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LETTER FROM THE EDITOR-IN-CHIEF

Dear Reader:

It is a pleasure to introduce the fall issue of the *Howard Human & Civil Rights Law Review* (“HCR”) for Volume V. Since its founding in 2015, Charles Hamilton Houston’s vision has guided HCR. As lawyers with a conscience, we strive to be social engineers. In light of this declaration, HCR has worked diligently to bring forth an issue that is timely and seeks to spark the discussion on matters that impact us most and encourage reflection on the most relevant injustices from a legal perspective. With this ideal in mind, HCR has earned the reputation as a foremost authority on human and civil rights issues.

As the publishing arm of Howard University School of Law’s Thurgood Marshall Civil Rights Center, HCR had the unique opportunity to partner with the Advancement Project on curating a collection of articles that discuss movement lawyering from a multi-faceted perspective. This issue consists of articles written by prominent legal minds, practitioners, and activists, all of whom are committed to human and civil rights and embody the spirit of HCR.

The issue opens with an article by Emmanuel Powell III, a Skadden Fellow, Staff Attorney at ArchCity Defenders, and Adjunct Professor at Tougaloo College. Titled “*#BlackLivesMatter and the Families Left Behind*,” this article examines how the response of members within the #BlackLivesMatter movement, specifically the formal and informal network of organizers, lawyers, activists, and institutions to killings by police — has managed to leave families of those killed by police behind. William P. Quigley is a human rights lawyer and professor at Loyola University New Orleans and is considered a giant within the movement lawyering community; he ushers in the second piece. “*Ten Ways of Looking at Movement Lawyering*” explores ten ways of looking at movement lawyering through a historical, instructive, and anecdotal perspective. Legal and Advocacy Director at Project South and former president of the National Lawyers Guild, Azadeh Shahshahani, explores the application of Len Holt’s bottom-up lawyering in a contemporary setting in the third article, “*Movement Lawyering: A Case Study in the U.S. South*.” The issue closes with a piece written by Alexi Freeman, Associate Dean for Diversity, Equity and Inclusion and Professor of the Practice at the University of Denver Sturm College of Law and Lindsey Webb, Associate Professor at the University of Denver Sturm College of Law. Titled “*Yes, You Can Learn Movement Lawyering in Law School: Highlights from the Movement Lawyering Lab at Denver Law*,” this article describes the unique opportunities the Movement Lawyering Lab provides to law students working alongside national and grassroots organizations while imple-

menting the philosophies of movement lawyering to advance social, economic, and racial justice issues.

Through the pieces mentioned above, I trust that the history, successes, challenges, and approaches to movement lawyering — a powerful tool that has advocated for the voiceless and strived to dismantle systems of oppression since its infancy — will enlighten you. We extend our deepest appreciation to the Howard University School of Law faculty and advisers for this issue: Dean Danielle Holley-Walker, Professor Darin Johnson, and Professor Jasbir (Jesse) Bawa. We would also like to thank Professor Justin Hansford, the Thurgood Marshall Civil Rights Center, and the Advancement Project, for without you, this issue would not have been possible. To our Law Review Manager Mrs. RaNeeka Witty, we thank you for your tireless efforts on our behalf. We also thank the rest of the Howard University School of Law community for its continued support. As a publication that stands on the shoulders of giants, we also extend our profound appreciation to our predecessors: The *Human Rights & Globalization Law Review* and the *Howard Scroll: The Social Justice Review*. These previous publications' unrelenting efforts provided the possibility of HCR's existence, and we are eternally grateful to the prior members and editorial boards for their contributions. As Editor-in-Chief, I would be remiss not to underscore the hard work of all of the members of the *Howard Human & Civil Rights Law Review* to produce the fall issue of Volume V of the *Howard Human & Civil Rights Law Review*. We have had a tremendously productive, enjoyable academic year thus far, and I am incredibly proud to serve on this editorial board.

To our readers, I invite you to fully engage the discourse as you read the articles and think critically about the ideas presented. We look forward to your support and hope that you find that this issue fulfills our obligation to publish timely, relevant pieces that make a meaningful contribution to the ongoing legal conversation in the field of human and civil rights.

ASHLYNE J. POLYNICE
Editor-in-Chief
Howard Human & Civil Rights Law Review

FOREWORD

Advancement Project National Office, a next generation, multi-racial civil rights organization, is proud to partner with the Howard Human and Civil Rights Law Review for this special edition issue dedicated to Movement Lawyering. Rooted in the great human rights struggles for equality and justice, we work to fulfill America's promise of a caring, inclusive and just democracy. Using innovative tools and strategies, we strengthen grassroots movements to dismantle structural racism. We are excited that this journal highlights this model.

In honor of the 20th Anniversary of our founding in 1999, we organized the inaugural Movement Lawyering Conference with our co-sponsors Law for Black Lives and the Thurgood Marshall Civil Rights Center, held at the Howard University School of Law. The conference uplifted the racial justice movement lawyering model we have pioneered and that is used by Law for Black Lives and others. At the heart of this model is a holistic approach of using organizing, law, and narrative change to support the genius of ordinary people to attack racist systems and build long-term power. Movement lawyers put the law into service of the freedom movement. We recognize that current legal doctrine upholds the status quo and therefore, we must push for a radical transformation of the law in order to achieve true justice. We also know that strong movements are the fourth branch of government; their power can change the law and ultimately the systems that oppress them. It is our duty to support these movements.

Our vision for the inaugural conference was to create a space for legal scholarship on Movement lawyering by sharing the incredible work that many are doing on the ground, and to also serve as an educational home for law students and legal scholars who sought something outside of the traditional method of lawyering offered in most of our country's law schools.

The articles and authors chosen for this issue represent the fruition of that vision and come from a range of movement lawyers—from one of our country's leading civil rights attorneys to emerging young leaders. We are grateful to all of the staff at the Howard Human & Civil Rights Law Review who believed in this vision and have worked tirelessly for months on this publication.

Judith Browne Dianis
Executive Director, Advancement Project National Office

Jessica Alcantara
Staff Attorney, Advancement Project National Office

#BlackLivesMatter and the Families Left Behind

EMANUEL POWELL III*

I write this as a family member of a man killed by police.¹ On January 21, 2017, Darrel Saxton, Steven Torrey, Julian Phillips, James Evans, and Tabari Thomas — law enforcement officers of the Greenville, Mississippi Police Department — shot and killed my cousin, Ronnie Shorter, in the dead of night outside the front of his home. He suffered 11 bullet wounds and died lying face down in a pool of blood and rainwater, bleeding profusely from a bullet wound to the back of the head.

I was in my first year at Harvard Law School, and I never felt so powerless. In my shock and the shame of not being able to help my family, I emailed one of the co-founders of the #BlackLivesMatter Movement (“#BLM”)² — to see if she could help or what she could do. I did not expect her to respond. I knew she was busy. But in less than 24 hours, she emailed me back. She shared her condolences for my family’s tragic loss. She told me how her organization received hundreds of calls about killings by police. Though there was not a #BLM chapter in Mississippi at the time, she offered to put me in touch with the national media team.³ In a later call, the team ex-

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1. “[S]ubject position is everything in [our] analysis of the law.” PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR* 3 (1991).

2. Garrett Chase, *The Early History of the Black Lives Matter Movement, and the Implications Thereof*, 18 NEV. L.J. 1091, 1096 (2018).

3. A formal chapter of Black Lives Matter was found in Mississippi in 2020. See BLACK LIVES MATTER MISSISSIPPI, <https://www.blacklivesmattermississippi.org/?fbclid=IWAR22HBX->

pressed their condolences and explained the importance of developing a strategy to tell the story through the media and offered to help amplify Ronnie's story.

