

COMMUNITY LAWYERING – THE ROLE OF LAWYERS IN THE SOCIAL JUSTICE MOVEMENT

*Charles Elsesser**

Within the past decade there has been a renewed interest in a style of practice we call “community lawyering.”¹ I use the term “renewed” because it involves a return to some of the values and practices of legal advocates in prior mass struggles, such as the labor movement,² the civil rights movement,³ and the earliest

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

1. There are literally hundreds of excellent articles on various aspects of what we call “community lawyering,” a few of which present topics discussed in this article and reference many other relevant articles. *See, e.g.*, William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 WASH. U. J.L. & POL’Y 101 (2006); William H. Simon, *Introduction: Lawyers and Community Economic Development*, 95 CALIF. L. REV. 1821, 1823 (2007); Scott L. Cummings, *The Pursuit of Legal Rights—And Beyond*, 59 UCLA L. REV. 506 (2012); Jennifer Gordon, *Concluding Essay: The Lawyer is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CALIF. L. REV. 2133 (2007); Purvi Shah & Chuck Elsesser, *Community Lawyering*, ORGANIZING UPGRADE (June 1, 2010), <http://www.organizingupgrade.com/index.php/modules-menu/community-organizing/item/71-purvi-amp-chuck-community-lawyering>; Anthony V. Alfieri, *Fidelity to Community: A Defense of Community Lawyering*, 90 TEX. L. REV. 635 (2012); Lucie E. White, *To Learn and Teach: Lessons From Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 700-01 (1988); Angelo N. Ancheta, *Community Lawyering*, 81 CALIF. L. REV. 1363, 1366 (1993); Zenobia Lai et al., *The Lessons of the Parcel C Struggle: Reflections on Community Lawyering*, 6 ASIAN PAC. AM. L.J. 1, 2 (2000). I would further recommend anything by William Quigley, Gary Bellow or Lucie White as my personal inspiration.

2. *See* Drew D. Hansen, *The Sit-Down Strikes And The Switch In Time*, 46 WAYNE L. REV. 49, 50 (2000).

3. *See, e.g.*, TAYLOR BRANCH, PARTING THE WATERS: AMERICA IN THE KING

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

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

Within the broad range encompassed by these descriptions, many lawyers and legal advocates across the country (and internationally) are working through their own definitions – driven largely by their own history of involvement and their unique relationships with their local communities.⁸ Whatever the

YEARS 1954-63 524-56 (1988) (discussing C. B. King’s work).

4. See EARL JOHNSON, *JUSTICE AND REFORM: THE FORMATIVE YEARS OF THE AMERICAN LEGAL SERVICE* 21-35 (1974).

5. See William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 WASH. U. J.L. & POL’Y 101, 148-66 (2006).

6. Ellen Hemley, *Supporting Local Communities Through Community Lawyering*, 45 CLEARINGHOUSE REV. 505, 505-06 (2012).

7. *Id.*

8. See, e.g., Richael Faithful, *Toward The Heart Of Justice*, 69 NAT’L LAW. GUILD REV. 239 (2012).

individual definition, central to all advocates, is a recognition of the importance of leadership by organized constituent groups within the communities served. Additionally, it is important that the advocates' skills be used not only to gain benefits for those communities but also to consciously build organizational power and community leadership. In implementing these central principles, each advocate confronts similar questions and tries to determine her own answers while maintaining a commitment to these central principles.

While there has been much academic reflection on the need for a renewed commitment by social justice lawyers to support organizing efforts and organized constituencies, there has been less written by legal advocates struggling to put those principles into practice, particularly outside of the narrow clinical context, and even less reflection on the lessons learned in developing that practice.⁹ Unfortunately, there is often little time in these practices for recording the type of critical reflection described by Professor Quigley. And perhaps there may be too much humility, as practitioners are painfully aware how far their practice strays from ideal community lawyering.

