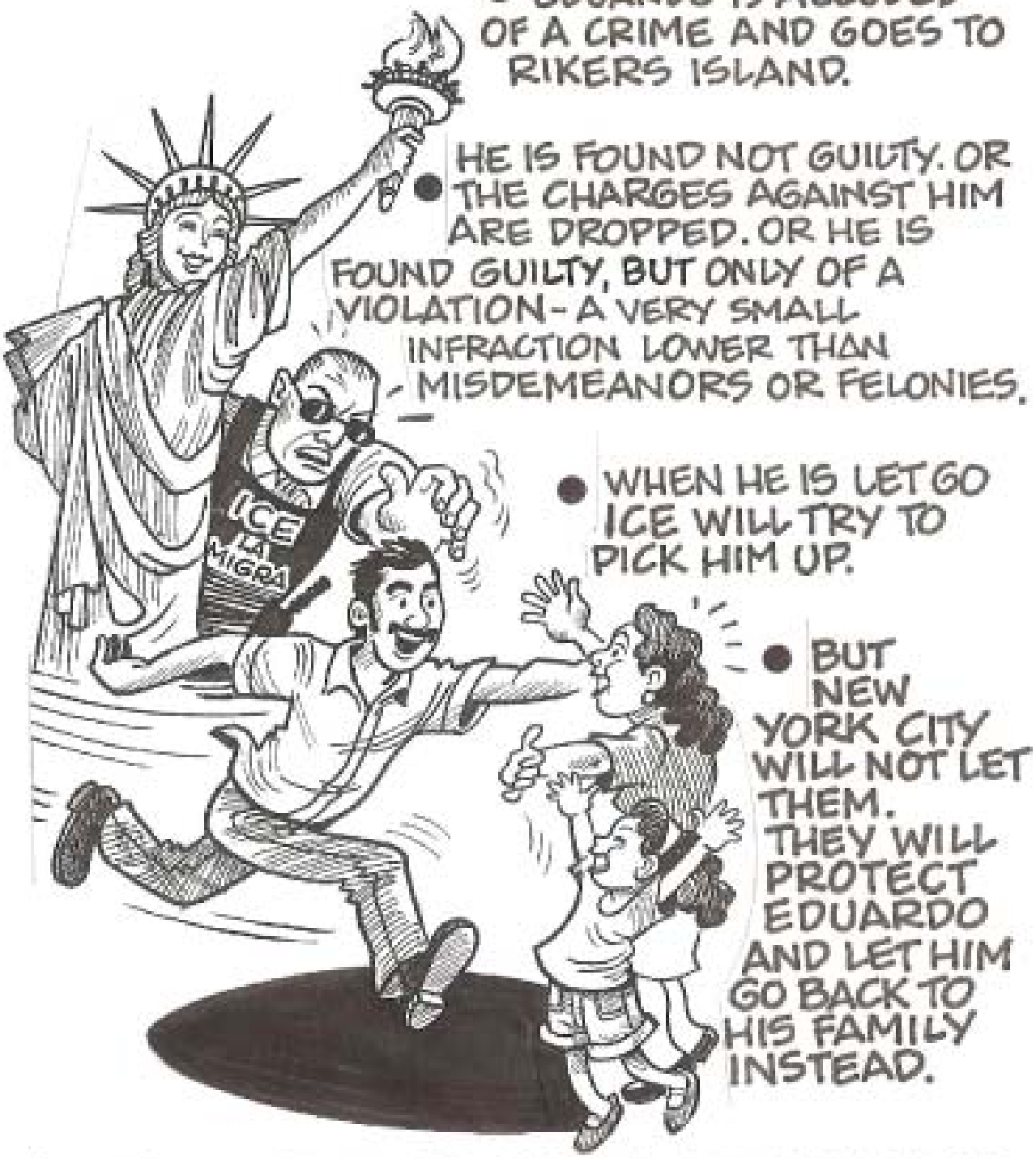
AFTER SPENDING ALMOST 18 MONTHS IN RIKERS ISLAND FIGHTING HIS CASE THE DISTRICT ATTORNEY DROPPED ALL THE CHARGES AGAINTS EDUARDO. DESPITE THE FACT THAT HIS CASE WAS DISMISSED AND EDUARDO HAD NEVER COMMITTED ANY CRIME, HE DID NOT GET TO GO HOME. INSTEAD, NEW YORK CITY HANDED HIM OVER TO ICE AND ICE SHIPPED HIM TO AN IMMIGRATION DETENTION FACILITY IN TEXAS.

EDUARDO SPENT MORE THAN 4 MONTHS IN TEXAS BEFORE HE WAS FINALLY GRANTED BOND AND ALLOWED TO RETURN TO HIS FAMILY TO FIGHT HIS DEPORTATION FROM HOME. SINCE COMING HOME HE HAS MANAGED TO GET HIS **GED** AND IS GOING TO COMMUNITY COLLEGE, BUT HIS **IMMIGRATION CASE** IS STILL ACTIVE AND EDUARDO COULD BE DEPORTED AT ANY TIME.



Eduardo's Case with the NEW BILL

EDUARDO'S CASE SHOWS WHAT USED TO HAPPEN TO IMMIGRANTS. NOW LET'S LOOK AT HOW THIS NEW BILL WILL PROTECT PEOPLE LIKE EDUARDO.



- EDUARDO IS ACCUSED OF A CRIME AND GOES TO RIKERS ISLAND.
- HE IS FOUND NOT GUILTY. OR THE CHARGES AGAINST HIM ARE DROPPED. OR HE IS FOUND GUILTY, BUT ONLY OF A VIOLATION - A VERY SMALL INFRACTION LOWER THAN MISDEMEANORS OR FELONIES.
- WHEN HE IS LET GO ICE WILL TRY TO PICK HIM UP.
- BUT NEW YORK CITY WILL NOT LET THEM. THEY WILL PROTECT EDUARDO AND LET HIM GO BACK TO HIS FAMILY INSTEAD.

THE CITY WILL PROTECT ALL PEOPLE WHO HAVE SIMILAR CASES TO EDUARDO. LET'S EXPLAIN IT A LITTLE.

THE DETAILS:

THIS LAW WILL MAKE SURE THAT **NEW YORK CITY** DOES NOT HELP ICE DEPORT IMMIGRANT RESIDENTS WHO HAVE NOT COMMITTED ANY CRIME.
IN ORDER TO QUALIFY FOR PROTECTION UNDER THE **NEW LAW**, YOU NEED TO MEET ALL OF THE FOLLOWING CRITERIA.:

① YOU HAVE NOT BEEN CONVICTED OF A CRIME

1 - THIS INCLUDES ANY MISDEMEANOR OR **FELONY CONVICTION**

2 - IT DOES **NOT** INCLUDE:

- VIOLATIONS (LIKE "DISORDERLY CONDUCT" OR TRAFFIC VIOLATIONS)
- YOUTHFUL OFFENDER CONVICTIONS
- JUVENILE DELINQUENT CONVICTIONS

FOR THINGS YOU COULD BE GUILTY OF:

☑ **VIOLATION**: IS THE LEAST SERIOUS AND THE LAW WILL PROTECT YOU IF YOU RECEIVE ONE.

☑ **MISDEMEANOR**: IS MORE SERIOUS THAN A VIOLATION.
THE LAW WILL NOT PROTECT YOU.

☑ **FELONY**: IS THE MOST SERIOUS GROUP OF CRIMES.
THE LAW WILL NOT PROTECT YOU.

NOTE:

ASK YOUR LAWYER FOR CLARIFICATION ABOUT ANY OF THESE TERMS TO MAKE SURE YOU HAVE ALL THE INFORMATION.

② YOU ARE NOT A DEFENDANT IN A PENDING CRIMINAL CASE - YOU ARE NOT PART OF A CASE THAT HAS NOT FINISHED YET SOMEWHERE ELSE.

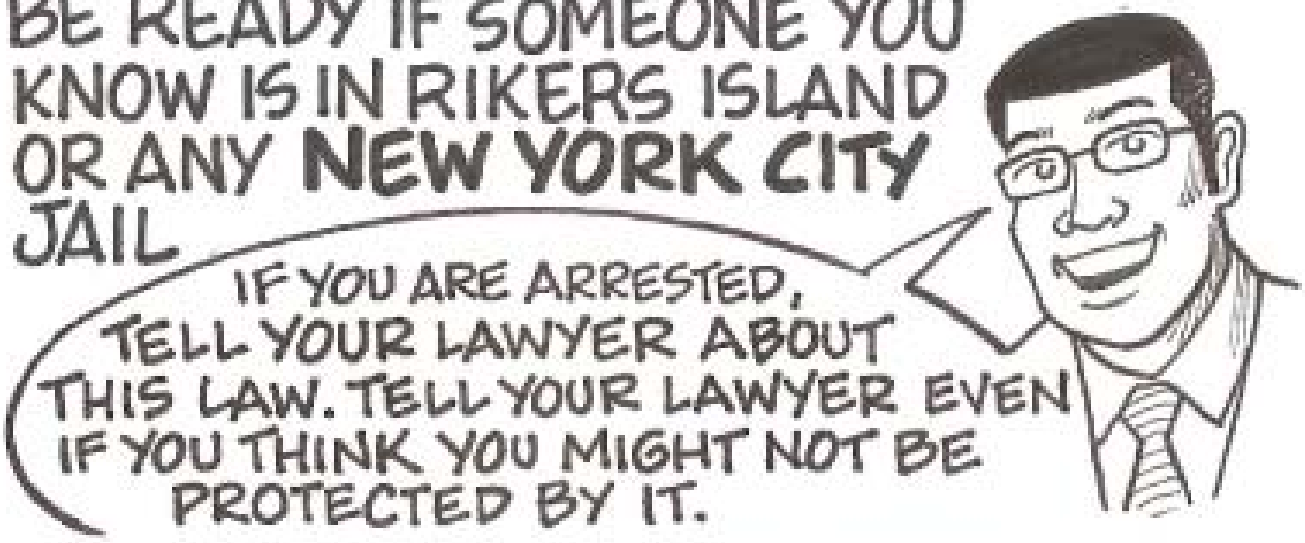
THIS DOES NOT INCLUDE:

1. CASES WHERE THE HIGHEST CHARGE IS A VIOLATION
2. FAMILY COURT CASES
3. CASES THAT HAVE BEEN ADJOURNED IN CONTEMPLATION OF DISMISSAL (ACD)

③ YOU DO NOT HAVE ANY OUTSTANDING CRIMINAL WARRANTS - NO POLICE DEPARTMENT ANYWHERE IN THE COUNTRY IS LOOKING FOR YOU FOR A CRIME SOMEWHERE ELSE.

④ YOU DO NOT HAVE AN OUTSTANDING WARRANT FOR REMOVAL OR PRIOR ORDER OF DEPORTATION - YOU HAVE NOT GOT AN ORDER TO LEAVE THE COUNTRY BEFORE.

BE READY IF SOMEONE YOU KNOW IS IN RIKERS ISLAND OR ANY **NEW YORK CITY** JAIL



TELL YOUR LAWYER ABOUT YOUR **FULL IMMIGRATION** AND **CRIMINAL HISTORY**

YOUR LAWYER MIGHT BE ABLE TO GET ANY ERRORS IN YOUR RECORD CORRECTED AND MIGHT BE ABLE TO GET YOUR PRIOR CONVICTIONS CHANGED SO YOU CAN BE PROTECTED BY THIS LAW.

IF THERE ARE ANY CASES THAT ARE STILL OPEN AND HAVE NOT FINISHED, MAKE SURE YOUR LAWYER CLEARS THEM UP.

DO NOT PLEAD GUILTY BEFORE TALKING TO YOUR LAWYER ABOUT THE POSSIBLE IMMIGRATION CONSEQUENCES OF A PLEA.

JOIN THE FIGHT FOR IMMIGRANT RIGHTS

AT MAKE THE ROAD NEW YORK'S WEEKLY MEETINGS YOU CAN LEARN ABOUT YOUR RIGHTS, AND GET INVOLVED IN THE FIGHT FOR JUSTICE.

- BUSHWICK BROOKLYN:
  301 GROVE ST. – WEDNESDAYS 6 PM
  (718) 418-7690 x 1212
- JACKSON HEIGHTS, QUEENS
  92-10 ROOSEVELT AVE. – TUESDAYS 7 PM
  (718) 565-8500 x 4432
- PORT RICHMOND, STATEN ISLAND
  479 PORT RICHMOND AVE. – FRIDAYS 6 PM
  (718) 727-1222 x 3446
- BRENTWOOD, LONG ISLAND
  (631) 294-8726, OR CALL THE

NEW SANCTUARY COALITION OF NEW YORK CITY

239 THOMPSON STREET, NEW YORK, NEW YORK, 10012

TEL. 212-477-0351
nfo@newsanctuarynyc.org
wwwnewsanctuarynyc.org

IF YOU HAVE QUESTIONS ABOUT THE CONNECTIONS BETWEEN THE IMMIGRATION AND CRIMINAL JUSTICE SYSTEM, CALL THE:

IMMIGRANT DEFENSE PROJECT'S HOTLINE

212-725-6422

CAREFUL: THIS **NEW LEGISLATION** IS EXCITING AND EXPANDS THE PROTECTIONS IMMIGRANTS HAVE. HOWEVER, ALL IMMIGRANTS SHOULD STILL LEARN THEIR RIGHTS AND BE PREPARED TO PROTECT THEM.

CASE STUDY: COMMUNITIES UNITED FOR POLICE REFORM & ROLE OF LEGAL ORGANIZATIONS

Kate Rubin, Bronx Defenders

The Problem: "Stop and frisk" and other discriminatory policing practices spiraled over of control during the Mayoral administrations of Rudolph Guiliani and Michael Bloomberg. In 2011, the New York City Police Department made over 600,000 stops, over 90% of them targeting people of color. Stops can lead to summonses, use of force, or arrests that trigger severe consequences, including job loss, eviction, and even deportation. Since 2012, recorded stops have plummeted, but "Broken Windows" arrests for low-level offenses continue at the same rate. New Yorkers feel targeted by an increasingly confrontational police force, often humiliated in their own homes, schools and neighborhoods.

The Campaign[1]: Communities United for Police Reform (CPR) brings together grassroots organizations, lawyers, researchers and activists to work toward the following goals: 1) Decrease discriminatory & abusive encounters by NYPD; 2) Build capacity of directly impacted communities to hold NYPD accountable; 3) Build public and political will to enact and sustain change.

SOCIAL CHANGE • Short Term: Decrease discriminatory and abusive encounters by NYPD, including stops and "Broken Windows" arrests. • Long Term: Build a culture of NYPD accountability and sustained community power to hold individual officers accountable.		
PILLAR OF POLICY • **Community Safety Act:** Package of New York City Council bills drafted by New York Civil Liberties Union with input from over a dozen member organizations. • **Floyd v. City of NY** (brought by Center for Constitutional Rights), **Davis v. City of NY (**brought by NAACP LDF and Legal Aid Society), and **Ligon v. City of NY** (brought by NYCLU, Bronx Defenders, Latino Justice).	**PILLAR OF CONSCIOUSNESS** • Combined, the organizations in CPR reach thousands of people each year through **Know Your Rights trainings**. • Created a CPR **Know Your Rights pamphlet** in English and Spanish. • Developed media and legislative strategy that **put directly affected people front and center.** • Trained directed impacted people to facilitate Know Your Rights trainings and register voters through **Leadership Development Institutes**. • Support **Cop Watch** patrols that peacefully document police activity. • Organized public events including **City Council hearings** and a **Nonpartisan Mayoral candidate forum.**	**PILLAR OF SERVICE** • **Comprehensive legal services to address the civil consequences of arrest and conviction** (including eviction, job loss, deportation, property seizure, etc.) • **Legal support for Cop Watch patrols** including representation for people arrested filming police activity. • **Police misconduct clinic** advises clients about process for filing a Notice of Claim, bringing a lawsuit against NYPD, or filing administration complaints about NYPD misconduct.

[1] From the Communities United for Police Reform website (www.changethenypd.org).

BASE OF POWER
Grassroots organizations with diverse memberships, including Make the Road NY, CAAAV—Organizing Asian Communities, VOCAL-NY, Picture the Homeless, Malcolm X Grassroots Movement, and dozens of other groups.

MEDIA:

http://www.nytimes.com/2013/08/14/nyregion/in-a-crescendo-the-citys-crime-policy-changed.html?pagewanted=all&_r=0

As Critics United, Stalled Battle Against Frisking Tactic Took Off

By J. DAVID GOODMAN Published: August 13, 2013

http://www.abajournal.com/mobile/article/special_project_reaches_appalling_conclusion_no_right_to_misdemeanor_trial/

Stop-and-frisk project reaches 'appalling' conclusion: No right to misdemeanor trial in Bronx, NY

By MARTHA NEIL Published: May 1, 2013, 02:21 pm CDT

http://www.huffingtonpost.com/kate-rubin/stop-and-frisk-court-decision_b_3757071.html

10 Things You Should Know About This Week's Stop and Frisk Decision

By KATE RUBIN Published: 08/15/2013 11:03 am EDT

COMMUNITIES UNITED FOR POLICE REFORM

SUPPORT THE COMMUNITY SAFETY ACT

LEGISLATION TO COMBAT DISCRIMINATORY POLICING AND HOLD THE NYPD ACCOUNTABLE

The *Community Safety Act* is a landmark police reform legislative package that currently consists of four bills aimed at ending discriminatory policing and bringing real accountability to the NYPD. New Yorkers want to live in a safe city where police officers treat all residents equally and respectfully, and are not above the law. These four bills were introduced and hearings were held on the full package by the New York City Council in 2012. The City Council passed two of the four bills - the End Discriminatory Profiling and NYPD Oversight bills - by a veto-proof majority in June 2013. The Mayor vetoed the bills in July 2013 and the Council voted to override the vetoes on August 22, 2013.

Intro 1080 – Protecting New Yorkers against discrimination by the NYPD

- Establishes a strong and enforceable ban on profiling and discrimination by the New York City Police Department.
- Expands the categories of individuals protected from discrimination. The current prohibition covers race, ethnicity, religion, and national origin. The bill would expand this to also include: age, gender, gender identity or expression, sexual orientation, immigration status, disability, and housing status.
- A meaningful "private right of action" would be created for individuals who believe they have been unjustly profiled by the NYPD.
- New Yorkers would be able to bring intentional discrimination claims and/or disparate impact claims, though not for monetary damages.

Similar laws exist in Illinois, W. Virginia & Arkansas. This bill is also similar to the federal End Racial Profiling Act.

Intro 1079 – Establishing independent oversight of the NYPD

- Assigns responsibility for NYPD oversight to the Commissioner of the Department of Investigation. (In NYC, the DOI currently oversees about 300 city agencies - including the Fire Department, Department of Education and Human Resources Administration – but not the NYPD.)
- Oversight would include reviewing NYPD operations, policies, programs and practices.
- Reports would be made public and revisited annually to see if recommendations have been followed.

There is independent monitoring of the FBI, CIA, LAPD and every major New York City agency except for the NYPD

Intro 799 – Protecting New Yorkers against unlawful searches

- Ends the practice of the NYPD deceiving New Yorkers into consenting to unnecessary searches
- Requires officers to explain that a person has the right to refuse a search when there is no warrant or probable cause
- Requires officers to obtain proof of consent to a search.

Similar laws exist in Colorado and West Virginia.

Intro 801 – Requiring NYPD officers to identify themselves and explain their actions

- Requires officers to provide the specific reason for their law enforcement activity, such as a stop-and-frisk
- Requires officers to provide document to the person with the officer's name and information on how to file a complaint at the end of each police encounter

Similar laws exist in Arkansas, Minnesota and Colorado.

Appendix B

ANALYZING OUR WORK: ARE WE BUILDING OR FIGHTING POWER?

1. Who is your client/community? What change do they want?

2. What larger social movement(s) is their struggle related to?

3. How do your clients/community think things are going to change? What's their Theory of Change?

4. What is your Theory of Change? Is it the same or different than the individuals/groups you're working with?

5. Who are you accountable to? How do you know you're accountable?

6. What has come up (what have you learned) about your power & privilege as a lawyer, legal worker or law student during this case/campaign?

7. Did you miss any opportunities to build the power of directly impacted people? Explain.

8. What can you do to better support the "base of power" in the future?

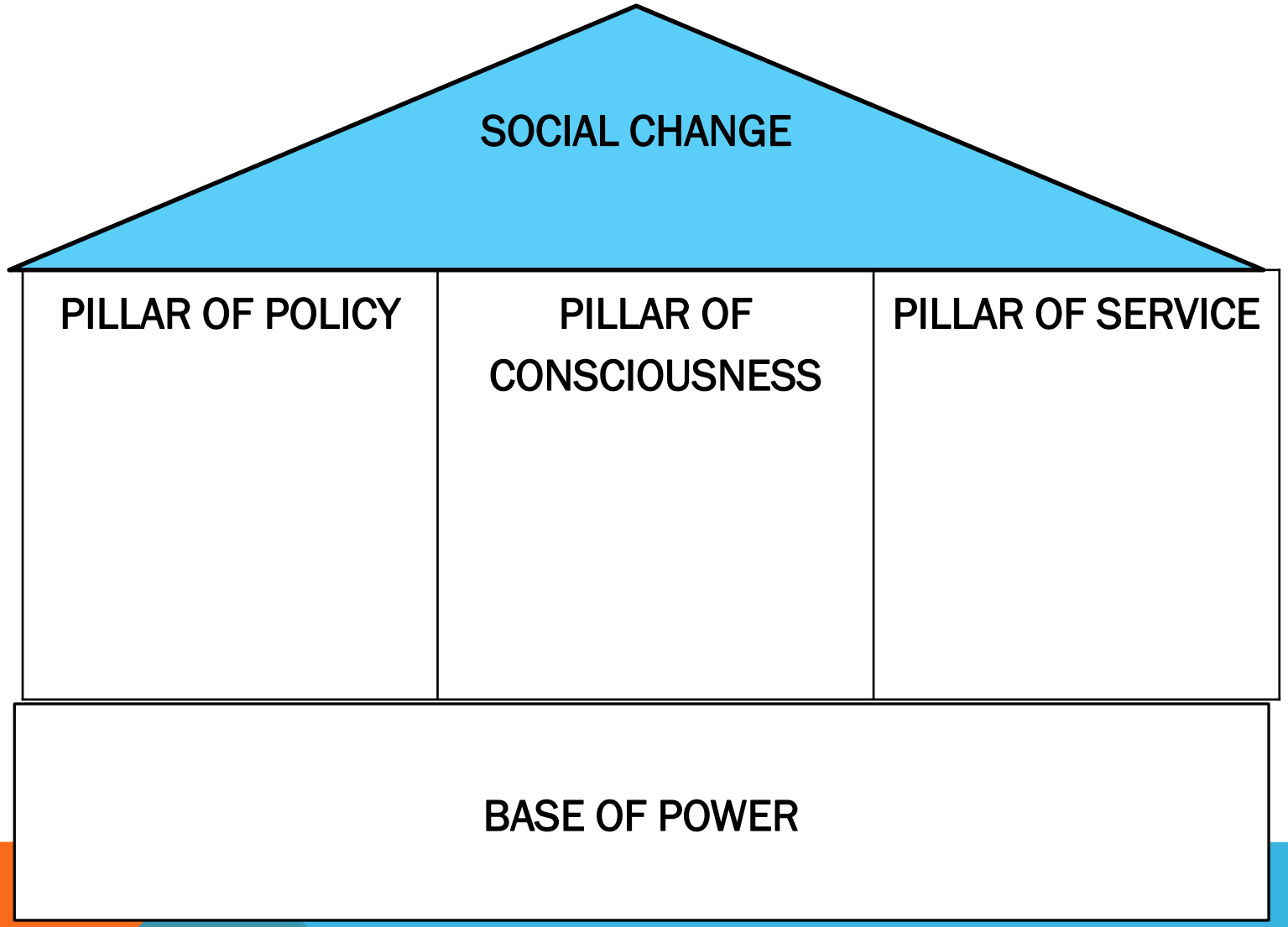
9. What are three things you want to do or three questions you want to reflect on when you go home? *(Write answers on post-its)*

ASSESSING YOUR TACTICS

List the tactics you used/are using to manifest the change your clients want.

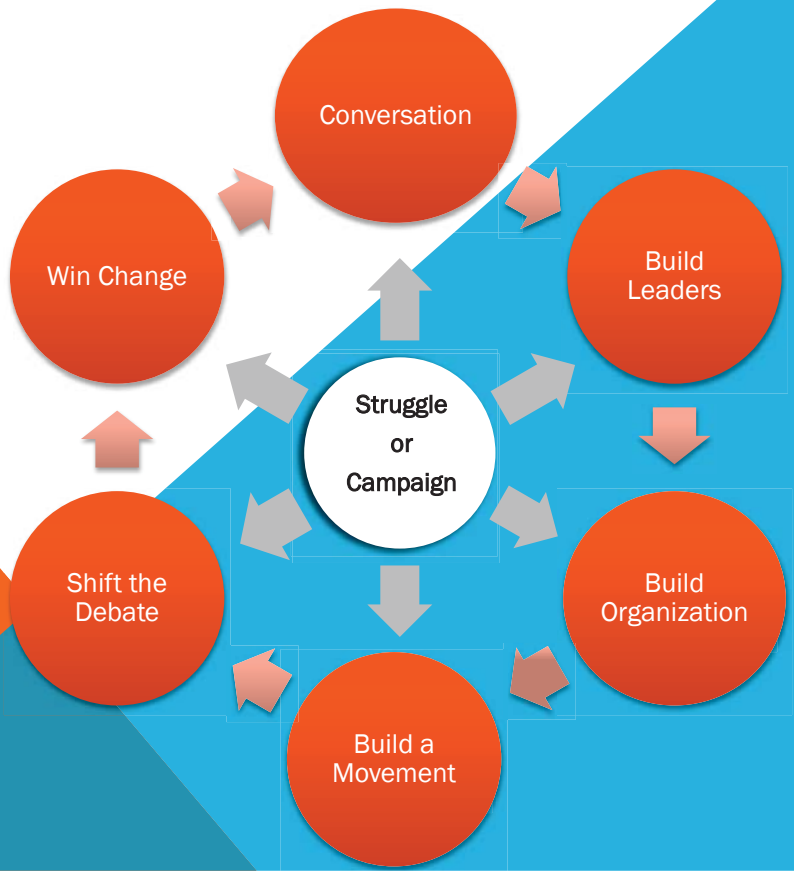
Does the tactic work to build the base of a movement, by 1) connecting the individual to a community, or 2) connecting communities together or, 3) connecting the individual/community to a social movement?	Y N
Does the tactic work to connect movements together?	Y N
Does the tactic work to connect the community/movement to someone with institutional power (e.g., political official, civil servant, journalist)?	Y N
Does the tactic deepen the level of political analysis in a community (e.g., will it spur discussions or raise questions of institutions with power and the community's own power vis-à-vis those institutions)?	Y N
Does the tactic build skills within the community (e.g., help community members understand how policy is shaped, how to engage with the media effectively, how legal processes work, or how to conduct community-based research to use for identifying issues and the causes of those issues; or develop leadership/management skills, such as public speaking, writing, goal-setting)?	Y N
Does the tactic encourage more members of a community to take on leadership/active roles in the movement or campaign?	Y N
Does the tactic allow the community to take a step towards reframing the public narrative on their issue(s)?	Y N
Does the tactic allow the community to recognize its own power vis-à-vis the oppressor –the government institution, a corporation, etc.?	Y N
Does the tactic take into account whether the community wants to increase their public exposure or protect themselves from public exposure and does the tactic help accomplish that?	Y N
Does the tactic lend legitimacy to the community and/or its leaders?	Y N
Is the tactics employed in a transparent enough manner that the community will be able to seek accountability from the lawyer or others working with them and in a way that encourages the community to call for such accountability?	Y N

What other questions would you ask to determine if your tactics are building power or to devise tactics that would power?



Adapted from the MIAMI WORKERS CENTER *4 Pillars of Social Justice Infrastructure*

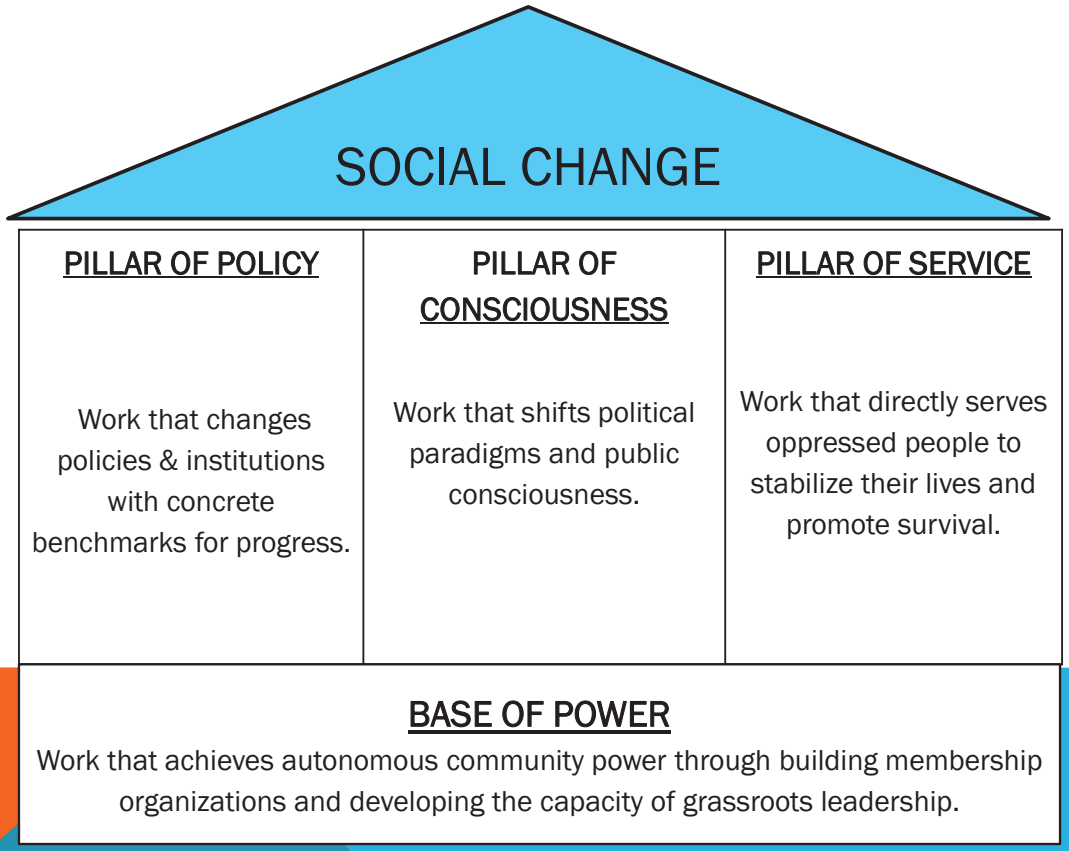
ORGANIZING THEORY OF SOCIAL CHANGE



TOOLS OF SOCIAL JUSTICE

- Community Organizing
- Coalition Building
- Fact gathering- research/data collection/interviewing
- Legal support to civil disobedience (observation, intervention, representation)
- Community capacity building (trainings, KYR, community education)
- Negotiation
- Facilitation
- Legislative/Administrative Advocacy
- Legislation
- Litigation
- Framing/Storytelling/Media Strategies

Adapted from the MIAMI WORKERS CENTER *4 Pillars of Social Justice Infrastructure*



SOCIAL JUSTICE LEGAL INFRASTRUCTURE

THEORY OF CHANGE BEHIND COMMUNITY LAWYERING

Sustainable social change occurs when directly-impacted individuals take **collective** action, **lead** their own struggles, and gain **power** to change the conditions of oppression.

8

ORGANIZING

IS BEHIND SOCIAL MOVEMENTS

9

Adapted from the MIAMI WORKERS CENTER *4 Pillars of Social Justice Infrastructure*

PILLAR OF POLICY	PILLAR OF CONSCIOUSNESS	PILLAR OF SERVICE
Work that changes policies & institutions with concrete benchmarks for progress	Work that shifts consciousness of directly-impacted communities and the broader public	Work that directly serves oppressed people to stabilize their lives and promote survival

BASE OF POWER

Work that achieves autonomous community power

10

MOVEMENT LAWYERING

READING GUIDE

April 2013

Bertha Social Justice Institute

centerforconstitutionalrights

on the front lines for social justice

April 3, 2013

It is with great pleasure that we have put together this short bibliography of selected readings as an introduction to “movement lawyering” to help orient you and point you to the works that we have found helpful in shaping our practice. There is a vast body of literature on movement lawyering and thus what follows is a work in progress and does not purport to be an exhaustive list in any way.

A few notes on the logic of the sections: the articles in Section 1 help lay the foundation; within those articles you will find citations to myriad other works that have been written on movement lawyering, called by a variety of names from “revolutionary lawyering” to “social justice lawyering” to “law and organizing.” The articles in Section 2 are but a scratch at the surface of the theoretical underpinnings of movement lawyering—the works that help lawyers develop a framework for critique and analysis of the law and its limits with respect to bringing about social change. Section 3 is an even fainter scratch at the extensive scholarship on progressive international lawyering and human rights, but here we offer a smattering of readings that will most certainly get you thinking and searching for more. Section 4 gives a nod to the numerous law professors and practitioners who have reflected on the law school experience, including clinical experience and pedagogy, and Section 5 to the practice of combining lawyering with organizing, though the organizers’ perspective is admittedly one to be expanded further here. Section 6 then contains some examples of how movement lawyering has been applied in the national and international contexts, to help guide our practice and learn from the lessons learned by our colleagues. At the end, in Section 7, we included a short list of books that have been useful to us in our work, but there are certainly countless others that could be included in this list.