When I shared this news with my family, I quickly realized they were not prepared to take on the likely callous scrutiny of the media. They were rightly scared of backlash from the local police and people in our community, as well as how Ronnie — a dark-skinned Black man from rural Mississippi — could be characterized by those who did not know him.⁴ I did not follow up with the #BLM media team. They offered what support they could and — while my family remains deeply grateful to this day — it was not the support my family needed. There was nothing to be done, and I knew there were many others calling for their support.

In the years since, my family was introduced to an attorney who took on the case but failed to investigate the circumstances surrounding Ronnie's death altogether. Local and state government officials who offered platitudes about our loss likewise failed to independently investigate Ronnie's death or hold the officers accountable. And, as my family predicted, the media portrayed our loved one as a criminal and abandoned the story without any investigation of their own. Our story is not unique. We are one of thousands of families whose stories are never fairly told, who fail to get adequate legal support, and whose loved one's deaths go uncovered by media outlets while their killers continue to police the streets. Despite an international movement expressly created to address killings by police, the numbers of surviving families continue to rise, and our experiences remain both traumatizing and fruitless.

Why has the work of #BLM had such limited impact on the experiences of the families of those slain by police? While some loved ones' names become the oft-repeated rallying cries justifying the movement's calls for "abolition," "justice," and "police reform," the vast majority go unsung. And meanwhile, the surviving families of *all* people killed by police — whether their loved one's names are converted to hashtags or not — struggle to get information on their loved one's killing, resources for essential needs like funeral expenses, and any form of accountability or systemic change.

ExNr-SXCrKcpEVgl6KFTDaHXXQsZz7uUt4svV2-gychElQoXZkYY (last visited Nov. 7, 2020).

4. See generally Bryan Adamson, *Thugs, Crooks, and Rebellious Negroes: Racist and Racialized Media Coverage of Michael Brown and the Ferguson Demonstrations*, 32 HARV. J. RACIAL & ETHNIC JUST. 189 (2016).

This Essay explores how the movement — namely the ongoing struggle of the formal and informal network of organizers, lawyers, activists, and institutions formed in response to the most recent on-slaught of killings by police — has managed to leave families of those killed by police behind. It asks how the movement might turn its focus back to the families who are most directly impacted by police killings and how such a pivot could both offer much needed support to surviving families and inform the movement’s strategies going forward. Section I begins with a description of the lived experiences of several families who survived the killing of a loved one by police and how the movement and movement lawyers often failed to support them. Section II explores the concepts and construction of “movement” and “movement lawyering” in the modern context of #BLM and the ways these constructs, along with the legal system, have challenged the movement’s ability to center the needs of families. The Essay concludes with proposals for how the movement may change its course in service of both surviving families and its own goals of ending killings by police and systems of oppression wholesale.

I. THE FAMILIES OF THOSE KILLED BY POLICE

The stories of countless individuals killed by the police are lost except to their families and — in some cases — the community members who rally around them. Access to reliable data on those killed by police remains limited and largely dependent upon crowdsourced databases created by activists or the press.⁵ Information regarding their families, however, is virtually nonexistent.

In 2018, I began the process of collecting the stories of families of those killed by police in St. Louis, Missouri, in connection with Arch-City Defenders, a nonprofit civil rights law firm and early endorser of #BLM.⁶ I spoke with the mothers, grandmothers, sisters, and brothers of those slain. The families were predominately Black. They worked as caretakers, in retail, and even corporate management. Despite the unique nature of each family member’s loss, I unearthed certain similarities. Almost uniformly, the families sought three things following the loss of their loved ones: information, justice, and the resources needed to meet their essential needs. Almost uniformly, the families faced similar barriers getting them.

5. See Gretchen Frazee, *Deadly Police Shootings Keep Happening. Data Could Be a Missing Piece*, PBS (Oct. 16, 2019, 4:08 PM), <https://www.pbs.org/newshour/nation/deadly-police-shootings-keep-happening-data-could-be-a-missing-piece>.

6. See Emanuel Powell, *Unlawful Silence: St. Louis Families’ Fight for Records After the Killing of a Loved One by Police*, 57 AM. CRIM. L. REV. ONLINE 65 (2020).

A. Information

One only has to look at local headlines to recognize that the lack of government transparency following a killing by police is a pervasive issue for families:

“Family seeks answers after police kill Texas woman at home;”⁷

“Family seeks answers after deputy kills Missouri woman;”⁸

“Family seeks answers in fatal police shooting of Louisville woman in her apartment;”⁹

“Family questions police shooting;”¹⁰

“Rally seeks answers on St. Louis police shootings.”¹¹

Most state public records laws — which should provide access to law enforcement records of the killing — include exceptions that allow investigations into deaths to be protected from the public.¹² Absent a handful of states, records of police officer discipline, which can include investigations into killings, are either completely closed to the public or only available in limited situations.¹³ Under this legal backdrop, families are left without much recourse to get information on their loved one’s death besides filing a civil claim that could allow access to the information or hoping for the release of the information by the police or a prosecuting authority.

B. Justice

Less than two months after Cary T. Ball, Jr. was killed by two officers of the St. Louis Metropolitan Police Department (“SLMPD”)

7. That was Atatiana Jefferson. See Assoc. Press, *Family Seeks Answers After Police Kill Texas Woman at Home*, ABC NEWS (Oct. 14, 2019, 7:15 AM), <https://abcnews.go.com/US/wireStory/family-seeks-answers-police-kill-texas-woman-home-66245449>.

8. That was Hannah Fizer. See Margaret Stafford, *Family Seeks Answers After Deputy Kills Missouri Woman*, ASSOCIATED PRESS (June 15, 2020), <https://apnews.com/c2402b227f9ea86121ccbae480fc87a8>.

9. That was Breonna Taylor. See Errin Haines, *Family Seeks Answers in Fatal Police Shooting of Louisville Woman in Her Apartment*, WASH. POST (May 11, 2020, 10:07 PM), <https://www.washingtonpost.com/nation/2020/05/11/family-seeks-answers-fatal-police-shooting-louisville-woman-her-apartment/>.

10. That was Cary T. Ball, Jr. See Rebecca S. Rivas, *Family Questions Police Shooting*, ST. LOUIS AM. (June 13, 2013), http://www.stlamerican.com/news/local_news/family-questions-police-shooting/article_69ac5d8c-d3b1-11e2-b7f2-001a4bcf887a.html.

11. That was Isaiah Hammett. See Assoc. Press, *Rally Seeks Answers on St. Louis Police Shootings*, NAT’L POST (Sept. 20, 2018), <https://nationalpost.com/pmnl/news-pmnl/rally-seeks-answers-on-st-louis-police-shootings>.

12. See generally *Police Records*, REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS <https://www.rcfp.org/open-government-sections/o-police-records/> (last visited Oct. 14, 2020); see also Jessie Gomez, *Access to police records is an issue across the country*, MUCKROCK (Dec. 10, 2018), <https://www.muckrock.com/news/archives/2018/dec/10/looking-into-police-records/>; Ryan J. Foley, *Public Regularly Denied Access to Police Officer Videos*, ASSOCIATED PRESS (Mar. 13, 2019), <https://apnews.com/article/67f22d5857f14413a4a9b34642c49ae3>.

13. *Disciplinary Records*, WNYC, <https://project.wnyc.org/disciplinary-records/> (last visited Oct. 17, 2020).

on April 24, 2013, his family created a Facebook page to bring awareness to his killing named “Justice For Cary Ball, Jr.”¹⁴ Four years later, Isaiah Hammett’s family launched a Facebook page — “Justice For Isaiah Hammett-Vinny”¹⁵ — after Isaiah was killed by SLMPD officers on June 7, 2017. Numerous pages demanding justice for the stolen lives exist online, but what does “justice” mean in this context?