The purpose of this article is not to add to the excellent academic reflections on community lawyering, but rather to report on some of the critical reflections of one small group of advocates struggling to consciously implement a community lawyering practice within a larger traditional public interest context. While much of the article is descriptive, its goal is to pull from these descriptions some prescriptive values and practices that arise from the practical application of our "community lawyering" principles. We understand that there are real and significant differences between communities and their struggles for equality. But we also increasingly understand that there are common lessons that lawyers can learn in their efforts to assist those struggles. In the following descriptions of our work, we attempt to define the common lessons we have observed.¹⁰

9. See, e.g., Cummings, *supra* note 1, at 1617. See Lai, *supra* note 1, at 2.

10. See Lucie White, *Paradox, Piece-Work, and Patience* 43 HASTINGS L.J. 853, 855 (1992) (stating, "theory becomes a habit of ongoing conversational reflection about how to describe problems, make alliances, devise strategies and thus move together toward a better world"). This article is an attempt to heed this admonition from Professor White.

I. PUBLIC INTEREST LAWYERS AND SOCIAL JUSTICE

It seems reasonable that a first step in supporting social change would be to possess an understanding of how social change occurs. Leaders in social change movements are often quoted regarding their understanding of the dynamics of change.¹¹ Unfortunately, many legal advocates, while deeply committed to social justice, have only a vague, largely unexamined notion of how they believe change occurs. These deeply committed advocates generally entered law school with an idea that being a lawyer would somehow make them more central participants in the struggle to achieve social justice. They had been educated to believe that lawyers and the law were integral to social change. They endured the mind-numbing routines of law school as a necessary step in achieving a role in that process. After law school, they may have had the good fortune to be able to practice in a legal services or other public interest practice, often handling numerous individual clients. Some of the clients' legal problems were serious, some trivial, some challenging, and some mundane. All were vitally important to the client.

For the first couple of years, the sheer terror of being trusted with any client's problem was sufficient to fully occupy the new lawyer's time. But, over time, these lawyers would see their clients return again and again with similar problems. Hundreds of new clients appear requesting legal assistance on legal problems identical to those suffered by dozens of previous clients.¹²

11. See, e.g., THE PUBL'NS DIV., NEW DELHI, THE COLLECTED WORKS OF M.K. GANDHI 241; See also <http://www.gandhitopia.org/forum/topics/a-gandhi-quote> ("If we could change ourselves, the tendencies in the world would also change. As a man changes his own nature, so does the attitude of the world change towards him."); Dr. Martin Luther King Jr., Letter from Birmingham City Jail (April 16, 1963) ("[F]reedom is never voluntarily given by the oppressor; it must be demanded by the oppressed."); Cesar Chavez, Address to the Commonwealth Club in San Francisco (Nov. 9, 1984) ("Once social change begins, it cannot be reversed. You cannot un-educate the person who has learned to read. You cannot humiliate the person who feels pride. You cannot oppress the people who are not afraid anymore."); PAULO FREIRE, PEDAGOGY OF THE OPPRESSED: 30TH ANNIVERSARY EDITION 65 (2006) ("It is only when the oppressed find the oppressor out and become involved in the organized struggle for their liberation that they begin to believe in themselves. This discovery cannot be purely intellectual but must involve action; nor can it be limited to mere activism, but must include serious reflection[.]").

12. See Gary Bellow, *Turning Solutions Into Problems: The Legal Aid Experience*, in NLADA BRIEFCASE 106 (Aug. 1977), available at <http://www.garybellow.com>.

Eventually the young social justice lawyer can become very frustrated since she fails to see any real connection between her work and any meaningful change in her clients' communities. Tenants are being evicted simply because they don't have the money to pay the rent.¹³ Using her legal skills, the lawyer can prolong the tenancy, informing the court and the jury about the client's family and the abominable housing conditions. But at the end of the day, the tenant generally leaves, the property remains unrepaired, and the next tenant becomes a potential future client. The initial client/tenant may return in six months threatened with eviction from another abominable apartment.¹⁴ Similar scenarios can be described in cases involving health care, disability, veterans' benefits, etc.¹⁵ Over time these advocates increasingly recognize that the most fundamental problems of their clients may have no legal solution.