Undoubtedly, our critical lenses are shaped by much more than a reading list, much less a reading list comprised primarily of articles written on the law in law review publications. There is of course the depth of our lived experience as well as the richness of poetry, music and film, among other things, that inform our human interactions and our own personal views on our place as social justice lawyers and students who desire to create social change. While fully recognizing this, we hope to continue to develop this reading list further as we move forward. To that end, if you note—as you surely will—that there are pieces missing from this list that have been valuable to you or have made an impression on you, please feel free to point them out to us so that we can make this list as comprehensive and helpful as possible. You can send any suggestions to BerthaSJI@ccrjustice.org.

Finally, thank you to Rebecca Sheff at NYU Law School, Jeena Shah at the Center for Constitutional Rights and Meena Jagannath at the Community Justice Project of Florida Legal Services for helping compile this reading list. We look forward to adding to it in the future!

Onward!

Purvi Shah
Director
Bertha Social Justice Institute
Center for Constitutional Rights

SECTION 1: DEFINING "MOVEMENT LAWYERING"

a. Models of Movement Lawyering

- Angelo N. Ancheta, *Community Lawyering*, 81 Cal. L. Rev. 1363 (1993).
  Reviews Gerald P. Lopez's *Rebellious Lawyering,* which contributed significantly to scholarly discussions on how transformative theories can influence the practice of law itself. Examines the process of empowering client communities through advocacy and education, in the context of racial subordination and the distortion of narratives.
- Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 Harv. C.R.-C.L. L. Rev. 297 (1996).
  Defines political lawyering as having a "politicized" orientation to the goals, commitments, and relationships of legal work. Calls for a self-conscious and aspirational approach, recognizing that legal practice always involves the exercise of power with systemic consequences.
- Eduardo R.C. Capulong, *Client Activism in Progressive Lawyering Theory*, 16 Clinical L. Rev. 109 (2009).
  Argues that the goals, contexts and methods of client activism have been under-theorized in progressive lawyering. Progressive lawyers are likely to misunderstand their own roles in promoting social change. Undertakes a historical inquiry into the ultimate political aims of progressive lawyering, the socio-political context, and broader conceptions of activist strategies.
- Angela Harris et al., *From "The Art of War" to "Being Peace:" Mindfulness and Community Lawyering in a Neo-Liberal Age*, 95 Cal. L. Rev. 2073 (2007).
  Assesses the value of "mindfulness" in legal practice. "Mindfulness" sets aside typical adversarial and zero-sum approaches and opens up new relationship-based possibilities in the fight for justice. Draws on a case study of a housing development project in West Oakland.
- Douglas NeJaime, *Cause Lawyers Inside the State*, 81 Fordham L. Rev. 649 (2012).
  Examines the effects of the movement of cause lawyers into the state during the Obama administration. Destabilizes the traditional paradigm of adversarial tension between cause lawyers and government lawyers. Provides examples with a focus on the Defense of Marriage Act.
- William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 Wash. U. J.L. & Pol'y 101 (2006).
  Calls for "revolutionary lawyering" as a collaborative method of dismantling and radically restructuring our current legally protected systems. Poverty, wealth, racism, materialism and militarism will not be changed by small revisions or modest reforms. Urges reflective activism.
- Lucie White, *Paradox, Piece-Work, and Patience*, 43 Hastings L.J. 853 (1992).
  Urges academics to constantly question the assumptions that underlie existing theoretical frameworks about poverty lawyering. Theory should not be pre-packaged or prescriptive, but rather should emerge from dialogic, situated, open-ended and ongoing explorations of poverty lawyers' practices.

b. Typology/Bibliographies

- Gill Boehringer, *People's Lawyering: The Filipino Model - A Preliminary Report* (2005), *available at* http://ebookbrowse.com/gill-h-boehringer-people%E2%80%99s-lawyering-the-filipino-model-a-preliminary-report-doc-d68415575.

  Reflects on how "people's lawyers" in the Philippines play a substantial role in combating repression and corrupt practices in a post-colonial context. Calls for further research on lawyers' roles in people's struggles.
- Jules Lobel, *Courts as Forums for Protest*, 52 UCLA L. Rev. 477 (2004).

  Treats courts as spaces in which political and social movements, supported by progressive attorneys, can agitate for their legal and political agendas. Diminishes the value of winning or losing and circumscribes the role of the judge. Calls for the use of courts to provoke public debate, energize the movement, or expose specific aspects of social justice.
- JoNel Newman, *Reconceptualizing Poverty Law Clinical Curriculum and Legal Services Practice: The Need for Generalists*, 34 Fordham Urb. L.J. 4 (2007).

  Argues that specialization in legal services and clinics negatively affects poor clients, because lawyers are less able to treat clients' problems in an integrated or holistic manner. The disappearance of neighborhood legal services offices has also made poverty lawyers less accessible. Uses a Miami case study to showcase a "one-stop shopping" service model.
- Loretta Price & Melinda Davis, *Seeds of Change: A Bibliographic Introduction to Law and Organizing*, 26 N.Y.U. Rev. L. & Soc. Change 615 (2000).

  Collects published works on how law and lawyering relates to grassroots organizing. A resource tool for community lawyers, divided into sections.
- Rebecca Sharpless, *More Than One Lane Wide: Against Hierarchies of Helping in Progressive Legal Advocacy*, 19 Clinical L. Rev. 347 (2012).

  Discusses how hierarchies within social justice lawyering cause serious harm by devaluing direct service work performed primarily by women. Critiques the rhetoric of hierarchy as representative of binary male thinking. Offers a historical account of this devaluation and proposes a more inclusive vision of progressive lawyering.

SECTION 2: BEYOND THE BLACK LETTER: THEORETICAL UNDERPINNINGS OF MOVEMENT LAWYERING

a. Critical Race Theory & LatCrit

- Alice G. Abreu, *Lessons from LatCrit: Insiders and Outsiders, All at the Same Time*, 53 U. Miami L. Rev. 787 (1999).

  Calls for legal scholars to draw on LatCrit scholarship in order to move beyond the simplicity of binary paradigms, especially the outsider/insider dichotomy. Uses the author's own story, in narrative form, to discuss how individuals can simultaneously hold outsider and insider positions. Urges us to move beyond paradigms that essentialize one aspect of identity.
- Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 Harv. L. Rev. 518 (1980).

  Suggests that the principle of "interest convergence" explains the *Brown* decision and the subsequent development of school desegregation law.

Brown must be understood at least in part in terms of its pragmatic value to whites. Subsequent divergences in the interests of blacks and whites point to the need to focus on improving the quality of existing schools.

- Cheryl I. Harris, *Whiteness as Property*, 106 Harv. L. Rev. 1709 (1993).
  Reflects on how rights in property are contingent on, intertwined with, and conflated with race. Examines the emergence of whiteness as property and its persistence over time. Offers preliminary thoughts on how to reconstruct affirmative action to challenge these developments.
- Neil Gotanda, *A Critique of "Our Constitution is Color-Blind*,*"* 44 Stan. L. Rev. 1 (1991).
  Challenges the notion of color-blind constitutionalism, as used in the Supreme Court. Analyzes the ways in which white racial domination is supported, protected, or disguised by themes related to color-blind constitutionalism. Suggests an alternate model for constitutional consideration of race, derived from First Amendment doctrine on religion.
- Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 Harv. C.R.-C.L. L. Rev. 401 (1987).
  Critiques the rejection of rights-based theory in Critical Legal Studies (CLS), as it applies to the black struggle for civil rights. CLS has ignored the value of rights-assertion and the benefits of rights. Examines contradictory social understandings between blacks and whites on the degree to which rights-assertion is experienced as (dis)empowering.

b. <u>Intersectionality & Race/Class/Gender/Postcolonial Analysis</u>

- Paulette Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 Duke L.J. 365 (1991).
  Draws on a case about the prohibition of wearing braided hairstyles in the workplace to discuss personal encounters with the intersection of racism and sexism in American culture. Examines limitations in how the courts have treated race- and sex-based claims in antidiscrimination law.
- Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 Stan. L. Rev. 1241 (1991).
  Identifies how identity politics tend to conflate or ignore intragroup differences, such that the intersectional identity of women of color becomes virtually invisible. Explores the race and gender dimensions of violence against women of color, focusing on battering and rape.
- Alan D. Freeman, *Race and Class: The Dilemma of Liberal Reform*, 90 Yale L.J. 1880 (1981).
  Critiques Derrick Bell's *Race, Racism and American Law (Second Edition*). Bell takes a critical and instrumentalist approach in examining whether doctrinal developments have improved, worsened, or left unchanged the actual lives of American blacks. It is a challenge to adopt teaching strategies in this area that avoid the myths of liberal reform.
- Angela P. Harris, *From Stonewall to the Suburbs? Toward a Political Economy of Sexuality*, 14 Wm. & Mary Bill Rts. J. 1539 (2006).
  Examines three U.S. court cases on civil rights and sexual rights (*Brown*, *Goodridge* and *Lawrence*) through the lens of political economy, to tell a cautionary story of how lessons may be drawn from these cases. The outcomes of these ostensible victories must be seen in the context of the success of neoliberalism and the rise of structural liberalism.

- Ratna Kapur, *Postcolonial Erotic Disruptions: Legal Narratives of Culture, Sex, and Nation in India*, 10 Colum. J. Gender & L. 333 (2001).
  Discusses how non-heteronormative sexuality is either criminalized or denied in the process of the dismantling of the colonial paradigm. Focuses on normative sexuality, culture and legal controversies in India. Sexual speech and the performance of the sexual subaltern in law can create transgressive spaces and challenge dominant sexual ideology.
- Rickke Mananzala & Dean Spade, *The Nonprofit Industrial Complex and Trans Resistance*, 5 Sexuality Res. & Soc. Pol'y 1 (March 2008).
  Explores how trans politics and emerging trans organizations can benefit from critical analyses of the nonprofit industrial complex and of neoliberalism's co-optation of activism. Seeks to build trans resistance through meaningful engagement with anti-racist and anticapitalist politics.
- Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 14 Women's Rts. L. Rep. 297 (1992).
  Considers women of color as a paradigm group for the utilization of multiple consciousness as jurisprudential method. Urges lawyers to make a deliberate choice to see the world from the standpoint of the oppressed.
- Makau Mutua, *Critical Race Theory and International Law: The View of an Insider-Outsider*, 45 Vill. L. Rev. 841 (2000).
  Deploys critical race theory (CRT) to challenge the universality and neutrality of international law. Highlights the emancipatory potential of CRT as a project of "outsider" jurisprudence, despite its particularized origins, through the use of multidimensionality and intersectionality.

c. <u>Client & Community "Voice"</u>

- Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 Mich. L. Rev. 2411 (1988).
  Assesses the role of storytelling as a means for destroying the prevailing mindset of the dominant group. Illustrates how stories structure reality and examines the use of storytelling in the struggle for racial reform.
- Herbert A. Eastman, *Speaking Truth to Power: The Language of Civil Rights Litigators*, 104 Yale L.J. 763 (1995).
  Problematizes the "sterile" pleadings typically drafted by lawyers, which obscure the client's identity, lived experience, and the root causes of systemic injustice. Draws on journalists' and historians' narrative framing and literary techniques to re-imagine persuasive "thicker pleading."
- Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 Hastings L.J. 861 (1992).
  Adopts a critical storytelling approach to examine the contextual constraints of poverty law practice. Seeks to build a typology of how clients, lawyers and legal decision-makers all tell, receive and translate stories. Advises on establishing ethical dialectic interactions with clients.
- Ruth Anne Robbins, *Harry Potter, Ruby Slippers and Merlin: Telling the Client's Story Using the Characters and Paradigm of the Archetypal Hero's Journey*, 29 Seattle U. L. Rev. 767 (2006).
  Asserts that lawyers should use storytelling techniques to more effectively characterize their client, the judge, and the role of the lawsuit in the client's story. Discusses how to develop persuasive narrative themes framing the client as a hero on a transformative life journey.

- Gayatri Chakravorty Spivak, *Can the Subaltern Speak?*, *in* MARXISM AND THE INTERPRETATION OF CULTURE 271 (Cary Nelson & Lawrence Grossberg eds., 1988), *available at* http://www.mcgill.ca/files/crclaw-discourse/Can_the_subaltern_speak.pdf.

  A postcolonial critique of the silencing of the subaltern and the role of intellectuals in perpetuating the subjugation of the oppressed. Argues that the intellectual is complicit in the persistent constitution of the Other. Turns to the practice of *sati* in India as an inquiry into epistemic violence and the manipulation of female subject-constitution.
- Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. Rev. L. & Soc. Change 535 (1989).

  Reviews the history of impact litigation in the 1960s-1970s, its successes in advancing systemic reforms, and the conditions that led poverty lawyers to explore alternative litigation strategies in the 1980s. Discusses the value of clients participating in public events "parallel" to litigation.
- Lucie E. White, *Subordination, Rhetorical Survival Skills and Sunday Shoes: Notes on the Hearing of Mrs. G*, *in* CLINICAL ANTHOLOGY: READINGS FOR LIVE CLIENT CLINICS (Alex J. Hurder et al. eds., Anderson, 1997).

  Recounts the story of an attempt by a poor woman to participate meaningfully in an administrative hearing at a welfare office. Explores the ways that gender, race and class subordination have systematically devalued the speech of subordinated groups in procedural legal rituals.

SECTION 3: MOVEMENT LAWYERING & INTERNATIONAL HUMAN RIGHTS

- Sameer M. Ashar, *Book Review: Frank S. Bloch, ed.,* The Global Clinical Movement: Educating Lawyers for Social Justice*. New York: Oxford University Press, 2011, pp. 400*, 62 J. Legal Educ. 193 (August 2012).

  Discusses the global development of clinical legal education, the importance of comparative analysis, and the meaning of the spread of clinical legal education as a contingent and contested phenomenon. Clinical legal education should be worked critically into broader theoretical frameworks about globalization, in terms of whether it creates or shuts down opportunities for social change.
- Dina Francesca Haynes, *Client-Centered Human Rights Advocacy*, 13 Clinical L. Rev. 379 (2006).

  Examines whether human rights advocacy can be enhanced through awareness of the dangers of essentializing, otherizing and re-victimizing the subjects of such advocacy. Argues that law school clinics should teach a client-centered model of human rights lawyering in order to ameliorate some of these concerns.
- Ratna Kapur, *The Tragedy of Victimization Rhetoric: Resurrecting the "Native" Subject in International/Post-Colonial Feminist Legal Politics*, 15 Harv. Hum. Rts. J. 1 (2002).

  Critiques the international women's rights movement for reinforcing the image of women in post-colonial contexts as victim subjects, particularly through violence against women campaigns. Looks at India as a case study to critique "feminist" positions that do not embrace an emancipatory politics for women.
- David Kennedy, *The International Human Rights Movement: Part of the Problem?*, 15 Harv. Hum. Rts. J. 101 (2002).

  Raises questions for human rights practitioners about whether the international human rights movement has serious drawbacks despite its accomplishments.

Urges legal professionals to adopt a pragmatic attitude toward human rights by weighing the costs and benefits of invoking, institutionalizing and enforcing rights.

- Makau Mutua, *What is TWAIL?*, 94 Am. Soc'y Int'l L. Proc. 31 (2000).
  Presents Third World Approaches to International Law (TWAIL) as standing in opposition to the international legal regime. Asserts that international law is an imperial project and traces the historical evolution of TWAIL as a discipline.
- Balakrishnan Rajagopal, *International Law and Social Movements: Challenges of Theorizing Resistance*, 41 Colum. J. Transnat'l L. 397 (2003).
  Proposes that international law needs to have a theory of resistance in order to remain relevant to contemporary events and cosmopolitan values. Such a theory should re-frame international law through the lens of social movements, rather than states or individuals. International lawyers should strive to overcome their reluctance or inability to seriously consider Third World social movements.

SECTION 4: LAW SCHOOL & MOVEMENT LAWYERING

a. Finding Your Place in the Dislocating Law School Experience

- Rachel Anderson et al., *Toward a New Student Insurgency: A Critical Epistolary*, 94 Cal. L. Rev. 1879 (2006).
  An exercise in collective storytelling, describing three law students' social justice activism in law school and identifying the revolutionary potential of the "new student insurgency." Calls for the creative fusion of critical legal study with clinical practice and coalitional interventions within law schools.
- Richard Delgado, *Rodrigo's Chronicle*, 101 Yale L.J. 1357 (1992) (reviewing DINESH D'SOUZA, ILLIBERAL EDUCATION: THE POLITICS OF RACE AND SEX ON CAMPUS (1991)).
  A dialogue between a professor and "Rodrigo" which explores issues of bias and discrimination against people of color in the LSAT, the law school hiring market, and academic publishing. Discusses potential avenues for destabilizing the current dominant culture.
- Betty Hung, *Letter to a Young Public Interest Attorney*, 1 L.A. Pub. Int. L.J. (2009).
  Describes one public interest attorney's legal education and early career, focusing on how critical race theory and small acts of resistance helped her to counter disempowerment and intimidation at law school.
- Duncan Kennedy, *Legal Education as Training for Hierarchy*, *in* THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE (David Kairys ed., 3d ed. 1998), *available at* http://www.duncankennedy.net/documents/Legal%20Education%20as%20Training%20for%20Hierarchy_Politics%20of%20Law.pdf.
  Asserts that law schools are intensely political places which provide ideological training for willing service in the hierarchies of the corporate welfare state. Students are co-opted into acting affirmatively within the channels cut for them, creating the appearance of consent and complicity. Progressive law students should strive to avoid being demobilized.
- Kathryn M. Stanchi, *Resistance is Futile: How Legal Writing Pedagogy Contributes to the Law's Marginalization of Outsider Voices*, 103 Dick. L. Rev. 7 (1998).
  Law students are "socialized" through legal writing pedagogy, such that the voices of those who have already been historically marginalized by

legal language remain suppressed. Law constitutes a "language of power" which compels marginalized persons to translate or encode their experiences, rather than expressing themselves in their own terms.

b. Clinics and Movement Lawyering

- Sameer M. Ashar, *Law Clinics and Collective Mobilization*, 14 Clinical L. Rev. 355 (2008).
  Envisions an innovative progressive model for law clinics. Cognizant of neoliberal globalization, urges clinics to stop privileging pedagogy over social justice and instead to focus on movement-building and law reform. Highlights importance of accounting for political, racial, cultural contexts.
- Caroline Bettinger-Lopez et al., *Redefining Human Rights Lawyering Through The Lens Of Critical Theory: Lessons For Pedagogy And Practice*, 18 Geo. J. on Poverty L. & Pol'y 337 (2011).
  Reflects on how critical theory offers opportunities for advancing legal strategies in the field of human rights. Identifies dilemmas that remain and examines them through case studies drawn from law clinics. Explores how clinics can address the structural origins of human rights violations.
- Juliet M. Brodie, *How Little Cases Fit into the Big Picture: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, *available at* http://www.law.harvard.edu/academics/clinical/documents/littlecasesbigpicture.pdf.
  Advocates for law clinics to return to a neighborhood-based approach, based on its pedagogical and service values. Uses a case study in East Palo Alto. Highlights how to be responsive to community needs by being physically proximate to the client community, and how to enhance the student experience using diverse, flexible methods on a range of issues.
- Karen Tokarz et al., *Conversations on "Community Lawyering": The Newest (Oldest) Wave in Clinical Legal Education*, 28 J.L. & Pol'y 359 (2008).
  Explores the pedagogical and professional challenges and rewards of community lawyering and clinical legal education. Provides a broad overview of community lawyering practices based on notions of place, engagement, and connectivity.

SECTION 5: LAWYERING AND ORGANIZING

a. Working with Community Organizations & Movements

- Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. Rev. 443 (2001).
  Reviews the historical evolution of law and organizing from the mid-20th century to the present and identifies opportunities for innovation in advocacy strategies for social justice. Examines structural tensions, practical barriers and ethical issues inherent in law and organizing.
- Shim Imai, *A Counter-Pedagogy for Social Justice, Core Skills for Community-Based Lawyering*, 9 Clinical L. Rev. 195 (2002).
  Argues that law students should be taught skills beyond the mainstream curriculum in order to be effective community-based lawyers. Such skills

include collaboration with community members; acknowledgement of identity, race and emotion; and adoption of a community perspective on legal problems. Includes concrete examples of techniques and exercises.

- Amy Kapczynski & Jonathan M. Berger, *The Story of the TAC Case: The Potential and Limits of Socio-Economic Rights Litigation in South Africa*, *in* HUMAN RIGHTS ADVOCACY STORIES (Deena R. Hurwitz & Margaret L. Satterthwaite eds., Foundation Press, 2009).

  Tells the story of a community-based AIDS activist organization in South Africa. Examines their success in court in securing a ruling on access to treatment for the prevention of mother-to-child transmission of HIV, and sets it in the context of an organized movement with strengths and limits.

- Michael McCann & Helena Silverstein, *Rethinking Law's 'Allurements': A Relational Analysis of Social Movement Lawyers in the United States*, *in* CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 261 (Austin Sarat & Stuart Scheingold eds., 1998).

  Uses case studies on gender-based pay equity and animal rights to critique assumptions about the role of cause lawyers in advancing movement reform goals. Suggests lawyers tend to be aware of pitfalls of litigation strategies and instead offer creative, critical and sophisticated approaches to legal strategies in coordination with non-legal tactics. Calls for a more nuanced relational analysis of factors that shape legal roles.

- William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 Ohio N.U.L. Rev. 455 (1994).

  Provides observations and reflections of three community organizers, evaluating the role of lawyers in community organizations. Critiques lawyers for playing a technical role, exerting authority and expertise, and creating dependency within the communities they seek to serve.

- Victor Narro, *Finding the Synergy between Law and Organizing: Experiences from the Streets of Los Angeles*, 35 Fordham Urb. L.J. 339 (2008).

  Case study of worker's centers in Los Angeles, demonstrating the importance of communication, participation and coordination ineffective collaborations between lawyers and organizers.

b. <u>Balancing Lawyering & Organizing</u>

- Charles Elsesser & Purvi Shah, *Purvi and Chuck: Community Lawyering*, Organizing Upgrade, June 1, 2010, *available at* http://www.organizingupgrade.com/index.php/modules-menu/community-organizing/item/71-purvi-amp-chuck-community-lawyering.

  Discusses the role of lawyers in grassroots organizing, social movements, and building a new world based on an alternative progressive vision. Aims to establish community lawyers as tacticians, rather than saviors or gatekeepers, and views poverty as a symptom of systemic inequality.

- Betty Hung, *Law and Organizing from the Perspective of Organizers: Finding a Shared Theory of Social Change*, 1 L.A. Pub. Int. L.J. (2008).

  Examines tensions in law and organizing, and how organizers evaluate whether lawyers will add value to campaigns. Concludes that a shared theory of social change, based on the primacy of affected community members, is key to effective partnerships in social justice movements.

- E. Tammy Kim, *Lawyers as Resource Allies in Workers' Struggles for Social Change*, 13 N.Y. City L. Rev. 213 (2009).
  Discusses the merits of a "resource-ally" model of community-based workers' rights lawyering, exemplified by the Urban Justice Center. Lawyers engage in client partnerships but are not directly involved in extralegal activism. Separates roles, ethics and resource allocation.

SECTION 6: CASE STUDIES ON MOVEMENT LAWYERING

a. National Context

- David Dominguez, *Getting Beyond Yes to Collaborative Justice: The Role of Negotiation in Community Lawyering*, 12 Geo. J. on Poverty L. & Pol'y 55 (2005).
  Envisions an innovative model of collaborative justice, in which lawyers equip community residents to form grassroots advocacy groups and to negotiate among themselves and with officials. Uses a case study to show how to train community residents in integrative bargaining skills.
- Jennifer Gordon, *Law, Lawyers, and Labor: The United Farm Workers' Legal Strategy in the 1960s and 1970s and the Role of Law in Union Organizing Today*, 8 U. Pa. J. Lab. & Emp. L. 1 (2005).
  In-depth analysis of United Farm Workers' legal strategy at the peak of its influence and power, taking a "long view" to ask what law offers labor organizing. Suggests lawyers can offer creative and experimental legal strategies even without legislative reforms.
- Zenobia Lai et al., *The Lessons of the Parcel C Struggle: Reflections on Community Lawyering*, 6 Asian Pac. Am. L.J. 1 (2000).
  Relates the story of community lawyers' involvement in a struggle over land development in Boston's Chinatown. Advises about how to build trust, translate legal concepts to the community, manage community expectations, and respect community choices about legal strategies.
- Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 5 Clinical L. Rev. 557 (1999).
  Discusses the challenges of lawyering within indigenous communities. Calls for the establishment of an ethic of non-exploitation founded on cultural autonomy, self-determination, building trust and respecting boundaries. Urges lawyers to appreciate the cross-cultural nature of work.
- Charles F. Elsesser, *Community Lawyering – The Role of Lawyers in the Social Justice Movement* (forthcoming 2013, Loyola J. Pub. Int. L.).

b. International Context

- Meena Jagannath et al., *A Rights-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti*, 10 Nw. U. J. Int'l Hum. Rts. 7 (2011).
  Describes a rights-based community lawyering response to the 2010 earthquake in Haiti. By bringing individual cases of human rights violations to Haitian courts, human rights lawyers strengthened the ability of the judiciary to respond to the needs of directly affected communities. Organizing and community engagement, operating alongside legal representation, provide valuable openings for communities to claim rights.

- Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 Wis. L. Rev. 699 (1988).

  Tells the story of efforts by residents of a black village in South Africa to resist attempts by the state to destroy the village and displace residents. Examines the exemplary efforts of a lawyer and an organizer as "outsiders" who contributed by educating and empowering villagers.
- Stuart Wilson, *Litigating Housing Rights in Johannesburg's Inner City: 2004-2008*, 27 South African J. Hum. Rts. 127 (2011).

  Uses a case study of housing rights in Johannesburg, South Africa, to examine the role of litigation in a rights-based strategy for social change. Litigation is an incremental and medium-to-long-term strategy of pro-poor change. The poor must become "repeat players" as active participants in the legal system in order to progressively shape legal norms.
- Neta Ziv, *Lawyers Talking Rights and Clients Breaking Rules: Between Legal Positivism and Distributive Justice in Israeli Poverty Lawyering*, 11 Clinical L. Rev. 209 (2004).

  Advocating on behalf of poor clients who break laws in order to secure their basic needs. Uses a case study in Tel Aviv, Israel, of ethical dilemmas posed by client squatters who have been evicted from their homes. How lawyers work within the legal system and simultaneously contest its underlying structure, language, and assumptions.

SECTION 7: ADDITIONAL READING

Mumia Abu-Jamal, JAILHOUSE LAWYERS: PRISONERS DEFENDING PRISONERS V. THE USA (2009).

Giorgio Agamben, HOMO SACER: SOVEREIGN POWER AND BARE LIFE (1995).

Michelle Alexander, THE NEW JIM CROW (2012).

Hannah Arendt, THE DECLINE OF THE NATION-STATE AND THE END OF THE RIGHTS OF MAN, IN THE ORIGINS OF TOTALITARIANISM (1966).

Derrick Bell, FACES AT THE BOTTOM OF THE WELL: THE PERMANENCE OF RACISM (1993).

Costas Douzinas, THE END OF HUMAN RIGHTS (2000).

Paulo Freire, PEDAGOGY OF THE OPPRESSED (1968).

THE REVOLUTION WILL NOT BE FUNDED: BEYOND THE NON PROFIT INDUSTRIAL COMPLEX (Incite! Women of Color Against Violence ed., 2009).

Arthur Kinoy, RIGHTS ON TRIAL: THE ODYSSEY OF A PEOPLE'S LAWYER (1993).

Gerald P. Lopez, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992).

Balakrishnan Rajagopal, INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS, AND THIRD WORLD RESISTANCE (2003).

Dorothy Roberts, KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY (1998).

Gerald N. Rosenberg, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? (2008).

Edward Said, ORIENTALISM (1978).

David K. Shipler, THE WORKING POOR: INVISIBLE IN AMERICA (2005).

Appendix C

From “The Art of War” to “Being Peace”: Mindfulness and Community Lawyering u a Neoliberal Age

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From "The Art of War" to "Being Peace": Mindfulness and Community Lawyering in a Neoliberal Age

Angela Harris †
Margaretta Lin ††
Jeff Selbin †††

INTRODUCTION

Between 1910 and 1912, a large Beaux-Arts train station rose out of the existing wooden structure at 16th and Wood Streets in the city of Oakland, California.[1] The immediate purpose of the West Oakland station was to serve as the hub of a regional network of main line, interurban, and street railways.[2] More broadly, however, the new Wood Street Station represented Oakland's identity as "the axis of an expanding industrial metropolis."[3] With its extensive infrastructure—including train yards, heavy industry, automobile plants, and machine shops—West Oakland in the early twentieth century was the heart of

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† Professor of Law, Boalt Hall School of Law. The authors thank Vien Truong, Alexa Lowe and Jason Malinsky for research assistance.

†† Director, Community Economic Justice Practice, East Bay Community Law Center. This article would not have been possible without all the hands, hearts, and brilliant minds of the community leaders, lawyers, law students, and many others who worked for community justice on the Wood Street project, including: Adam Gold, Monsa Nitoto, Margaret Gordon, Jackie Howell, Barry Lubovisky, Clarence Johnson, Sharon Cornu, Wendall Chin, Elissa Dennis, Andre Spearman, Purvi Shah, Ben Geiger, Mareela Ruiz, Seema Patel, Vien Truong, Marc Gottschalk, Jenna Jones, Jeremy Hays, John Brauer, and Deborah Collins. Special thanks to current Mayor Ron Dellums and his dedicated staff for once more answering the call to serve Oakland's people and the cause of community justice.

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1. JAMES CORLESS, OAKLAND HERITAGE ALLIANCE, BANKING ON OUR FUTURE BY BUILDING ON OUR PAST 16 (2006), http://www.oaklandheritage.org/OHA25.pdf.

2. *Id.*

3. Robert O. Self, *California's Industrial Garden: Oakland and the East Bay in the Age of Deindustrialization*, *in* BEYOND THE RUINS: THE MEANINGS OF DEINDUSTRIALIZATION 159, 162 (Jefferson Cowie & Joseph Heathcott eds., 2003).

the San Francisco Bay Area's industrial economy.[4] Variously described as the "Mecca of the West" and the "Harlem of the West," by the end of World War II West Oakland was home to the largest African American working-class community west of the Mississippi River, and boasted a vibrant social and cultural scene.[5]

By the beginning of the twenty-first century, however, West Oakland had been destroyed by freeways, deindustrialization, and capital flight. The Wood Street Station laid empty and the land around it vacant. Indeed, Oakland itself was under siege, with its homicide statistics and problems with crack cocaine and gangs making headlines more often than its economic growth.[6] In late 2003, however, three developers working in partnership promised that the free market could bring West Oakland back to life. They proposed to build over 1,500 market-rate condominiums, as well as new commercial space, on a twenty-nine-acre site surrounding and including the historic train station.[7] The Wood Street project, as the ambitious project was named, would be one of the largest housing developments in West Oakland's history.[8]

In this Article, we describe the Wood Street project and the community struggle it provoked to illustrate the link between the fight for economic justice and the work of community lawyering. The existing literature on community economic development (CED) and on community lawyering focuses on identifying and critiquing models and paradigms for action. Scores of authors have posed—and offered varying answers to—a series of questions about the community lawyer's role: Should community lawyers simply provide technical assistance to clients, or should they actively express their own moral values and substantive visions in their work?[9] How can lawyering tools, skills, and

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4. *Id.*

5. For a description of West Oakland at the height of its prosperity in the 1940s, see ROBERT O. SELF, AMERICAN BABYLON: RACE AND THE STRUGGLE FOR POSTWAR OAKLAND 157-59 (2003).

6. *See, e.g.*, Ryan Tate, *Oakland Crime Spreads: Businesses Grapple with Lawlessness out on the Sidewalk*, S.F. BUS. TIMES, Feb. 10, 2006, *available at* 2006 WLNR 5066827.

7. For the history of the formal planning process of the Wood Street Development Project, see Oakland Wood Street Development Project, http://www.oaklandnet.com/government/CEDA/revised/planningzoning/MajorProjectsSection/woodstreet.html (last visited July 3, 2007). For a description of the project from the developer's perspective, see Holliday Development, Central Station, http://www.hollidaydevelopment.com/d/CS.html (last visited July 3, 2007).

8. For the history of development in West Oakland, see *infra* Part I.

9. We use the term "community lawyer," rather than "public interest lawyer," to describe lawyers who work primarily within the "law and organizing" paradigm and who view their work as reflecting the needs and interests of a particular community rather than only the abstract "public interest." For a description of the "law and organizing" paradigm, see Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443 (2001). Elsewhere in this Symposium, Sheila Foster and Brian Glick describe a lawyering model similar to "law and organizing" and name it "integrative lawyering." See Sheila R. Foster and Brian Glick, *Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment*, 95 CALIF. L. REV. 1999, 2004-05 (2007). Many scholars who write about legal ethics use the more general term "cause lawyering." For recent discussions of the ethical issues involved in "cause

mindsets best be brought to bear in partnership with grassroots struggles for economic justice?[10] Is accomplishing a material goal on behalf of clients—e.g., gaining access to affordable housing, health care, or minimum income, or leveraging community benefits from a proposed commercial development—the only purpose of representation, or should the community lawyer seek to increase her clients' capacities to advocate for themselves?[11] Do community lawyers inevitably disempower their clients in the process of representation itself?[12] Where is the line between being a lawyer and being something else entirely, and what is the value of spending time worrying about this demarcation?