The United States provides two avenues: the civil or criminal justice systems. Under the civil justice system, a family or the estate of the loved one killed can seek compensation for the death by using both state and federal law. Under the criminal justice system, a prosecuting authority — either state or federal — can charge an officer with a crime and seek to have the officer incarcerated, or even force the officer to compensate the victims. Neither system works for the families of those slain by police.

A complex system of immunities bars families from getting justice in civil courts. In Alabama, for example, law enforcement officers enjoy both “state-agent immunity” and “peace officers’ immunity.” The first derives from state sovereign immunity, a doctrine associated with the English common law concept “that a sovereign could not be sued without its consent.”¹⁶ Under state-agent immunity, “state employees, as agents of the State, [are protected] in the exercise of their judgment in executing their work responsibilities.”¹⁷ For the second immunity, the Alabama state legislature created a separate statute to specifically protect police officers from lawsuits raising state claims.¹⁸

While families could seek federal claims against police for killings under federal statute, 42 U.S.C. § 1983, the Supreme Court created the doctrine of qualified immunity to protect police officers from liability.¹⁹ Even if a court finds that an officer violated a family’s loved one’s rights, under qualified immunity, an officer can escape liability if the law was not “clearly established” at the time of the killing.²⁰ This obstacle is nearly impossible to overcome and has been the subject of significant academic and public critique.²¹

14. Justice For Cary Ball Jr., FACEBOOK, <https://www.facebook.com/JusticeForCaryBallJr/> (last visited Sept. 12, 2020).

15. Justice For Isaiah Hammett-Vinny, FACEBOOK, <https://www.facebook.com/justiceforisaiahhammett/> (last visited Aug 29, 2020).

16. *Alden v. Maine*, 527 U.S. 706, 715 (1999).

17. *Ex parte Kennedy*, 992 So. 2d 1276, 1280 (Ala. 2008) (quoting *Ex parte Hayles*, 852 So. 2d 117, 122 (Ala. 2002)).

18. *See Ex parte Kennedy*, 992 So. 2d at 1281; *see also* ALA. CODE § 6-5-338 (1975).

19. *See Pierson v. Ray*, 386 U.S. 547, 557 (1967).

20. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

21. *See, e.g.,* William Baude, *Is Qualified Immunity Unlawful?*, 106 CAL. L. REV. 45, 82-84 (2018).

Beyond immunity, the law itself is biased in favor of law enforcement. Rather than the Fourteenth Amendment — which says that no state shall “deprive any person of life, liberty, or property, without due process of law” — the Supreme Court determines if a killing by police is a violation of the Constitution based on the Fourth Amendment.²² Accordingly, the Court asks whether an officer’s actions were reasonable.²³ One may imagine that there are few situations in which it would be reasonable for the government to kill its citizens, especially given the Court’s prior holding that “[t]he intrusiveness of a seizure by means of deadly force is unmatched.”²⁴ In *Tennessee v. Garner*, Justice White, writing for the Court, stated that a person’s “fundamental interest in his own life need not be elaborated upon.”²⁵ The Court’s later holdings show that Justice White should have spent a little more time elaborating.²⁶

Perhaps most important, the Supreme Court tells us that the question in these cases is not whether it is “reasonable to kill [a person], but whether” the officer’s “use of deadly force” was reasonable.²⁷ According to Justice Scalia, “all that matters is whether [the officer’s] actions were reasonable.”²⁸ Any other characterization “stacks the deck against the officer,” and the Court does not want that, quite the opposite.²⁹ The determination of reasonableness is “judged from the perspective of a reasonable officer on the scene” rather than the normal “reasonable person” standard.³⁰ Since “police officers are often forced to make split-second judgments — in circumstances that are tense, uncertain, and rapidly evolving,” the Court determined police officers should determine whether it was reasonable to kill, not the courts.³¹

This “calculus of reasonableness[.]”³² along with qualified immunity, results in a jurisprudence that “tells officers that they can shoot

22. See *Graham v. Connor*, 490 U.S. 386, 394-95 (1989).

23. See *id.*

24. *Tennessee v. Garner*, 471 U.S. 1, 9 (1985).

25. *Id.*

26. See, e.g., *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (holding that it was “not at all evident” that an officer acted with excessive force when he shot a mentally ill woman who was holding a kitchen knife at her side) (*per curiam*); *Plumhoff v. Rickard*, 572 U.S. 765, 770 (2014) (holding that officers did not violate the Constitution despite engaging in a high speed chase and shooting into the driver’s car 15 times killing both the driver and passenger after the driver was stopped for driving without a working headlight, had an indentation in his window, “failed to produce his driver’s license upon request[,] and appeared nervous”).

27. *Mullenix v. Luna*, 136 S. Ct. 305, 313 (2015) (Scalia, J., concurring).

28. *Id.*

29. *Id.*

30. *Graham*, 490 U.S. at 396-97.

31. *Id.*

32. *Id.*

first and think later” and tells families “that palpably unreasonable conduct will go unpunished.”³³

C. *Essential Needs*

“Families of police brutality victims experience a level of suffering that is typically ignored and misunderstood.”³⁴ How much does the killing of a loved one cost a family? “[W]e know that the direct and immediate costs can include the loss of a breadwinner, the loss of consortium, emotional distress, and the loss of parental support.”³⁵ Unfortunately, the lack of data and research on this issue makes it challenging to quantify.³⁶

A 1996 study by the U.S. Department of Justice identified a range of different “tangible losses” associated with murder and other crimes including property loss, medical care (including funeral expenses), mental health care, and productivity (including wages, fringe benefits, housework, and school days lost by victims and their families).³⁷ The study also identified “intangible losses” like “pain, suffering, and reduced quality of life.”³⁸ The study valued the loss of productivity and reduced quality of life at more than \$1.9 million per killing.³⁹ These are the costs borne by nearly a thousand families every year.⁴⁰

II. THE MOVEMENT AND ITS LAWYERS

A. *The Movement’s Origins and Priorities*

#BLM began with the killing of a young boy and our legal system’s failure to provide justice for his family. “[O]n July 13, 2013, after deliberating for more than sixteen hours, the jury” found Trayvon Martin’s killer not guilty after a more than a month-long criminal trial.⁴¹ As Alicia Garza later noted, “‘It was as if we had all been punched in the gut.’”⁴² Within days of the verdict, the Revered

33. Kisela, 138 S. Ct. at 1162 (Sotomayor, J., dissenting).

34. Adam Hudson, *Families of Police Violence Victims Face Trauma Without Support*, TRUTHOUT (June 7, 2015), <https://truthout.org/articles/families-of-murdered-black-men-deal-with-trauma-channel-anger/>.

35. Eleanor Lumsden, *How Much is Police Brutality Costing America?*, 40 U. HAW. L. REV. 141, 172 (2017).

36. *Id.*

37. TED R. MILLER ET AL., NAT’L INST. OF JUST., VICTIM COSTS AND CONSEQUENCES: A NEW LOOK 9 (1996).

38. *Id.* at 14.

39. *Id.*

40. Ian Thomsen, *1,000 People in the US Die Every Year in Police Shootings. Who Are They?*, NEWS@NORTHEASTERN (Apr. 16, 2020), <https://news.northeastern.edu/2020/04/16/000-people-in-the-us-are-killed-every-year-in-police-shootings-how-many-are-preventable/>.

41. Chase, *supra* note 2, at 1094.

42. *Id.* (citation omitted).