Generally, as they become more experienced, most legal advocates also become more specialized in narrow substantive areas that further narrowly limit the number of potential clients.¹⁶ Whether they continue to handle individual cases or "graduate" to handling class actions or other "more important" cases, specialization allows the lawyers to avoid clients they are least likely to be able to assist and to develop greater expertise for those whom they do assist.¹⁷ This substantive specialization and focus can allow the young lawyer to feel more expert and productive. But it also dramatically restricts the lawyer's contact with people possessing problems outside of the lawyer's area of expertise, and dramatically limits her experience of the clients'

org/garywords/solutions.html. See also Marc Feldman, *Political Lessons: Legal Services for the Poor*, 83 GEO. L.J. 1529 (1995). While these authors' observations support my general descriptions of what is often termed "public interest" practice, the descriptions contained in this article are based largely on my own experiences and observations throughout my past forty years of practice.

13. Matthew Desmond, *Eviction and the Reproduction of Urban Poverty*, 118 AM. J. SOC. 88, 101 (2012).

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

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

16. Antoinette Sedillo Lopez, *Learning Through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL L. REV. 307, 308-11 (2001).

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

larger world.¹⁸ And seldom does it allow the attorney to achieve any meaningful systemic change. For example, a young housing rights lawyer may represent only tenants with federal vouchers. However, she knows most poor tenants are not receiving voucher assistance, are living in substandard conditions, paying most of their income in rent, and being evicted solely because their work hours were cut— they had unexpected bills, lost their job, or lost a partner. Thus, to the extent that she talks to the community, she often sees little correlation between the most serious problems as that community might define them and the narrow housing voucher-related problems that she deals with on a daily basis. She also quickly learns that there is not even a rough correlation between what is legal and what is just.

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

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

Some of these committed new lawyers may have come to law school already possessing an important recognition that

18. Lopez, *supra* note 16, at 318-21.

19. See sources cited *supra* note 12.

20. See Scott L. Cummings & Ingrid V. Eagley, *A Critical Reflection On Law And Organizing*, 48 UCLA L. REV. 443, 493-96 (2001) (describing the role that confusion and contradictions inherently plays in lawyers acting as organizers).

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

These lawyers may feel particularly frustrated because they were raised in a popular culture that glorified the crusading lawyer who singlehandedly changed lives and communities. Older advocates, myself among them, who grew up in the 1960s and 1970s, were indoctrinated with the idea that lawyers and litigation were the keys to all sorts of social change movements. After all, hadn't civil rights lawyers singlehandedly changed society through a series of skillfully crafted courtroom victories?²⁴ The younger generations have been similarly taught that lawyers have singlehandedly won environmental reforms, closed sweatshops, freed wrongly condemned inmates and outed

21. See Bellow *surpa* note 12. See also William P. Quigley, *Letter To A Law Student Interested In Social Justice* 1 DEPAUL J. SOC. JUST. 7 (2007).

22. *Id.*

23. Many funding sources, including the Legal Services Corporation (LSC), have severe restrictions on who can be represented and how they can be represented. For example, LSC prohibits organizing, soliciting, representing incarcerated individuals, conducting class action lawsuits, and lobbying by lawyers funded in whole, or in part, with LSC funds. Alan W. Houseman, *Restrictions By Funders And The Ethical Practice Of Law*, 67 FORDHAM L. REV. 2187, 2188-2193 (1999); see also Selena Spain & Jean Wiley, *The Living-Wage Ordinance: A First Step in Reducing Poverty*, 32 CLEARINGHOUSE REV. 252, 266 (1998) (examining the tensions created by funding restrictions in trying to work in campaigns that involve influencing local governments); see William P. Quigley, *The Demise Of Law Reform And The Triumph Of Legal Aid: Congress And The Legal Services Corporation From The 1960's To The 1990's* 17 ST. LOUIS U. PUB. L. REV. 241, 264 (1998) (discussing a more pessimistic, but no less realistic view of the impact of the LSC restrictions on the practice of community lawyers).