The emerging CED literature and the long-standing community lawyering literature are helpful to our teaching, practice and thinking at the East Bay Community Law Center (EBCLC). Founded in 1988 by law students from U.C. Berkeley's Boalt Hall School of Law, EBCLC is the largest provider of free legal services in the East Bay and a nationally recognized law and justice

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lawyering," see Norman W. Spaulding, *Reinterpreting Professional Identity*, 74 U. COLO. L. REV. 1 (2003) (exploring the professional misconduct risks associated with and attributable to lawyers' increased identification with clients). *See also* CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES (Austin Sarat & Stuart Scheingold eds., 1998); CAUSE LAWYERS AND SOCIAL MOVEMENTS (Austin Sarat & Stuart A. Scheingold eds., 2006). For a classic take, see William H. Simon, *The Ideology of Advocacy: Procedural Justice and Professional Ethics*, 1978 WIS. L. REV. 29, and William H. Simon, *The Dark Secret of Progressive Lawyering: A Comment on Poverty Law Scholarship in the Post-Modern, Post-Reagan Era*, 48 U. MIAMI L. REV. 1099 (1994).

10. Cummings & Eagly, *supra* note 9.

11. For various perspectives on these questions, *see* Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217, 249-51 (1999) (arguing that lawyers can and should move urban community development programs toward the goal of empowering represented groups, not just improving material circumstances); Ann Southworth, *Representing Agents of Community Economic Development: A Comment on Recent Trends*, 8 J. SMALL & EMERGING BUS. L. 261, 270-71 (2004) (lawyers should serve clients' wishes, not simply seek "empowerment," but organizing and connecting local struggles to larger movements for structural reform is a legitimate part of lawyers' work); Anthony Alfieri, *The Antinomies of Poverty Law and a Theory of Dialogic Empowerment*, 16 N.Y.U. REV. L. & SOC. CHANGE 659, 665 (1987-88) ("Empowering the poor should be the political object of poverty law.").

12. *See, e.g.*, GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992) (arguing that the "regnant" model of lawyering disempowers clients); Lucie E. White, *Pro Bono or Partnership? Rethinking Lawyers' Public Service Obligations for a New Millennium*, 50 J. LEGAL EDUC. 134, 144-45 (2000) (traditional "pro bono model" of public interest practice is paternalistic and serves the lawyer's ego needs more than the client's needs); *see also* Anthony V. Alfieri, *Disabled Clients, Disabling Lawyers*, 43 HASTINGS L.J. 769 (1992); Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991); Barbara Bezdek, *Silence in the Court: Participation and Subordination of Poor Tenants' Voices in Legal Process*, 20 HOFSTRA L. REV. 533 (1992); Christopher P. Gilkerson, *Poverty Law Narratives: The Critical Practice and Theory of Receiving and Translating Client Stories*, 43 HASTINGS L.J. 861 (1992); Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947 (1992); Lucie E. White, *Mobilization on the Margins of the Lawsuit: Making Space for Clients to Speak*, 16 N.Y.U. REV. L. & SOC. CHANGE 535 (1987-88).

clinic.[13] EBCLC's community economic justice work does not fit comfortably into any one scholarly model, however. Some of the Center's efforts could be described as "institution-building" and others as "movement-building." The lawyers at EBCLC find themselves playing multiple roles as they work toward aligning law with progressive social and economic change. At times, EBCLC lawyers have adopted a conventional technical assistance model of lawyering, and at other times a distinctly unconventional model of equal partnership with clients. The common thread throughout EBCLC's work is the approach it takes toward reconciling personal and professional roles. The best word we have found to describe that stance is "mindfulness."

The term "mindfulness" is closely associated with Buddhism, but mindfulness is not a religion, and EBCLC is not a Buddhist (or otherwise religiously affiliated) organization. Jon Kabat-Zinn, who has worked to bring meditation practice into mainstream medicine, describes mindfulness as the art of paying attention "to what we already know or sense, not just in the outer world of our relationships with others and with our surroundings, but in the interior world of our own thoughts and feelings, aspirations and fears, hopes and dreams."[14] Mindfulness in the practice of law does not dictate a particular set of projects or a particular model of lawyering. Instead, mindfulness provides a framework for thinking about how individual action is tied to group process, how group process connects to institutionalized relations of power, and thus how transformational change at the interpersonal level is linked to transformational change at the regional, national and global levels.

A small literature on mindful lawyering has begun to emerge. Most of this work, however, addresses mindfulness as a tool for stress management, or as a complement to alternative dispute resolution training.[15] It is focused on helping

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13. For more on the East Bay Community Law Center, see http://www.ebclc.org.

14. JON KABAT-ZINN, COMING TO OUR SENSES: HEALING OURSELVES AND THE WORLD THROUGH MINDFULNESS 5-6 (2005).

15. *See, e.g.*, John Monterisi, *Mindful Lawyering: Awake at Work*, CRBBA NEWSL. (Capital Region Bankr. Bar Ass'n, Albany, N.Y.) (2005), *available at* http://www.deilylawfirm.com/admin/ktmlpro/includes/site/layouts/42/uploads/files/docs/MINDFUL_LAWYERING.pdf; Leonard L. Riskin, *The Contemplative Lawyer: On the Potential Contributions of Mindfulness Meditation to Law Students, Lawyers, and their Clients*, 7 HARV. NEGOT. L. REV. 1 (2002); William S. Blatt, *What's Special About Meditation? Contemplative Practice for American Lawyers*, 7 HARV. NEGOT. L. REV. 125 (2002). In addition to a growing literature, there are a number of organizations that connect lawyers with meditation and other mindfulness practices. For example, Charles Halpern and the Center for Contemplative Mind in Society recently hosted a meeting to address questions related to contemplative awareness in the law. *See* Doug Codiga & Heidi Norton, Report on Law and Contemplative Awareness: An Exploratory Gathering, http://www.contemplativemind.org/programs/law/02explore.html (last visited July 4, 2007). The Law Program at the Center for Contemplative Mind, according to its website, "explores ways of helping lawyers, judges, law professors and students reconnect with their deepest values and intentions, through meditation, yoga, and other contemplative and spiritual practices." Center for Contemplative Mind in Society, About the Law Program, http://www.contemplativemind.org/programs/law/about.html (last visited July 4, 2007). The Initiative on Mindfulness in Law and Dispute Resolution at the University of Missouri-Columbia

individual lawyers be more attentive and effective in their work. Mindful lawyering, as we will describe it here, can do more than offer benefits to an individual practitioner. Mindful lawyering also can connect the individual practice of paying attention with the collective work of peacemaking. It helps us stand aside from—and abandon when necessary—the adversarial stance that so often characterizes not only lawyering, but also organizing and even progressive politics as a whole. It helps lawyers take on very different roles with respect to the people they work alongside, depending on personal, political, and cultural necessities. Finally, mindfulness helps us address a central tension in our work: how best to advocate on behalf of subordinated and disenfranchised communities within the existing political economy while holding fast to a clear vision of a more diverse, democratic, egalitarian, transparent, and participatory civic life.

Mindful lawyering, in this conception, is not preoccupied with winning or losing; but it is also not necessarily about smoothing out conflict and avoiding suffering. EBCLC's work has by no means always been easy or free of strife. The story of the Wood Street project demonstrates how neoliberal policies and traditional approaches to lawyering and organizing can foster both zero-sum thinking and all-out war between "adversaries." Yet it also illustrates how transcending these impulses—even if only temporarily—can open up a wealth of possibilities.

In Part I of this Article, we provide a brief history of West Oakland, placing it in the context of the broader shift in the American political economy from an industrial to a post-industrial neoliberal regime. In Part II, we describe the evolution of EBCLC and its Community Economic Justice practice over the last decade, highlighting the engagements that have facilitated its orientation toward mindfulness. In Part III Margaretta Lin, co-author and lead attorney on the Wood Street case, describes the Wood Street struggle, and then reflects on lessons learned from this experience through the lens of mindfulness. In Part IV, we offer a tentative theory on the practice of mindful lawyering. We conclude with the suggestion that mindfulness can be more than a self-help practice for an ailing legal profession; mindfulness can transform lawyers and communities alike as we work together toward a more just and equitable future.

School of Law, the Contemplative Lawyering Program at CUNY Law School, the Harvard Negotiation Insight Initiative, and the University of California, Hastings College of Law Center for Negotiation and Dispute Resolution have all incorporated mindfulness practices into their training work. For descriptions of these programs, see Renaissance Lawyer Society, Contemplative Practices in Law, http://www.renaissancelawyer.org/NewApproaches/contemplativepractices.htm (last visited July 4, 2007). Even the ABA is showing an interest in mindfulness. *See, e.g.*, Robert Zeglovitch, *The Mindful Lawyer*, GPSOLO MAG., Oct./Nov. 2006, http://www.abanet.org/genpractice/magazine/2006/oct-nov/mindfullawyer.html.

I
WEST OAKLAND

Oakland, California lies just across the bay from San Francisco in one of the country's most dynamic social, political, and economic regions. Oakland is currently experiencing record economic development that will shape the city and region for the rest of the century.[16] Several billion dollars' worth of housing and commercial development are underway or being planned in and around some of Oakland's most impoverished neighborhoods.[17] These projects promise new jobs, safer and more attractive neighborhoods, and higher property values for many residents whose needs have been dismissed, ignored, or thwarted by public officials and private developers for decades. At the same time, these large-scale developments threaten to displace some of Oakland's most disadvantaged residents.[18]

The community of West Oakland sits between downtown Oakland and the San Francisco Bay at the heart of the Bay Area. Home to the nation's fourth-largest container port and located only minutes from San Francisco's Financial District, West Oakland is a major transportation, shipping, and mass-transit hub. It is also home to roughly 30,000 residents, almost two-thirds of whom are African American.[19] Although it is a community in transition, more than a third of West Oakland's residents live below the federal poverty line and more than six in ten live below 200% of the poverty line.[20] West Oakland has been the site of both great promise and dashed hopes, and its history is a complex tale of public and private market forces shaping and being shaped by the aspirations of urban dwellers at the powerful intersection of class, race, and place.

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16. For a description of the major economic development and revitalization projects currently underway in the City of Oakland, see CEDA-Planning, Major Projects, http://www.oaklandnet.com/government/CEDA/revised/planningzoning/MajorProjeetsSection/default.html (last visited July 4, 2007).

17. *Id.*

18. Memorandum from Jeremy Hays, Program Coordinator, Urban Strategies Council, to Oakland City Council Members (Apr. 12, 2005) (on file with author).

19. SOCIAL COMPACT, NEIGHBORHOOD MARKET DRILLDOWN: WEST OAKLAND 6 (2005), http://www.urbanstrategies.org/documents/WestOaklandBook.pdf (finding 11,139 households and 30,918 people in West Oakland in 2005 compared to 10,972 households and 29,700 people in the 2000 US Census); MANUEL PASTOR, CTR. FOR JUSTICE, TOLERANCE & COMMUNITY, BASELINE CENSUS DATA FOR WEST OAKLAND WORKFORCE DEVELOPMENT PLANNING 3 (2002), http://cjtc.ucsc.edu/docs/cr_Analysis02_unlinked_WOakland.pdf (citing the following census statistics for West Oakland: 65.7% African American; 17.3% Latino; 7.9% Asian and Pacific Islander; 5.6% Anglo; 3.5% Other).

20. PASTOR, *supra* note 19, at 3. Some 63% of West Oakland's residents have no credit history compared to the national average of 23.8%. SOCIAL COMPACT, *supra* note 19, at 30.

A. 1869-1950: From the Transcontinental Railroad to the "Harlem of the West"

In 1869 the fabled transcontinental railroad was completed. Located at its western terminus, Oakland quickly developed into a major transportation and shipping center.[21] With rail tracks ending at the foot of Seventh and Adeline Streets, West Oakland in the late 1800s grew as a community made up of Chinese, Irish, Italian, Japanese, Mexican and Portuguese immigrants.[22]

By the early twentieth century, Oakland was the regional engine of industry and the site of tremendous population growth.[23] In 1906, many San Franciscans relocated to West Oakland in the wake of the great earthquake.[24] Between 1900 and 1950, Oakland's population grew more than five-fold from just under 67,000 to almost 385,000, roughly its present-day size. The new Beaux-Arts Wood Street Train Station served both the transportation needs of a growing manufacturing economy and as a symbol of the burgeoning African American community.

As the disembarkment point for migrants from the South in the decades prior to World War II—and given discrimination and residential segregation elsewhere in Oakland and the East Bay—West Oakland quickly became home to thousands of African Americans seeking living-wage employment and affordable housing.[25] Many neighborhood residents worked as Pullman porters, and their fabled union, the Brotherhood of Sleeping Car Porters, was headquartered at Fifth and Wood Streets.[26] Income from the railroads and shipyards combined with local housing opportunities to support a thriving working-class neighborhood:

In ways largely untrue of the vast industrial cities of Chicago and

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21. *See* CHRIS RHOMBERG, NO THERE THERE: RACE, CLASS, AND POLITICAL COMMUNITY IN OAKLAND 27 (2004) ("By 1911, Oakland was the West Coast terminus for three transcontinental rail lines, and as many as sixteen hundred trains a day moved through the city."); *see also* ANTHROPOLOGICAL STUDIES CTR., SONOMA STATE UNIV., PUTTING THE "THERE" THERE: HISTORICAL ARCHAEOLOGIES OF WEST OAKLAND 31 (1994), http://www.sonoma.edu/asc/cypress/finalreport/Chapter02.pdf.; West Oakland Public Library, http://www.fopl.org/west_oakland.htm (last visited July 6, 2007).

22. RHOMBERG, *supra* note 21, at 28-30. For more on the history of Oakland see DAVID WEBER, OAKLAND: HUB OF THE WEST (1981), RUTH HENDRICKS WILLARD, ALAMEDA, CALIFORNIA CROSSROADS: AN ILLUSTRATED HISTORY (1988), and BETH BAGWELL, OAKLAND: THE STORY OF A CITY (1982).

23. RHOMBERG, *supra* note 21, at 28-30.

24. *Id.* at 28.

25. SELF, *supra* note 5, at 2-6, 32. As late as 1950, "nearly 90 percent of the city's black population resided in 22 percent of [Oakland's] census tracts concentrated in West and North Oakland." *Id.* at 51. *See also* RHOMBERG, *supra* note 21, at 1-24, 96-120.

26. SELF, *supra* note 5, at 50. For more on the Brotherhood of Sleeping Car Porters, see LARRY TYE, RISING FROM THE RAILS: PULLMAN PORTERS AND THE MAKING OF THE BLACK MIDDLE CLASS (2004); BETH TOMPKINS BATES, PULLMAN PORTERS AND THE RISE OF PROTEST POLITICS IN BLACK AMERICA, 1925-1945 (2000); National Park Service, A History of Black Americans in California: Brotherhood of Sleeping Car Porters Headquarters Site, http://www.cr.nps.gov/history/online_books/5views/5views2h20.htm (last visited July 4, 2007).

> Detroit, black workers in Oakland did not have to travel long distances through hostile white neighborhoods to reach jobs crucial to the community. Work, in many ways, came to them. The docks, the railroad tracks, and West Oakland's small factories lay within easy walking distance or a short bus or streetcar ride of the majority of African American homes. The Southern Pacific yards lay so close to West Oakland's black neighborhoods that you could hear the trains blowing when they would come in . . . .[27]

West Oakland suffered with the rest of the country during the Depression in the late 1930s, but WWII accelerated its growth and relative prosperity.[28] The naval shipbuilding industry was the major draw for new residents, and with family members already in place, African American workers continued to arrive in large numbers.[29] Significantly, during this period:

> Black workers nourished a variety of institutions, including the Brotherhood of Sleeping Car Porters, the city's two oldest African American churches, the Alameda County NAACP, fraternal and civic associations, women's clubs and auxiliaries, DeFremery Recreation Center (an important focal point of community organization, youth entertainment, and athletics), and substantial black commercial and professional districts, principally along Seventh Street.[30]

Oakland was not anomalous in having an economy driven by industrial production, or in producing a vigorous working-class culture. In the period from 1914 until the 1970s, the U.S. economy was dominated by mass industrial production.[31] In the latter part of this period, following World War II, governing elites promoted economic growth and a social safety net through Keynesian fiscal and monetary policies that dampened business cycles but

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27. SELF, *supra* note 5, at 51 (internal quotations omitted). Despite these local opportunities, many African Americans also dreamed of life beyond West Oakland. According to East Bay resident Norvel Smith, the aspiration for black people was that, "[y]ou came into West Oakland, then North Oakland, and if you really made it, with a civil service job or something, you moved into South Berkeley." *Id.* at 50. There also remained a large white working class in West Oakland through World War II. A serious labor struggle ensued between the segregated unions and the Key System, an important public transportation network in the East Bay, which had refused to hire African Americans. In a series of hearings before the Fair Employment Practices Commission, the Key System agreed to abide by fair employment practices in principle. In fact, though, the Key System did not hire African American operators until 1951, six years after the hearings. *Id.* at 83-84.

28. *Id.* at 27, 57.

29. *Id.* at 57.

30. *Id.* at 50; *see also* RHOMBERG, *supra* note 21, at 82-84.

31. David Harvey marks the period from 1914 to 1965 as the heyday of "Fordism." This system of economic production takes its name from Henry Ford, who combined technological and labor innovations in mass production with the conviction that workers also should learn to be proper consumers. *See* DAVID HARVEY, THE CONDITION OF POSTMODERNITY: AN ENQUIRY INTO THE ORIGINS OF CULTURAL CHANGE 125-26 (1989).

ensured relatively full employment.[32] For many, unionization and collective bargaining in the manufacturing sector ensured blue-collar jobs with comparatively high pay, modest health care coverage, and the promise of a pension.[33]

B. 1950-1980: Deindustrialization and Urban "Renewal"

The benefits of a high-growth economy were not, however, spread evenly. The suburban-industrial complex subsidized by government and spurred by private institutions and organizations resulted in cities and suburbs highly segregated by race and class.[34] The white wealthy left the cities, and manufacturing centers began to follow, moving to suburbs and taking jobs with them.[35] Oakland was no exception; in a series of struggles that would foreshadow current events, residents, city and regional planners, and the private sector squared off over the allocation of resources and power, as well as the future of the community.

Funded by the Alameda County Board of Supervisors and designed by the Oakland Chamber of Commerce, the post-war Metropolitan Oakland Area Program (MOAP) promoted regional development to attract human and financial capital to the East Bay.[36] While MOAP fostered considerable economic growth in the form of job creation and capital accumulation, the distribution of these benefits was uneven at best. Drawn by cheap land, low taxes, and racial exclusivity, companies relocated to Oakland's periphery in the growing "garden" communities of southern Alameda County.[37] At the same time—and partly as a consequence of this human and financial mobility—Oakland lost thousands of manufacturing jobs while tens of thousands of white, middle-class homeowners moved to the burgeoning suburbs.[38] The impact of

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32. *See id.* at 129-35 (describing the post-war balance of power between organized labor, large corporate capital, and the nation-state); *see also* ROBERT KUTTNER, EVERYTHING FOR SALE: THE VIRTUES AND LIMITS OF MARKETS 30 (Univ. of Chi. Press 1999).

33. *See* HARVEY, *supra* note 31, at 133. The burgeoning economy also allowed for generous social programs like the GI Bill, the Great Society, and the War on Poverty.

34. For an historical account of this process, see LIZABETH COHEN, A CONSUMERS' REPUBLIC: THE POLITICS OF MASS CONSUMPTION IN POSTWAR AMERICA 194-257 (2003) (describing how suburbanization created or exacerbated race and class stratification). For an account focusing on the racial effects of suburbanization, see DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 17-57 (1993). *See also* Chantal Thomas, *Globalization and the Reproduction of Hierarchy*, 33 U.C. DAVIS L. REV. 1451, 1456-1472 (2000).

35. SELF, *supra* note 5, at 170.

36. *See* Self, *supra* note 3, at 162-66; RHOMBERG, *supra* note 21, at 124.

37. RHOMBERG, *supra* note 21, at 124.

38. Joseph A. Rodriguez, *Rapid Transit and Community Power: West Oakland Residents Confront BART*, 31 ANTIPODE 212, 216 (1999). Between 1958 and 1966, the city lost more than 9,000 manufacturing jobs. RHOMBERG, *supra* note 21, at 146. In the same period, 100,000 white middle-class homeowners left Oakland. *Id.* Oakland lost 10,000 manufacturing jobs from 1961 to 1996. Self, *supra* note 3, at 178; RHOMBERG, *supra* note 21, at 146-48.

these developments in West Oakland was devastating—the loss[39] of people, jobs, and capital revealed the fragility of a working class community with little in the way of political or economic bargaining power:

> Oakland embodied the seeming contradictions of the postwar American metropolis. It was characterized by poverty amidst wealth; racial apartheid at the heart of liberalism; and high unemployment in periods of economic growth.[40]

In response to deteriorating neighborhoods and growing "blight,"[41] city and regional planners targeted West Oakland as a site of urban "renewal" projects during the 1950s and 1960s, including large-scale investments in freeways, public housing, and mass transit.[42]

1. Freeways

The post-war period was the golden era of the California freeway. Although some local communities successfully defeated or rerouted freeways,[43] West Oakland was not so fortunate. In 1957 the elevated Nimitz Freeway was completed linking San Francisco with Oakland, the East Bay, and San Jose to the south. It bisected West Oakland, cut it off from the downtown, destroyed many blocks of homes, and directed thousands of high-emission vehicles through the heart of residential areas each day.[44] Within a few years, the MacArthur and Grove-Shafter Freeways would also traverse West Oakland, "convert[ing] what had been an advantage for local residents—the area's

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39. We advisedly do not use the term "flight" here:

> [W]hite suburbanites did not 'flee' Oakland. They were drawn to suburban communities by the powerful economic and cultural incentives behind city building: new housing markets subsidized by the federal government; low taxes underwritten by relocating industry; and the assurance that a new home, spacious yard, and garage signaled their full assimilation into American life and its celebration of modernity and consumption.

SELF, *supra* note 5, at 16.

40. SELF, *supra* note 5, at 20.

41. As Self notes, the term "blight" is often used to suggest that the economic and physical attributes of an area are the problem, rather than the underlying racial, political, or social inequities. SELF, *supra* note 5, at 139. For more on how reformers established a discourse of "blight" in order to enable the wholesale destruction of black and brown neighborhoods in the post-war era, see Wendell E. Pritchett, *The "Public Menace" of Blight: Urban Renewal and the Private Uses of Eminent Domain*, 21 YALE L. & POL'Y REV. 1, 13-17 (2003).

42. For a detailed discussion of post-war urban renewal in Oakland, including the public and private market forces that shaped it, see SELF, *supra* note 5, at 21-96.

43. *See, e.g.*, Daniel P. Faigin, San Francisco Bay Area Freeway Development (Part 1—The City of San Francisco), http://www.cahighways.org/maps-sf-fwy.html (last visited July 5, 2007).

44. SELF, *supra* note 5, at 158-59. One journalism student made a short film that "investigate[d] the impact of freeway construction and suburban flight on a community in West Oakland, California. Focusing on her family's experiences while drawing on a wide range of historical sources, the filmmaker paint[ed] an eloquent picture of a divided community with increasing socioeconomic stratification." UC Berkeley Student Films: Media Resources Center, http://www.lib.berkeley.edu/MRC/StudentFilmsVid.html (last visited July 10, 2007); Videotape: Highway of Dreams (Nandi Pointer 2000) (on file at UC Berkeley Media Resources Center).

transportation crossroads, waterfront, and rail lines—into a liability."[45] Not only did the freeways do irreparable harm to the existing neighborhoods and physical environment, but they greatly impaired future efforts to reestablish residential and economic vitality across a broad swath of the community.[46]

2. Redevelopment

In 1959, the Oakland Redevelopment Agency adopted a ten-year "General Neighborhood Renewal Plan" for West Oakland.[47] One of the first efforts under the plan involved bulldozing a fifty-block residential neighborhood—which was 70% African American—to make way for Acorn Plaza, a multi-use project with middle-income housing and light commercial space.[48] The initial optimism of local organizations and homeowners gave way to opposition by West Oakland residents concerned about the project's massive redistribution of people and property.[49] After a bruising battle, including a lengthy challenge in federal court, the demolition proceeded.[50] The impact of the Acorn development was mixed, at best. While it attracted private investment and light

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45. SELF, *supra* note 5, at 150.

46. For a spatial analysis of the built environment in West Oakland, see Gergana Hadzhieva, Inverting Balkanization: West Oakland as a Site of Cultural and Technological Interchange (Jan. 6, 2003) (unpublished M.Arch. thesis, University of California, Berkeley) (on file with author).

47. RHOMBERG, *supra* note 21, at 127-34. The creation in 1956 of the redevelopment agency in Oakland was promoted by the Oakland Citizens' Committee for Urban Renewal (OCCUR) to "serve[] the greater Oakland / East Bay region as a community building intermediary and direct service organization dedicated to public policy, non-profit capacity building, information technology, and consumer education. OCCUR has been nationally commended for its positive impact on low-income and emerging communities. OCCUR programs cover a diverse range of successful community engagement and service activities," and are an on-going presence in the city's redevelopment struggles. Bay Area Progressive Directory, Oakland Citizens Committee for Urban Renewal, http://bapd.org/goatal-1.html; RHOMBERG, *supra* note 21, at 127-34.

48. SELF, *supra* note 5, at 140.

49. Urban renewal—and its many manifestations—divided communities like West Oakland, especially between homeowners and less-well-off renters. *See* Rodriguez, *supra* note 38, at 217; RHOMBERG, *supra* note 21, 137-44 (describing the creation of the Oakland Economic Development Council and other citizen bodies to speak on behalf of community members, including the complex class and race dynamics in West Oakland and citywide with respect to anti-poverty efforts). Because so many "renewal" programs undermined once-thriving minority neighborhoods and displaced so many individuals and families, they became known as "Negro removal." SELF, *supra* note 5, at 140.

50. According to Self:

> Johnson ultimately lost before the U.S. Supreme Court, which found that Oakland's Redevelopment Agency was not in violation of either federal law or the Constitution, and that its plan for relocating Acorn residents—a hastily assembled proposal to help people and businesses move, primarily to East Oakland—was sound. Ruling only in the narrowest sense on the agency's relocation efforts and declining to address the larger issue of segregation in Oakland, the Court's decision freed the city to redevelop the Acorn property.

SELF, *supra* note 5, at 147; *Johnson v. Redevelopment Agency of Oakland*, 317 F.2d 872 (9th Cir.), *cert. denied*, 375 U.S. 915 (1963).

industry, it did little to address West Oakland's chronic housing problems. The adjacent Oak Center neighborhood, however, successfully fended off demolition as part of a fifty-six-block redevelopment project, and instead received redevelopment funds for rehabilitation of existing homes.[51]

3. Mass Transit

As part of a larger regional planning effort and in an attempt to address the growing congestion of Bay Area freeways, the state legislature established the San Francisco Bay Area Regional Transit (BART) Commission in 1951. BART was designed as a commuter rail system, and—much like the freeways—was meant to link the sprawling suburbs with the major urban centers of Oakland and San Francisco. Building such a system in a densely-populated region was an enormous logistical and financial challenge that required years of intense negotiation with cities and counties.[52] In response to the proposed construction of elevated tracks and a BART station in the middle of Seventh Street—which threatened to destroy the last remaining commercial activity along West Oakland's once-thriving strip—West Oakland activists founded Jobs on BART (JOBART).[53] JOBART was concerned primarily with the displacement of local residents, the loss of jobs to the suburbs, and BART's poor track record in hiring minorities.[54] In the end, although activists negotiated some concessions in the form of a temporary moratorium on evictions and the maintenance of statistics on minority hiring by BART, "the system was completed largely as planned through West Oakland," forcing many to relocate and failing to deliver on the employment front.[55]

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51. *See* RHOMBERG, *supra* note 21, at 131-134; SELF, *supra* note 5, at 147-48. Both sites are on-going redevelopment areas more than 40 years later. *See also* Acorn – Oakland CEDA, http://www.business2oakland.com/main/acorn.htm (last visited July 6, 2007); Oak Center – Oakland CEDA, http://www.business2oakland.com/main/oakcenter.htm (last visited July 6, 2007).

52. For a brief history of the political, financial and engineering challenges during BART's development, see BART – History and Facts, History, http://www.bart.gov/about/history/history_1.asp (last visited July 6, 2007).

53. Rodriguez, *supra* note 38, at 214.

54. For a detailed description of the struggle against displacement and for local hiring during BART's development in West Oakland—and the role it played in the nascent Black Power movement—see *id.* at 212-26. Support for rerouting BART waned as money had to come from local coffers to do so. Whereas freeways were largely funded with gas taxes and federal dollars, BART was funded with bonds and local, state, and federal taxes. *See* BART – History and Facts, System Facts, http://www.bart.gov/about/history/systemFacts.asp (last visited July 6, 2007); Rodriguez, *supra* note 38, at 222 ("In short, public support was more forthcoming for the costly rerouting of freeways. Highway builders had a much more difficult time arguing that rerouting was 'too expensive' since Washington paid for 90% of the cost of freeways."); RHOMBERG, *supra* note 21, at 121-23.

55. Rodriguez, *supra* note 38, at 221.

4. The Black Power and Populist Homeowner Movements

The deleterious impact of redevelopment efforts in West Oakland cannot be overstated. From 1960 to 1966 the community lost some 6,600-9,700 apartments and homes to urban renewal,[56] displacing more than one in three residents. In the mid-1960s, out of the struggle to resist these developments in a setting of growing poverty and inequality, West Oakland activists formed the Black Panther Party.[57] Locally, the Panthers succeeded in opening the political process in Oakland to eventual leadership by African Americans,[58] contributing to the election of the city's first African American mayor in 1978.[59]

In the meantime, however, the U.S. economy had undergone a series of severe shocks. In the early 1970s, disruptions in the international economy—including oil shortages[60]—precipitated fiscal crises in the United States and elsewhere, and post-war economic stability vanished.[61] Unemployment and inflation began to rise together—a condition named "stagflation"—and Keynesian polieies were unable to rescue national economic growth from the "Great Malaise."[62]

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56. SELF, *supra* note 5, at 155; *see also* RHOMBERG, *supra* note 21, at 120-23.

57. For a collection of essays and a narrative history of the Black Power movement and the role of the Black Panthers, see THE BLACK POWER MOVEMENT: RETHINKING THE CIVIL RIGHTS-BLACK POWER ERA (Peniel E. Joseph ed., 2006), and PENIEL E. JOSEPH, WAITING 'TIL THE MIDNIGHT HOUR: A NARRATIVE HISTORY OF BLACK POWER IN AMERICA (2006).

58. *See* RHOMBERG, *supra* note 21, at 167-72. *See also* LIONEL WILSON, ATTORNEY, JUDGE, AND OAKLAND MAYOR 56 (1992), http://content.cdlib.org/xtf/view?docId=hb400006hx&brand=oac&doc.view=entire_text (an oral history conducted in 1985 and 1990 by Gabrielle Morris, Regional Oral History Office, The Bancroft Library, University of California, Berkeley).

59. *See* RHOMBERG, *supra* note 21, at 170.

60. The Oil Producing Exporting Countries (OPEC) raised prices of crude oil by fourfold in 1973 and again in 1979. ROBERT POLLIN, CONTOURS OF DESCENT: U.S. ECONOMIC FRACTURES AND THE LANDSCAPE OF GLOBAL AUSTERITY 18 (2d ed. 2005).

61. David Harvey describes the destabilization of the global post-war economy:

> Unemployment and inflation were both surging everywhere, ushering in a global phase of 'stagflation' that lasted throughout much of the 1970s. Fiscal crises of various states (Britain, for example, had to be bailed out by the IMF in 1975-6) resulted as tax revenues plunged and social expenditures soared. Keynesian policies were no longer working. Even before the Arab-Israeli War and the OPEC oil embargo of 1973, the Bretton Woods system of fixed exchange rates backed by gold reserves had fallen into disarray. The porosity of state boundaries with respect to capital flows put stress on the system of fixed exchange rates. US dollars had flooded the world and escaped US controls by being deposited in European banks. Fixed exchange rates were therefore abandoned in 1971. Gold could no longer function as the metallic base of international money; exchange rates were allowed to float, and attempts to control the float were soon abandoncd. The embedded liheralism that had delivered high rates of growth to at least the advanced capitalist countries after 1945 was clearly exhausted and was no longer working. Some alternative was called for if the crisis was to be overcome.

DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 12 (2005).

62. Former Federal Reserve Chairman Alan Greenspan used this term to describe the 1970s stagflation in the United States. Roger Lowenstein, *The Inequality Conundrum*, N.Y. TIMES MAG., June 10, 2007, at 11.

The crisis of domestic and international fiscal policy led to a "counterrevolution" in economic theory and ultimately in economic policymaking and ideology.[63] The intellectual forebear of this counterrevolution was Milton Friedman, who as early as the 1950s argued that government fiscal and monetary intervention cannot improve the functioning of markets and in fact will likely worsen their operation.[64] Friedman was both an economist and a gifted public intellectual who tirelessly pursued the idea—through best-selling books and his television series, *Free to Choose*—that laissez-faire economic policy was the best way to promote both economic growth and democratic freedoms.[65] While Friedman and his followers promoted the "free market," economists from the Left and Right alike criticized the regulatory structures that governed trucking, airlines, railroads, gas pipelines, and telephones.[66]

In the realm of electoral politics, the 1970s saw the beginning of another aspect of the counterrevolution: a grass-roots attack on taxes that would soon swell into a protest against government in general. California's populist tax-revolt backlash culminated in the passage of Proposition 13 in 1978.[67] The success of Proposition 13, in turn, spurred a nationwide tax revolt that ultimately took California Governor Ronald Reagan to the White House on an anti-tax, anti-"big government" platform, setting the stage for widespread deregulation of industry and the dismantling of the social safety net.[68]

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63. KUTTNER, *supra* note 32, at 30.