Al Sharpton organized vigils across the country as “a 100-city effort to demand a federal investigation into violations of Trayvon Martin’s civil rights.”⁴³ As Garrett Chase writes, “[p]ost-Zimmerman America needed a rallying cry to express its discontent” and “Black Lives Matter would become that cry.”⁴⁴

The day of the verdict, Alicia Garza would pen “A Love Letter to Black People,” a series of Facebook posts that included the message “black people. I love you. I love us. Our lives matter.”⁴⁵ Her friend, Patrisse Cullors, would see the message and follow up with a post stating, “trayvon, you are loved infinitely #blacklivesmatter.”⁴⁶ Two days later, Cullors would announce she, Garza, “and hopefully more black people than we can imagine are embarking on a project.”⁴⁷ They called it “#BLACKLIVESMATTER” and defined it as “a movement attempting to visibilize [sic] what it means to be black in this country. Provide hope and inspiration for collective action to build collective power to achieve collective transformation. Rooted in grief and rage but pointed towards vision and dreams.”⁴⁸ Opal Tometi, “with input from Garza and Cullors, created various social media pages on Facebook, Tumblr, and Twitter, where people could share ‘what they were doing to build a world where black lives matter.’”⁴⁹ A movement was born.

If the killing of Trayvon Martin started this movement, then the brutal killings of Michael Brown in Ferguson, Missouri, and Eric Garner in New York City solidified it. An uprising in Ferguson began after Michael Brown’s killing, with protests lasting for weeks.⁵⁰ After the St. Louis County prosecutor announced that a grand jury would not indict the officer who killed Michael Brown, [p]rotests broke out in a number of U.S. cities.⁵¹ The criminal justice system had failed again, and #BLM was there to give the people protesting in the streets a path forward.

43. Christina Cocca, *Hundreds Gather for Trayvon Martin Vigil in LA*, NBC L.A. (July 20, 2013, 10:48 PM), <https://www.nbclosangeles.com/news/local/trayvon-vigil-la-federal-courthouse-100-city-effort/1955626/>.

44. Chase, *supra* note 2, at 1098.

45. Alicia Garza (@ChasingGarza), *A Love Letter for Black People*, FACEBOOK (July 13, 2013), <https://www.facebook.com/ChasingGarza/>.

46. Chase, *supra* note 2, at 1095.

47. *Id.* at 1096 (citation omitted).

48. *Id.*

49. *Id.* at 1098.

50. Monica Davey & Julie Bosman, *Protests Flare After Ferguson Police Officer Is Not Indicted*, N.Y. TIMES (Nov. 24, 2014), <https://www.nytimes.com/2014/11/25/us/ferguson-darren-wilson-shooting-michael-brown-grand-jury.html>.

51. Thomas MacMillan et al., *Protests Spread in U.S. Cities Following Decision*, WALL ST. J. (Nov. 25, 2014, 10:56 AM), <https://www.wsj.com/articles/protests-spread-in-u-s-cities-following-decision-1416922570>.

They “set out together on the Black Lives Matter Freedom Ride to Ferguson, in search of justice for [Michael] Brown and all of those who have been torn apart by state-sanctioned violence and anti-Black racism.”⁵² On November 28, 2014, four days after the grand jury announcement in Ferguson, #BLM demonstrators planned a demonstration at the West Oakland Bay Area Rapid Transit (“BART”) station. The site was significant “to the Black community and its significance to the problem of police violence with racial undertones (one of the first officers convicted of murder in Oakland had killed Oscar Grant at a BART station).”⁵³ Numerous other #BLM affiliated demonstrations happened across the country in due time. As activist Kai M. Green stated at a 2013 vigil for Trayvon Martin, #BLM had “use[d] this moment to build a movement.”⁵⁴

Today, the official Black Lives Matter Global Network Foundation (“the Network”) includes sixteen local chapters based in the United States and Canada.⁵⁵ The Network is decentralized, allowing chapters to set the agenda and develop local movement goals and strategies.⁵⁶ Additionally, countless other organizations make up the broader movement. The Movement for Black Lives (“M4BL”) is a collective of more than fifty organizations, including the Network, founded in December 2014 that “created . . . a space for Black organizations across the country to debate and discuss the current political conditions, develop shared assessments of what political interventions were necessary in order to achieve key policy, cultural and political wins, convene organizational leadership in order to debate and co-create a shared movement wide strategy.”⁵⁷ The coalition has been endorsed by over 50 additional organizations reflecting support of the M4BL’s policy demands.⁵⁸ In addition, as #BLM co-founder, Patrisse Cullors would later say, “What is clear is that Black Lives Matter shares a name with a much larger movement and there are literally hundreds of organizations that do impactful racial and gender justice work who make up the fabric of this broader movement.”⁵⁹

52. *What We Believe*, BLACK LIVES MATTER, <https://blacklivesmatter.com/what-we-believe/> (last visited Sept. 12, 2020).

53. Chase, *supra* note 2, at 1104.

54. *Id.* at 1095.

55. See *Black Lives Global Network Foundation*, INFLUENCE WATCH, <https://www.influencewatch.org/non-profit/black-lives-matter-foundation/> (last visited Nov. 26, 2020).

56. *Id.*

57. *About Us*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/about-us/> (last visited Dec. 6, 2020).

58. See *Vision for Black Lives*, MOVEMENT FOR BLACK LIVES, <https://m4bl.org/policy-platforms/> (last visited Dec. 6, 2020).

59. Aaron Morrison, *Black Lives Matter Network Establishes \$12M Grant Fund*, ASSOC. PRESS. (June 17, 2020), <https://apnews.com/article/1d5d09286d910bc84c48ffe2d3a11197>.

From its start, #BLM's vision and guiding principles were expansive. In 2016, through M4BL, the movement codified its "Vision for Black Lives."⁶⁰ The collective characterizes this document as "a comprehensive and visionary policy agenda for the [P]ost-Ferguson Black [L]iberation [M]ovement."⁶¹ It laid out six demands: (1) end the war on Black people, (2) reparations, (3) divest-invest, (4) economic justice, (5) community control, and (6) political power.⁶² The vision also discussed centering the most impacted.⁶³ The Network identified 13 guiding principles: diversity, globalism, Black women, Black villages, loving engagement, restorative justice, collective value, empathy, queer affirming, unapologetically black, transgender affirming, Black families, and intergenerational.⁶⁴

Noticeably missing from both the vision and guiding principles was an express goal to address the needs of the families of those killed by police. Rather, #BLM's early focus was to "facilitate the types of connections necessary to encourage social action and engagement."⁶⁵ This focus on direct action required family participation to establish the legitimacy of the movement. Families, and their struggle for justice, provided the foundation for the movement to establish a broader agenda even at #BLM's earliest actions. The organizers of the Black Lives Matter Ride to Ferguson characterized the ride as "a call to action for black people and their allies to fight for justice — not just for Brown and his family, but for all of us."⁶⁶ While Brown's killing and his family's suffering provided a catalyst for their activism, the only named support for the family was to demand the arrest of Brown's killer and dismissal of the county prosecutor.⁶⁷ Otherwise, in their "5 ways to . . . deliver real justice for Michael Brown," the movement demanded the discontinuation of military weaponry supply to local law enforcement and that decreased law enforcement spending should be reinvested "into the black communities most devastated by poverty in order to create jobs, housing[,] and schools."⁶⁸ There was no express demand that money be directed back to the family by the state.

60. MOVEMENT FOR BLACK LIVES, *supra* note 58.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Guiding Principles*, BLACK LIVES MATTER, <https://web.archive.org/web/20160208060855/http://blacklivesmatter.com/guiding-principles/> (last visited Oct. 13, 2020).

65. *About the Black Lives Matter Network*, BLACK LIVES MATTER, <https://web.archive.org/web/20160208060700/http://blacklivesmatter.com/about/> (last visited Oct. 13, 2020).