24. See MICHELLE ALEXANDER, *THE NEW JIM CROW; MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 225-27 (2012); Derrick Bell, *Law, Litigation, And The Search For The Promised Land*, 76 GEO. L. J. 229, 232 (1987) (describing the belief that the civil rights gains of the 1960s were the result of carefully planned litigation).

governmental corruption.²⁵ They went to law school aspiring to find their generation's version of *Brown v. Board of Education*,²⁶ which they believe will forever change the social landscape.

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

Less lawyer-centric examinations have shown that the African American civil rights movement in the United States won far more enduring victories in the streets of Selma than in the Supreme Court. In Professor Michelle Alexander's book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, she describes how racial justice advocacy in the United States, from the earliest struggles to the civil rights struggles, revolved around grassroots organizing and the strategic mobilization of public opinion.²⁷ In fact, integration failed to follow *Brown* and it was not until the next decade during the organized people's movement that actual change began to occur. In Professor Gerald Rosenberg's book, *The Hollow Hope: Can the Courts bring About Social Change?*, he demonstrates that the actual social gains in civil rights for African Americans and women correlate not with the court victories, but rather with the popular struggles.²⁸ This mirrors the early labor movement, which accomplished its victories largely through bloody and generally illegal strikes rather than in the courtroom. These analyses support the idea that significant social change results from organized struggles outside the courtrooms rather than judicial decisions made inside.²⁹

In fact, these legal victories often diverted attention and

25. See *A CIVIL ACTION* (Touchstone Pictures 1998); *ERIN BROKOVICH* (Universal Pictures 2000); *AMISTAD* (DreamWorks Pictures 1997); *THE CHAMBER* (Universal Pictures 1996); *CONVICTION* (Fox Searchlight Pictures 2010); Raymond H. Brescia, *Line In The Sand: Progressive Lawyering, "Master Communities," And A Battle for Affordable Housing In New York City*, 73 ALB. L. REV. 715, 724-29 (2010).

26. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

27. ALEXANDER, *supra* note 24, at 225-27.

28. See generally GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (2008).

29. See Hansen, *supra* note 2, at 50.

energy from the real struggles for change. Professor Alexander argues that a mythology resulted from the Supreme Court's *Brown* decision in that litigation and lawyers were the central players in bringing about social change. She then observes: "As public attention shifted from the streets to the courtroom the extraordinary grassroots movement that made civil rights legislation possible faded from public view. The lawyers took over."³⁰ The result was a reliance on the lawyers and a distancing from the grassroots organizing that had brought about those changes in the first place.

Others echoed this view. Lani Guinier, quoted by Professor Alexander, further describes the legal takeover as a participant:

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

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

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

30. ALEXANDER, *supra* note 24, at 225.

31. ALEXANDER, *supra* note 24, at 226.

32. William P. Quigley, *Reflections of Community Organizers: Lawyering for*

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

II. THE COMMUNITY LAWYERING PERSPECTIVE

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

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

The understanding that a lawyer’s role in change is *supporting* community organizations and other organized groups of people (i.e., worker/tenant associations, immigrant/community coalitions, and unions), who win benefits and shift power through collective action and strategic campaigns, is central to all types of community lawyering. True sustainable change comes from building large-scale, democratic organizations focused on building the power and conscious leadership of poor and working people.

Empowerment of Community Organizations, 21 OHIO N.U. L. REV. 455, 457-58 (1994) (quoting Ron Chisom’s reflections on the role of lawyers in community organizations).

Community lawyering can assist fundamental and long-term change only through supporting grassroots organizing in all its aspects— community education, organizational development, and leadership development.

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

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

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

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

A. Our Partners - Who Do We Work With?

Our work has focused on working with community

organizations and other organized groups (i.e., worker/tenant associations, community coalitions, and unions) that are committed to building power through collective action and strategic campaigns.