64. *See id.* at 31.

65. *See id.* at 33.

66. *Id.* at 37.

67. SELF, *supra* note 5, at 1.

68. For the text of Proposition 13, see California Constitution, Article 13A, http://www.leginfo.ca.gov/.const/.article_13A (last visited July 5, 2007). Placed on the ballot in 1978 by anti-tax activists Howard Jarvis and Paul Gann, Proposition 13 was framed as a populist revolt against government waste. *See* Seth Gassman, Note, *Direct Democracy as Cultural Dispute Resolution: The Missing Egalitarianism of Cultural Entrenchment*, 6 N.Y.U. J. LEGIS. & PUB. POL'Y 525, 554 (2002) ("At its core, Proposition 13 was billed as a populist initiative. More than half of its proponents based their support on disapproval of government excess and inefficiency."); *see also* William M. Lunch, *Budgeting by Initiative: An Oxymoron*, 34 WILLAMETTE L. REV. 663, 665 (1998) ("The sponsors and activists involved in the Proposition 13 campaign were strongly conservative and anti-government. Interviews with activists have shown that such views were underscored by racial hostility and xenophobia."). It was also a stunning success, passing by a 2-1 margin. Jonathan Schwartz, Note, *Prisoners of Proposition 13: Sales Taxes, Property Taxes, and the Fiscalization of Municipal Land Use Decisions*, 71 S. CAL. L. REV. 183, 212 (1997).

Scholars continue to debate vigorously the causes of the landslide vote for Proposition 13. The traditional account emphasizes the financial squeeze felt by California property owners as inflation ballooned and property tax burdens skyrocketed. At the same time, Californians believed that the state was sitting on a large and growing budget surplus. *See* DAVID O. SEARS & JACK CITRIN, TAX REVOLT: SOMETHING FOR NOTHING IN CALIFORNIA 220 (Enl. ed. 1985); THE PROPERTY TAX REVOLT: THE CASE OF PROPOSITION 13 (George G. Kaufman & Kenneth T. Rosen eds., 1981); William H. Oakland, *Proposition 13: Genesis and Consequences*, 32 NAT'L TAX J.

Some scholars see the anti-tax movement as a revolt of "the haves," in which wealthier and whiter citizens turned their backs on poorer and darker Americans, and the suburbs declared their intent to end financial support of the cities.[69] For Oakland and many urban centers in the 1970s and 1980s, the timing of Proposition 13 was fateful. As one historian has noted, the Black Power and Tax Revolt movements in Alameda County "faced off over how the region's assets and prosperity would be distributed. . . . The tax revolt placed

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387 (1979). William Fischel later offered a novel and iconoclastic explanation: Proposition 13 was passed because of voters' displeasure with *Serrano v. Priest*, in which the California Supreme Court mandated a redistributive remedy for the wide disparities in school district funds caused by the reliance on local property taxes. William A. Fischel, *How Serrano Caused Proposition 13*, 12 J.L. & POL. 607, 612 (1996); Serrano v. Priest (*Serrano I*), 557 P.2d 929 (Cal. 1976) (holding that the reliance on local property taxes to fund school districts was unconstitutional); Serrano v. Priest (*Serrano II*), 569 P.2d 1303 (1977) (holding that the aid program set up by the state to address the disparities was inadequate). Fischel's thesis has been disputed. *See, e.g.*, Kirk Stark & Jonathan Zasloff, *Tiebout and Tax Revolts: Did Serrano Really Cause Proposition 13?*, 50 UCLA L. REV. 801 (2003). Yet another scholar sees Proposition 13's success as caused by the "belief that government was abrogating its de facto obligation to uphold the rights of whites pursuant to whiteness as property." Kathryn Julia Woods, *California's Voters Revolt: Lynwood, California and Proposition 13, A Snapshot of Property's Slipping from Whiteness's Grasp*, 37 UWLA L. REV. 171, 194 (2004).

Whatever the causes of the Proposition 13 landslide, it is clear that the measure had dramatic effects on public services, such as education, and on municipal financing. With respect to education, the quality of California's public schools has suffered immensely. As one commentator observes:

> Proposition 13's main impact on schools was to transfer control over public school financing from local districts to the state. Through the state's protracted budgeting process, an annual tug-of-war between the legislature and the governor, money for California's public schools is now disbursed by the state to school districts based on each district's "average daily attendance," the average number of students actually attending school. Although enactment of Prop. 13 nullified the legislature's efforts to meet the *Serrano* equalization requirements in 1978, it may have actually sped up compliance with the *Serrano* mandate by centralizing school funding at the state level. The tragedy, however, was that instead of leveling up the cash-poor districts to the funding levels of the richer districts, the high-wealth districts have been leveled down to meet the poorer districts at a funding level significantly below the national average.

Martha S. West, *Equitable Funding of Public Schools Under State Constitutional Law*, 2 J. GENDER RACE & JUST. 279, 301-02 (1999).

Other public services supported by property taxes also suffered, as state and local governments scrambled to find funding methods other than assessed valuation. *See* INST. OF GOVERNMENTAL STUDIES LIBRARY, U.C. BERKELEY, TAX AND EXPENDITURE LIMITATION IN CALIFORNIA: PROPOSITION 13 & PROPOSITION 4 (2005), http://www.igs.berkeley.edu/library/htTaxSpendLimits2003.html. With respect to municipal financing, cities now face tremendous pressures to find land uses that will generate sales taxes, encouraging a desperate scramble after businesses like shopping centers and large discount retailers. *See* Schwartz, *supra*, at 199-201. As Schwartz observes, cities now compete with one another to get such businesses. *Id.* at 204-208 (using the game theory models the "Prisoner's Dilemma" and the "Winner's Curse" to show why the competition results in poor outcomes for everyone).

69. SEARS & CITRIN, *supra* note 68, at 220.

debilitating limits on struggling cities like Oakland at the exact historical moment when African Americans achieved their greatest political successes."[70]

C. 1980-Present: Public Disinvestment and Private Opportunism—the Neoliberal Promise of Joint Gain?

A cascade of changes in the regulation of finance and international trade, usually labeled "globalization," intensified in the 1980s and 1990s. The North American Free Trade Agreement (NAFTA) between Canada, the United States, and Mexico, as well as the agreements establishing the hundred-plus-member World Trade Organization in 1995, liberalized both international trade and investment, making the flight of capital overseas even easier.[71] At the same time, the governments of the United States and other nations undertook measures to globalize securities markets, lubricating the international flow of capital and increasing the size and volatility of financial markets.[72]

These material aspects of globalization coincided with the consolidation of a new political-economic ideology in the United States: "neoliberalism." David Harvey defines neoliberalism as "a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong private property rights, free markets, and free trade."[73] Although Milton Friedman had begun to make such arguments in the 1950s, the American neoliberal era is commonly associated with the 1980 election of President Ronald Reagan, and it has continued under Democratic and Republican administrations and Congresses alike.[74] Neoliberal rhetoric has

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70. SELF, *supra* note 5, at 2, 4.

71. *See* Thomas, *supra* note 34, at 1480.

72. *See* WILLIAM GREIDER, ONE WORLD, READY OR NOT 231-32 (1997) ("The aggregate force of global financial markets has expanded enormously during the last generation, as major governments removed national controls on finance capital.").

73. HARVEY, *supra* note 61, at 2. Harvey describes the preference for market orderings over government action under neoliberalism:

> The role of the state is to create and preserve an institutional framework appropriate to such practices. The state has to guarantee, for example, the quality and integrity of money. It must also set up those military, defence, police, and legal structures and functions required to secure private property rights and to guarantee, by force if need be, the proper functioning of markets. Furthermore, if markets do not exist (in areas such as land, water, education, health care, social security, or environmental pollution) then they must be created, by state action if necessary. But beyond these tasks the state should not venture. State interventions in markets (once created) must be kept to a bare minimum because, according to the theory, the state cannot possibly possess enough information to second-guess market signals (prices) and because powerful interest groups will inevitably distort and bias state interventions (particularly in democracies) for their own benefit.

Id.

74. *See* POLLIN, *supra* note 60, at 29-30 (describing how President Clinton, a Democrat, nevertheless conformed to the neoliberal agenda, for example, in his abolition of Aid to Families with Dependent Children, the federal entitlement to welfare benefits for low-income families).

dramatically shifted the terms of the debate about social and economic justice, the role of government, and the rights and social status of low-income people and communities.[75]

Like the benefits of the manufacturing economy, the benefits of globalization have not been distributed evenly. Chantal Thomas argues that one result of suburbanization followed by deindustrialization has been the entrenchment of poverty and economic marginalization for the urban poor, who tend to be people of color.[76] The decline of manufacturing jobs in American cities has been accompanied by two other trends: the "informalization" of employment, which replaces union jobs with non-unionized jobs without worker protections (as in sweatshop work, farm work, and domestic work); and a stratification of the workforce according to skill level, under which there are many new high-paying service jobs with high barriers to entry (such as a post-graduate degree), and many new low-wage jobs, but fewer jobs in the middle.[77]

The losers in this situation have been the urban poor, for whom unemployment has coincided with disinvestment in the public sphere. During the last twenty-five years, the federal commitment to income support, job creation, and affordable housing has fallen sharply, even as social and economic challenges such as residential segregation and concentrated poverty have deepened in communities like West Oakland. The 1960s "War on Poverty"[78] has given way to what some have described as the "War against the Poor."[79] Since 1980, federal housing subsidies have fallen by more than 80%.[80] In the mid-1990s, a Democratic President and a Republican Congress ended

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75. *See* LISA DUGGAN, THE TWILIGHT OF EQUALITY?: NEOLIBERALISM, CULTURAL POLITICS, AND THE ATTACK ON DEMOCRACY 9 (2003) (discussing how public debate in the 1970s and 1980s pushed the perceived "center" of American politics rightward).

76. *See* Thomas, *supra* note 34, at 1484-86.

77. *See id.* at 1490-94.

78. The "War on Poverty" was waged in part through the Economic Opportunity Act of 1964. Pub. L. No. 88-452 § 2, 78 Stat. 508 (repealed 1981). The Act created the Office of Economic Opportunity, which included, among other initiatives, the civil legal aid program that would become the Legal Services Corporation in 1974. Legal Services Corporation Act, 42 U.S.C. §§ 2996-2996*l* (2000). The conservative and libertarian critique of the War on Poverty was set forth in a series of influential books, including GEORGE GILDER, WEALTH AND POVERTY (1981) (contending that poverty is the result of personal irresponsibility which government programs reward and encourage), CHARLES MURRAY, LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980 (1984) (contending that federal anti-poverty programs produce a series of undesirable social and economic choices among those living in poverty), and LAWRENCE M. MEAD, BEYOND ENTITLEMENT: THE SOCIAL OBLIGATIONS OF CITIZENSHIP (1986) (criticizing government programs for perpetuating poverty by being overly permissive with respect to work in return for benefits).

79. *See, e.g.*, HERBERT J. GANS, THE WAR AGAINST THE POOR: THE UNDERCLASS AND ANTIPOVERTY POLICY (1995) (arguing that the War on Poverty failed for lack of resources, and that the backlash of the 1980s and 1990s—including stigmatizing rhetoric and labels—is a much greater barrier to ending poverty than government intervention).

80. W. REG'L ADVOCACY PROJECT, WITHOUT HOUSING: DECADES OF FEDERAL HOUSING CUTBACKS, MASSIVE HOMELESSNESS, AND POLICY FAILURES 11 (2006), http://www.wraphome.org/wh_press_kit/Without_Housing_20061114.pdf.

welfare "as we know it" by dismantling the sixty-year federal commitment to a minimum income for families with children.[81] The federal minimum wage likewise stagnated, falling farther behind the cost of living.[82] While some states have tried to replace the federal disinvestment with local dollars, many more have followed California's lead and enacted laws analogous to Proposition 13 that roll back existing tax levels, while freezing or limiting future tax increases.[83]

In response to state and federal government disinvestment, many localities have turned to financial and regulatory incentives to lure private development.[84] Audrey McFarlane observes that many city governments believe that luring back the middle class will solve these financial and social difficulties:

> Urban places that were once racialized as Black and classified as poor, dangerous and off-limits to anyone of affluence and with choices, have taken on new meaning today. These places are now suppliers of housing that is relatively cheap, centrally located, and often architecturally rich. They are open territories for investment speculators, redevelopment agencies, and affluent professionals who reject the suburban form of living, but demand, and can easily pay for, luxury residential, commercial retail, entertainment, and other intangible spatial amenities. . . .
>
> The current market for inner city space coincides quite evenly with a decades-old policy of cities trying to attract the upper-middle class to the city. Arguably, the discovery has been partially fostered and guided by the deliberate intervention of state and local

81. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified in scattered sections of 42 U.S.C.). For more on the discourse and ideology of welfare reform, see Kathleen A. Kost & Frank W. Munger, *Fooling All of the People Some of the Time: 1990's Welfare Reform and the Exploitation of American Values*, 4 VA. J. SOC. POL'Y & L. 3 (1996), and Sylvia A. Law, *Ending Welfare as We Know It*, 49 STAN. L. REV. 471 (1997). *See also* SHAWN FREMSTAD, CTR. ON BUDGET & POLICY PRIORITIES, RECENT WELFARE REFORM RESEARCH FINDINGS: IMPLICATIONS FOR TANF REAUTHORIZATION AND STATE TANF POLICIES (2004), http://www.cbpp.org/1-30-04wel.pdf (providing longitudinal data on the impact of welfare reform on low-income families).

82. In May 2007, President Bush signed into law the first increase since 1997, raising the minimum wage from $5.15/hour to $5.85 effective July 24, 2007 (with subsequent increases to $6.55 and $7.25 on the same date in 2008 and 2009). Jeffrey Meitrodt, *Hourly Wages Going up to $7.50*, CHI. TRIB., July 1, 2007, at C1.

83. Michael J. New, *Proposition 13 and State Budget Limitations: Past Successes and Future Options* 1 (Cato Inst., Briefing Paper No. 83, 2003) (noting that California's Proposition 13 "launched a wave of tax limitation efforts in other states and created momentum for the large federal tax cuts passed in 1981").

84. Even as the federal government continues to disinvest from social programs, a recent trend has emerged of state governments stepping into the breach. Christopher Cooper, *Budget Boom: States Set Big Spending Plans as Washington Preaches Austerity*, WALL ST. J., Feb. 24, 2007, at A1. The implications of this early counter-trend to neoliberal policies do not seem to be well understood.

governments through an explicit and pointed policy to attract affluent residents. This intervention by state and local governments has taken many forms: incentives to urban professionals to locate in certain neighborhoods such as first-time homebuyers programs, settlement cost forgiveness programs, other incentive grants and loans for purchasing residential real estate within the city, and favorable re-zonings of industrial property to facilitate residential occupancy.[85]

In Oakland, no one personified this pro-development approach more than Jerry Brown, the city's mayor from 1999 to 2007. A former California governor, one-time presidential hopeful, and the current state attorney general, Brown came into the Oakland mayor's office promising to boost the city's economic fortunes. A centerpiece of his approach was the so-called "10K Downtown Housing Initiative" through which the city would attract 10,000 new residents to downtown Oakland by developing some 6,000 market-rate housing units.[86] While this initiative focused on downtown Oakland, during Brown's tenure an unprecedented number of development projects were approved citywide.[87]

Mayor Brown's efforts, however, appear to have hastened gentrification in Oakland, and low-income people of color continue to be displaced.[88] From 1980 to 2000, the percentage of African Americans in Oakland decreased from 46.9% to 35.7%; by mid-2005, the African American population was estimated by the Census Bureau to have dropped further to between 29% and 33.2%.[89] During the last five years, African American enrollment in the Oakland Unified School District has declined by an estimated 25%.[90]

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85. Audrey G. McFarlane, *The New Inner City: Class Transformation, Concentrated Affluence and the Obligations of the Policc Power*, 8 U. PA. J. CONST. L. 1, 5-6 (2006).

86. For more on this initiative, including an updated list of housing projects as of November 2006, see Oakland CEDA – 10K Housing Initiative, http://www.business2oakland.com/main/10kdowntownhousinginitiative.htm (last visited July 6, 2007).

87. For a report eard on Brown's eight years in office, see Feature Report, *Grading Jerry*, E. BAY EXPRESS, Jan. 3, 2007, at 7, *available at* http://www.eastbayexpress.com/2007-01-03/news/grading-jerry.

88. Chris Thompson, *Jerry Brown Was Right: He Was a Poor Manager but a Great Salesman*, E. BAY EXPRESS, Jan. 3, 2007, *available at* http://www.eastbayexpress.com/2007-01-03/news/jerry-brown-was-right/ (click on "The Changing Face of Oakland" chart). From 1999 to 2005, the city's African American population declined 18.6% or more than 26,000 individuals. During the same period, median household income rose 10.2%, households earning more than $100,000 rose 26.2%, median home values rose 163%, and unemployment was up 33%, from 5.1% to 6.8%. *Id.*

89. Leslie Fulbright, *S.F. Moves to Stem African American Exodus: Critics Say Effort to Reverse Longtime Trend May Be Too Late*, S.F. CHRON., Apr. 9, 2007, at A1.

90. Recent reports commissioned by the Oakland Unified School District found that "the declining enrollments are a result of a change in Oakland's demographic makeup. This change is part of a process of 'gentrification,' in which middle-class or affluent people migrate into an area, displacing earlier, usually poorer, residents." Lapkoff & Gobalet Demographic Research, Demographic Update for Facilities Planning 1 (May 25, 2005) (on file with author). One report

West Oakland itself is the site of several large-scale development projects that join public and private resources and purpose. Many of the projects have the potential to ameliorate the failures of urban renewal in the 1950s and 1960s.[91] With the collapse of the Nimitz Freeway in the 1989 Loma Prieta earthquake—and after a considerable struggle against state efforts to rebuild it in the same location[92]—West Oakland reclaimed Cypress Street, renamed it Mandela Parkway, and created a mixed-use development with low-income rental housing, low-income homebuyer sites, and commercial and community space at the foot of Seventh Street.[93] At one end of the project, efforts are currently underway to revitalize the area surrounding the West Oakland BART station with a $400 million mixed-use residential and commercial project.[94]

While these developments may help reverse decades of decline, they also put increased pressure on remaining residential and industrial areas of West Oakland. As in earlier times, there is both optimism and concern about new developments.[95] Given resident incomes and the high concentration of renters, community groups have recently expressed serious concern about vulnerability to evictions and the exclusionary displacement of some 7,000 households in West Oakland, made up especially of poor and African American residents.[96]

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found that very few children lived in the new market rate condos: "Of the nearly 1,700 market rate units, only three students attend OUSD [schools]." Lapkoff & Gobalet Demographic Research, Impact of New Housing Developments on OUSD Enrollment and Facilities 2 (Sept. 5, 2006) (on file with author).

91. *See* West Oakland – Oakland CEDA, http://www.business2oakland.com/main/westoakland.htm (last visited July 12, 2007) (detailing general redevelopment plan in West Oakland). In 1999, the U.S. Army closed the 425-acre Oakland Army Base in West Oakland. In 2000, the City of Oakland adopted a redevelopment plan for that area. *See* Oakland Army Base – Oakland CEDA, http://www.business2oakland.com/main/oaklandarmybase.htm (last visited July 12, 2007).

92. *See* Rodriguez, *supra* note 38, at 226:

> The California Department of Transportation proposed rebuilding the structure in its original location down the middle of Cypress Street in West Oakland. Environmentalists joined West Oaklanders in blocking the reconstruction of the freeway along its original route. Their combined efforts succeeded in forcing the state to reroute the reconstructed freeway through Oakland's port.

93. *See* BRIDGE Housing – Mandela Gateway, http://www.bridgehousing.com/Default.aspx?DN=185,32,7,1,Documents (last visited July 12, 2007) (describing the Mandela Gateway development).

94. *See* AWOD – Future Developments, http://web.archive.org/web/20060829210451/www.awod.org/futuredevelopments.htm (last visited July 12, 2007) (describing the Mandela Transit Village development); *see also* Marsha Ginsburg, *Transition*, S.F. CHRON., May 9, 2004, at G1 (describing both developments).

95. *See, e.g.*, Dana Perrigan, *Central Station Finally on Track in West Oakland: Often-Neglected Area's Residents Hope That Housing Plan Thrives*, S.F. CHRON., Nov. 12, 2006, at K8; Anne Stuhldreher, *Against Gentrification: Marcel Diallo Sees a Black Cultural District Where Oakland's the Bottoms Neighborhood Now Stands*, S.F. CHRON., Jan. 21, 2007, at CM13; abc7news.com, Transcript of Report: West Oakland Area to Undergo Renaissance (Dec. 2, 2004), http://abclocal.go.com/kgo/story?section=News&id=2460403 (last visited July 6, 2007).

96. *See* Memorandum from Jeremy Hays to Oakland City Council Members, *supra* note 18.

Yet the neoliberal catechism that free markets, if not subject to government interference, will bring good things to everyone until recently has permeated city decisionmaking. This faith in market-based forces would converge with the desperation to improve Oakland's image and its finances to produce a pitched battle over a symbol of the city's prosperous past.

II
LAWYERING IN COMMUNITY: A SHORT HISTORY OF EBCLC

Community economic development (CED) emerged during the 1990s as the dominant approach to redressing urban poverty in an age of neoliberalism. As Scott Cummings observes, CED replaced entitlement programs and civil rights initiatives with a "market-based" strategy for advancing economic development, premised on the idea that poor neighborhoods are underutilized markets in need of private sector investment.[97] William Simon similarly suggests that the CED movement is a pragmatic response by lawyers and other advocates for the poor within the neoliberal paradigm, promoting collaboration and negotiation over zero-sum struggle, and favoring market solutions over government intervention.[98]

Cummings contrasts market-driven CED with a model he calls "politically engaged CED." For Cummings, a politically engaged CED movement has three key features: (1) it incorporates the law and organizing model of legal advocacy that has recently emerged in community law practice; (2) it "seeks to situate CED advocacy within the context of a broader progressive movement on behalf of marginalized communities;" and (3) it should strive to organize people at regional, national, and international levels instead of being limited to geographically defined neighborhoods.[99]

While at times the Community Economic Justice (CEJ) practice at EBCLC has reflected all three of the features that Cummings associates with politically engaged CED, some of its projects have more resembled "market-driven" CED. EBCLC's commitment to economic justice reflects less a conscious institutional preference for certain models than the long engagement of its staff with low-income and minority communities in Alameda County. It incorporates not only institutional history, but also the evolving individual philosophies of EBCLC attorneys. Nor has the organization's relationship with local government and the private sector remained static. Once cast as adversaries in many struggles, elected officials, real estate developers, and grassroots organizations serving the poor recently have forged new

97. Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 402 (2001).

98. William H. Simon, *Solving Problems vs. Claiming Rights: The Pragmatist Challenge to Legal Liberalism*, 46 WM. & MARY L. REV. 127 (2004); *see also* WILLIAM H. SIMON, THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT (2001).

99. Cummings, *supra* note 97, at 459-64.

opportunities to work together in greater harmony.

What ties these disparate strategies, tactics, and styles of lawyering together is what we call "mindfulness": an awareness of political realities shaping small-scale personal relationships and large-scale societal transformations alike. This mindset permits us to challenge the assumptions and intervene in the workings of neoliberalism. This Part describes EBCLC's evolution as an institution deeply rooted in the political and economic realities of its client community, allowing it to build the trust and form the relationships that make mindful lawyering possible.

A. 1988-1995: "Direct Impact"—Grounding the Law Center in Community

EBCLC was founded in 1988 by law students from Boalt Hall who wanted both practical lawyering training and the chance to make a difference in the lives of low-income clients. As simple as this service-learning formulation might sound, the student founders were in fact motivated by the intersection of significant and complex trends in legal education and legal services. First, the students were inspired by the growing clinical legal education movement in U.S. law schools. By the mid-1980s, law schools increasingly were offering curriculum-based experiential learning in the form of clinics, and Boalt students were eager to take advantage of such opportunities.[100]

Second, clinics were ideal sites for leveraging the talents of law students to help bridge the growing gap in access to justice for clients in poor communities. The founding students were deeply moved by the impact of the federal government's retreat from the anti-poverty agenda of the 1960s and 1970s. Important socio-political struggles had taken place in the decades immediately following the Second World War, including the civil rights and Black Power movements, the anti-Vietnam war movement, the women's movement, and the environmental movement.[101] Lawyers had played significant roles in shaping and advancing these struggles, the federal government had provided direct funding for legal services to the poor, and the legal system had been viewed as a central venue for gaining ground on almost all fronts.

Legal services lawyers, however, were soon the targets of relentless assault by conservative policymakers.[102] In the early 1980s and again in the mid-1990s, Congress slashed federal funding for legal services and enacted draconian restrictions on the kinds of cases and clients such attorneys could

100. *See generally* Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461 (1998) (providing a history of clinical legal education, including its social justice aspirations).

101. *See generally* HOWARD ZINN, A PEOPLE'S HISTORY OF THE UNITED STATES (1980).

102. ALAN W. HOUSEMAN & LINDA E. PERLE, CTR. FOR LAW & SOC. POLICY, SECURING EQUAL JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN THE UNITED STATES 29-37 (2007), http://www.clasp.org/publications/legal_aid_history_2007.pdf.

represent.[103] In Berkeley and elsewhere in Alameda County, neighborhood legal services closed their offices.[104] At the same time, funding cuts decimated affordable housing programs and led to the deinstitutionalization of people with mental disabilities, resulting in an unprecedented growth in homelessness.[105] The law students, then, sought to leverage the potential of a community-based clinic to meet both educational and client-service goals that were timely and significant.

In September 1988, EBCLC opened on a shoestring budget as the Berkeley Community Law Center in a small storefront in South Berkeley. In light of the growing homeless problem, services were initially focused on housing and welfare. Staff attorneys and students under their supervision represented clients seeking affordable housing and a minimum income.

While this work looked conventional in many ways, EBCLC's early leaders were also eager to apply some of the lessons of their legal services and anti-poverty forbears. Forceful and thoughtful commentators were asking hard questions about the role of lawyers in bringing about community change.[106] Thus the Law Center eschewed impact litigation, the object of considerable critique for its over-reliance on big cases and high-profile lawyers.[107] The efficacy of such litigation was debatable as an anti-poverty strategy even in the 1960s and 1970s, but by the late 1980s federal courts had become less hospitable as venues to advance justice on behalf of poor people.[108] EBCLC

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103. The high water mark of national funding of legal services was in 1981, the closest most programs ever came to achieving the "minimum access" goal of 1 lawyer for every 5,000 low-income clients. *Id.* at 24. After cuts of 25% in 1982, and 30% in 1996—with stagnant funding in between and thereafter—the federal commitment to legal services in inflation-adjusted dollars now represents approximately one-half of the plateau of a quarter-century ago. ACCESS TO JUSTICE WORKING GROUP, STATE BAR OF CAL., AND JUSTICE FOR ALL: FULFILLING THE PROMISE OF ACCESS TO CIVIL JUSTICE IN CALIFORNIA (1996). In addition to being starved of operating resources, legal services programs have chafed under draconian restrictions for more than a decade. *See* David S. Udell, *Implications of the Legal Services Struggle for Other Government Grants for Lawyering for the Poor*, 25 FORDHAM URB. L.J. 895 (1998).

104. *Boalt Celebrates New Poverty Law Center: Law Students Raised the Money Themselves*, THE RECORDER, Sept. 29, 1988, at 8 (Legal Aid Society of Alameda County attorneys down from 54 to 13 and forced to close Berkeley office); *Law Students Launch Community Legal Center*, E. BAY EXPRESS, Sept. 9, 1988, at 3 (LASAC attorneys down from 54 to 13 and services in Berkeley reduced to 1 lawyer from Oakland 4 hours/week).

105. *See* W. REG'L ADVOCACY PROJECT, *supra* note 80, at 11.

106. Stephen Wexler, in his classic critique, challenges "[t]wo major touchstones of traditional legal practice—the solving of legal problems and the one-to-one relationship between attorney and client." Wexler suggests four alternate ways that lawyers for the poor can help their clients: "(1) informing individuals and groups about their rights, (2) writing [educational] manuals and other materials, (3) training lay advocates, and (4) educating groups for confrontation." Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1053, 1056 (1970).

107. *See, e.g.*, LÓPEZ, *supra* note 12, at 13-17 (describing and critiquing the practices of a public interest litigation firm).

108. This process has only accelerated during the last quarter-century. As Scott Cummings and Ingrid Eagly put it, "By the early 1990s, legal scholars had rejected the law as a vehicle for social transformation, challenged the privileged position of lawyers in social change strategies,

also strove to avoid some of the routine practices of neighborhood legal services offices.[109] Some observers suggested that legal aid lawyers were neglecting the root causes of poverty, missing the interconnectedness of low-income people's problems, and creating new dependencies instead of "empowerment."[110] At EBCLC, attention to these shortcomings meant developing delivery models that were deeply enmeshed in the people, places, and institutions that affected clients' lives.[111] Reflection on the lawyer's role, a central feature of EBCLC's teaching mission, also became an ingrained feature of its law practice. Further, the Law Center viewed itself not just as a service provider, but as an incubator, spinning off legal and non-legal entities in response to community needs.[112]

Community-based organizations come and go, and many low-income residents are understandably wary of unfulfilled promises made by eager outsiders, including well-meaning lawyers. EBCLC addressed this potential problem in several ways. During this period, EBCLC staff and students made a concerted effort to develop personal and professional relationships in the community by meeting people where they were, both figuratively and literally. EBCLC ran outreach programs in shelters, soup kitchens, city parks, welfare offices, health clinics, and other places where people in need congregate. The Law Center also partnered with established community organizations to host evening workshops in low-income neighborhoods. In short, staff and students

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and actively encouraged lawyers to work with other community members to seek local, nonlegal solutions to poverty." Cummings & Eagly, *supra* note 9, at 460.

109. The classic critique is Gary Bellow, *Turning Solutions Into Problems: The Legal Aid Experience*, 34 NLADA BRIEFCASE 106 (1977), *available at* http://www.garybellow.org/garywords/solutions.html (critiquing the routinized practice prevalent in many legal aid offices leading to low client autonomy, narrow definition of elient needs, and poor outcomes).

110. *See* William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1995) (discussing the unique values of "[e]mpowerment lawyering with organizations of the poor and powerless", its focus on representing groups instead of individuals, and how empowerment lawyering "differs from corporate lawyering or criminal defense lawyering in purpose, substance and style"); *see also* Joel F. Handler, *Community Care for the Frail Elderly: A Theory of Empowerment*, 50 OHIO ST. L.J. 541 (1989) (discussing "why the legal rights perspective will not protect the frail elderly" and arguing for a different approach based on the theory of empowerment and empirical models for home care projects benefiting the poor elderly population).

111. In response to a largely silent epidemic sweeping through the low-income community, in 1990 EBCLC expanded its initial focus on legal issues related to sheltcr (housing) and income (welfare) to include a health practice for people living with HIV. *See* Jeffrey Selbin & Mark Del Monte, *A Waiting Room of Their Own: The Family Care Network as a Model for Providing Gender-Specific Legal Services to Women with HIV*, 5 DUKE J. GENDER L. & POL'Y 103 (1998) (discussing the history of EBCLC's HIV/AIDS law practice).

112. The most prominent example in the early years was the Homeless Action Center (HAC), which was initially housed at EBCLC until it received sufficient seed funding to operate as an independent entity. HAC is now a vital service provider to low-income and homeless residents of Alameda County. *See* Homeless Action Center Services, http://homelessactioncenter.org/about (last visited July 12, 2007).

recognized that they had as much to learn as they had to offer, and that they could only make a difference on important community issues by working alongside the people whose interests they purported to represent.[113] This commitment to relationship building made possible a deeper awareness of local political and economic realities, and established a level of trust between EBCLC staff and community leaders that would support the growth of further collective efforts over time.

B. 1995-2001: The Credit Union—Bringing Banking Services to West Oakland

After serving thousands of individual clients with welfare, housing, and health-related needs, staff and students turned their attention in the mid-1990s to some of the serious gaps in community assets and infrastructure. In response to these needs, and with a desire to help address the root causes of poverty and inequality, EBCLC established a Community Economic Development practice. Even while expanding its direct services, this investment in long-term, community initiatives led to EBCLC's in-depth involvement in a series of multi-year, large-scale projects.

In 1995, in partnership with UC Berkeley's Institute of Urban and Regional Development, EBCLC began assisting Oakland's Enhanced Enterprise Communities through the HUD-funded Joint Community Development Project (JCD).[114] JCD efforts included providing legal resources to address impediments to community revitalization, including technical assistance workshops and community clinics on managing small businesses and non-profits. As a natural outgrowth of the JCD work, EBCLC began to explore ways to support new community enterprises.