66. Darnell Moore & Patrisse Cullors, *5 Ways to Never Forget Ferguson – and Deliver Real Justice for Michael Brown*, THE GUARDIAN (Sept. 4, 2014, 7:30 AM), <https://www.theguardian.com/commentisfree/2014/sep/04/never-forget-ferguson-justice-for-michael-brown>.

67. *Id.*

68. *Id.*

As Erica Garner, the late daughter of Eric Garner, once said regarding the use of loved one's killings, "They exploit their deaths all over the media and we have to relive it every day. So how can we, as family, heal if we continue to keep seeing our loved one die or the next one die or the next one die and ask for questions?"⁶⁹ While the movement continues to play a significant role in building awareness of certain killings and the broader issue of killings by police,⁷⁰ its investment in systemic change has largely been silent on meeting the explicit needs of families.

It is important to note that this problem is not one that #BLM created. The fault lies at the hands of our legal system and local communities that both allow a system of public safety that so often results in civilian death, while failing to provide support for families in the aftermath. However, given the use of families' loved ones to legitimize and support this movement, it follows that the movement should also support the families that are left behind.

B. *The Movement's Lawyers*

While #BLM's efforts focus primarily on supporting the work of organizers and others leading direct actions, lawyers have had a role in the movement from the beginning.

1. Movement Lawyers

Lawyering for social change has historically encompassed three models according to attorneys Purvi Shah and Chuck Elsesser: (1) the civil legal-aid model, (2) the test-case or impact litigation model, and (3) the social-rescue model.⁷¹ They describe them as follows:

The *civil legal-aid model*, believes that the major problem with the legal system is a lack of lawyers. It argued that if there were just enough lawyers to represent every single poor person, the courts would be able to administer a just result. The *test-case or impact litigation model*, believes that systemic social change can result from carefully targeted class action litigation. The *social-rescue model* believes that poverty is the result of failure of social and other support services, including, legal services.⁷²

69. Hudson, *supra* note 34.

70. See, e.g., Larry Buchanan et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

71. Super User, *Purvi & Chuck: Community Lawyering*, ORG. UPGRADE (June 1, 2010, 7:20 AM), <http://archive.organizingupgrade.com/index.php/modules-menu/community-organizing/item/71-purvi-amp-chuck-community-lawyering>.

72. *Id.*

An alternative model that has gained traction under #BLM is “movement lawyering.” While there are many ways to define movement lawyering,⁷³ it is most often characterized as a type of lawyering that supports the organizers from directly impacted communities and their organizing goals.

A range of movement lawyering organizations exist in service of #BLM. The National Conference of Black Lawyers (“NCBL”), founded in 1968 to support the Black activists of that era, was an initial member of M4BL. Its mission, among other things, is “to serve as the legal arm of the movement for Black Liberation.”⁷⁴ The Black Movement Law Project formed when lawyers and legal activists, “[a]fter working in Ferguson, Baltimore and Cleveland[,]” came together to provide legal support for activists during mass demonstrations and arrests.⁷⁵ Launched in August 2015 following a convening by the Center for Constitutional Rights, Law For Black Lives is a “network of nearly 4,000 radical lawyers and legal workers committed to building a responsive legal infrastructure for movement organizations, and cultivating a community of legal advocates trained in movement lawyering.”⁷⁶

The work of #BLM’s movement lawyers is as expansive as the movement. Advancement Project, “a next generation, multi-racial civil rights organization,” works to “inspire[e] and support[] national and local movements” on several issues including “[p]olicing and [c]riminalization.”⁷⁷ Advancement Project’s Justice Project specifi-

73. See Scott L. Cummings, *Movement Lawyering*, 2017 UNIV. ILL. L. REV. 1645, 1690 (2017) (“ [M]ovement lawyering is the mobilization of law through deliberately planned and interconnected advocacy strategies, inside and outside of formal law-making spaces, by lawyers who are accountable to politically marginalized constituencies to build the power of those constituencies to produce and sustain democratic social change goals that they define.”); see also *What We Can Do: Movement Lawyering in Moments of Crisis*, LAW FOR BLACK LIVES, <http://www.law4blacklives.org/respond> (last visited Sept. 19, 2020) (“Movement lawyering means taking direction from directly impacted communities and from organizers, as opposed to imposing our leadership or expertise as legal advocates. It means building the power of the people, not the power of the law.”); Super User, *Purvi & Chuck: Community Lawyering*, ORG. UPGRADE (June 1, 2010, 7:20 AM), <http://archive.organizingupgrade.com/index.php/modules-menu/community-organizing/item/71-purvi-amp-chuck-community-lawyering> (“Similar to the different schools of thought in organizing (community vs. union, Alinsky vs. ideological), community lawyering has many different strains.”).

74. *Our History*, NAT’L CONF. OF BLACK LAWS., <https://www.ncbl.org/about-01-history> (last visited Sept. 19, 2020).

75. *About Us*, BLACK MOVEMENT-L. PROJECT, <https://bmlp.org/#work-with-us>. (last visited Sept. 19, 2020).

76. *Our Team*, LAW FOR BLACK LIVES, <http://www.law4blacklives.org/about-us> (last visited Sept. 19, 2020).

77. *Mission and Vision*, ADVANCEMENT PROJECT, <https://advancementproject.org/about-advancement-project/> (last visited Sept. 19, 2020); see also *Policing and Criminalization*, ADVANCEMENT PROJECT, <https://advancementproject.org/issues/policing-and-criminalization/> (last visited Sept. 19, 2020).

cally “supports grassroots movements in communities of color that challenge racial criminalization and call for genuine police accountability.”⁷⁸ “The Justice Project provides short and long-term support to local campaigns seeking not simply to reform, but to wholly dismantle systems that over-criminalize and over-incarcerate people of color in the name of ‘law and order.’”⁷⁹

Law for Black Lives, which “partner[s] with Black Alliance for Just Immigration to bring lawyers to the U.S.-Mexico border to assist Black migrants[,]” serves as a founding member of the National Bail Out Collective, which “coordinates the Mama’s Day Bail Outs, where [the Collective] bail[s] out as many Black Mamas and caregivers as we can so they can spend Mother’s Day with their families where they belong[.]”⁸⁰ Additionally, the Collective coordinates fellowships and programs with clinical programs at law schools to support movement lawyering on issues ranging from prison abolition to divesting from fossil fuels.⁸¹

NCBL’s work is also varied, including an informal collaboration with the National Lawyers Guild - NYC Mass Defense Committee “to increase the presence of legal support on the streets by reinvigorating NCBL’s legal support program”⁸² and a collaboration with the Law Enforcement Accountability Project, which is a “legal education program designed to train a cadre of lawyers to file civil suits on behalf of the victims of police misconduct and to educate community activists to know their rights, especially during these protests.”⁸³

With some notable exceptions described below, movement lawyering typically addresses a range of issues, but rarely centers on providing legal support for families of those slain by police.

2. Impact Litigators

While the line can be blurred, several organizations operate more along the lines of the impact litigation model. For example, in 2015, the NAACP Legal Defense Fund (“LDF”) “launched its Policing Reform Campaign to transform policing culture and practices, eliminate

78. *Policing and Criminalization*, ADVANCEMENT PROJECT, <https://advancementproject.org/issues/policing-and-criminalization/> (last visited Sept. 19, 2020).

79. *Id.*

80. *About*, NAT’L BAIL OUT, <https://www.nationalbailout.org/> (last visited Sept. 19, 2020).

81. *Id.*

82. Jill Humphries, *Black Lives Matter Clarion Call for Black-Led Legal Support: Is This a Turning Point for the NLG?*, NAT’L LAWS. GUILD, <https://www.nlg.org/guild-notes/article/black-lives-matter-clarion-call-for-black-led-legal-support-is-this-a-turning-point-for-the-nlg/> (last visited Sept. 19, 2020).