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

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

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

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

We have no organizer on staff. We have tried on a few occasions to operate as both organizer and lawyer when there was

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

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

Sometimes the problem is that an advocate is searching for a community organization focused on a particular substantive area. Thus the expertise or focus of the lawyer dictates an assessment of the level of community organization. However, a community lawyer must respect the decisions of a community. For example, if a community is organizing itself around a struggle with the excessive discipline of their African American children, lawyers have no right to demand people organize around affordable housing. Indeed, it can be destructive to the local leadership.

Legal advocates desiring to assist those community struggles must develop expertise that is useful to the struggle or be rendered irrelevant.

iv. Our Capacity. Our initial goal was to become the go-to legal resource for grassroots organizing campaigns involving low-income communities of color in Miami. Thus, the groups we worked with were geographically limited to south Florida and principally Miami-Dade County. This created significant synergy, as many of the organizations and organizers with whom we worked knew each other and worked closely together. We did not expressly limit the substantive goals of the groups with whom we worked. However, much of our initial work focused on either housing/community development related campaigns or immigrant/worker related campaigns. This reflected our own expertise as well as the issues of most serious concern to the community organizations with whom we worked. These communities were suffering from the impact of uncontrolled development and gentrification, demolition of low-income housing, immigration enforcement and criminalization, and exploitation of low wage workers. Thus, those were the substance of the campaigns with which we worked.

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

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

For us, while substantive diversity has always been a major

challenge, more recently the geographic diversity of our partners and their campaigns has presented an increasing challenge. As these groups have grown more sophisticated they have understood the need to expand their influence to the state level. This is a natural progression from local organizing efforts. For example, groups organizing homeowners in foreclosure in various communities were faced with state legislature attempts to gut the foreclosure process. They were forced to create state level legislative campaigns to defeat these measures.³³ A successful campaign to pass a Wage Theft Ordinance in Miami-Dade County was met with an effort to pass state legislation barring such local efforts.³⁴ Thus the coalition supporting such ordinances was forced to learn about state-level education, coalition building and lobbying. Perhaps most dramatically, immigrant groups were faced with the imminent threat of statewide legislation importing Arizona type anti-immigrant legislation and were forced to mount a massive state level response.³⁵ Each of these initial grassroots lobbying efforts was successful and resulted in some of the most significant legislative victories in recent Florida history.³⁶

These statewide campaigns created a challenge for us. On the one hand, we desperately wanted to continue being of service to these immigrant, wage theft and anti-foreclosure coalitions. Many of the traditional public interest lawyer/lobbyists had difficulty relating to grassroots efforts that did not see lawyers as central. At one televised legislative hearing, the statewide homeowner foreclosure coalition that had brought numerous people to the capitol to testify were calling our office— six hundred

33. See Peter Phillips, *PICO United Florida rips foreclosure bill*, PICO NAT'L NETWORK (Feb. 12, 2013), <http://www.piconetwork.org/news-media/coverage/2013/pico-united-florida-rips-foreclosure-bill> (describing the statewide effort of PICO United Florida).

34. See *Wage Theft Preemption*, FLA. RETAIL FED'N, <http://www.frf.org/index.php/government-affairs/legislative-issues/loss-prevention/63-wage-theft-preemption> (last visited Mar. 21, 2013).

35. In 2011, the Florida Immigrant Coalition led a statewide campaign that opposed passing legislation, modeled after Arizona law, that would dramatically restrict immigrants' rights in Florida. The campaign in opposition included almost daily events at the State Capitol in Tallahassee, as well as an unprecedented statewide grassroots lobbying campaign. Ultimately, despite passing several committees, the bill was defeated. Eduardo Garcia, *FAILED: Florida Not Yet Becoming the Next Police State*, CAMPUS PROGRESS (May 9, 2011), http://campusprogress.org/articles/breaking_news_florida_inches_closer_to_becoming_the_next_police_state/.