In 1996, EBCLC joined a working group of community activists, non-profits, and county service providers to address the dearth of banking and financial services available to low-income residents in many parts of the East Bay. The group pooled expertise and envisioned a credit union as a community-based approach to meeting the banking needs of residents in West Oakland, a community of 30,000 low-income people without a single bank. EBCLC staff and students worked on all aspects of the credit union's

113. *See, e.g.*, Susan D. Bennett, *On Long-Haul Lawyering*, 25 FORDHAM URB. L.J. 771 (1998) (describing the imperative for an imbedded lawyering practice—morally, geographically, and longitudinally—in low-income communities); Gary Bellow, *Steady Work: A Practitioner's Reflections on Political Lawyering*, 31 HARV. C.R.-C.L. L. REV. 297 (1996) (offering the author's contributions to the debate on the "elusive" subject of "political lawyering" and his attempt "to clarify the subject of the conference, this Symposium, and our work by reflecting on a few examples from my own experience of politics through law."); *see also* Julie A. Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, 1 J. GENDER RACE & JUST. 405 (1998) (arguing that lawyers should work *with* subordinated clients, not *for* them).

114. *See* Marie Felde, *A $2 Million HUD Grant for Campus-Oakland Ventures*, The Berkeleyan (Sept. 27, 1995), http://www.berkeley.edu/news/berkeleyan/1995/0927/grant.html (last visited August 2, 2007).

development: conducting market research, surveying community members, researching federal regulations, developing a business plan, and raising seed funds.

In March 2001, with many individual, corporate and foundation supporters, the People's Community Partnership Federal Credit Union opened its doors in West Oakland. Since its founding, the credit union has expanded its vital banking services to more than 2,600 members, three-quarters of whom are low-income. More than ten years later, EBCLC continues to serve as a fiscal agent for the credit union, helping it access much-needed capital to expand its membership and services.[115]

C. 1999-2003: Port of Oakland Project Labor Agreement and the Bay Area Construction Sector Intervention Collaborative —Training and Apprenticeship Opportunities for Living Wages

In 1999, EBCLC staff and students began providing technical assistance to the Coalition for an Accountable Port, an organizing effort of labor unions and community groups anchored by the East Bay Alliance for a Sustainable Economy.[116] In March 2000, EBCLC helped community groups gain a place at the table in negotiating a Project Labor Agreement with the Port of Oakland, governing labor and hiring aspects of the Port's $1.3 billion capital improvement plan, including the development of what may be the first social responsibility division in a U.S. Port.[117]

At the same time, EBCLC staff and students began working with a coalition of organizations, agencies and interested parties committed to increasing opportunities for local residents in the construction trades, with an emphasis on gaining access for women and people of color who traditionally have been excluded from the industry. From that collaboration, the Bay Area Construction Sector Intervention Collaborative (BACSIC) was born.[118] EBCLC staff and students provided critical assistance to help BACSIC incorporate and carry out its important mission. Although it has since ceased operation, for several years BACSIC worked to increase the supply of local

115. *See* People's Community Partnership Federal Credit Union, http://www.pcpfcu.org (last visited July 5, 2007).

116. http://www.workingeastbay.org (last visited July 5, 2007).

117. The Port of Oakland—which modernized and expanded during the 1960s to become Oakland's leading industry—was "one of West Oakland's few success stories, an enormous industry that, unlike much of the rest of the city, took advantage of, rather than lost ground to, the waves of economic restructuring sweeping through the East Bay in these decades." SELF, *supra* note 5, at 154. By the late 1960s, the Port of Oakland was the "second largest port in the world in container tonnage . . . and second only to New York in its container terminal acreage." Port of Oakland – The Port & You, http://www.portofoakland.com/portnyou/history.asp (last visited July 5, 2007).

118. For more on BACSIC and its role in negotiating the Port's Project Labor Agreement, see Jason Parkin, Note, *Constructing Meaningful Access to Work: Lessons from the Port of Oakland Project Labor Agreement*, 35 COLUM. HUM. RTS. L. REV. 375 (2004).

residents able to fill apprenticeship and journey-level positions while increasing the demand for such workers through implementation of local hiring provisions in major public works contracts. BACSIC helped prepare individuals for apprenticeship programs, placed individuals directly in construction jobs, and provided meaningful support and retention services.[119]

D. 2003-2007: The Shift from Community Economic Development to Community Economic Justice

EBCLC's early economic development work filled the vacuum left by significant public and private disinvestment in low-income communities. The credit union, for example, was a direct response to the decades-old withdrawal of banks from communities like West Oakland. The absence of basic banking services—and undercapitalization more generally—only increases the cost of being poor and drains much-needed cash from the community. Likewise, BACSIC attempted to address the federal government's significant retreat from job training and apprenticeship programs. Disadvantaged workers excluded from living wage employment sectors like the construction industry are consigned, at best, to dead-end service sector jobs that keep them and their families in poverty.

These projects emerged from, and helped to foster, EBCLC's engagement with the systemic problems facing low-income communities of color in Alameda County. The economic development practice thus was an outgrowth of a long engagement with West Oakland and other impoverished East Bay communities that made plain these communities' structural needs. EBCLC's involvement in these projects also helped to build and deepen relationships with grassroots community organizations. These community relationships would be dramatically mobilized by a conflict that moved EBCLC to change the name of its Community Economic Development practice to Community Economic Justice (CEJ).

In April 2002, the Pacific Renaissance Plaza (Pacific Renaissance) developers initiated mass evictions of elderly, low-income, and immigrant tenants in a development project in the heart of Oakland's Chinatown. As part of a broad-based community effort, EBCLC organized a legal team to represent the tenants, and acted as a critical bridge between the lawyers and the community coalition of grassroots-organizing and tenant groups. EBCLC's involvement in the Pacific Renaissance struggle required intensive negotiations and meetings with the developers and the City of Oakland. Participating in behind-the-scenes meetings and reviewing the paper trail revealed the

119. In addition to the credit union and BACSIC, EBCLC also spent several years providing technical assistance to more than 100 local non-profits on a broad range of legal issues. Enhancing the capacity of community-based organizations is a vital role in low-income neighborhoods, which often lack the resources and infrastructure to sustain and benefit from such institutions.

incredible power imbalance between developers and low-income communities. Particularly striking was the City's past failure to hold the Pacific Renaissance developer accountable for commitments to public purpose (affordable housing units) and the use of public loan funds (never repaid).[120]

Although the Pacific Renaissance litigation continues, the struggle has been emblematic of the weakness of government institutions under neoliberalism.[121] Market forces failed to serve low-income tenants or protect public funds from abuse. Local government was likewise unwilling or unable to play its vital enforcement role. Meanwhile, vulnerable residents like the low-income, elderly, and immigrant Pacific Renaissance tenants suffered the consequences of the developers' attention to the bottom line and the City's inaction. Such conditions have given rise to the need for more active engagement by EBCLC and other organizations. The name change from "CED" to "CEJ" signified what had already become apparent from EBCLC's work: that the needs of the poorest communities in Chinatown, West Oakland, and elsewhere could not be adequately met without a broad-based movement for progressive political and economic change.

III
A FIRST-PERSON ACCOUNT OF THE WOOD STREET STRUGGLE: URBAN REDEVELOPMENT UNDER NEOLIBERALISM AND A GLIMPSE OF TRANSFORMATIVE CHANGE

The premise of market-driven CED is that poor communities suffer from "market failures" that can be remedied by targeted public and private investment. As Cummings and others have argued, however, there is little evidence that waiting for the benefits of investment to "trickle down" to the poorest of the poor is actually an effective strategy.[122] The economic justice paradigm works from different premises: that under neoliberalism, economically powerful actors are able to harness political processes to project their interests;[123] that meaningful redistribution thus requires both the political

120. Public records revealed that the Pacific Renaissance developers received $30 million in public funds (in part to provide affordable housing for the Chinatown community); overcharged the tenants more than $2 million over ten years; and borrowed $7 million from the City of Oakland that was forgiven without repayment. Further discovery revealed evidence that the developers set up over fifty different corporate affiliate entities to move funds around, and that they also allegedly engaged in apparently fraudulent self-dealing transactions that led directly to the evictions of tenants and the potential loss of affordable housing. *See* John M. Glionna, *Chinatown Evictions Roil Oakland*, L.A. TIMES, June 24, 2003, at 7, *available at* 2003 WLNR 15153554. *See also* Jahna Berry, *Tenant Tempest: Evictions from a Condo Complex in Oakland's Chinatown Have Triggered a Wave of Lawsuits*, THE RECORDER, Oct. 17, 2003, at 1.

121. *See* Foster & Glick, *supra* note 9, at Part III.B ("The City as a Weak(er) Player").

122. *See* Cummings, *supra* note 97, at 447 (criticizing market-driven CED policies as ineffective at poverty reduction).

123. *See* WILLIAM GREIDER, WHO WILL TELL THE PEOPLE: THE BETRAYAL OF AMERICAN

and the economic empowerment of marginalized actors; and that changing these rules of play, in turn, requires coalition work.

In response to the neoliberal policies of Oakland's former Mayor Jerry Brown, progressive groups and leaders in Oakland therefore have found it increasingly necessary to join forces to cobble together funds, constituency groups, political capital, and moral force to challenge large-scale development projects and policies. Advocates from various sectors, including labor, faith leaders, environmentalists, housing activists, and policymakers, have collaborated to advance a progressive economic justice agenda. During the past five years, progressive coalitions have produced concrete resources that directly benefit low-income residents and have significantly shifted the debate among political leaders. This work has been exciting, fulfilling, and a model for other communities. Yet like all coalition work, it has also been extremely demanding.

In this Part, the first-person narrative reflects the perspective of Margaretta Lin, EBCLC's Community Economic Justice practice director, as a community lawyer who has attempted to represent community interests while also trying to practice mindfulness. Part III.A tells the story of a coalition of progressive organizations and residents who worked to exact community benefits from the largest market-rate housing development project in West Oakland's history. This account provides poignant examples of the strategies employed and the barriers faced by low-income communities in the struggle for economic justice. In Part III.B, Margaretta reflects on how Thich Nhat Hanh's mindfulness principles can shed light on community lawyering, utilizing the Wood Street story as an illustration of the challenges involved in this kind of endeavor.

A. The Wood Street Struggle and the Politics of Neoliberalism

In late 2003, community activists and West Oakland residents began a struggle to gain benefits for low-income residents from neighborhood development. Three real estate entities had formed a partnership to develop the Wood Street project, proposing to build over 1,500 market-rate condominiums and some commercial space on a twenty-nine-acre site surrounding and including the historic 16th and Wood Street Train Station.[124] The founding partner, Rick Holliday, was a former affordable-housing developer and was also known as the "Loft King" for pioneering the construction of live/work

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DEMOCRACY (1992) (describing the effectiveness with which large corporate interests such as General Electric have been able to influence national policymaking).

124. Sue Kwon, CBS Channel 5, Transcript of Report: Development to Bring $300,000 Homes to Oakland, (Oct. 12, 2006), http://cbs5.com/business/local_story_285214313.html (last visited July 12, 2007). *See also* Oakland Cmty. & Econ. Dev. Agency, Wood Street Project Draft Environmental Impact Report S-6 (Sept. 20, 2004), *available at* http://www.oaklandnet.com/government/ceda/revised/planningzoning/MajorProjectsSection/WoodStreetDraftEIRSept2004/Sections/Summary%20Text.pdf.

lofts in San Francisco's light industrial neighborhoods.[125]

The choice of the site was evocative. As described above, the Wood Street Station once represented West Oakland's central role in the regional economy and the prosperity it brought to its African Americans residents in the early to mid-20th century.[126] Now the train station was to be a symbol of the post-industrial age. The proposal for market-rate housing on the train station site invoked the "New Urbanism," a strategy of luring the upper-middle class back to ailing cities.[127] Once the birthplace of the West Coast's African American, labor, and civil rights movements,[128] the Station was now to serve as a site of upper-middle class—and most likely, predominantly white—convenience and consumption, a symbol of Oakland's ability to cater to affluent professionals.[129] The struggle over the fate of the abandoned train station would vividly illustrate the conflicts generated by the politics of neoliberalism.

Many feared the Wood Street project's impact on low-income residents, the neighborhood's cultural heritage, employment opportunities, and the physical environment. A grassroots organizing group, Just Cause Oakland (hereinafter "Just Cause"),[130] formed a coalition to seek mitigation and

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125. Adam Feuerstein, *Lofty Ambitions in Emeryville*, S.F. BUS. TIMES, Feb. 21, 1997, *available at* http://www.bizjournals.com/sanfrancisco/stories/1997/02/24/story1.html. Holliday created the vision for the land's reuse and recruited partners, including: BUILD West, the recently formed for-profit arm of Bridge Housing, a long-time affordable housing development nonprofit; and Andy Getz, the head of a family owncd development corporation, former chair of the City of Emeryville Planning Commission that ushered in the large-scale live/work housing and commercial development that makes up most of Emeryville.

126. *See supra* Part I.A.

127. *See* McFarlane, *supra* note 85 and aecompanying text. The New Urbanism reflects a growing desire among young professionals and empty-nesters to live in urban cores, finding previously industrial or "gritty" neighborhoods exciting and vibrant, and reversing the previous trend of suburbanization. While one of the motivations behind New Urbanism is laudatory environmental principles, it also has contributed to the negative impacts of gentrification by failing to take the impacts of market force displacement into account and ignoring the need to integrate existing community residents,. *See* James Jennings, *Race, Politics, and Community Development in U.S. Cities: Urban Planning, Community Participation, and the Roxbury Master Plan in Boston*, 594 ANNALS 12 (2004); *see also* James A. Kushner, *Smart Growth, New Urbanism and Diversity: Progressive Planning Movements in America and Their Impact on Poor and Minority Ethnic Populations*, 21 UCLA J. ENVTL. L. & POL'Y 45 (2002/03).

128. SELF, *supra* note 5, at 46-60.

129. Audrey McFarlane explains the dual strategy of economic development and consumption:

> Economic development is a major project of central cities whose quest is to attract capital through incentives to locate offices, headquarters, and to a lesser extent, plants within the inner city. The other approach has been a consumption strategy: tailor land use and development to meet the consumption tastes of people with money to spend by building entertainment venues, convention centers, festival marketplaces, ethnic and historical festivals, sports stadiums, hotels, restaurants, sbopping, and bars (both coffee and alcohol).

McFarlane, *supra* note 85, at 16.

130. Just Cause Oakland is a grassroots organizing group founded in 2000 to campaign for Oakland's just cause eviction ordinance. JUST CAUSE OAKLAND:for the people, http://www.justcauseoakland.org/ (last visited July 12, 2007). Just Cause's mission is "to create a

community benefits from the project. The 16th and Wood Train Station Coalition (hereinafter the "Coalition") included West Oakland residents and housing-rights, labor, environmental justice, and faith-based organizations.[131] Just Cause asked EBCLC to provide legal support to the Coalition.

The decision to represent Just Cause and the Coalition thrust EBCLC into perhaps the most contested arena of Oakland's political economy. For the past decade, the common progressive mantra in community gatherings had been that real estate developers were the city's real power brokers. This perception was common throughout U.S. urban communities during the neoliberal resurgence. Nevertheless, I underestimated the full breadth and depth of developers' influence until I became directly involved in this struggle.

The Wood Street developers were politically well connected. One of the developers was the son-in-law of a U.S. senator, and made sure the Coalition knew of this family connection. The lead developer, Rick Holliday, had personal ties to Mayor Jerry Brown going back decades to when Brown was state governor. These political connections appeared to grease the wheels of the Wood Street project. Brown himself was personally involved in making sure that the project was approved without delay, and even took the unusual step of attending public hearings on the project. The top City planning staff responsible for the project appeared to operate more like consultants to the developers than like planners serving the public interest.[132]

The developers' power and connections also affected our efforts to put together a legal team. Knowing that they would be well-armed with teams of

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just and diverse city and region by organizing Oakland residents to advocate for housing and jobs as human rights, and to mobilize for policies that produce social and economic justice in low-income communities of color." *Id.*

131. The Coalition included: A. Phillip Randolph Institute, Coalition for West Oakland Revitalization, Just Cause Oakland, Building & Construction Trades Council of Alameda County, Bay Area Construction Sector Intervention Coalition, East Bay Community Law Center, Alameda County Central Labor Council, West Oakland Environmental Indicators Project, SEIU Local 790, Urban Habitat, St. Mary's Center, Urban Strategies Council, East Bay Alliance for Sustainable Economy, Pacific Institute, East Bay Housing Organizations, Parent Leadership Engagement Academy, and Asian Pacific Environmental Network.

132. For example, the need to study the health and environmental impacts of locating a large-scale housing project less than 100 feet from the freeway, in direct contravention of state guidelines, resulted in planning officials reacting with scorn and dismissiveness. WOOD STREET PROJECT FINAL ENVIRONMENTAL IMPACT REPORT 3-23 to 3-25 (Feb. 7, 2005), *available at* http://www.oaklandnet.com/government/ceda/revised/planningzoning/MajorProjectsSection/WoodStreetFinalEIRFeb2005/PDF/3%20Master%20Response0203.pdf. As part of formulating the legal and policy arguments for the Coalition, EBCLC analyzed the explicit and hidden quantifiable public costs associated with the Wood Street project. Given its location in a designated redevelopment area—and without the provision of any affordable housing—the project would create a public obligation to provide 225 to 450 units of affordable housing with a public price tag of over $22 million. We argued that the City should require the developers to provide the affordable housing mandated by state redevelopment law within the Wood Street project itself rather than in another location because it would be half as expensive and prevent the creation of segregated housing.

lawyers and technical consultants, we needed a team of lawyers who specialized in environmental, redevelopment, affordable housing, and planning and zoning laws. Our first attempt to secure pro bono assistance, however, netted a law firm with a conflict—they already represented the Wood Street developers. Given that the "adverse" party in the representation potentially included the City of Oakland, many of the other Bay Area firms we contacted were also conflicted out.[133]

Common political wisdom suggested that the Coalition was fighting a lost cause. The developers and their lobbyist—who was simultaneously serving as a commissioner at the Port of Oakland—told Coalition members on several occasions that they "had the project in the bag" and that we were wasting our time. Progressive City officials supported the project as proposed by the developers because they believed that West Oakland needed private development and market-rate urban infill. Early meetings revealed that the Wood Street project would trigger state redevelopment requirements that 15-30% of the housing constructed be affordable. Unless the developers themselves assumed the financial burden of complying with this mandate, the full costs—some tens of millions of dollars—would need to come from the City's coffers. When questioned about this potentially devastating public cost, one member of the City Council responded, "We don't follow the law on other issues; why should we do so now?" One pragmatic Council member said that she supported the Coalition's cause but that the majority of the Council "wasn't there" because they feared that the developers would leave Oakland. We also heard stories about how hard it was to lure developers to come to Oakland because of the high crime rate, the failing education system, and Oakland's lack of "sex appeal" when compared to its glamorous sibling, San Francisco.

We encountered the rhetoric of neoliberalism everywhere. In hearing after hearing, from public appointees on the Planning Commission to elected officials on the City Council, we heard that Oakland needed development and developers to grow its economy. Further, the argument went, the role of the City was to facilitate development: these were great developers who had the courage to build in West Oakland, and the community should embrace them rather than force them to provide affordable housing. A minority of City officials talked about the need for community benefits from development, but even these officials believed that the City, rather than the developers, should

133. In the end, the law firm of Wilson Sonsini Goodrich & Rosati served as pro bono co-counsel. The partner on the case was a former labor lawyer and community organizer, and both understood and tolerated messy, process-oriented coalition politics and multiple agendas. An EBCLC board member who was a former transactional partner in a large law firm was also later involved as part of the legal team. EBCLC's team of advisors also included legal interns from Boalt Hall (U.C. Berkeley) School of Law, attorneys and policy specialists from the California Affordable Housing Law Project, Urban Strategies Council, Community Economies, East Bay Alliance for Sustainable Economy, and other groups.

pay for such benefits.[134]

The City's socio-economic analysis in the Environmental Impact Report on the project, which the Coalition compelled the City to conduct, explicitly concluded that the Project was creating a set of "Winners and Losers."[135] The report identified the "Winners" as mainly property owners in West Oakland and the "Losers" as low-income tenants at risk of displacement through market forces.[136] Yet very few City officials seemed concerned that the project might exacerbate the displacement of lower income residents through gentrification. The media painted the developers as West Oakland's white knights, and the Coalition as a marginalized, disreputable group who made unreasonable demands.[137] The local newspaper was enthusiastic about the Project and published laudatory stories about the Wood Street developers.[138] One reporter even went so far as to criticize EBCLC's involvement in the Coalition, informing me that I had "hitched my wagon to the wrong people."

Thus, not only did the developers wield enormous political and economic power, but the Coalition had to contend with a strikingly impoverished public discourse about economic development. The position taken by political leaders and mainstream media outlets was that all development was good development, and that development projects were an either/or proposition—either the project would go forward in exactly the way that the developers wanted, or there would be no development at all. No political leader articulated a vision of healthy development that could bring economic benefits while minimizing the burden on the local residents who had the most to lose.

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134. See Wood Street affordable housing requirements contained in Exhibit A: Wood Street Conditions of Approval 100A, CITY OF OAKLAND AGENDA REPORT ON WOOD STREET DEVELOPMENT PROJECT, (June 7, 2005), http://clerkwebsvrl.oaklandnet.com/attachments/10992.pdf.

135. As a result of the Coalition's advocacy, the Planning Commissioners directed the Planning Director to include a study of the project's socio-economic impact as part of the Environmental Impact Report—an important advancement. While the study did not include many of the elements that the Coalition asked for, it did conclude that the Wood Street project would exacerbate existing gentrification in West Oakland, creating a set of "Winners and Losers" with low-income residents among the "Loser" category. Through this official study, the decision-makers could no longer close their eyes to the suffering that the redevelopment would create, vindicating the testimony of many residents as well as furthering the Coalition's ability to get affordable housing included as part of the Project. Mundie & Associates, *The Proposed Wood Street Project: Policy and Planning Framework*, WOOD STREET PROJECT FINAL ENVIRONMENTAL IMPACT REPORT, *supra* note 132, at S-4.

136. *Id.*

137. *Id.*

138. *See* Cecily Burt, *Plan for Station Stirs W. Oakland*, OAKLAND TRIB., Oct. 22, 2004, *available at* 2004 WLNR 17137752; Cecily Burt, *Mixed Views on Housing at Train Depot*, OAKLAND TRIB., July 26, 2004, *available at* 2004 WLNR 17197228; Perrigan, *supra* note 95.

I. Gentrification in the Age of Neoliberalism—the Inevitability of Divide-and-Conquer and Community Conflicts

William Simon describes the reigning CED practice as a model that seeks the possibility of "joint gain," a win-win situation that encourages cooperation and negotiation rather than adversary struggle.[139] For a number of reasons, however, the Wood Street conflict quickly proved to be anything but collaborative.

First, the flip side of CED's focus on joint gain is that players perceived as rupturing the cozy embrace of cooperation may be demonized for being adversarial. Thus, the Coalition members found themselves distrusted and attacked as spoilers of a harmonious process, rather than invited into a necessary debate. Second, the market-driven approach to CED can produce a zero-sum game. In the Wood Street struggle, the neoliberal belief that government intervention into the private developers' plans could only disrupt or destroy the project ramped up (rather than reduced) the level of conflict. Community residents were backed into a corner in which the choices were either the development as proposed or no development at all.

Third, the Wood Street proposal exacerbated both long-standing divisions within the West Oakland community and newer divisions produced by changing demographics. As described above, West Oakland historically has seen more than its share of failed community revitalization initiatives, divisions based on race, class, and turf, and broken promises from elected officials, community leaders, and funders. West Oakland is also a community that is rapidly gentrifying due to its close proximity to San Francisco and the development of live/work lofts, artist colonies, and other urban spaces attractive to young professionals. On the one hand, West Oakland residents benefit from having new neighbors with more income and political clout, who can attract needed grocery stores and fix up streets and landscaping. On the other hand, to abandon completely the neighborhood to "market forces" would result in the direct and indirect displacement of lower-income and long-time residents. In addition, new residents with higher incomes and different demographics may not necessarily connect with the former residents. The fabric of a previously tight-knit and supportive community quickly can unravel under such pressures.

These tensions produced rifts within the community that the Wood Street developers, intentionally or unintentionally, were able to exploit. For example, the developers got the support of a group of new homeowners' associations,

139. Simon, *supra* note 98, at 212. *See also* WILLIAM H. SIMON, THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS, AND THE NEW SOCIAL POLICY (2001); *but see* David J. Barron, *The Community Economic Development Movement: A Metropolitan Perspective*, 56 STAN. L. REV. 701 (2003) (reviewing Simon's book and critiquing the CED movement for its narrow focus on neighborhood and place to the exclusion of broader, regional approaches–"metropolitan reform" work–to economic development opportunities).

who saw their self-interest directly tied to the project's potential to raise property values rapidly in the area. These homeowners saw the Wood Street site as "blighted" land that had gone unused for years, and that had served as occasional haven for homeless residents and drug users. The homeowners were also worried about a possible alternative use of the land: a trucking depot that would exacerbate existing traffic and air pollution. Finally, as public testimony later revealed, some residents did not want more affordable housing in West Oakland; they yearned instead for a neighborhood with cafés and other middle- and upper-class amenities.

We had expected some of these newer residents to come out to public hearings and testify in support of the project. What we did not anticipate sufficiently was the project's support among some low-income African American residents and nationalist community activists. The developers often claimed in both community meetings and in their written materials that their market-rate housing would be affordable to current residents. These claims proved to be incredibly effective in garnering support for the project, especially because of the relationships the developers had with tenants in another affordable housing project in West Oakland. Hoping to buy homes of their own at last, few community residents critically analyzed the numbers the developers provided. They did not stop to ask whether they could afford $350,000 or $400,000 for a condo, or even if these prices could be guaranteed in the ever-inflating Northern California housing market.[140]

One of the Coalition's leaders had worked to form a new group of African American entrepreneurs to take advantage of the development project's economic opportunities. These were West Oakland residents and activists who believed strongly in nationalistic African American community empowerment and self-sufficiency. They had close personal and professional relationships with key leaders in the Coalition. They also had formed ties with the Wood Street developers and were told that they could purchase land from the developers at market-rate prices to build their own project. This promise appeared to be linked to this group's public support for the development project and their ability to neutralize the Coalition. One of the group's members left me a message that the developers were willing to sell the group land if they could get the Coalition to agree not to sue the developers over the environmental study and mitigation issues.[141] Issues of race and space also pervaded the Wood

140. *See* OAKLAND CITY STAFF REPORT ON REVISIONS TO CONDOMINIUM CONVERSION LAWS 10 (Nov. 14, 2006), http://clerkwebsvrl.oaklandnet.com/attachments/14912.pdf (noting, "The 2000 Census showed 88,301 renters households in Oakland with an average median income of $29,278"; "The income required to purchase a $375,000 unit is approximately $75,000/year"; and "Only 8 to 13 percent of current renters would fall into this category.").

141. The Coalition had weighed the possibility of filing a lawsuit under the California Environmental Quality Act, which requires land use agencies to study certain impacts from the project and mitigate impacts that were found to be significant. For more information, see MICHAEL H. REMY ET AL., GUIDE TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

Street struggle. Early in the campaign, community members and Coalition partners pointed out publicly that the Wood Street developers were all white, implying a race-based motive for their disregard of the largely African American community in West Oakland. The Coalition stopped raising the developers' ethnicities after the first public hearing once group consensus concluded that it was a diversionary issue. Some of the African American entrepreneurs, in turn, questioned the legitimacy of one of Just Cause's community organizers, who was white and did not reside in West Oakland. As a Coalition, we struggled with balancing our affirmative campaign message and our response to such charges. We were unsure how best to stay focused on our principles; we did not want to add fuel to unprincipled attacks, but also felt compelled to address them before they spread, and to confront the conflicts directly with the people involved.

In the end, the 16th and Wood Train Station Coalition partially succeeded in holding the private developers and City of Oakland officials accountable to the needs of local residents and to local land use laws and policies, but it did so only by employing traditional adversarial-based law and organizing strategies.[142] But our efforts had a silver lining: an unexpected shift in the

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1999 (10th ed. 1999). Because of the threat of a lawsuit—including EBCLC's central role in a potential suit and the high cost of delay to the project—the developers contacted members of EBCLC's board of directors and its funders to complain about the Law Center's involvement in the case.

142. *See* CITY OF OAKLAND, AGENDA REPORT ON WOOD STREET DEVELOPMENT PROJECT (June 7, 2005), *available at* http://clerkwebsvr1.oaklandnet.com/attachments/10992.pdf. The Coalition was able to achieve the following community benefits from the Wood Street project:

Affordable Housing. The developers had not planned any affordahle housing in the Project. But because of the Coalition's organizing work and in light of the City's own report that the Project would exacerbate gentrification and displace low-income residents, the Coalition convinced the City of Oakland to require a minimum of 15% affordable housing in the Project, including both rental and homeownership. The rental units are to be affordable, setting aside half of the area for residents making median income, or up to $40,000 a year. However, the Coalition could not convince the City to force the developers to pay for any of the affordable housing or to set a ceiling for the level of City subsidy required for the affordable units. The City now applies this 15% on-site affordable housing development standard to all major development projects. Through this intense, drawn-out, and laborious public process, some City Council memhers came to realize that the time was right to reintroduce an inclusive housing policy. If the City had already had one in place, the community battle, which included public hearings that lasted past midnight, would not have been necessary. *See id.* (Exhibit E: Wood Street Condition of Approval 100A).

The Historic Baggage Wing. The developers sought to demolish the Train Station's baggage wing to make way for live/work lofts. In addition to denigrating the history of African American porters, the demolition of the baggage wing would have jeopardized the property's landmark status and its eligibility for federal renovation funds. Fortunately, the Coalition was able to get the City to withhold final approval of the demolition. Instead, the developers were required to create a business plan for the reuse of the baggage wing through a process that included community involvement and further City Council approval. However, the City refused to prohibit demolition outright, deferring instead to the developers' financial viability arguments, but this time with greater community involvement and scrutiny. *See id.* (Exhibit D: Wood Street Condition of

political landscape that may enable a different kind of approach in the future.

2. The Beginnings of Changed Conditions in West Oakland—A Glimpse of Transformative Justice in the Face of Neoliberalism

Almost two years after the struggle for community benefits from the Wood Street project ended, conditions in Oakland have begun to change and a new paradigm is emerging. The work of numerous progressive coalitions over the past five years, especially in partnership with new political leadership, has shifted the terms of the debate. Perhaps the most critical transformation has come with the election of Oakland's new mayor, Ronald V. Dellums, who took office in January 2007. Mayor Dellums said he was inspired in part to run for office after becoming involved in the Wood Street struggle, and witnessing firsthand the City's need for strong, moral political leadership, the unnecessary community strife arising from the dispute, and the deep desire for change among Oakland's citizens.[143]

In 2005, Mr. Dellums spoke on the Coalition's behalf at the City Council hearing on the Wood Street project before an overflow crowd of people (many of whom were not involved in the project). In contrast to most Council hearings, you could hear a pin drop when Mr. Dellums eloquently offered a moral and political vision for development and government. He observed that people were fighting over the project because the City leaders had failed to establish the standards and governing parameters for development. He added that the question was not whether to have development or not, but how to do it in a way that did not "kick the can" on poor people and that still provided economic and community benefits.[144] Mr. Dellums' clarity and passion struck a

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Approval 56B).

Prevailing Wage and Local Hiring. The developers originally refused to guarantee the hiring of local residents or to guarantee a project labor agreement, while the Coalition sought local hiring and prevailing wage requirements on the entire project. In the end, the City required the developers to enter into a project labor agreement for only the portions of the project receiving public funds—the historic Train Station and the affordable housing component. Unfortunately—and despite efforts from the Building Trades Council and community groups to push for legally binding requirements—the City required the developers to utilize only "good faith" in hiring local residents. *See id.* (Exhibit C: Wood Street Condition of Approval 7B).

143. Mayor Dellums had deep ties to West Oakland in general and the Wood Street Station in particular. He grew up in West Oakland near the train station, his father was a longshoreman, and his uncle C.L. Dellums was one of the organizers of the Brotherhood of Sleeping Car Porters, later serving as its President. RONALD V. DELLUMS & H. LEE HALTERMAN, LYING DOWN WITH THE LIONS: A PUBLIC LIFE FROM THE STREETS OF OAKLAND TO THE HALLS OF POWER 9-14 (2000).

144. For example, at a business forum shortly after his inauguration in 2007, Mayor Dellums was asked whether he was "anti-development." He reportedly responded:

> It's not whether I'm for or against development. The better and more intelligent question is what values shall frame our development? . . . Who's at the table to shape development, and who ultimately benefits from development? Why would you think I'm not for development when I want good schools, ending poverty, jobs for young

deep chord among the gathered community members. Inspired and galvanized by his character and leadership, a broad-based movement of progressive community activists, labor organizers, and African American nationalists began a campaign to recruit him to run for mayor the following month. In fact, many people who had worked together on the Wood Street project were part of the leadership of his successful mayoral campaign.

Several members of the Wood Street Coalition continue to work on subsequent community economic struggles, including fights for just affordable housing policies and support for union construction workers. Mr. Dellums has taken office in the context of a strong history of multi-sector progressive coalition building. He is not the city's savior; instead, he has charted a progressive vision for Oakland that can be implemented through the organized efforts of many groups and residents. Progressive groups are now engaged in planning an economic justice agenda in partnership with political leadership, rather than strategizing on how to fight an ailing political system. Instead of focusing enormous resources and creative energy on fighting for crumbs from development projects, we can step back and question the underlying *vision* for such policies and projects. In a historic move, Mayor Dellums has nominated the main Coalition leader on the community environmental justice demands to serve on the Port of Oakland Commission—a highly controversial move that appears to be blocked by business interests.[145]

The Wood Street story continues to evolve. The relationships between some of the Coalition partners and the developers have changed, generally moving toward principles of constructive engagement. Under the former paradigm, in which the market (developers) drove public policy, the Coalition had to prove to the developers that public pressure could affect the outcome. Now, developers have begun to deal with the Coalition as a legitimate participant at the negotiating table, and the parties have acknowledged that we need to work together and to engage the City as a constructive partner. The new relationships with the developers signify the maturity of both the Coalition leaders and developers, many of whom were extremely angry at the conclusion of the struggle. The ability of leaders from both camps to put aside personal animosity and to focus on the larger needs of the community has enabled us to move forward constructively.