83. *Leap CLE Masters Series*, NAT’L CONF. OF BLACK LAWS., <https://www.ncbl.org/post/leap-cle-200725> (last visited Sept. 19, 2020).

racial bias and profiling in policing, and end police violence against citizens.”⁸⁴ LDF’s strategy is multi-pronged, including supporting demands for federal civil rights investigations, promoting special prosecutors to investigate police misconduct cases, advocating for national data collection and reporting, and litigating to “eliminate all forms of racially-based policing.”⁸⁵

LDF, along with the American Civil Liberties Union (“ACLU”), Roderick & Solange MacArthur Justice Center, the Cato Institute, and others play a major role in challenging Supreme Court precedent that keeps police officers from being held accountable: qualified immunity. In no less than five amicus briefs filed in the Supreme Court, these organizations have argued that the Court should revisit the doctrine.⁸⁶ The ACLU of Washington, D.C. and the ACLU of Tennessee even took one of these cases challenging qualified immunity to the Supreme Court, which denied their petition along with a host of others in 2020.⁸⁷ Both ACLU chapters have also spoken about the lack of accountability for police killings at the Inter-American Commission on Human Rights.⁸⁸

While some families may find support through impact litigation, the focus of such lawyering is often at odds with the aspirations of most families. Most impact cases focus on changing certain Supreme Court or other appellate precedent, rather than meeting the needs of families. Cases with less attractive facts, such as allegedly armed victims, are likely to be overlooked and deprioritized under this model. Families saddled with funeral expenses or other burdens following a killing by police may be less inclined to support the impact litigator’s broader goals of systemic change over meeting immediate financial needs.

3. Private Attorneys

Private personal injury attorneys are perhaps the most attuned to the needs of surviving families. While not directly affiliated with

84. *Policing Reform Campaign*, THURGOOD MARSHALL INST., <https://tminstituteldf.org/advocacy/campaigns/policing-reform/about/> (last visited Sept. 19, 2020).

85. *Id.*

86. Clark Neily, *Why Cato Took on Qualified Immunity*, CATO INST. (May 5, 2020, 8:47 AM), <https://www.cato.org/blog/why-qualified-immunity>; see also Brief of Cross-Ideological Grps. Dedicated to Ensuring Off. Accountability, Restoring the Pub.’s Tr. in L. Enf’t, and Promoting the Rule of L. as Amici Curiae in Support of Petitioner, *Baxter v. Bracey*, No. 18-1287, 2019 WL 2370285, at *1 (6th Cir. May 31, 2019), *cert. denied*, 140 S. Ct. 1862 (2020).

87. *Baxter v. Bracey*, ACLU, <https://www.aclu.org/cases/baxter-v-bracey> (last updated July 2, 2020).

88. *Human Rights Hearing on Police Killings in U.S.*, ACLU, <https://www.aclu.org/cases/human-rights-hearing-police-killings-us> (last updated Dec. 5, 2017).

#BLM, Attorney Benjamin Crump would eventually represent both the Martin and Brown families in filing civil suits. He, along with attorneys L. Chris Stewart and S. Lee Merritt, would be lauded as the “lawyers [who] get a phone call” when Black people are killed by police.⁸⁹ Each attorney maintains a private law firm that specializes in personal injury lawsuits. For surviving families, they typically file civil rights lawsuits to seek monetary damages for the killing of a loved one. While these attorneys have perhaps the highest profile, virtually every state has a private personal injury lawyer who could take on a wrongful death case on behalf of a family.

In contrast to the aforementioned lawyering models, private attorneys largely depend on contingency fees, meaning that they will agree to represent the family if they can take a percentage of whatever settlement or verdict they can win. Because of this pay structure, private attorneys are incentivized to choose cases based on whether they are likely to get a settlement or favorable jury verdict. Accordingly, the cases they are more likely to take are those in which enough evidence is already readily available, limiting the attorney’s additional cost required to investigate. This means that families without video evidence or witness testimony may be hard-pressed to get the support of private attorneys. In the case of the personal injury lawyers mentioned above, they also depend on “public pressure” and media exposure to control the narrative and pressure the other side, often a local government, toward settlement. According to Merritt, “[w]hen you hear us advocate, we’re not advocating for a settlement, we’re advocating for an indictment. We’re advocating for a conviction.”⁹⁰ While their work may pressure the local prosecutor to indict and/or convict a police officer, these attorneys’ cases are civil in nature and many end up in a settlement of some sort. This results in a payout both to the family and the attorneys who, along with a contingency fee, may take attorney’s fees for their work.

A less obvious function some lawyers play involves supporting crowdfunding campaigns to meet certain expenses. Using the GoFundMe crowdfunding platform, Crump raised over \$340,000 for the Brown family with over 11,000 donations⁹¹ and over \$14 million

89. Darran Simon, *When African Americans Are Killed by Police, These Lawyers Get a Phone Call*, CNN (May 28, 2019, 11:23 PM), <https://www.cnn.com/2019/05/28/us/civil-rights-attorneys-merritt-crump-stewart/index.html>.

90. *Id.*

91. Tamara Kneese, *Mourning the Commons: Circulating Affect in Crowdfunded Funeral Campaigns*, SOC. MEDIA + SOC’Y, Jan.-Mar. 2018, at 1, <https://journals.sagepub.com/doi/pdf/10.1177/2056305117743350/>.

for the family of George Floyd with over 500,000 donations.⁹² #BLM’s efficacy to “circulate narratives” about the dead and support of activism across social media and other platforms directly supports crowdfunding efforts as well as the media strategy private attorneys depend on to succeed.⁹³

C. *What’s Missing?*

Meeting the needs of all families of those killed by police has never been at the center of the broader #BLM movement nor of the vast majority of lawyers affiliated with it. One reason may be the fact that philanthropy — the predominate source of funding for these organizations — has a history of underfunding Black-led organizations.⁹⁴ The presence of the private bar and impact litigators, which take some cases that become big profile, also falsely portrays a narrative that families are getting access to legal services when, in fact, both models prioritize a small subset of the population of surviving families.

Movement and movement lawyering ideology may also play a role. Many in the movement aspire to “an abolitionist vision and praxis.”⁹⁵ An abolitionist approach “calls on us . . . to destabilize, deconstruct, and demolish oppressive systems, institutions, and practices.”⁹⁶ This includes “abolish[ing] prisons, policing, [] militarization” and other aspects of carcerality [sic].⁹⁷ While surviving families may be interested in pursuing traditional criminal and civil justice system methods of acquiring justice, the movement recognizes such systems as largely failing to mete out justice or reparations.⁹⁸ In practice, movement actors may recognize a surviving family’s desires for criminal prosecution or a civil lawsuit but choose to prioritize “com[ing] up

92. *Official George Floyd Memorial Fund*, GoFundMe (May 27, 2020), <https://www.gofundme.com/f/georgefloyd/>.

93. Kneese, *supra* note 91, at 2.

94. *Nonprofit Leaders of Color Face Additional Challenges, Report Finds*, PHILANTHROPY NEWS DIG. (June 6, 2019), <https://philanthropynewsdigest.org/news/nonprofit-leaders-of-color-face-additional-challenges-report-finds/>; see also Cheryl Dorsey et al., RACIAL EQUITY AND PHILANTHROPY: DISPARITIES IN FUNDING FOR LEADERS OF COLOR LEAVE IMPACT ON THE TABLE 13, <https://www.bridgespan.org/bridgespan/Images/articles/racial-equity-and-philanthropy/racial-equity-and-philanthropy.pdf>.