36. *Id.*

miles away—for advice. It forced us to rethink our own limitations and our approach to statewide advocacy. Traditional statewide public interest policy advocacy/lobbying resources have a history of working in parallel formations with constituent groups, but seldom working *for* these groups. These public interest policy/lobbying advocates are often uncomfortable taking direction from anyone other than themselves or their fellow lawyers, which creates significant difficulty due to the fact that leading and empowering community organizations is a core component of any community organization’s philosophy.

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

B. What Do We Do For Our Organizational Partners?

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

While public interest/legal service providers tend to focus their representation through substantive priorities and expertise, the problems of communities are not so limited but often present

37. See John Bouman, *Power of Working with Community Organizations: The Illinois FamilyCare Campaign—Effective Results through Collaboration*, 38 CLEARINGHOUSE REV. 583 (2005) (describing the tensions of working with community organizations that have separate agendas).

2013]

Community Lawyering

61

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

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

campaign to adapt to your expertise.

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

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

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

1. Organizing/Base-Building Tactics

These include a wide array of outreach and member development strategies, including door-knocking, one-on-ones,

2013]

Community Lawyering

63

town-hall meetings, leadership development efforts, and know-your-rights trainings.

Lawyers can be powerful allies in base building. Public interest lawyers often provide “know your rights” trainings for client groups and participate in other public presentations. These trainings and presentations can be used in conjunction with organizational events to introduce the organization, build the organizational power, or simply provide added benefits to the organization members.

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

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

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

Organizing campaigns will also always have an outreach

38. Some organizers don’t like lawyers participating in their meetings. Nevertheless, lawyers can operate as a draw and the lawyer discussions can be handled outside of the regular meeting.

component. Lawyers often have access to outreach resources, such as law students, who often love the opportunity to go door to door and talk to individual families.

2. Communications & Media Tactics

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

Lawyers can create forums (through litigation and policy advocacy) and those forums can be utilized to further get the message out. One of those forums is a press conference. The media is accustomed to covering the filing of lawsuits and similar legal demands. Traditionally there is a statement by the lawyer, and possibly the client, a fact handout, and sometimes a background statement. The challenge is to turn that paradigm on its head. The community organization calls the press conference, and the lawyer takes a back seat. The organization explains any legal demands in conjunction with, or instead of, the attorney. The community organization develops talking points and spokespeople. To the extent that the attorney speaks to any media outlet, they subordinate their message to the message or the messenger of the campaign. It means that no messaging – whether leaflets, press releases, blogs, or op-eds – is utilizing the often powerful media resources of the lawyer without the direction of the organizational partner.

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

2013]

Community Lawyering

65

speakers.

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

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

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

3. Policy Advocacy Tactics

Many, if not most, organizing campaigns are designed to influence public policy—whether it be elected government officials or unelected agency heads. These targets wield enormous power

over poor and disadvantaged communities and are, at least nominally, democratic institutions, with leadership more subject to public pressure than private corporations. In addition, unlike courts, lawyers are not necessary to participate.

We have all seen public interest lawyers speaking before commissions, school boards, town councils, etc., with little impact. Sometimes there are a few supporters in the audience, sometimes none. Yet there is probably no forum in which community organizing can have a greater impact. Each event can be an opportunity for an organization to exercise its power and leadership by packing the hall, picking the speakers, and otherwise conducting the presentation. This does not mean an attorney cannot speak; there are often important legal points. But the lawyer is speaking as the legal representative of the larger group and not as its spokesperson.

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

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

In addition, lawyers must ensure that organizations are aware that the most effective public policy advocacy occurs not in the public arena, but in formal and informal conversations with decision makers. Indeed, it is in these meetings that policy makers gather most of their information. Lawyers, lobbyists and others in power are familiar with these meetings. Lawyers can assist organizations in obtaining these meetings, preparing for the meetings, drafting policy proposals and, if necessary or

desired, can even accompany organization members.³⁹ However, to conduct these meetings without using them to build the organization, its leadership, and its power, does a disservice to both the policy goal and the organization.