Things are also changing in West Oakland. A new Train Station Partnership has emerged from the original Coalition, focused on the revitalization of this historic building. Partnership members have met numerous times with the Wood Street developers regarding their vision for the train

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people, giving people on the corners selling drugs new options?

Christopher Heredia & Cecilia Vega, *Mayors' Tales of 2 Cities: Newsom and Dellums Look to the Future*, S.F. CHRON., Jan. 18, 2007, at B1.

145. Kelly Rayburn, *Disputed Port Board Selection Put on Hold*, OAKLAND TRIB., July 19, 2007, http://www.insidebayarea.com/ci_6411333?source=most_emailed.

station as a means to address West Oakland's economic, cultural, and social needs through innovative collaborations and programming. The meetings have resulted in the creation of a preliminary common agenda to secure public redevelopment funds for the train station's reuse. The Wood Street developers have preliminarily approved the Train Station Partnership's vision for the site, and have pledged to bring their resources to the table, including their connections with powerful business groups.

Negotiating with the developers under the neoliberal assumption that what's good for developers is good for everyone would not have produced such results, and it is unlikely that they even would have agreed to meet the minimum legal requirements for community benefits. It took tremendous community pressure and multiple strategies including organizing, policy advocacy, and possible litigation to force both the City and developers to provide the minimum benefits. However, once the political paradigm began to shift, we were able to take off our fighting gloves and put on our garden gloves to work together with former adversaries to grow a win-win situation. Now, the developers are talking about providing more affordable housing than is legally required and at a much smaller cost to the public. They also are working closely with the West Oakland Environmental Indicators Project on the environmental clean-up needs. There is reason for hope that West Oakland has turned an important page among developers and community groups alike. This important and fruitful move from animosity and adversarial conflict toward collaboration and constructive engagement is due in part to principles drawn from the practice of mindfulness.

B. Lessons Learned: Reflections on Lawyers, Power, and Mindful Practice

In reflecting on the practice of community lawyering in this day and age, the fourteen principles of "engaged Buddhism" promulgated by Thich Nhat Hanh have inspired us, as authors. Thich Nhat Hanh formed the Order of Interbeing (*Tiep Hien*) in 1966, during the escalation of the Vietnam War. The members of the Order—monks, nuns, and laypersons—blended the traditional Buddhist concerns with their pressing need to speak out against social injustice and oppression. They helped war victims, organized demonstrations, printed books and leaflets, ran social service projects, and organized an underground for draft resisters, all while practicing meditation together and following the Fourteen Mindfulness Trainings.[146]

The insights and practice of the Order of Interbeing offer poignant guideposts for current communities fighting for economic justice, as well as for other social justice movements. Under neoliberalism, capitalism, and other oppressive structures, local communities may often feel that they are at "war"

146. Fred Eppsteiner, *Introduction* to THICH NHAT HANH, INTERBEING: FOURTEEN GUIDELINES FOR ENGAGED BUDDHISM viii (3d ed. 1997).

with private corporate interests, unresponsive government, and even other community players. This was certainly the case with the Wood Street struggle. How can we reflect upon and apply the teachings and learnings of spiritual movements like the Order of Interbeing in current urban struggles for economic justice?

One place to begin is with the nature of lawyering itself. The Buddhist concept of "right livelihood," as expressed in Thich Nhat Hanh's eleventh mindfulness principle, asks people to take work that harms neither humans nor nature, physically nor morally:

> *Aware that great violence and injustice have been done to our environment and society, we are committed not to live with a vocation that is harmful to humans and nature. We will do our best to select a livelihood that helps realize our ideal of understanding and compassion. Aware of global economic, political and social realities, we will behave responsibly as consumers and as citizens, not supporting companies that deprive others of their chance to live.*[147]

This raises a number of questions for lawyers. Can being a lawyer qualify as right livelihood? Or is practicing law in an adversarial system inherently at odds with a philosophy based on compassion, empathy, and loving kindness? What can Buddhist philosophy bring to the task of lawyering? Can it illuminate the kind of complex, charged, sometimes bitter struggle that characterized the Wood Street case? Can it give us a pathway to find a vision of transformative justice? Or is Buddhism ultimately quietist, prompting its students to withdraw from the world in search of inner peace rather than engaging in struggle?

We (the authors) believe that the concept of "engaged Buddhism" helps bridge the apparent gap between Buddhist philosophy and the practice of lawyering. At the same time, engaged Buddhism transforms both sides of the equation: it pushes us (as lawyers) to change how we lawyer, just as the work of community lawyering pushes us to rethink Buddhism. The following sections provide Margaretta's first-person reflection of the application of mindfulness principles to the practice of community lawyering, utilizing the Wood Street campaign as an illustrative example.

1. From "The Art of War" to "Being Peace"

I was trained to be a zealous advocate in a highly adversarial system. In my first years of practice as a lawyer representing civil rights education class action cases, Sun Tzu's book, The Art of War,[148] was my "bible"—my reference guide to turn to when I faced barriers in my work. I believed that the

147. HANH, *supra* note 146, at 44; *also available at* http://www.iamhome.org/14trainings.htm (describing the "Eleventh Mindfulness Training: Right Livelihood").

148. ZHUGE LIANG & LIU JI, MASTERING THE ART OF WAR (Thomas Cleary trans. & ed., 1st ed. 1989).

principles reflected in the book helped me and my colleagues find strategies to win against the discriminatory public institutions and officials with whom we were "waging war." In the realm of education, we "won" battles such as court orders and mandatory compliance agreements by forcing change upon recalcitrant agencies and officials through litigation, community pressure, and shame. But we failed to reach the hearts and minds of the people who needed to implement those mandates—to show them why they had an interest in providing the kind of educational services for which we were fighting. The community coalitions and I saw the "targets," such as the school district superintendent or unfriendly school board members, as our enemies. We based our tactics on the belief that our opponents did not care about the civil rights of the children we represented and that in order to meet the needs of the people we cared about, we had to influence the "targets" through outside and heavy-handed pressure.[149] These tactics created deep animosity and mistrust among the players involved.

I subsequently learned through working directly with community youth the incredible power of what I would call "transformative justice"—work that fosters individual development and aligns it with community development principles.[150] We were helping young people to love themselves, realize their leadership potential, and serve as leaders in changing their own school communities. Our school change campaigns had to reflect the same underlying principles of love, compassion, belief in the possibility of human change through education, and the ability to ally with people different than you. Otherwise, the youth themselves would call out the hypocrisy. This approach helped allow young people, who were historically disrespected by mainstream society, to organize coalitions of elected officials, school leaders, parents, teachers, and community leaders to work together toward the visions and solutions that the youth themselves developed. It built concrete resources for young people today,[151] and developed amazing young community leaders.

Also along this journey, I became a parent—a life-transforming

149. Examples of tactics used include storming school board hearings and making personal attacks against individual officials. While I did not engage in personalized attacks myself, feeling that they were ineffective, my understanding of this issue was not informed enough to be persuasive to others in the Coalition. In my public statements, however, I would use what the other side saw as inflammatory characterizations of school district officials as recalcitrant and uncaring violators of children's civil rights.

150. In response to outbreaks of racial violence on school campuses in Oakland, Berkeley, and Richmond, California, a group of community leaders, including myself, co-founded a multiracial youth violence prevention and educational justice organization called Youth Together. I served as the founding director of Youth Together for seven years. *See* Youth Together, http://www.youthtogether.net (last visited July 12, 2007).

151. For example, the East Oakland Youth Uprising Center that provides comprehensive youth violence prevention and community health services and programs was created through the work and vision of Youth Together youth and staff. *See* Suzy Abu-nie & Keith Henry, *Castlemont Students Plan Youth Center*, OAKLAND TRIB., Nov. 19, 2000, at L2; *see also* Welcome to Youth Uprising, http://youthuprising.org (last visited July 12, 2007).

experience that helped me detach my ego from my work and gave me a greater reason to work for social and community change. At the same time, a close friend, who has been a lifelong movement organizer and activist, introduced me to the teachings of Thich Nhat Hanh. What began as helpful guidanee for personal meditation turned into an appreciation for how the teachings of engaged Buddhism could guide my social justice work.

In times of turmoil, confusion, and anxiety during the Wood Street struggle, I would turn to books by Thich Nhat Hanh to help center me and give me guidance.[152] In addition, another "bible" that saw me through these times were the audiotapes of Dr. King's autobiography.[153] Stories from both told of living under great duress and war, and gave me courage to address the attacks on the Coalition and me from the developers, government officials, and community opposition. They were reminders to me that although we were in pitched battle, it was essential to remain principled, to speak to the merits of the situation, and to allow the integrity of what we were fighting for serve as our predominant public message. Combined with this guidance and meditation, there were times when I was able to see our interconnectedness, and the potential for both great happiness and cooperation with even our opposition.

2. Mindfulness and Representation

> *Aware that much suffering is caused by war and conflict, we are determined to cultivate nonviolence, understanding, and compassion in our daily lives, to promote peace education, mindful mediation, and reconciliation within families, communities, nations, and in the world. We are determined not to kill and not to let others kill. We will diligently . . . [seek] to discover better ways to protect life and prevent war.*[154]
>
> *Aware that lack of communication always brings separation and suffering, we are committed to training ourselves in the practice of compassionate listening and loving speech. We will learn to listen deeply without judging or reacting and refrain from uttering words that can create discord or cause the community to break. We will make every effort to keep communications open and to reconcile and resolve all conflicts, however small.*[155]

152. I read and meditated on sections from Thich Nhat Hanh's books. *See, e.g.*, THICH NHAT HANH, ANGER: WISDOM FOR COOLING THE FLAMES (2001); THICH NHAT HANH, CREATING TRUE PEACE: ENDING VIOLENCE IN YOURSELF, YOUR FAMILY, YOUR COMMUNITY, AND THE WORLD (2003).

153. LeVar Burton, *Audiobook of* THE AUTOBIOGRAPHY OF MARTIN LUTHER KING, JR. (Clayborne Carson ed., Hachette Audio 1998).

154. HANH, *supra* note 146, at 47 (describing the "Twelfth Mindfulness Training: Reverence for Life").

155. *Id.* at 39 (describing the "Eighth Mindfulness Training: Community and Communication").

The twelfth and eighth mindfulness trainings remind us as readers that the work of social and economic transformation emerges from relationship-building and conflict-resolution within a community. From a Buddhist perspective, the idea that a just society can be brought about through violence, hatred, and armed struggle is absurd. Instead, we must transform institutional structures and personal relationships together, centering both on compassion. For the community lawyer, this ideal means that questions of process, as well as outcome, are central. Do we speak and treat one another in ways that are compassionate and reflect the humanity in all of us? Do we take the time to muster the courage to resolve the inevitable conflicts that arise when people work together closely? Do we mindfully create campaign strategies that understand the inter-relationships between people and actions? Do we believe in the possibility of personal transformation for the elected official who we perceive as compromised by money and influence? And, more practically, is the lawyer's duty of zealous representation consistent with the principle of promoting peace and reconciliation? Relationships, apart from the likelihood of wining or losing a particular struggle, are important because both Buddhist philosophy and the history of social justice movements teach that the process affects the results.

Additionally, this principle speaks to issues that have troubled social justice lawyers for decades. Is it possible to serve clients from subordinated communities without reinforcing their subordination? This worry about power and the dread of complicity in domination shaped the writing on social justice lawyering throughout the 1980s and 1990s. Such concerns are real. Lawyers can too easily coerce their individual clients and thus reinforce structures of subordination based on class privilege, race privilege, and the authority of expertise. Nor does the emergence of the "law and organizing" model of social justice lawyering somehow resolve the problem, as subordination can easily be reinforced through this method as well.[156] Yet the solution cannot be to withdraw one's training, knowledge, and influence from the struggle.

Lawyering relationships–like all relationships–cannot be purged of power or the possibility of coercion and complicity in 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. Mindfulness does not dictate a particular relationship between lawyer and client; indeed, it does the opposite. It requires the lawyer to be aware of and intentional about the layers

156. Cummins & Eagly note:

> The postmodern critique of lawyers imposing their own views on their clients is equally applicable in the law and organizing context: Just as poverty lawyers must be careful not to use their technical sophistication and legal knowledge to disempower clients, they must also guard against reifying the concept of organizing and using it to advance a social change agenda that does not reflect the needs and desires of client communities.

Cummings & Eagly, *supra* note 9, at 497.

of relationship with the client and situation involved.

In the context of the Wood Street case, taking relationships seriously meant that EBCLC lawyers rejected the traditional confines of the lawyer-client dyad. EBCLC lawyers were brought in initially by a grassroots organizing group with a primary interest in affordable housing. But the Coalition as a group had multiple demands that we were required to represent effectively. When our pro bono counsel reminded us of the potential conflict between the Coalition's environmental demands and those affecting labor and housing needs, we worked to ensure that the Coalition was committed to stand behind all the demands as a total package. We realized that the relationship among the different Coalition groups was a critical aspect of building progressive unity and furthering Oakland's economic justice movement.

We learned that the ability to maintain a semblance of unity throughout an entire campaign, despite numerous and conflicting demands, is of central importance in coalition work. This required all Coalition members to compromise on their particular self-interests in order to meet collective needs. Having a lawyer-client relationship with only a segment of the Coalition would have created inequities and tension within the group, and would have potentially undermined its unity. EBCLC, instead, sometimes played a mediator role within the Coalition, especially when conflicts between community and labor arose. We worked with others to ensure that the Coalition maintained a public united front throughout the campaign, regardless of the time it took to get there. When it came time to determine whether or not to file a lawsuit, we did not limit decision-making purview to just those groups with retainer agreements. In a departure from the approach I had encountered in more traditional legal situations, we instead facilitated an informed and involved process that incorporated Coalition members' opinions and ultimately reached a group consensus not to sue.

Just Cause asked EBCLC both to join the Coalition as a member and to provide legal services. They also signed a retainer agreement with us. EBCLC operated as an interdependent member of the Coalition—meaning that we were members of the community and had a vested interest in what happened. EBCLC's role was similar to that of other Coalition members. We participated in strategy discussions, used our connections to help bring other community and labor groups into the Coalition, and contributed funds toward organizing.

The only difference between EBCLC and other organizations was that we also contributed legal services. In the traditional lawyering model, the lawyer may be absent from the messy and laborious process that defines coalition politics, instead engaging only in a narrowly defined scope of "legal" work. In the Wood Street campaign, we not only participated in Coalition strategy discussions, but also voiced an opinion about strategic direction.[157] What we

157. In reflecting upon the Coalition's view of EBCLC, one could point to the post-

failed to do, however, was to be sufficiently mindful of our relationship with the original group that retained us. It was not explicitly discussed what our relationship would be toward this group versus other Coalition members. Did Just Cause expect us to side with them when conflicts arose in the Coalition or take direction solely from them?

The fast and furious nature of the campaign and the fact that this was the first time I had served as an attorney to a coalition with multiple interests (as opposed to previous representation of single-issue coalitions) prevented me from realizing that the conflicts with Just Cause went beyond substantive disagreements about tactics. The relationship was complicated not only by the two organizations' history of working together as equal community partners, but also by Just Cause's role as plaintiff in a contemporaneous suit for which EBCLC served as legal counsel.[158] One lesson EBCLC learned from this example is the need to define our role before we join a coalition effort. Will we be able to remove ourselves from the interests involved or might they directly impact our direct services to client communities or implicate issues of movement building? In Oakland-based coalition efforts, our long history, mission, and status as a community-based service organization makes it difficult for us not to be invested in both the process and outcomes of the struggle. What we have learned is to be clear and upfront about the role that we will play in a given effort.

Additionally, in the Coalition debrief after the campaign, it was noted that the Coalition should have had a signed memorandum of understanding between every member that clearly laid out each group's roles, expectations, and final campaign demands, as well as an agreed-upon decision-making process. This illustrates the reality that *all* members of a coalition, not just legal groups, should pay close attention to how they shape their roles in collective efforts.

Perhaps the greatest challenge in bringing the practice of mindfulness to the Wood Street campaign was our interaction with the developers. In the context of being "at war" with this group, it was impossible to reconcile our duty to be zealous advocates for our clients with the call to promote peaceful relations with the developers. Yet these developers had a long history in affordable housing. They should have served as models, demonstrating that

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campaign celebration with Coalition partners, community allies, and Mayor Dellums. The celebration planners wanted initially to honor only a few groups for their work on the campaign, including EBCLC. While we were able to convince the planners that it made the most sense to honor everyone involved for their effort equally, EBCLC was highlighted in the celebration. One of the Coalition partners, a labor leader, referred to me as the "spit and glue" of the Coalition—while not the most laudatory of terms, it does sum up a general view of the role we played. This is not to say that our connection with Just Cause is trouble-free—it is an ongoing process of growing a relationship. The point is, however, that the issue of attorney-client relationship in a coalition context is not black and white one.

158. Just Cause Oakland is a plaintiff in the Pacific Renaissance litigation, which was underway during the Wood Street campaign. *See supra* Part II.D.

they could turn a profit while still providing affordable housing, jobs, and environmental protections. From the debrief sessions with Rick Holliday, it became clear that he felt that the adversarial and oppositional nature of the relationship had set in before EBCLC's involvement began. The Coalition believed that, lacking the support of a largely pliant city government, we had to display our power before the developers would take us seriously. However, once the development project struggle ended and political conditions began to change, we could begin to relate differently toward the developers.

3. Mindfulness and Communication

> *Aware that words can create suffering or happiness, we are committed to learning to speak truthfully and constructively, using only words that inspire hope and confidence. We are determined not to say untruthful things for the sake of personal interest or to impress people, nor to utter words that might cause division or hatred. We will not spread news that we do not know to be certain nor criticize or condemn things of which we are not sure. We will do our best to speak out about situations of injustice, even when doing so may threaten our safety.*[159]

The ninth mindfulness training focuses our attention on the suffering we confront daily in our work, which can sometimes bring us to despair. The stories we hear reach inside us and motivate us in our work. Yet it is incredibly difficult to get decision-makers to listen to and care about these stories. Community needs often hold little weight in policy-making decisions. Community activists are often told outright to "skip the needs statement," or public officials nod off to sleep during those presentations, chat with each other, or look on with disinterest. As advocates in court we hear the refrain, "*Get to the point, counsel.*" But from our perspective, stories of human suffering are precisely the point.

The issue of what to do with the suffering we witness brings us back to the dilemma of power. Many community members are not skilled at making technical arguments. However, they are the experts on their own conditions and those of their family members, friends, and neighbors. Tremendous power stems from morality and righteousness, but too often policymakers refuse to listen because they have either heard it all before or do not know what to do after hearing a statement of need. As the lawyers in the room, it is often up to us to provide the evidence, rationale, and weight to make policymakers feel compelled to do something.

For example, at one of the first public hearings on the Wood Street project, West Oakland residents passionately testified about their long-time

159. HANH, *supra* note 146, at 41 (describing the "Ninth Mindfulness Training: Truthful and Loving Speech").

neighbors being forced out of their homes, about their view that the lack of affordable housing was an enormous problem, and about their fear that the development would force still more long-time residents out of West Oakland. While those of us who live with, study, and understand the patterns of urban gentrification and market force displacement would nod and feel stirred by these arguments, the developers, planning commissioners, and City Council members did not seem to share our understanding. The Council member representing West Oakland believed that there was too *much* affordable housing in West Oakland, and that market-rate development would bring the neighborhood desperately needed amenities like grocery stores and pharmacies. The chair of the planning commission and other commissioners believed that people were leaving West Oakland voluntarily because of poor public schools and crime, or because they wanted larger houses in the suburbs.

People's stories of their struggles trying to find or keep stable, adequate, and affordable housing were insufficient to sway these decision-makers. Our job as the community lawyers was to find ways to validate these stories of suffering without allowing them to be subsumed by legal analysis or data. This was a difficult balance to achieve. Mindfulness about the need for community residents to testify about their own experiences pushed us to think creatively about how to achieve both objectives. From our perspective, our role was to take the pain, emotions, and brilliant ideas of community residents and translate them into legal arguments (based upon redevelopment, environmental, and land-use laws) and policy recommendations (grounded in long-term thinking, fiscal feasibility and impact concerns).[160]

In addition to our role translating community ideas into legal arguments, the presence of lawyers can confer legitimacy on a community struggle. It is harder to label people as "radical," "left-wing," or "anti-everything" when legal advocates translate community needs and demands into statements based upon reason, logic, and the law. In the Wood Street case, the developers told us that one of the reasons why they were so upset at EBCLC's involvement was that it lent legitimacy to people they believed were unscrupulous and unreasonable.

Thus, as translator and as a source of legitimacy, we believe that we served as an effective bridge to policymakers. However, being effective can be problematic, too. I have witnessed how quickly and forcefully the presence of

160. One strategy we used to accomplish this was the Environmental Impact Report required by the California Environmental Quality Act (CEQA) as part of the approvals process for development projects. CEQA enables community residents to comment on the impact of the project as part of the official record. CEQA also enables jurisdictions to study the socio-economic impact of a project. *See* Sheila R. Foster, *The City as an Ecological Space: Social Capital and Urban Land Use*, 82 NOTRE DAME L. REV. 527 (2006). We worked with community residents and groups in helping them put together their CEQA comment letters, letting them know that they were the experts regarding community experiences. We provided them with the legal framework that would enable or require the planning commission and City staff to address community concerns about the negative impact of the project.

legal professionals can silence community activists and shift the conversation into a discussion monopolized by the lawyer and the policymaker. It is the "all eyes on me" phenomenon that stems from our training in the language of power.[161] If lawyers fail to be mindful of the power imbalance between them and community residents and activists, the legal professionals can drive rather than partner in community struggles. One concrete strategy that I have learned is to avoid serving as the facilitator in community delegation meetings with policymakers. Instead, even if I were asked to set up the meeting, I would consciously attempt to ensure that another Coalition member, preferably an impacted resident leader, served as facilitator.

The need to be mindful of power in communication issues, of course, applies also to speech with clients. Because the Train Station Coalition was made up of strong and highly competent community and labor leaders, we established structures of accountability to ensure that lawyers did not dominate the process. These included negotiation teams that contained non-lawyers and a group process that selected participants for meetings with policymakers. Coalition partners also read and signed off on public documents that EBCLC had drafted. Nevertheless, mindfulness of right speech can be a constant struggle for those of us trained as lawyers. I cannot count the number of times that I mulled over my words or actions in bed after community meetings, wishing that I had found a gentler way of cutting someone off who was meandering from the agenda. I found that my desire to get things done hindered my ability to be a good facilitator of group meetings because I was not mindful of people's needs to be heard and validated. My eyes were too focused on moving the agenda along so that we could accomplish our ambitious goals with limited resources and under unrealistic timeframes.

At the same time, oversensitivity to our role as lawyers can impede our effectiveness. Lawyers who see themselves as subordinate to community activists can sometimes fail to realize the importance of their presence, especially during negotiations. In addition, the legal training that conditions us to step back and see all sides of an issue also enables us potentially to serve as effective group mediators. There are no cut-and-dried answers as to when to step forward despite one's privilege and when to step back.

The role of community lawyers is not the same as that of community organizers or residents. We are technicians with special access to power and privilege. We can translate community needs, and help community members

161. Lawyers are trained to understand the interests of the groups in power. We are taught in law school to speak, think, and analyze in ways that are linear, and come to value so-called principles of "objectivity." Critical legal scholars have written about this issue. *See, e.g.*, Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 596 (1982) (noting "schools teach skills through class discussions of cases in which it is asserted that law emerges from a rigorous analytical procedure called 'legal reasoning,' which is unintelligible to the layman but somehow both explains and validates the great majority of the rules in force in our system").

influence the political system. We can do this in a way that does not strip people of their voices, but frames their experiences and desires into arguments that sway policymakers. Working respectfully with community residents requires relationship-building and trust. Mindfulness training can inform such relationships as we help community residents develop into effective advocates and advance the movements we care about.

4. Mindfulness and Emotion

> *Aware that anger blocks communication and creates suffering, we are determined to take care of the energy of anger when it arises and to recognize and transform the seeds of anger that lie deep in our consciousness. . . . We will learn to look with the eyes of compassion at ourselves and at those we think are the cause of our anger.*[162]

The sixth mindfulness training reminds people engaged in social justice struggles that anger is a powerful fuel fed by injustice and oppression. It works to incite, motivate, and drive many leaders and movements. At the same time, however, anger is also a barrier to transformation at the individual, interpersonal, and community levels. It is a violent feeling that historically has produced violent outcomes. Anger has the power to topple regimes and replace them with new faces, but it lacks the power to ensure that the new faces will not replicate the old patterns of injustice and oppression. Tactics born of anger can be counterproductive to achieving the original goals.

There was more than enough anger to go around on the Wood Street case. Both a great deal of money and people's neighborhoods were at stake. The developers were angry at the Coalition, and singled out two community organizing groups and EBCLC in particular for their rage. Members of the Coalition were angry at the developers, who they felt were out only to make money, and angry as well at the elected officials and city staff who they perceived as being in the pockets of the developers. The African American entrepreneurs were angry at the Coalition for blocking their economic advancement. The City staff was angry at the Coalition for blocking a project they had spent considerable time shepherding through the approval process.

It was incredibly challenging for the Coalition to stay focused on our goals and remove personal feelings from strategy determinations. This challenge turned out to be particularly significant for me. The developers had decided that I was a primary obstacle to their goals and they communicated this clearly. At one point, for example, the developers demanded that I not attend a negotiation meeting between them and Coalition labor leaders. The main labor leader eventually won a concession that I could attend the meeting, but on the condition that I remain silent.

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162. HANH, *supra* note 146, at 33 (describing the "Sixth Mindfulness Training: Dealing with Anger").

When I first heard this, I agreed to attend the meeting in silence in order to move the Coalition's objectives forward. But after reflection, I realized that I could not subject myself to being silent in a room full of mainly white men, because it would invoke too many of my painful experiences growing up as an immigrant child in blatantly racist communities. This request brought up the pain and suffering my family and I had experienced as one of the first Asian families in the communities where we had lived. It spoke to the experiences I had as a young woman attorney of color working for respect and credibility at a time when the profession was predominately white and male. I felt anger and pain, and I am not proud to say that as a result, I joined in lashing out at the developers in private Coalition meetings.

When I explained to the labor leader that I could not attend the meeting because it would be a personal violation and also compromise the Coalition's strategy (i.e. by letting the other side dictate the negotiation terms), he tried to convince me to attend, but I remained politely steadfast. The next morning before the negotiations, however, the labor leader called me with his profound apologies. In a voice full of tears he said that after talking to an Asian labor sister to better understand the issue, he realized how wrong it was to ask an Asian American female to remain silent. The exchange was a moment of profound understanding and mutual compassion that helped build a new relationship based on understanding and caring—elements that are not, unfortunately, universal, even in progressive movement work.

A second personally transformative experience occurred at one of the last public hearings on the project. Rick Holliday got up to speak, but instead of the glossy and energetic presentation he normally provided, he was hunched over and visibly shaken. He proceeded to attack one of the community organizing groups in an embittered voice. I connected with his suffering and wanted to respond to him. In mindful meditation, my anger at him washed away, and I was left instead with greater understanding of him and compassion for his suffering. At that same time, because we were engaged in a heated struggle that could lead to litigation, I did not want to do something that could be used against the Coalition politically or in court. So instead, I emailed the developer, stating clearly that I was communicating with him not as an attorney for the Coalition, but as a human being acknowledging the suffering that I had seen in him. He responded with gratitude. While this small exchange of humanity did not change the outcome of the struggle, it did plant seeds in me of how things could operate differently.

And yet, when I next saw Mr. Holliday in a mediation session, he could not even bear to look at me. He could only attack me verbally with the goal of inflicting pain. At one point in the mediation, I lost my professional composure. Former Congressman Ronald Dellums was facilitating the session. During the break, Mr. Dellums spoke words of wisdom and comfort to me: "We are nothing but human beings. Tragedy occurs when we forget that."

Today EBCLC and our community partners take these experiences into our work with the Wood Street developers on transforming the historic train station into a model "Center for Community Sustainability." Without a doubt, our decision not to sue the developers made possible a dialogue based on respect and understanding. And because I had dared to reach out to the developer to conneet with his suffering, we also were able to spend the next year in honest one-on-one meetings with the goal of mutual learning. I gave the developer a book by Thich Nhat Hanh entitled *Anger*, which he read and which we sometimes refer to in our conversations.

This more productive dialogue allows the Train Station Partnership and the developers to talk about creative ways to increase affordable housing with lower public costs, and how to implement more effectively other Coalition goals. Mr. Holliday is now one of my "go-to" people when I need to hear a developer perspective. Our changed relationship meant that our respective groups now see one another less as adversaries and more as potential allies. Although the ultimate outcome of this ability to communicate more openly and compassionately remains to be seen, the steps taken to reach out in mindfulness have given us great hope.

5. Mindfulness and Tactics

> *Aware of the suffering brought about when we impose our views on others, we are committed not to force others, even our children, by any means whatsoever—such as authority, threat, money, propaganda, or indoctrination—to adopt our views. We will respect the right of others to be different and to choose what to believe and how to decide. We will, however, help others renounce fanaticism and narrowness through practicing deeply and engaging in compassionate dialogue.*[163]

The third mindfulness training speaks to our choice of tactics in a struggle. It may seem strange to say it, but the words of this passage are extremely difficult to put into practice as social justice activists. We work in environments where we carry the suffering of other people on our shoulders, and we are up against systems and people who appear corrupt, unprincipled, and disdainful of our clients. We feel, at times, that we are in pitched battles in a war for power. We see developers and city officials as our enemies who we need to vanquish. We make strategic choices in order to win the battle and justify those choices because we are trained that way, because they are effective, and because we have a duty to protect our clients from further suffering. As a result, our tactics too easily can become adversarial or spiritually and emotionally violent.

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163. HANH, *supra* note 146, at 27-28 (describing the "Third Mindfulness Training: Freedom of Thought").

When I run ragged with too much responsibility, take too little time to sleep, to rest, and to touch the beauty of life, I allow this mindset to consume me. I have struggled with how to have compassion for someone who I believe to be corrupt and responsible for causing or contributing to the needless suffering of other people. But with sufficient meditation and time for reflection, I have at times been able to find the seeds of compassion and write City Council members "love letters" in the heat of other battles, as Thich Nhat Hanh exhorts us to do.[164] While I was unable to write such letters to the Wood Street developers, meditating on the suffering of one of the developers did enable me to understand his perspectives and melted away the anger that I had against him, allowing me to reach out to him with compassion. There was, however, no group consensus on the value of applying the principles of compassion to the Coalition campaign plan, nor did we spend time discussing this issue. I never put on the agenda of Coalition strategy planning sessions discussion of applying mindfulness principles as part of our campaign strategy or approach.

In the two years since the struggle for community benefits from the Wood Street project ended, EBCLC and our community partners have engaged in developing a comprehensive housing plan for Oakland. This work is in concert with a broad-based coalition of labor, grassroots organizing, and affordable housing activists, including some of the same players involved in the Wood Street struggle. This new coalition has identified the principles of transformative justice and implementation tactics as explicit long-term goals. While discussion on the transformative justice goals is on-going, coalition members have bought into the implementation tactics of organizing listening sessions with the policy-maker "targets" and creating a moral high ground through our community education efforts. One labor leader in particular has begun to use the langnage of "transformative justice" as part of his discourse. However, we cannot operate naively, for the opposition to our vision of meeting the housing needs of Oakland's low-income communities is very real, well-funded, and organized. People opposed to our vision have and will continue to engage in tactics to undermine the progressive agenda.

Compassionate tactics matter. Gandhi said that we must "be the change you wish to see in the world."[165] In my view, changing the identities of the

164. THICH NHAT HANH, BEING PEACE 81-82 (1987) ("Because without being peace, we cannot do anything for peace. If we cannot smile, we cannot help other people smile. If we are not peaceful, then we cannot contrihute to the peace movement.") We also wrote "love letters" as part of preparing for trial in the Pacific Renaissance housing case, where the sons of the tenant plaintiffs wrote "love letters" to the developer defendant as a settlement tactic. The writers of these letters found the process to be profoundly cathartic and healing. Through the process of writing mindfully and strategically to the developer, they found the ability to forgive him for the wrongs he committed against their families. But because these letters were written in the context of litigation, they were never sent to the developer for fear that they could be used against our clients at trial.

165. RALPH KEYES, THE QUOTE VERIFIER: WHO SAID WHAT, WHERE, AND WHEN 75 (2006).

people who hold power does not mean that community justice is automatically achieved. I do not want to support unprincipled tyrants no matter what their class, race, or politics. The question is whether people in positions of power operate with integrity and principle. But this view may be in conflict with some progressive organizing tenets that suggest that grassroots members are always in the right or that the goal is to build power for the organization itself. These are the conversations that we are beginning to have as a broader progressive community in Oakland. They are profoundly difficult, but the relationships of trust built over years of working together on economic justice struggles create grounds for great hope.