95. Patisse Cullors, *Abolition and Reparations: Histories of Resistance, Transformative Justice, and Accountability*, 132 Harv. L. Rev. 1684 (2019); see also Amna Akbar, *The Movement for Black Lives Offers an Abolitionist Approach to Police Reform*, THE L. AND POL. ECON. PROJECT, <https://lpeproject.org/blog/the-movement-for-black-lives-offers-an-abolitionist-approach-to-police-reform/>.

96. Cullors, *supra* note 95, at 1686.

97. *Id.* at 1686.

98. See *id.*; see also Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1638-46 (2019).

with new structures of accountability beyond the system[s] [they] are working to dismantle” based on their abolitionist principles.⁹⁹

III. THIS TIME WILL BE DIFFERENT

The brutal killing of George Floyd and the subsequent uprising across the United States has renewed mass interest in killings by police. While there is relative silence at the national level about the needs for families, many developments point to the potential of re-centering surviving families in the broader movement for Black lives.

A. Local Efforts

Despite the lack of a national and systematic commitment to supporting families, several local organizations provide support that can positively impact families in the aftermath of losing a loved one. Justice for Families is a 100% volunteer-run working group with Black Lives Matter: Chicago that “designs campaigns, strategies, and direct actions with families so they can fight for justice for their loved ones.”¹⁰⁰ Black Lives Matter — Los Angeles’ “More than a Hash Tag” effort provides “a digital living altar for people killed by police,” telling their stories and changing the narrative around families’ loved ones.¹⁰¹ California’s Anti-Police Terror Project (“AFTP”) “support[s] families surviving police terror in their fight for justice, documenting police abuses and connecting impacted families and community members with resources, legal referrals, and opportunities for healing.”¹⁰² AFTP has even trained organizations in other cities to develop rapid response programs similar to their model, including in Chicago¹⁰³ and St. Louis, Missouri.¹⁰⁴

99. See e.g., Mariame Kaba & Andrea J. Ritchie, *We Want More Justice for Breonna Taylor Than the System That Killed Her Can Deliver*, ESSENCE (July 16, 2020), <https://www.essence.com/feature/breonna-taylor-justice-abolition/> (“There are ways to support families calling for arrests without legitimizing the system, including by meeting material needs, providing safety for families and communities, and working to disempower police.”).

100. *Justice for Families*, BLACK LIVES MATTER CHI., <https://www.blacklivesmatterchicago.com/justice-for-families/> (last visited Oct. 13, 2020).

101. *Organize*, BLACK LIVES MATTER L.A., <https://www.blmla.org/organize> (last visited Oct. 13, 2020).

102. *About*, ANTI POLICE-TERROR PROJECT, <https://www.antipoliceterrorproject.org/about-aptp/> (last visited Sept. 19, 2020).

103. *People’s Response Team*, PEOPLE’S RESPONSE TEAM CHICAGO, <http://www.peoplesresponsechicago.org/> (last visited Sept. 19, 2020).

104. *The STL First Responders*, WECOPWATCH (Mar. 6, 2016), <https://wecopwatch.org/jointhefirstresponders/>.

These organizations, along with others like Mass Action Against Police Brutality in Boston,¹⁰⁵ the Coalition Against Police Crimes and Repression and its Rapid Response Program in St. Louis,¹⁰⁶ and Communities United Against Police Brutality's Stolen Lives Justice Fund in Minneapolis,¹⁰⁷ provide inspiration for how a coordinated effort to support and build power with each surviving family may take shape.

B. Family Self-organization

In lieu of being organized by an outside entity, families have come together to advocate, support, and connect one another with resources.

A national network is one model. Mothers Against Police Brutality ("MAPB") is a coalition "formed to unite mothers who have lost their children to police violence."¹⁰⁸ MAPB tells families' stories and "challenge[s] existing laws and practices that leave our families vulnerable to police brutality and official murder."¹⁰⁹ Established in 2014, the Families United 4 Justice Network is a national collective of over 200 families impacted by police violence.¹¹⁰ The collective is "dedicated to providing support and services to newly impacted families and family led [sic] organization seeking assistance in healing, organizing, demanding justice and working to redress the causes of unjustified police shooting."¹¹¹ Protect our Stolen Treasures ("POST") is a national chapter-based organization for victims and their families who have been killed by police.¹¹² POST offers support and guidance for families after a killing by police and also advocates to hold police accountable. Families have also created online social groups to share their stories, seek support and guidance, and otherwise build community.¹¹³

Individual family members are also creating tools and services to support others. Sybrina Fulton, mother of Trayvon Martin, started

105. MASS ACTION AGAINST POLICE BRUTALITY, <https://www.maapb.org/> (last visited Sept. 19, 2020).

106. *Rapid Response*, COALITION AGAINST POLICE CRIMES & REPRESSION, <https://www.capcr-stl.org/r-a-p-i-d-r-e-s-p-o-n-s-e> (last visited Sept. 19, 2020).

107. *Stolen Lives*, COMMUNITIES UNITED AGAINST POLICE BRUTALITY, https://www.cuapb.org/stolen_lives (last visited Sept. 19, 2020).

108. *About*, MOTHERS AGAINST POLICE BRUTALITY, <https://mothersagainstopolicebrutality.org/about/> (last visited Sept. 19, 2020).

109. *Id.*

110. *About Us*, FAMILIES UNITED 4 JUST. NETWORK, <http://fu4jgroup.website/index.html> (last visited Sept. 19, 2020).

111. *Id.*

112. *See* PROTECT OUR STOLEN TREASURES, <http://protectourstolentreasures.mystrickingly.com/> (last visited Sept. 19, 2020).

113. (citation omitted). For safety concerns, I will not share the names of these groups.

“the Circle of Mothers . . . to bring together mothers who have lost children or family members to senseless gun violence for the purpose of healing, empowerment, and fellowship towards the larger aim of community building.”¹¹⁴ The Circle of Mothers program offers weekend retreats to mothers that creates space for healing and support. Brandon Anderson, who lost his partner after he was killed by an officer during a routine traffic stop, created a nonprofit tech startup called RAHEEM for police reporting, which “aims to make reporting police violence more accessible, more visible, and hold officers accountable with the goal of ending police terror against black people.”¹¹⁵ Lesley McSpadden, Michael Brown’s mother, recently ran for a seat on the City Council in Ferguson, Missouri and remains active in local and national efforts to change policy around policing.¹¹⁶

C. Changing Movement Strategy

There are signs that movement actors are bringing families to the table. While the initial #BLM policy demands failed to specifically name a demand for the support of families, recent legislation proposed by the movement — the BREATHE Act — expressly calls for reparations for the families of those killed by police.¹¹⁷ During the video announcement of the Act, Lesley McSpadden was one of the first speakers.¹¹⁸ She expressed her excitement for the reparations component named after her son.¹¹⁹ McSpadden also acknowledged that “the majority of the cases do not generate significant media exposure or public support” and named the many issues that families face in the aftermath of killings to meet essential needs and deal with the pressure of advocating.¹²⁰ While the viability of the Act is unknown, the reparations carveout highlights a movement that has, at the very least, recognized the significant needs of families and put forth one idea for how to address it.

114. CIRCLE OF MOTHERS: TRAYVON MARTIN FOUND., <https://www.circleofmothers.org/> (last updated Oct. 13, 2020).

115. Christopher Gray, *Brandon Anderson’s RAHEEM Has Leveraged Technology and Data to Help Thousands of Black People Report Police Misconduct*, FORBES (June 10, 2020, 12:37 PM), <https://www.forbes.com/sites/christophergray/2020/06/10/brandon-andersons-raheem-has-leveraged-technology-and-data-to-help-thousands-of-black-people-report-police-misconduct/#769c9e1b24e4>.