4. Direct Action Tactics

Organizations often engage in direct action—including rallies, marches, protests, sit-ins, taking over property, making repairs to buildings—to dramatize or emphasize their demands. Lawyers often shy away from participating in these activities because they may include confrontational activities that can result in arrests. However, experienced lawyers can be invaluable in providing relevant information to minimize any adverse potential before and during the event. While lawyers sometimes negotiate with police, law enforcement personnel, or private security, experienced organizers are often much better at handling security because they are closer to the demonstrators, are often seen as less threatening to police, and are more able to deescalate any unanticipated situation. However, should there be arrests or confrontations, it is essential that there be lawyers in a position to provide assistance.⁴⁰

5. Legal Tactics

Notwithstanding all of the above, organizations regularly employ legal/litigation tactics in organizing. In our experience the role of affirmative litigation, such as class actions, injunctions, etc., is almost always tactical. It creates forums. It can shape public opinion. It can provide a stage for dramatizing and demonstrating issues and demands. Injunctive relief, particularly preliminary injunctions, can delay the progress of a project while the organizing and education around the community's concerns take place. However, seldom does affirmative litigation result in a definitive community victory. Indeed, more often it distracts from the underlying struggle to achieve a lasting political victory. It delays any decision for years and distracts everyone's attention. Litigation often terminates any discussions that may have been taking place between the community leaders and the decision

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

40. Our project does not provide criminal defense assistance and has only very rarely been involved in advising groups over civil disobedience resulting in unanticipated arrests.

makers. Thus, to undertake litigation without coordinating and supporting a community organizing initiative is often counterproductive, if not irresponsible.

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

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

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

6. Other Tactical Help

a. Providing Time

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

b. Utilizing Routine Types of Cases

I have often heard comments by advocates to the effect that it would be impossible to import the values of community lawyering into their practice because: (a) they handle a volume of small individual cases, or (b) they are private practitioners who must charge, or (c) some other constraint on their practice prevents them from utilizing these practices. It is important to remember that the essential element of community lawyering is that it is in support of, and lead by, an organizing effort. Any type of advocacy can be adapted to support an organizing effort if there is an intentional and planned effort to do so. Take for example an advocate required by her employer to handle a high volume of landlord-tenant practice. If the advocate is aware of a community organizing effort involving tenants, she can work with a tenant organizing effort and fill her docket with cases associated with that effort. In addition, her community education efforts can be in support of the community organization conducting the organizing and she can provide know-your-rights trainings to the staff and the members. She can even influence the practices of her fellow advocates, further increasing the resources available. All of these efforts, if done in an intentional and supportive manner, can provide priceless assistance to an organizing effort. Thus, while it is easier if you have the freedom to take on cases in different

substantive areas, requiring different levels of resources, you must shape your advocacy, whatever its makeup, to best serve the needs of an empowered community. And do not ever be afraid to simply ask how you might be most useful, with whatever limitations presented.

C. How Do We Work With Our Partners?

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

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

As a result, we seldom engage in classic “law reform” cases

2013]

Community Lawyering

71

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

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

Thus, for example, we have worked with a community organization in a multiyear campaign against the demolition of public housing. Within that campaign there were other smaller campaigns to fill vacant units, and to modify the waiting list, all

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

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

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

41. Bouman, *supra* note 37.

2013]

Community Lawyering

73

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

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

This same conflict arises in another area. We, as attorneys, are significant repositories of knowledge and experience. We may have dozens of years of experience interacting with local, state, and national governmental bodies and their policies. How do you make that knowledge available without further reinforcing the centrality of lawyers? While that information may indeed be useful to a campaign, it is almost impossible to divorce the message from the messenger. Time and again I find myself not opening my mouth because I know that whatever I say will be

given a weight far beyond its worth and, more dangerously, will undercut the leadership development of the organization. On the other hand, it is important that all useful information be taken advantage of. Where to draw this line has been a fundamental and long-standing struggle. Perhaps my best advice is to develop sufficient mutual trust that allows for information flow in a partnership fashion through the organizers. But, I am not at all comfortable that I have any clear or satisfactory response to this other than to say, "When in doubt keep your mouth shut."

III. CONCLUSION

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

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

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

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