I continue to struggle with figuring out how to reconcile, or rather, how to integrate principles of mindfulness into the work I do as a lawyer and human being. I have many lifetimes to live before I come close to getting it right. Through the practice of mindfulness, however, I have grown in my ability to operate more compassionately, reflectively, and in better alignment with what I know to have integrity. These seeds enable me to reflect upon my mistakes, apologize when needed, be more compassionate to the mistakes of others, and better serve as a mindful worker in Oakland's economic justice movement. In addition, I believe that the practice of mindfulness means that once the conditions that gave rise to highly adversarial relationships begin to change, as they have begun to do in Oakland, we can then find new ways to work with former opponents, and to use the relationships created within the Coalition to support still-greater efforts.

IV

TOWARD A THEORY AND PRACTICE OF MINDFUL LAWYERING

The lessons learned from the Wood Street struggle, EBCLC's continuing partnerships, and evolving conditions in Oakland offer new insights for community lawyering. In this Part, we, the authors, identify a tentative professional path for people who have a vision of transformative justice and strive to practice mindfulness and compassion in the face of people, policies and institutions that are indifferent or antagonistic to community interests.

> *Aware that the essence and aim of a Sangha [Buddhist community] is the practice of understanding and compassion, we are determined not to use the Buddhist community for personal gain or profit or transform our community into a political instrument. A spiritual community should, however, take a clear stand against oppression and injustice and should strive to change the situation without engaging in partisan conflicts.*[166]

The tenth mindfulness training reinforces the notion that mindfulness can

166. HANH, *supra* note 146, at 43 (describing the "Tenth Mindfulness Training: Protecting the Sangha").

help ground community lawyers in practices that will further a just and peaceful society, and that the nascent movement for mindful lawyering can benefit from the experiences of community lawyers and perspectives drawn from engaged Buddhism. The current literature on mindfulness practice for lawyers tends to focus on making individual lawyers more effective and more at ease with themselves. These are worthy goals. But engaged Buddhism suggests that in order to counter both individual and structural injustice, lawyers must also work collectively for socio-economic transformation.

There are at least three levels on which the practice of mindful lawyering helps challenge domination and facilitates social justice in ways consistent with Buddhist teachings. The first level of scale (lawyer-self and lawyer-client) is addressed in the mindful lawyering literature and is common to the work of all lawyers. Here we explain how these two first-level relationships are especially important for community lawyers. Our experience also suggests that mindful lawyering is relevant at two broader levels of scale. The second level concerns the relationship between a community lawyering practice and the community it seeks to serve. The third level of scale concerns the relationship between law and progressive social change.

A. First-Level Mindfulness: Lawyer-Self and Lawyer-Client

The first level concerns the lawyer's relationship to herself and her client. The mindful lawyer is able to see and identify her emotional reactions in the moment, as well as to think through her situation intellectually and in the abstract. Anger, sadness, disappointment, fear and anxiety—whether the source is the client or the lawyer herself—are common emotions for those who work for social change, and they can lead to burnout, cynicism, constant rage, or despair. Mindfulness practice fosters the ability to be centered in wholeness that can help lawyers handle these feelings. The mindful lawyer is also able to recognize that the desire to be the hero often motivates social justice lawyering and is aware of the mischief that can follow if this desire is at the center of one's lawyering practice.[167]

A lawyer's relations with her clients or other individuals are fraught with complexity.[168] It is a truism that effective lawyers must learn how to listen to

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167. *See* Tremblay, *supra* note 12, at 970 (discussing the "rescue preference" in neighborhood legal services offices); *but see* Gerald J. Postema, *Moral Responsibility in Professional Ethics*, 55 N.Y.U. L. REV. 63 (1980) (describing the moral and practical dangers of lawyer distancing).

168. Julies Su explains:

> I avoid referring to the workers as "clients." To me, it impersonalizes the workers and places them in a dependent relationship. As "clients," the relationship is defined by my education and skills as their "lawyer"; instead, by referring to them as "workers," their experiences define our work together. I talk with them not just in terms of legal rights, but in terms of basic human dignity. For many people, when language is framed as "law," I have seen an immediate shift in their willingness to engage in the dialogue;

and communicate with their clients, and that this is not as easy as it seems. It is difficult partly because communication flows through a number of channels, not all of them verbal and not all of them conscious. In addition, especially in a community practice, lawyer-client communication often crosses lines of power and privilege. A substantial literature has examined the power dynamics that envelop lawyer-client relationships, particularly when social hierarchies such as race, class, gender, disability, or sexual identity divide a lawyer and her client.[169] The work of listening across difference and across boundaries of power and privilege is difficult. It can become nearly impossible when the lawyer fails to pay attention to the client's thoughts, feelings, and behavior and to how she herself is perceived by others. The mindful lawyer can learn to be aware of these matrices of power without being defeated by them, and even can learn to employ them in transformative ways.[170]

Similarly, in negotiations and in coalition work, effeetive lawyers must be able to understand the strengths, weaknesses, and attachments of others in the room. For this reason, training programs in alternative dispute resolution (ADR) increasingly incorporate mindfulness principles. Mindfulness can bring a level of sensitivity to emotional needs that is critical to the practice of meditation, arbitration, and restorative justice. In a community practice, mindfulness also means understanding how structural relations of privilege and oppression affect group dynamics. Race, gender, class, sexuality, and ethnicity can become the "elephant in the room" that no one quite understands or can articulate.

Mindfulness also is useful when the lawyer is involved in adversarial proceedings, which seemingly dictate a mindset focused on victory rather than compromise. The mindful lawyer can recognize where the desire to "win," to be right, or to stand on principle, can lead both lawyer and client astray, and where what looks like compromise can serve the greater good of the client and the community. Finally, the lawyer who is paying attention can learn to shift between different models of representation. Sometimes a directive role for the

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> many people think the discussion is suddenly taking place in a language they do not and cannot understand. What workers do understand is a language of human dignity.

Su, *supra* note 113, at 412-13.

169. Some classic articles exploring the potential divisions between lawyer and client created by various forms of privilege and subordination, especially race and poverty, include Lucie E. White, *Subordination, Rhetorical Survival Skills, and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990); Austin Sarat, *". . . The Law Is All Over": Power, Resistance, and the Legal Consciousness of the Welfare Poor*, 2 YALE J.L. & HUMAN. 343 (1990); John O. Calmore, *A Call to Context: The Professional Challenges of Cause Lawyering at the Intersection of Race, Space, and Poverty*, 67 FORDHAM L. REV. 1927 (1999); and Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning Lessons of Client Narrative*, 100 YALE L.J. 2107 (1991). See also works cited *supra* note 12.

170. *See, e.g.*, LÓPEZ, *supra* note 12 (discussing "rebellious lawyering," which encourages lawyers to recognize and work with, rather than against, the knowledge base and power of traditionally subordinated communities); *see also* Gerald P. López, *The Work We Know So Little About*, 42 STAN. L. REV. 1 (1989) (providing examples of this local knowledge).

attorney is appropriate; at other times the attorney should step back.

B. Second-Level Mindfulness: Lawyer-Community

Being an effective community lawyer is difficult. The struggle for social and economic justice can be debilitating and demoralizing. Community lawyers know well the feeling of Pyrrhic victory when fighting for subordinated communities and interests in a legal and political system that purports to be neutral, yet frequently consolidates the power of winners against losers. The experience of "winning the lawsuit but losing the war" is all too familiar. Victories are few and far between, and sometimes even short-term or apparent victories turn into longer-term defeats. The adversarial stance necessary when working for disempowered communities—even when the lawyer is not actually in litigation—can produce rigidity, blindness, and un-mindfulness that leave both lawyers and their community partners disempowered and disengaged. Community organizations can focus on *being* right at the expense of *doing* right for the people they seek to represent. They might stand on principle when a greater good could be achieved by compromising with organizations or individuals who are conventionally painted as "the enemy." They may accuse the lawyer of "selling out," or demand adherence to political litmus tests that stand as a barrier to providing real assistance to suffering individuals and groups. Community organizations and community lawyers alike bring analytical and practical tools to their work that are outmoded and no longer appropriate.

How can mindfulness practice address the relationship between the community lawyer and the community she serves? *Mindfulness practice can seem like a ridiculous luxury in the face of the suffering that community lawyers witness daily.* What is the point of becoming happy and enlightened when the people with whom you work are struggling with poverty, racism, and political powerlessness? One way that community lawyering can be informed by Buddhist philosophy—not just meditation practice—is on precisely this question of suffering. Buddhism urges its followers to recognize suffering as part of the human condition; to work to reduce needless suffering; and to bear witness to the suffering that cannot be avoided. Awareness of suffering demands social action, not just individual contemplation. Thus mindfulness means more than just the traditional practice of meditation as attention to an individual's inner world. It also serves as a practice of attention to social relations of privilege and subordination, the needless suffering that they create, and the responsibility to end them. In accordance with these ideas, engaged Buddhism suggests that Buddhists should not only focus on inner awareness, but should resist social injustice as well. At this level of mindfulness practice, community lawyering requires an active engagement with the community that at times may transcend more traditional and passive modes of representation.

Community lawyering at this level goes beyond representing individual

clients to articulating longer-term and larger-scale community interests. This means, again, that a lawyer must play multiple roles. At times, the community lawyer in the room need only offer technical assistance; at other times, the lawyer must speak powerfully for an unrepresented interest. Such independence and willingness to speak forthrightly can be disconcerting for opponents and allies alike, but in the long run it leads to and fortifies a respect for the lawyer's integrity. This suggests that the community lawyer will, at times, be an equal partner with, rather than merely a tool for, community organizations. But, more importantly, it also means that the lawyer must be transparent and explicit about the role she will play from the beginning of a relationship.

C. Third-Level Mindfulness: Lawyer-Movement

Finally, a mindfulness practice assists lawyers in understanding the place of their work in the larger struggle for peace and justice. Law students entering a social justice practice often find themselves grappling with the big questions: whether and to what extent lawyering and the law itself reinforce the status quo, and conversely, whether lawyering can assist in building "people power." We live in a time when official social leaders seem either missing in action or actively working to thwart progressive goals. The suffering caused by war, violence in social institutions from the family to prisons, political corruption, rampant consumption, and unregulated production are at the forefront of many progressives' minds and hearts.

Yet in other seemingly hopeless eras, extraordinary events have occurred. Examining the work of leaders such as Gandhi and Martin Luther King, and events such as the fall of apartheid South Africa and the toppling of the Berlin Wall, Jonathan Schell concludes that the traditional assumption that political power is inevitably based on force is wrong. Schell observes that for Gandhi, there were two kinds of power: power obtained by the fear of punishment, and power obtained by acts of love, which he called *Satyagraha.*[171] Schell renames these "coercive power" and "cooperative power" respectively, and argues that, contrary to the usual belief that world cooperation can only be enforced by coercive power, a world politics can be built on cooperative power.[172] Such a

171. *See* M.K. GANDHI, NON-VIOLENT RESISTANCE (SATYAGRAHA) 3 (Dover Publications 2001) (1961) ("Satyagraha is literally holding on to Truth and it means, therefore, Truth-force. Truth is soul or spirit. It is, therefore, known as soul-force. It excludes the use of violence because man is not capable of knowing the absolute truth and, therefore, not competent to punish.").

172. Schell writes:

> I suggest that the power that is based on support might be called cooperative power and that the power based on force might be called coercive power. Power is cooperative when it springs from action in concert of people who willingly agree with one another and is coercive when it springs from the threat or use of force. Both kinds of power are real. Both make things happen. Both are present, though in radically different proportions, in all political situations. Yet the two are antithetical. To the extent that the one exists, the other is ruled out. To the degree that a people is forced, it is not free. And so when cooperative power declines, coercive power often steps in to fill the vacuum,

global politics would not rely solely on the establishment of rules and enforcement mechanisms, although it might well incorporate them. Practices and institutions that work to build cooperative power would be more important than rules and enforcement mechanisms. For Schell, "[t]he agenda of a program to build a cooperative world would be to choose and foster cooperative means at every level of political life."[173]

At this scale, mindful lawyering is a practice that connects the traditional Buddhist goal of individual inner enlightenment with the political program of facilitating the development and exercise of cooperative power. As Schell points out, such power is real, and it can defeat power bought with guns and tanks. Coercive power, as the United States is once again learning in Iraq, is in fact severely limited. Schell's insight is that cooperative power need not be negative; it can also be positive and productive. And, as Schell suggests, cooperative power is built from below, beginning with the interactions of persons and small-scale groups whose actions are shaped by clear-sightedness, cooperation, and respect. In short, cooperative power starts with mindfulness.

The lawyer concerned with progressive political change, then, can use mindfulness as a practice to connect small-scale and large-scale transformation. Right action and right interaction with others are paths of mindful lawyering: seeking neither victory nor defeat; getting caught up in neither wild optimism

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> and vice versa. Society's need for power of one kind or another is so great that in the absence of popular government people will often accept dictatorship, creating a sort of desperate "consent" that is quite different from the "liberal obedience" (in Burke's phase) that is the bedrock of a system of cooperative power. Likewise, when coercive power weakens, cooperative power may suddenly appear, as it did in the latter days of the Soviet empire.

JONATHAN SCHELL, THE UNCONQUERABLE WORLD: POWER, NONVIOLENCE, AND THE WILL OF THE PEOPLE 227 (2003).

173. *Id.* at 351. As Schell elaborates:

> At the street level, this would mean choosing satyagraha over violent insurrection—the sit-down or general strike or "social work" over the suicide bombing or the attack on the local broadcasting station. At the level of the state it would mean choosing democracy over authoritarianism or totalitarianism (although some, such as Jefferson, Arendt, and Gandhi, have hoped for the invention of a political system that would provide more participation for citizens than representative democracy does); at the level of international affairs, it would mean choosing negotiation, treaties, and other agreements and institutions over war and, in general, choosing a cooperative, multilateral international system over an imperial one; at the level of biological survival, it would mean choosing nuclear disarmament over the balance of nuclear terror and proliferation. There is no reason to restrict the idea of cooperative power to individuals acting together. We can, to paraphrase Burke, just as well say, "freedom, when nations act in concert, is power." The choice at each level is never merely the rejection of violence; it is always at the same time the embrace of its cooperative equivalent.
>
> Such a program of action, though lacking the explicit, technical coherence of a blueprint, would possess the inherent moral and practical coherence of any set of actions taken on the basis of common principles.

Id.

that the revolution is just around the corner nor the despair that all is hopeless; caring for others without attempting to make everything about us; doing the day-to-day work of lessening needless suffering; and witnessing the suffering that is an inherent part of being alive.

Finally, our experiences as community lawyers and law professors working with and thinking about economic justice raise far-reaching questions about the direction of necessary transformation. The eleventh mindfulness training asks us to seek right livelihood and to practice responsibility as citizens and consumers. This training, however, does not address us as workers in a class society. A Buddhist perspective on community economic development reinforces the progressive intuition that the dream of "lifting all boats" without disturbing the inequities of free-market capitalism is problematic. Community lawyers must work in the here and now, but the ultimate direction of change must be toward economic analyses that value both greater efficiency *and* equity; economic practices and institutions that foster trust and good faith rather than greed and selfishness; and measures of well-being that take health and happiness, not just wealth, seriously.[174]

CONCLUSION

> *Aware of the suffering caused by exploitation, social injustice, stealing, and oppression, we are committed to cultivating loving kindness and learning ways to work for the well-being of people, animals, plants, and minerals. . . . We will respect the property of others, but will try to prevent others from profiting from human suffering or the suffering of other beings.*[175]

The eleventh mindfulness training recalls for us as authors both the painful history of many low-income communities and the reasons we attended law school. West Oakland under neoliberalism is at once unique and fairly typical: a community where the forces of the "free market" are pitted against the needs of "the people." The recent train station development—like housing and commercial developments throughout urban areas during the last twenty-five years—is but the latest skirmish over the distribution of wealth and power in this era. Like earlier development battles, this struggle has been full of opportunity and rife with danger. Residents of West Oakland and similar neighborhoods across the country want the same basic things: safe streets, good

174. For an effort to identify various institutions and practices that incorporate democratic practices into economic ones (with an eye toward reconstructing democratic socialism), see ARCHON FUNG & ERIK OLIN WRIGHT, DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE (2003). *See also* Erik Olin Wright's Home Page, http://www.ssc.wisc.edu/~wright/ (last visited July 12, 2007) (previewing Wright's manuscript in progress: Envisioning Real Utopias).

175. HANH, *supra* note 146, at 49 (describing the "Thirteenth Mindfulness Training: Generosity").

schools, affordable housing, convenient amenities, and a sense of community. Yet the rules of the game have been structured in such a technocratic and legalistic way that community voices are rarely consulted or heard in the development process unless assisted by community lawyers.

We grapple daily with the issue of the role of lawyers in community struggle. Lawyering for social justice can seem like an oxymoron. In this view, law is designed to maintain the power and privilege of economic and social elites, and civil and human rights have only been obtained through the efforts of mass movements and challenges to law and legal rhetoric. In this perspective, lawyers are inherently limited in their ability to advance genuine social justice, serving only to undercut the activism and organizing that is needed for fundamental and lasting change to occur.

And yet our varied experiences as authors have revealed a different vision and paths that lawyers can take to realize social justice. This is not the vision often taught in law school, in which neutral justice naturally emerges from partisan advocacy on each side. Nor is it the yearning for a great leader who can single-handedly mold "the beloved community," or the desire for a "come the revolution" moment that will transform all institutions in a single blow. Instead, it is a path that recognizes that lawyers are ultimately members of the communities we serve, and that our interests are inextrieably tied to the results that flow from community efforts. It is an acknowledgement that as lawyers who live, work, raise our children, and struggle in the community, we are partners along with grassroots community groups, obligated to engage in the often messy, often controversial, always process-intensive work of building and advancing community. This is a community-lawyering path that is not immune to criticism, because lawyers can and do abuse their power. But it is a path that resonates strongly with lawyers and law students because it enables us to better unify our public and private selves and, ultimately, to participate in life-work that both brings about external change and offers the prospect of inner peace:

> *Aware that life is available only in the present moment and that it is possible to live happily in the here and now, we are committed to training ourselves to live deeply each moment of daily life. We will try not to lose ourselves in dispersion or be carried away by regrets about the past, worries about the future, or craving, anger, or jealousy in the present. . . . We are determined to learn the art of mindful living by touching the wondrous, refreshing, and healing elements that are inside and around us, and by nourishing seeds of joy, peace, love, and understanding in ourselves, thus facilitating the work of transformation and healing in our consciousness.*[176]

176. *Id.* at 37 (describing the "Seventh Mindfulness Training: Dwelling Happily in the Present Moment").

Appendix D

Lawyers as Resource Allies in Workers' Struggles for Social Change

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LAWYERS AS RESOURCE ALLIES IN WORKERS' STRUGGLES FOR SOCIAL CHANGE

*E. Tammy Kim**

PRELUDE

It's 9:00 a.m., and lower Manhattan wakes to another day of business. As livery trucks and coffee-toting commuters rush down the block, a group of men gathers in the basement of an old brick building. Soon, the space, a nonprofit workers' center, buzzes with brisk conversation in Spanish, English, and Mixteco, an indigenous Mexican language. Around a crowded pair of oblong tables, a community organizer starts the meeting.

The men are kitchen workers from a number of restaurants. They have little in common except for their work and their potentially imminent unemployment. Months ago, they organized collectively to demand fair treatment and just compensation from their employers, but their demands have been met with threats. In the latest of a series of retaliatory actions, the employers have issued an ultimatum against the workers—if they do not abandon their organizing and legal claims, then they will be fired. In two hours' time, the earliest shift of workers will face their employers and this fate.

Many of these workers are my clients in a federal wage-and-hour lawsuit. I know they are meeting this morning to discuss the situation, but I am not with them. I am in my office, considerably anxious, wondering what will happen. What will the workers decide? How angry, hurt, and worried do they feel? How will they find new jobs in this ailing economy? How will they pay rent and feed their families?

I learned just last night about this retaliatory move. In response, I emailed a letter to opposing counsel stating that I interpreted their clients' actions as potentially unlawful retaliation. Beyond that, I could do little. No rhetoric of rights or legal prohibition can prevent workers from actually suffering employers' illegal acts.

In contrast to my legal response, the plaintiffs in our case immediately reached out to their friends at related restaurants and requested this morning's meeting with the organizers. Unwilling to give up their fight for respect and legally mandated pay, they face their likely firings while seizing the opportunity to increase awareness among similarly affected

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workers and to brainstorm creative strategies to combat the bosses' tactics. Despite my availability to attend this morning's meeting, the organizers and workers decided to meet on their own. I understand the wisdom of this, as they have in mind something bigger than legal remedies.

It's now 3:00 p.m., and I learn that my clients were all fired. I also learn that they are more determined than ever to contest unfair conditions and to support other workers in parallel struggles. As they press on, we lawyers engage in the daily tasks of litigation, seeking to represent the workers and support their organizing as best we can.

INTRODUCTION

This is community-based workers' rights lawyering as I know it. In the present paper, I draw on my work at the Community Development Project of the Urban Justice Center ("CDP") to present and endorse a model of community lawyering in an organizing context.

In the first section, I trace the contours of the CDP lawyering model and its workers' rights litigation practice, which, in the second section, I characterize as "resource-ally lawyering."[1] In lauding this model's fittingness to workers' rights lawyering, I endorse it over blurrier models that maintain less distinction between the roles of lawyers and organizers. I also discuss how the resource-ally model can lead us out of what Orly Lobel has called the "paradox of extralegal activism," according to which a romantic notion of "activism" has, in the minds of many, come to replace "law" as the primary vehicle for social change.[2] The CDP community lawyering model, I argue, allows lawyers to do what they are best equipped to do, while avoiding the pitfalls of pessimistic self-skepticism or the exaggerated separation and idealization of non-legal activities.

Then, in the third section, I apply the theoretical to the day-to-day, comparing the CDP workers' rights model to that of "in-house" community lawyering, where lawyers and organizers are em-

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[1] The model I propose is a relative of the "facilitative" model. Indeed, Richard Marsico's notion of facilitative lawyering lends itself well to the community organizing context. In his words, "[f]acilitative lawyering contains elements of both collaborative and client-centered lawyering. However, it is somewhat less self-consciously political than full collaborative lawyering and seeks to preserve a more clearly defined role for attorneys as attorneys. Facilitative lawyering recognizes more of a risk to client autonomy in social change lawyering than the client-centered model admits, and carves out an appropriately more limited role for attorneys. In addition, facilitative lawyering includes many of what might be considered more collaborative behaviors." Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role for "Facilitative" Lawyering?*, 1 CLINICAL L. REV. 639, 639–40 (1995).

[2] *See* Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 974 (2007).

ployed by the same community organization or workers' center. I argue for resource-ally lawyering over the in-house model based on the interpersonal, logistical, and ethical demands of our daily work.

I. Workers' Rights Lawyering in the Urban Justice Center's Community Development Project

In the CDP, we strive to operate in dynamic relation to the individuals and communities we serve. Our lawyering is imbued with geographic and cultural context as well as a broad vision for social change. At its best, our model takes client partnerships seriously while preserving the lawyer's role, respecting organizing, and being careful not to overreach.

The CDP works on cases and other matters shaped and driven by members of grassroots organizations in the diverse neighborhoods of New York City. Our website describes our mission as follows:

> The Community Development Project (CDP) of the Urban Justice Center formed in September 2001 to provide legal, technical, research and policy assistance to grassroots community groups engaged in a wide range of community development efforts throughout New York City. Our work is informed by the belief that real and lasting change in low-income, urban neighborhoods is often rooted in the empowerment of grassroots, community institutions.[3]

Composed of researchers, lawyers, paralegals, development and technical assistance staff, the CDP has grown into a team of nearly 20. Significantly, the CDP has never had any organizers on staff.

Plaintiffs'-side workers' rights litigation is one of the many practice areas in the CDP.[4] The workers' rights lawyers handle mostly group and some individual cases in the areas of wage-and-hour, discrimination, right-to-organize/collective action, and workers' compensation claims. The cases are referred to the CDP by

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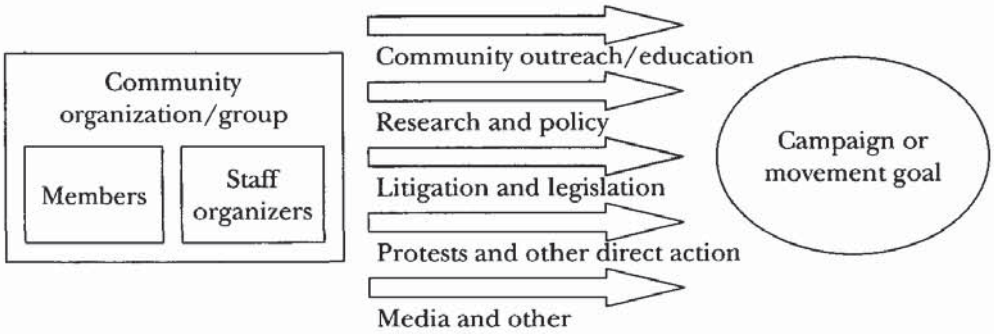
[3] Urban Justice Center, Community Development Project Home Page, http://www.urbanjustice.org/ujc/projects/community.html (last visited Nov. 28, 2009).

[4] The lawyers in the CDP are divided into litigators and transactional attorneys, with litigators working in the substantive areas of workers' rights, consumer debt, housing rights, healthcare access, and foreclosure prevention. To date, CDP workers' rights lawyers have included Molly Biklen, Raymond Brescia (founder of the CDP), David Colodny, Benjamin Holt, Carmela Huang, Tammy Kim, Megan Lewis, Tony Lu, Amy Tai, Haeyoung Yoon. This practice area has been heavily influenced by the lawyering model of the Immigrant Rights Clinic at New York University School of Law, founded by Professor Nancy Morawetz and previously co-directed by Professor Michael J. Wishnie, who now directs a similar clinic at Yale Law School.

community groups—mainly workers' centers and industry-specific workers' organizations—that initially meet with the workers to understand their claims and build an organizing strategy. In other words, the organizers and workers have decided on a specific role and purpose for the CDP legal team in advance. The workers' legal cases fit into larger campaigns for restaurant workers' rights, women workers' rights, or increased entitlements for domestic workers, for example, and have the potential to impact caselaw.

Figure 1 illustrates how community groups incorporate our legal services into their multi-pronged campaigns.



While the CDP's work for these community organizations or groups is significant, litigation is not the sole means or end in a community group's campaign for social change.[5] In our workers' rights cases, the community organization, client-members of the organization, and CDP lawyers cooperate to achieve legal and non-legal goals. Ideally, the legal work reflects harmony among clients, organizers, the organization itself, and us lawyers. In tandem with the litigation, the organizers or community group engage in related, non-legal work—from assembling supportive pickets and press conferences to accompanying client-workers to meetings and serving as interpreters. The lawyers do not participate in the formation of organizing strategies; nor are they involved with protests or other direct actions.

The CDP attorneys manage multiple lines of communication between and among participants in this framework: worker-clients, the community group and its organizers, CDP lawyers, and pro bono law firm lawyers, with whom the CDP partners in larger-scale

[5] As Sameer Ashar has observed, "unlike conventional public interest law, the legal work [i]s not central to the larger campaign or to the effort for [in the case of restaurant workers] building organizational capacity to improve working conditions in the restaurant industry." Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CAL. L. REV. 1879, 1917 (2007).

federal litigation. (See Figure 2.) While our immediate focus is the case at hand, and while our ethical duty remains to the individual worker-clients, CDP lawyers take into account the community group's organizing goals as much as practicable.

The CDP serves a diverse range of worker-centered community groups. These include the National Mobilization Against Sweatshops, a workers' center located on the Lower East Side of Manhattan and in downtown Brooklyn; the Chinese Staff and Workers Association, a workers' center located in Manhattan and Brooklyn Chinatowns; Domestic Workers United, a group supporting and led by New York City-area domestic workers; Andolan, a Queens-based, mostly domestic workers' group; and the Restaurant Opportunities Center of New York, which supports restaurant workers' organizing.

Many of these organizations epitomize "non-traditional organizing efforts by community-based worker centers"[6] and a "comprehensive effort to build a new labor movement to fight against exploitation of immigrants and other working-class people."[7] While the groups we support are located in and focused on New York City, they are conscious of large-scale social, political, and economic conditions,[8] and "conceptualize [their] work as opposed to the forces of neoliberal globalization"[9] and the "worsening conditions created by deregulated market forces."[10]

The CDP is distinct from agencies with organizers on staff (represented in this volume by CASA de Maryland), as the crux of the CDP model is the extralegal partnership between CDP attorneys and community groups or organizations. To be sure, each model has its joys and challenges. On balance, however, and as fleshed out in the following sections, I argue that the CDP's model has distinct advantages from the perspective of workers' rights lawyering and community-based legal advocacy.

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[6] Victor Narro, *Finding the Synergy Between Law and Organizing: Experiences From the Streets of Los Angeles*, 35 FORDHAM URB. L.J. 339, 341 (2008).

[7] *Id.* at 342.

[8] For example, some of the groups supported by the CDP belong to the national Break the Chains Alliance, which calls for the elimination of the punitive employer sanctions provision under the Immigration Reform and Control Act of 1986. *See* Break the Chains, Employer Sanctions, http://www.breakthechainsnow.org/employer%20sanctions.htm (last visited Nov. 28, 2009). *See also* Michael J. Wishnie, *Prohibiting the Employment of Unauthorized Immigrants: the Experiment Fails*, 2007 U. CHI. LEGAL F. 193 (2007).

[9] Ashar, *supra* note 5, at 1923.

[10] *Id.*

II. Using a Resource-Ally Lawyering Model to Move Beyond Traditional Legal Services and the Critique of Extralegal Activism

In the last 75 years, perceptions of public interest lawyering and the progressive function of law have shifted dramatically. The middle of the twentieth century saw an acceptance of the primacy of law in enacting social change.[11] Impact litigators were highly visible, and the legislature and courts were receptive to their progressive ideas—indeed, the paradigmatic proofs are the oft-cited New Deal Labor and Civil Rights movements.[12] Legal services attorneys enjoyed a trickle-down ascendancy; they could take heart in their connection to the large-scale cases that seemed to be transforming America. Individual and community clients were grateful to secure representation from these attorneys.

During the following decades, critical evaluation justly problematized this view.[13] Most of us are now familiar with these criticisms, which have hardened into the stereotypical image of an authoritative, domineering attorney, single-minded in his adherence to legal solutions. This attorney always wears a suit, remains in his office, and condescends to clients and their agendas. He believes strongly that the vindication of legal rights is the culmination of struggle.

Two parallel strands of thought emerged in reaction to this traditional mode of rights lawyering. First, on the micro-level, came Gerald López's "rebellious lawyering" critique, which jolted individual lawyers from their entrenched practices.[14] Rebellious lawyering gave rise to productive self-reflection and external critiques, resulting in the now canonical models of collaborative lawyering, client-centered lawyering, and critical lawyering.[15] In addition to revising our thinking about the lawyer-client relationship, rebellious lawyering led to the development of alternative lawyering models, including community-based law offices, lawyering con-

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[11] *See* Lobel, *supra* note 2, at 946.

[12] *Id.* at 942.

[13] *Id.* at 948.

[14] *See* Gerald P. López, Rebellious Lawyering: One Chicano's Vision of Progressive Law Practice (1992).

[15] *See, e.g.*, Louise G. Trubek, *Embedded Practices: Lawyers, Clients, and Social Change*, 31 Harv. C.R.-C.L. L. Rev. 415, 416 (1986); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 Wis. L. Rev. 699, 740–42 (1988); Marsico, *supra* note 1, at 639–40; Narro, *supra* note 6, at 339 n.1. For a comprehensive bibliography of literature on law and organizing, *see generally* Loretta Price & Melinda Davis, *Seeds of Change: A Bibliographic Introduction to Law and Organizing*, 26 N.Y.U. Rev. L. & Soc. Change 615 (2000–01).

nected to community organizing, and community development advocacy. These models reflected a distrust of the law and a "view that the law is not capable of protecting the interests of the poor and subordinated."[16]

On the macro-level, the "critique of rights," as articulated by Mark Tushnet, warned against overreliance on potentially pyrrhic legal victories.[17] At the heart of the critique of rights was an epistemic legal indeterminacy thesis—that "nothing whatever follows from a court's adoption of some legal rule,"[18] and that "[p]rogressive legal victories occur . . . because of the surrounding social circumstances."[19] This critique, like its rebellious counterpart, reoriented public interest attorneys, bringing community members, community organizers, and social and political factors into daily practice concerns.

In recent years, decades after the rebellious and rights-based critiques first emerged, thinkers and practitioners are revisiting them. Commentators observe that, driven to their logical conclusions, these critiques have led to an unproductive pessimism about the law and "role confusion" on the part of community lawyers.[20] Lawyers are now unduly skeptical of their own discipline and too eager to take up other mantles, including organizing and strategic planning. As one scholar has pointed out:

> The new scholarship chides poverty lawyers to be reflective—indeed humble—about their own pretentions to change the world . . . . Yet at the same time, the new vision of collaboration can be understood to authorize well-meaning lawyers to intrude into the few spaces where poor people can work out their own strategies and priorities.[21]

As lawyers qua lawyers, according to this argument, we have abdicated our status as "autonomous agent[s], [who] also ha[ve] views and principles that deserve recognition and expression,"[22] yet we feel free to advise on other matters. Our devaluing of the legal

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16 Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 107 (2000).

17 Mark Tushnet, *The Critique of Rights*, 47 SMU L. REV. 23, 24 (1993).

18 *Id.* at 32.

19 *Id.*

20 Regarding lawyers and clients, the rebellious call to reject lawyer-client hierarchy and to respect the cultural and communal factors that shape our lawyering remains important. Social justice lawyers must be vigilant against the creep of privilege (whether based on education, class, race, gender, sexuality, or language) and the temptation to dominate the client.

21 Lucie E. White, *Collaborative Lawyering in the Field? On Mapping the Paths from Rhetoric to Practice*, 1 CLINICAL L. REV. 157, 159–60 (1994).

22 Diamond, *supra* note 16, at 114.

realm may have also produced an overly optimistic view of extralegal activism, which assumes a clear separation between legal and non-legal spheres and takes for granted that non-lawyers are immune to the dangers of cooptation and other threats to progress.[23]

So where are we now, given this vacillating trajectory? If scholars are correct in calling "community lawyer" a "highly recognizable catchphrase [that] masks a series of philosophical problems as well as some very complicated practical ones,"[24] then are we forced to choose between an orthodox but clear-cut legal services model and a fuzzy, undefined community model?

The answer is "no." We should chart a middle ground between regressively traditional, "regnant" lawyering[25] and an unbounded lawyering model comprising the roles of organizer, counselor, and friend. I argue that the CDP resource-ally model, by which lawyers support community organizing through legal representation of members of external grassroots organizations, is ideal for community-minded lawyers. To adopt a well-established term, the CDP sees lawyers as "facilitators" who should perform "work that is supportive of, but not directly involved in, the work the client is seeking to accomplish."[26] Adding to this facilitative model, I employ the term "resource ally" to denote that the CDP's model, and our workers' rights practice in particular, involves third-party community organizers and the attendant demands and benefits of tripartite lawyering.

Operating as resource allies, the lawyers in the CDP avoid role confusion and are able to focus on what they do best. Separated, but not isolated, from non-legal community organizations, lawyers at the CDP provide legal services upon request and as needed. As distinct but accessible entities, therefore, we are able to prioritize our most basic and fundamental duty—to be excellent in our craft.

However, there remains an additional prong of the critique of extralegal activism—that the separation of law and activism romanticizes and overestimates the power of local organizing to effect widespread change, given the oppressive meta-structures of global-

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[23] For example, Orly Lobel warns of the dangers of prioritizing extralegal activism at the risk of excluding possible legal remedies: "the [extralegal] strategies embraced by new public interest lawyers have not been shown to produce effective change in communities, and certainly there has been no assurance that these strategies fare comparatively better than legal reform." Lobel, *supra* note 2, at 977. This argument is addressed *infra*.

[24] Diamond, *supra* note 16, at 112.

[25] *See* LÓPEZ, *supra* note 14, at 23–28.

[26] Marsico, *supra* note 1, at 660.

ization.[27] This is an important but hardly fatal criticism. First, one cannot be sure that community groups' local initiatives have as minor an impact on larger structures as the critique of extralegal activism ascribes to them. In our experience, community organizations are conversant in the politics and economics of globalization, and members are encouraged to connect their daily experiences to these realities, fostering activism that has a global vision. Moreover, community groups that prioritize organizing rarely reject the law altogether; rather, they are savvy about deploying the various tools at their disposal, including legal ones, which is where we come in. According to our lawyering model, it is up to workers and community organizers to "identify the diverse ways in which some legal regulations and formal structures contribute to socially responsible practices while others produce new forms of exclusion and inequality,"[28] and up to us to provide legal assistance to resolve discrete legal problems and attack structural injustices. We have found that the CDP's separation of law and organizing offers a pragmatic response to the "myth of law" as much as to the "myth of activism;" our collaborative model neither overemphasizes the law's place in social movements nor pretends that organizing efforts have no need for the law.

III. The Benefits of the CDP Model Compared to Individualized and In-House Lawyering Models

My objective in this section is to compare two approaches to community lawyering. Because of this narrow focus, I do not discuss traditional legal services lawyering; nor do I intend to thereby criticize or undermine it.[29] I will comment briefly, though, on the necessity of private employment litigation and the general benefits of group workers' rights litigation.

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[27] *See* Lobel, *supra* note 2, at 974.

[28] Lobel, *supra* note 2, at 979.

[29] In praising our model, I do not mean to "exaggerat[e] the ineffectiveness of traditional legal interventions [or] minimize[ ] the significant institutional restructuring that legal advocacy has achieved." Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 U.C.L.A. L. Rev. 443, 491 (2001). I also recognize that one drawback of community lawyering is that we serve fewer people—potentially an ethical problem given the incredible need for individual legal services. However, I would argue that community lawyering is necessary and, when conducted in balance with traditional legal services, "constitutes a justifiable, justice-based allocation of resources away from clients' short-term needs and in favor of a community's long-term needs." Paul R. Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 Hastings L.J. 947, 950 (1992).

A. *Litigating Group Workers' Rights Cases*

For a number of socio-political and legal reasons, workers—especially low-wage workers—rely more and more on private legal mechanisms. As others have previously noted,[30] inadequate governmental and union responses to workers' rights violations have made it often ineffectual for workers to seek out "business unions"[31] or agencies like the State Department of Labor and the National Labor Relations Board.[32] Many have opined that "[f]ederal, state, and local governments have no coherent strategy for enforcing the rights of workers who participate in the underground economy."[33] Thus, low-wage workers, while not forsaking governmental agencies altogether, have turned increasingly to mainstream employment law, bringing wage-and-hour claims under the Fair Labor Standards Act ("FLSA") and, in our jurisdiction, the New York Labor Law ("NYLL").

Several factors augur in favor of bringing FLSA/NYLL cases on behalf of groups of workers. First, as suggested in the narrative prelude to this article, workers are strengthened and encouraged by one another to stand up for their rights and to navigate temporal and emotional demands of litigation.

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[30] *See, e.g.*, Jennifer Gordon, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407 (1995); Julie Yates Rivchin, *Building Power Among Low-Wage Immigrant Workers: Some Legal Considerations for Organizing Structures and Strategies*, 28 N.Y.U. REV. L. & SOC. CHANGE 397 (2004); Cummings & Eagly, *supra* note 28. *See also* Narro, *supra* note 6. "Despite the strong connections to the union movement, workplace law and organizing advocates have been forced to venture outside the scope of conventional labor law practice for a variety of reasons. Most importantly, the declining power of unions, particularly in the low-wage employment sector, has heightened the need for alternative workplace organizing tactics . . . . This effort has been important in industries where labor has a weak presence . . . . These industries are also comprised of large numbers of undocumented immigrant workers who are employed on a part-time or contingency basis and who are particularly vulnerable to employer exploitation." *Id.* at 340–41.

[31] The goals of workers' centers contrast with those of a "'business unionism' model that focuses on serving dues-paying members, immediate material interests, and using the political process to protect jobs and economic interests." Rivchin, *supra* note 30, at 401. However, there is movement toward bridging the divide between unions and workers' centers. For example, in 2008, the New York City Central Labor Council, a union umbrella group, embraced the Taxi Workers Alliance and Domestic Workers United, two non-union workers' organizations. *See* Steven Greenhouse, *Labor Needs to Improve Conditions for Nonunion Workers, Official Warns*, N.Y. TIMES, June 23, 2008, *available at* http://www.nytimes.com/2008/06/23/nyregion/23workers.html.

[32] This is to say nothing about the forces of globalization and the criminalization of certain categories of immigrants in the United States, which are areas beyond the scope of this article. *But see* Gordon, *supra* note 30, at 424–27 (describing the threat of globalization on workers' rights in the domestic U.S. context).

[33] *Id.* at 416–17.

Second, because federal wage-and-hour litigation can be costly and time-consuming, it is more efficient to do multiple-plaintiff cases. Similarly, the attorneys' fees provisions of the NYLL and FLSA make group cases (with greater potential damages) more appealing to plaintiffs'-side lawyers hoping to recover for their time.

Third, and on a more principled note, pursuing group cases allows us to overcome the "sustained 'internal' progressive critique:"[34] that the "atomistic nature of remedies offered by public interest lawyers"[35] undermines collective action and disperses social conflict.[36] By lawyering on behalf of groups of workers in community contexts, we avoid perpetuating the separation and isolation of workers and defeating possibilities for mass mobilization and resistance. Moreover, to the extent group litigation connects to organizing, we lawyers can view wage-and-hour cases "not [as] endpoints but rather moments in broader campaigns to stimulate collective action and leverage political reform."[37] We learn about developments in labor organizing from our community partners, and, after earning their trust, are often asked to engage in a diversity of lawyering tasks beyond litigation, including legislative and policy work. There is a related, underappreciated benefit: our multifaceted interactions with community groups and individual clients prevent burnout and mitigate boredom, neglected but significant professional hazards.

Yet group representation also poses difficulties, since our responsibility as lawyers flows to each individual. Members of a plaintiff group rarely share the same employment histories, claims, and litigation goals. And when divergent views arise, we must manage client conflicts and occasionally find alternate counsel for those whose interests require separate advocacy. Moreover, in cases involving dozens of workers and multiple languages, the banal tasks of communication, coordinating meetings, and group decision-making become formidable challenges. To mitigate these problems, a group of workers may designate representative plaintiffs for purposes of making settlement decisions and communicat-

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34 Ashar, *supra* note 5, at 1904.

35 *Id.*

36 Cummings & Eagly, *supra* note 29, at 455 (*citing* Richard Abel, *Lawyers and the Power to Change*, 7 LAW & POL'Y 5 (1985)). We also avoid the crisis-oriented "inherent rescue preference in neighborhood legal services offices," which keeps "poverty lawyering . . . more or less conservative." Tremblay, *supra* note 29, at 970.

37 Scott L. Cummings, *Hemmed In: Legal Mobilization in the Los Angeles Anti-Sweatshop Movement*, 30 BERKELEY J. EMP. & LAB. L. 102, 105 (forthcoming 2009), *available at* http://escholarship.org/uc/item/5k94h2nk.

ing general information to the lawyers.[38] For our part, we prioritize individual lawyer-client relationships while staying attuned to group dynamics. By maintaining this orientation, we maximize the overall benefits of group litigation.

B. *Lawyering in Support of Organizing: Why CDP Isn't "In-House" Counsel*

To date, "law and organizing" has occupied a fractional space in the community-lawyering discourse. While there are now a handful of articles and books describing law and organizing practices and fleshing out their challenges, none have offered a typology of law and organizing structures or discussed their benefits and drawbacks. The literature has assumed an "in-house" model of law and organizing, where lawyers and organizers are employed by the same organization and coexist under one umbrella.[39] This assumption is perhaps due to the fact that the Workplace Project (represented in this volume),[40] which began with an in-house structure, has been the touchstone for legal discussions of law and organizing.[41] Instructively, the founder of the Workplace Project has since criticized the in-house provision of legal services, stating that after two years of hosting a legal clinic: "[w]e have come to realize that this is not how we want the Project to function. Instead, we now see organizing immigrant workers as both our end goal and our core strategy."[42]

As described above in Section I, the CDP resource-ally model can be conceptualized in the following diagram:

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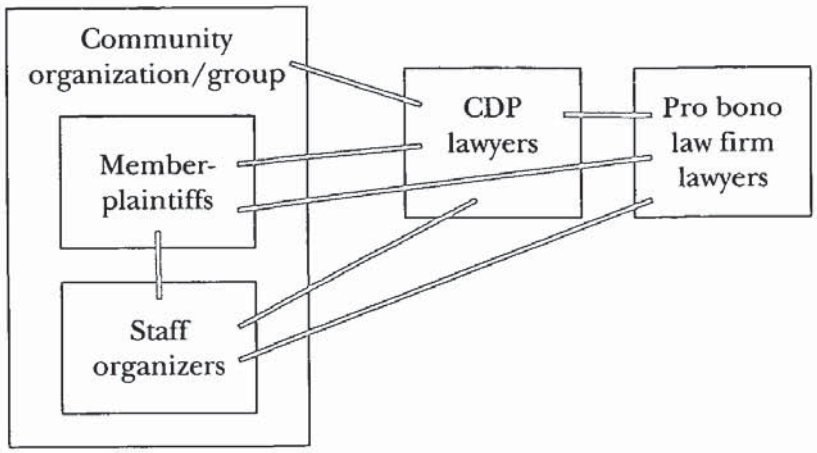
38 However, a lawyer representing multiple clients must receive informed, written consent in order to make a settlement in the aggregate on behalf of the group of clients. MODEL RULES OF PROF'L CONDUCT R. 1.8(g) (2009).

39 *See, e.g.*, Gordon, *supra* note 30; Narro, *supra* note 6. Sameer Ashar and Richard Marsico also analyze dynamics between community groups, worker-clients, and lawyers, but do so in the law school clinical, pedagogical context. *See generally* Ashar, *supra* note 5; Marsico, *supra* note 1. The literature also includes important case studies that illuminate the concerns faced by lawyers working in law and organizing contexts. However, these articles do not explore relational models of lawyering in depth. *See, e.g.*, Julie A. Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, 1 J. GENDER RACE & JUST. 405 (1998).

40 *See* Nadia Marin Molina & Jaime Vargas, *The Role of Legal Service in Workers' Organizing*, 13 N.Y. CITY L. REV. (2010).

41 *See* Gordon, *supra* note 30. Virtually all subsequent writing on law and organizing cites Gordon's articles in some capacity.

42 *Id.* at 430. Gordon also notes, "[b]y continuing to offer legal services to anyone who will sign the contract, perhaps we have done little more than create a façade of collective action. Instead, we should build an organization with a culture of organizing rather than a culture of legal services, to which workers could come when they were ready to fight for better working conditions." *Id.* at 445.



The CDP workers' rights attorneys, in partnership with pro bono co-counsel, develop relationships and interact continuously with the overlapping entities of member-clients, staff organizers, and the community group itself. These are not always easy connections to maintain, but they are ultimately fruitful and rewarding.

In the next section, I discuss the practical and methodological benefits of our resource-ally model over the in-house counsel model. For the sake of clarity, I simplify certain distinctions and assume that the overall lawyering responsibilities of both sets of lawyers are basically equivalent.

1. Excellence and Role Confusion

Lawyers working in-house at community organizations will tend to be pulled in many directions. Sharing the same office with organizers, their physical space will be energetic but potentially distracting, as members of the community organization arrive for meetings, workshops, classes, and other events. If organizers are short-staffed, they may ask the lawyers to help with a variety of tasks.

Although this is an exciting environment, it can make lawyering difficult. There are times, when meeting with clients at workers' centers, that I have occasion to babysit, color posters, and set up tables and chairs. I am grateful to do this work and be made welcome in these spaces. Yet, at the end of the day, I can return to my office and to tackle research, writing, and other quotidian legal tasks. After all, I have been hired for a reason, and I must respect my clients' "right to choose to retain an attorney to perform certain tasks."[43]

[43] Marsico, *supra* note 1, at 657.

The spatial boundary inherent to the CDP model prevents us from engaging in activities we are not trained to do. Generally speaking, law school does not train us "to deal with the non-legal aspects of social or economic problems or, for that matter, with any form of multi-dimensional problem-solving,"[44] and while we should learn to think in broader, more diverse ways, we should also be humble about how much we can realistically accomplish. In-house lawyers, working so intimately and on a daily basis with organizers and members, may find it difficult to resist contributing organizing strategies or press and policy ideas, or responding to clients' crisis situations.[45] Even when a community group tries to maintain separation between in-house lawyers and organizers, it may be impossible, as a practical matter, to do so.[46]

Separation can also benefit the clients. As noted above, individuals in a group of plaintiffs may disagree on case strategies or harbor personal apprehensions related to the litigation. Conflicts may also emerge over organizing tactics surrounding a lawsuit. To the extent clients perceive a demarcation between lawyers and organizers, they are more likely to express concerns and anxieties—to lawyers about organizing, or to organizers about lawyering.

2. Resource Allocation

The reality of public interest organizations is that activities may be planned and ranked according to available funding. For an in-house organization, funding streams for legal services and organizing may overlap. Due to the relatively higher salaries of lawyers and the considerable costs of litigation, organizations may tend to provide more resources to in-house lawyering than organizing.

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[44] Diamond, *supra* note 16, at 76.

[45] Even in situations with organizational separation, lawyers may be tempted to fulfill social services tasks. Scott Cummings describes how Julie Su, the primary lawyer for the imprisoned Thai workers in the El Monte sweatshop campaign, recruited volunteer English as a Second Language ("ESL") teachers, made doctor appointments for her clients, and helped them find housing and jobs in addition to her legal work on the case. Cummings, *supra* note 37, at 121. We should acknowledge that lawyers usually have neither the training nor the resources to provide for their clients in this manner.

[46] Organizers and directors of organizations, nevertheless, try their best to institute a separation between the group's legal and organizing work. Cummings and Eagly cite Make the Road New York as one example of an organization that pursues this approach. *See* Cummings & Eagly, *supra* note 29, at 509 n.271 (quoting a telephone interview with Andrew Friedman, co-director of Make the Road New York ("MRNY"), about MRNY's decision to separate legal and organizing work by not allowing organizers to participate in legal cases).

While the CDP occasionally fundraises jointly with community-group partners, it is responsible only for its own operations. As resource allies unengaged in organizing, the CDP lawyers are spared the challenge of choosing between handling another workers' rights case and hosting an additional day of pickets against a bad employer. The client-community group members and the CDP team of attorneys can therefore make separate, strategic decisions about resource allocation.

At the same time, resource conflicts arise from the fact that the CDP serves many different community groups with substantial litigation needs. Resource shortages are endemic to public interest offices generally, and the CDP is no exception. To maximize our effectiveness, CDP attorneys may select cases based on likelihood of success or legal impact. The CDP workers' rights team also relies on community organizations to prioritize potential cases for litigation.

3. Ethics

Writers have already commented on the numerous ethical issues that arise in the context of community lawyering generally, and law and organizing in particular.[47] My contribution to this scholarship is to argue that, while these issues affect both in-house lawyers and resource-ally lawyers, the separation afforded by the CDP model makes our ethical worries less acute.

One frequently discussed ethical issue concerns the prohibition against communicating with a represented party.[48] Consider the following hypothetical: in a workers' rights case, a demonstration is held in front of the defendant-employer's home. The defendant's attorney raises this issue with the presiding judge, who immediately reproaches the plaintiff's public interest attorney for having orchestrated the protest. The judge accuses plaintiff's counsel of having used the protesters as agents to "communicate" with the represented defendant-employer during the protest, in viola-

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[47] *See, e.g.*, Cummings & Eagly, *supra* note 29, at 502–16 (describing ethical considerations of establishing an attorney-client relationship, confidentiality, conflict of interest, scope of representation, and avoiding unauthorized practice of law for lawyers who use a law and organizing model); *see generally* Ashar, *supra* note 5.

[48] "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." MODEL RULES OF PROF'L CONDUCT R. 4.2(a) (2009).

tion of ethics rules, even though the demonstration had been planned by the workers' center to which the plaintiff belongs.

Were a CDP lawyer faced with this situation, she would have no qualms explaining that the CDP is distinct from the workers' center and that the CDP was uninvolved in coordination of the protest. Indeed, CDP attorneys do not organize, attend, or otherwise take part in any direct actions connected to CDP cases. But how would in-house lawyers defend themselves against such a charge, however ill-founded? A judge would likely be incredulous at the in-house lawyers' disassociation from their organizer-coworkers, as the protest would have been organized in the name of the community group that employs both the organizers and lawyers.

A second important ethical concern is attorney-client privilege.[49] The presence of community-group organizers, like anyone else, at client meetings ordinarily pierces attorney-client privilege. However, this is not true when organizers serve as interpreters, which they are often needed to do. Lawyers in the CDP routinely rely on bilingual organizers to interpret from, for example, Spanish to English and vice versa, and we make clear that the organizers are there to play this interpretive role. By comparison, in the in-house lawyering context, because of the fluidity and spatial coincidence of legal and extralegal interactions, organizers present at lawyer-client meetings may initially begin as interpreters but then slip inadvertently into an organizing posture, endangering attorney-client privilege. This only infrequently arises in the CDP's cases, since the meetings we attend with our clients tend to have a deliberately legal tenor.

Another issue is that of third-party influence. Ethical rules limit outside influence over client decision-making by requiring lawyers to take direction only from their clients and by prohibiting lawyers from receiving payments from third parties.[50] In an organization that coordinates both in-house litigation and organizing

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[49] For a discussion of how the City University of New York School of Law's Immigrant & Refugee Rights Clinic addressed concerns about attorney-client privilege in a workers' rights organizing campaign with the Restaurant Opportunities Center of New York, *see* Ashar, *supra* note 5, at 1910.

[50] *See* Trubek, *supra* note 15, at 434. The Model Rules of Professional Conduct also provide guidance on a lawyer's duty to a client when payment for legal services is made by a party other than the client. "A lawyer shall not accept compensation for representing a client from one other than the client unless: (1) the client gives informed consent; (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and (3) information relating to representation of a client is protected as required by Rule 1.6." MODEL RULES OF PROF'L CONDUCT R. 1.8(f) (2009).

campaigns, could certain legal decisions be influenced or determined by the timing and aim of the organizing work? The answer is presumably "yes," and in-house attorneys must be vigilant to preserve client autonomy in decision-making. The CDP, too, has faced such situations: there have been instances when a community group wants to schedule a press conference to announce the filing of a workers' rights case when the court complaint is not yet ready, posing potential harms to the workers' legal claims while potentially benefiting the organizing campaign. The ensuing conversation among workers, organizers, and attorneys can be difficult, as we lawyers must prioritize our clients and the integrity of their complaint. Whether working as resource allies or in-house counsel, "we could either reject the influence of the organizers or learn to discern the boundaries between lawyer-client, lawyer-organizer, and client-organizer decision-making."[51] In general, we choose the latter path, navigating these relationships and weighing priorities to find workable solutions compatible with our duty to the clients.

The ethical prohibition of unauthorized practice of law ("UPL") is a fourth challenge. A public interest practice will invariably involve some counseling over the telephone, conducting know–your-rights workshops, and engaging in various forms of community education. With this comes the possibility of UPL by unsupervised paralegals, organizers, and other non-attorneys, who may have extensive legal knowledge and insight into clients' problems but are nonetheless prohibited from practicing law—that is, applying law to facts.[52] Because the CDP has relationships with non-legal groups, we know that advocates and organizers in those groups may find it difficult to distinguish between lawyering and talking to workers about their claims in general terms, especially when it comes to seemingly straightforward matters like statutes of limitations or potential damages. Organizations where in-house counsel and organizers work together, faced with staff members' overlapping spheres of action and possible confusion on the part of clients, may find it that much harder to prevent instances of UPL by organizers and other non-attorney staff.

Finally, in extreme situations, ethical issues could arise from

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[51] Ashar, *supra* note 5, at 1910.

[52] Trubek, *supra* note 15, at 435. Again, the Model Rules of Professional Conduct comment on the unauthorized practice of law by non-lawyers. "A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so." MODEL RULES OF PROF'L CONDUCT R. 5.5(a) (2009).

workers' decisions to engage in unlawful protest actions.[53] The ethical rules tightly circumscribe lawyers' counseling of clients as to intended illegal acts, but, from an organizing standpoint, aggrieved workers may feel the need to resort to such strategies. With organizers and lawyers in the same group, the in-house lawyers would likely learn about and be forced to counsel workers against even relatively minor illegalities, such as trespass or disorderly conduct, which could constrain organizing options. As resource allies, by contrast, CDP lawyers are generally not consulted about organizing strategies and therefore avoid facing this dilemma (although we would similarly have to counsel against unlawful actions if pressed).

4. Power and Hierarchy

It is well recognized that individual legal services can be used as a "draw" to bring members into organizing, as clients may perceive that "[f]inding a lawyer to resolve the problem presents the least risk and the biggest possible benefit."[54] A worker may initially be drawn to a group or organization because of her own legal problem, but then become interested in the larger organizing campaigns run by that group or workers' center. However, workers seeking individual legal services may not always wish to participate. Organizing is hard work, and it presents no sure path from A to B. It also requires a lot of time and personal energy, as opposed to entrusting a case to a lawyer for litigation.

Some of the organizers I work with are selective about inviting lawyers to meetings and other gatherings, observing that workers may rely too much on lawyers and possess an inflated trust in the legal system. A separation between law and organizing, therefore, can promote opportunities for leadership development and the mutual strengthening of groups of workers, a particularly important goal in hostile political climates.[55] The resource-ally model also mitigates the perception that lawyers are driving the organizing agenda or that legal and organizing authority is vested in the

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[53] Diamond, *supra* note 16, at 125. The Model Rules of Professional Conduct state: "A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist client to make a good faith effort to determine the validity, scope, meaning or application of the law." MODEL RULES OF PROF'L CONDUCT R. 1.2(d) (2009).

[54] Gordon, *supra* note 30, at 439–40.

[55] Sameer Ashar notes that especially in an anti-immigrant environment, "active participation in rights-based campaigns and in organization-building strengthens the sense of membership in American communities and the solidarity of some of the immigrant workers." Ashar, *supra* note 5, at 1921.

same person.[56] We can apply what we have learned from critiques of legal services to this scenario: "[j]ust as poverty lawyers must be careful not to use their technical sophistication and legal knowledge to disempower clients, they must also guard against reifying the concept of organizing and using it to advance a social change agenda that does not reflect the needs and desires of client communities."[57]

The rejoinder to my view is that the CDP's separation of law from organizing represents a return to the disengaged traditional legal services model. As one critic has noted: "[a] key component of the [legal services] model to serve the poor is a separate staff attorney office that provides services for no cost; this aspect relates to the concept that the poor are a unified group and require attorneys with specialized knowledge."[58] Could this criticism—that separation between lawyerly professionals and community groups reifies identity and power disparities—apply to the CDP's resource-ally model as well? Perhaps, but it is equally possible that the group affirmation facilitated by community groups acts as an antidote to these hierarchical threats. Moreover, our generation of community lawyers is more sensitive to these potential drawbacks. In the CDP, for example, while remaining secure in our role as lawyers, we relate to our clients on a personal level, wearing street clothes, avoiding legalese, and speaking in our clients' languages (Spanish, Chinese, and Korean, among others) as much as possible. We meet with clients at the community organizations and workers' centers to which they belong. We also attend our partner groups' social events, where we meet clients' and organizers' families and friends, and bring ours along, too.

None of these measures eliminate barriers completely, but this is not necessarily a bad thing. Again, as explained above, our clients enlist CDP attorneys to work on their cases and campaigns precisely because we bring something different to the table. Our professional knowledge and skills allow us to play a partnering role

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[56] *See* Diamond, *supra* note 16, at 124 ("When the functions of attorney and organizer are combined in one person, several difficulties may surface. For instance, the group may lose the benefit of the independent perspectives provided by the lawyer and the organizer. Indeed, there may be no other person to provide an effective counterpoint to the lawyer/organizer's positions. Without this counterpoint, the visibility and centrality of a lawyer increases, along with his or her ability to influence group decision-making."). *Id.*

[57] Cummings & Eagly, *supra* note 29, at 497.

[58] Trubek, *supra* note 15, at 436.

in their struggles, and it is a pleasure and honor to do so, even in a limited manner.

IV. Conclusion

In this article, I make a theoretical and practical case for why lawyers should consider using a resource-ally lawyering model in the workers' rights context. I begin by outlining this model as practiced by the CDP. Second, I attempt to explain the historical context in which community lawyering has developed and how the resource-ally model fits into this framework, and argue that the CDP model responds effectively to the paradox of extralegal activism. In the third section, after a brief note on group litigation, I advocate for the resource-ally model over in-house community lawyering along the axes of specialization, resource allocation, ethics, and power dynamics.

By arguing for resource-ally lawyering, my intention is not to criticize the important work of in-house lawyers and their community organizations. I seek instead to deepen our understanding of different models of tripartite lawyering, a topic deserving nuanced analyses and an enlarged presence in legal scholarship. Above all, I hope to engage community lawyers in productive reflection and dialogue about our work, with the goal of advancing our clients' interests and greater social change.

Biographies

Jennifer Ching is the Director of Queens Legal Services. At QLS, she manages the borough-wide legal services and advocacy program, which includes fourteen practices, including disaster aid. Jennifer has coordinated advocacy responses post-Sandy on issues ranging from federal, state and city agency responsiveness to long-term community rebuilding issues. She has presented and lectured on disaster issues in numerous settings, including CLE programs. Prior to joining QLS, Jennifer was Director of New York Appleseed, a citywide public interest advocacy center. From 2004-2008, Jennifer was a litigator with Paul, Weiss, Rifkind, Wharton & Garrison LLP, where her pro bono representation included litigation on behalf of 13 Saudi nationals held in Guantanamo. Jennifer was a 2002 Gibbons Fellow in Public Interest Law and Constitutional Litigation, where she litigated national security, employment, civil rights and death penalty matters. She taught as an adjunct professor at Rutgers School of Law-Newark and, as a Skadden Fellow at the American Civil Liberties Union of New Jersey, Jennifer founded New Jersey's first legal advocacy project for low-wage immigrant workers.

Marika Dias is the Managing Attorney at Make the Road New York. In addition to managing a legal practice that includes housing, immigration, employment, benefits and health advocacy services, Marika directly supervises Make the Road's immigration legal services, while also maintaining an active caseload of immigration and LGBTQ rights cases. Marika is currently engaged in policy work relating to NYC detainer laws, immigration reform, U-Visa certifications, and policing of LGTBQ communities. Marika initially joined Make the Road in March 2011 as a Supervising Attorney of the Housing and Benefits Practice. Prior to joining Make the Road, Marika was a housing attorney at the SRO Law Project of the Goddard Riverside Community Center based in Manhattan. Marika had practiced as an attorney in Melbourne, Australia for over 5 years before moving to the U.S. There, Marika also worked in grass-roots organizations that combined community organizing with legal services. Her work was similarly driven by the needs of low-income communities, with an emphasis on criminal defense, police accountability, and the impact of post-September 11 counter-terrorism laws on communities of color. In 2008, Marika won her state Bar Association's award for Young Lawyer of the Year.

Reyna Ramolete Hayashi has been a Workers' Rights Attorney with Empire Justice Center since 2011. She established the Wage Justice Project which seeks to empower low-wage workers to fight wage theft and workplace exploitation using: grassroots organizing, outreach, and education, impact litigation, and bottom-up policy reform. Reyna represents low-wage and immigrant workers in wage and hour and other employment law litigation in federal and state courts. She provides policy support to community coalitions on local and state legislative reform including campaigns to Ban the Box in Rochester and to raise New York's minimum wage. Reyna is a founder and Steering Committee member of P.O.W.E.R. People Organizing for Worker Empowerment & Respect, a worker center in Rochester. She is also a member of the Upstate New York Worker Center Alliance, a former Hanna S. Cohn Equal Justice Fellow, and served on the Legal Working Group of Occupy Rochester.

Kate Rubin, as a Managing Director of the Civil Action Practice at The Bronx Defenders, leads a staff of 30 advocates and attorneys providing comprehensive civil legal representation to thousands of people each year. Responding to the legal needs and priorities of our clients with criminal justice and family court involvement, the Civil Action Practice handles a wide range of issues including housing, employment, public benefits, civil forfeiture, and immigration. The practice also looks beyond individual cases, addressing systemic problems through legislative and administrative advocacy, grassroots organizing, and affirmative litigation. Kate also oversees community legal education programs and Reentry Net/NY, an online resource center on the consequences of criminal proceedings in New York State.

Purvi Shah is the Director of the Bertha Justice Institute at the Center for Constitutional Rights, a new training institute committed to building a diverse generation of movement lawyers to serve social movements in the US and across the world. Purvi has over a decade of experience as an activist, organizer, attorney and law professor. In 2006, she received a New Voices Fellowship to launch the Community Justice Project at Florida Legal Services. While there, Purvi worked collaboratively with community and worker organizations to represent tenant unions, public housing residents, immigrants' rights groups, and taxi drivers. From 2007-2011, Purvi served as a professor at the University of Miami, School of Law, where she co-founded and co-directed the Community Lawyering Clinic. Over the years, Purvi has become a regularly featured panelist and trainer on the connection between law and organizing, conducting numerous state and national trainings for law students and young lawyers. Prior to becoming an attorney, Purvi worked as a community organizer with youth in Miami, students in India and families of incarcerated youth in California. Purvi has received many awards for her work including the Rodney Thaxton Award for Racial Justice from the ACLU of Florida and the Miami Fellowship for rising civic leaders from the Miami Foundation. Purvi is a graduate of UC Berkeley School of Law at the University of California and of Northwestern University.

Garrett Wright is a staff attorney at the Community Development Project (CDP) at the Urban Justice Center, where he provides litigation support to grassroots community-based organizations that are fighting against gentrification and displacement and for the realization of housing justice. Prior to working at CDP, Garrett was on a fellowship at the Center for Constitutional Rights, where he worked on the Center's litigation against the NYPD's racist stop-and-frisk policies. He has also participated in labor, racial justice, and antiwar organizing work. Garrett is a past President of the National Lawyers Guild – New York City Chapter and a past co-chair of the NLG's Anti-Racism Committee. Garrett is a proud member of UAW – National Organization of Legal Services Workers (Local 2320) and the NYC branch of the Industrial Workers of the World. He graduated from the University of California – Berkeley School of Law in 2007 and from the University of Maryland, Baltimore County in 2001.

Helena Wong is the former executive director and current member of CAAAV Organizing Asian Communities, a grassroots organization working directly in Asian immigrant and refugee communities in New York City. She has organized in low-income in Asian communities for

nearly twenty years, leading campaigns targeting slumlords, advocating for policy changes around issues such as language access and tenant harassment. During this time, Helena also served as a coordinating committee member of the Right to the City national alliance, and worked in collaboration with a number of other organizations addressing housing injustice for tenants and long-time residents in gentrifying neighborhoods. She has led delegations to China over the past two years, meeting with migrant workers, feminist and queer organizations, and organizations concerned about land rights and the environment. Helena is currently an independent consultant working with a number of non-profit organizations around the country.