116. Jim Salter, *Lesley McSpadden, Michael Brown’s Mother, Loses Bid for Ferguson City Council*, CHI. TRIB. (Apr. 3, 2019, 2:48 PM), <https://www.chicagotribune.com/nation-world/ct-michael-brown-ferguson-lesley-mcspadden-20190402-story.html>.

117. See M4BLBREATHE ACT, <https://breatheact.org/> (last visited Sept. 19, 2020).

118. Movement for Black Lives, *The BREATHE Act Unveiling*, YOUTUBE (July 7, 2020), https://www.youtube.com/watch?v=GAET2x_rwZ8&feature=emb_title.

119. *Id.*

120. *Id.*

Though not affiliated with the formal #BLM network, activist Shaun King has been a major player in the movement from the beginning.¹²¹ In 2020, he launched the Grassroots Law Project with Attorney Lee Merritt as the full-time legal director.¹²² The Grassroots Law Project has an expansive set of goals, but it also includes policy plans to: “[g]rant media and family immediate access to all body, dash, and video evidence;” provide legal support for families; and launch “truth, justice, and reconciliation” commissions to address the needs of impacted families.¹²³ While it is yet to be seen if these efforts will provide support for all families, it points to a more systematic and national effort to meet the needs of families by legal actors.¹²⁴

IV. CONCLUSION

The numerous local, national, and international organizations who make up #BLM have created a movement that has built global awareness of a problem that so many families have had to face alone. For that, their work is to be applauded. This Essay is a call to the movement to take its efforts one step further and invest in the systematic support of the families of those whose names gave reason to take to the streets, famous or not.

With new investment and other resources flowing into the movement,¹²⁵ this is an opportune time to build the infrastructure necessary to ensure no family is left alone to seek justice in their loved one’s

121. See Feliks Garcia, *The Rise and Fall of Shaun King, Former Black Lives Matter Darling*, COMPLEX (Jan. 29, 2016), <https://www.complex.com/life/2016/01/shaun-king-black-lives-matter-self-promoter> (“King burst into the national spotlight in August 2014, after relentlessly tweeting criticisms of Ferguson police and the systemic injustice against people of color in America.”).

122. Shaun King, *SHAUN KING: Setting the Record Straight on the Accusations Made About Me, My Fundraisers and The North Star*, THE NORTH STAR (Jun 4, 2020 4:47 PM), <https://www.thenorthstar.com/shaun-king-setting-the-record-straight-on-the-accusations-made-about-me-my-fundraisers-and-the-north-star/>.

123. *Our Policy Plan*, GRASSROOTS L. PROJECT, <https://www.grassrootslaw.org/plan> (last visited Oct. 13, 2020); *truth, justice, and reconciliation commission*, GRASSROOTS L. PROJECT, <https://www.grassrootslaw.org/tjrc> (last visited Oct. 13, 2020).

124. Numerous other activists affiliated with #BLM have questioned King’s integrity, his use of donations, and treatment of Black women and other movement organizers. See generally Tamela J. Gordon, *The Shaun King We’re Not Talking About*, MEDIUM (Feb. 4, 2019), <https://medium.com/@shewritestolive/the-shaun-king-were-not-talking-about-84c46ab40079>; DeRay Mckesson, *On Shaun King*, MEDIUM (Sept. 12, 2019), <https://medium.com/@deray/on-shaun-king-351bd812318c>. It is also undisputed that King has repeatedly brought “attention to stories [of surviving families and their loved ones] that may have gone under-reported or overlooked.” *Id.* For this reason, I note his efforts as potentially promising for the outlook of the broader movement.

125. See *Black Lives Matter Global Network Foundation Announces \$6.5 Million Fund to Support Organizing Work*, BLACK LIVES MATTER (June 11, 2020), <https://blacklivesmatter.com/black-lives-matter-global-network-foundation-announces-6-5-million-fund-to-support-organizing-work/>.

name. Local models exist. The energy is here. We just have to decide that surviving families are worth prioritizing.

Ten Ways of Looking at Movement Lawyering

WILLIAM P. QUIGLEY*

Nadia Ben-Youssef, a radical, social-change, lawyer-friend told me that “lawyers are either servants of the people or predators.” There are more than a million lawyers in the United States, but most of them are not servants of the people. Lawyers and legal workers, who are true servants of the people, are often engaged in the struggles for justice alongside communities of directly impacted people. They are engaged in movement lawyering.

Movement lawyering involves several simultaneous journeys that this article will briefly highlight: (1) education of how social change comes about; (2) learning a critical understanding of the differences between law and justice; (3) understanding how to work in respectful partnership with communities and how to actually begin the work; (4) a willingness to be uncomfortable; (5) developing relationships built on solidarity, liberation, and community; and (6) finding, as I have, that the foundation of our relationships and work as movement lawyers is based on hope, joy, and love.

Almost a hundred years ago, Wallace Stevens wrote a poem entitled “Thirteen Ways of Looking at a Blackbird.”¹ Stevens realized that there were unlimited ways of looking at a blackbird; he described

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1. WALLACE STEVENS, *Thirteen Ways of Looking at a Blackbird*, in HARMONIUM 97 (1923).

thirteen.² The same is true about movement lawyering due to the limitless ways of looking at it. Here are ten.

I. WHAT IS MOVEMENT LAWYERING?

Movement lawyering encompasses lawyers, law students, and legal workers working in respectful partnership with, and alongside, directly impacted communities who are fighting for justice. Movement lawyering is about being in a relationship with a community of people who are building power. It is law with, not law for, communities.

After Hurricane Katrina ravaged New Orleans and the Gulf Coast in 2005, tens of thousands of skilled and manual laborers were desperately needed to rebuild the community. Initially, they were welcomed. However, after most of the rebuilding was completed, the welcome mat was removed and those workers, our neighbors, were now labeled “illegal immigrants.”³ Local law enforcement worked with U.S. Immigration and Customs Enforcement (“ICE”) to target work sites, groceries, and churches to arrest the people who, side by side with us, rebuilt the Gulf Coast.⁴

Many traditional lawyers took full advantage of the racism inherent in the legal system to help immigration authorities target, arrest, prosecute, and deport our neighbors. Other good lawyers admirably represented a small percentage of those targeted for deportation in immigration and other courts; some worked for pay, and some worked pro bono. However, a number of other lawyers took an alternate route. Along with the staff and community of the newly formed New Orleans Workers’ Center for Racial Justice, these lawyers followed the leadership of the directly impacted.⁵

Out of these post-Katrina struggles, a newly formed organization of immigrant workers and their families emerged: Congress of Day Laborers, or Congreso de Jornaleros (“Congreso”).⁶ Congreso members insisted on speaking for themselves and deciding the best

2. *See id.*

3. Jim Mustain & Max Muth, *Louisiana Illegal Immigrants Face Skyrocketing Deportations, Rising Uncertainty Under Trump Administration*, THE ADVOCATE (Aug. 12, 2017, 8:00 PM), https://www.theadvocate.com/baton_rouge/news/politics/article_93180a42-7d1a-11e7-86f0-630976a90d45.html.

4. *See* Alexia Fernandez Campbell et al., *Is New Orleans Trying to Deport Undocumented Workers Now That the Rebuilding Is Over?*, THE ATLANTIC (Oct. 27, 2014), <https://www.theatlantic.com/politics/archive/2014/10/is-new-orleans-trying-to-deport-undocumented-workers-now-that-the-rebuilding-is-over/431406/>.

5. *See generally* NEW ORLEANS WORKERS’ CTR. FOR RACIAL JUST., <https://nowcrj.org> (last visited Oct. 25, 2020).

6. *See Our Work*, NEW ORLEANS WORKERS’ CTR. FOR RACIAL JUST., <https://nowcrj.org/our-work/congress-day-laborerscongreso-de-journaleros/> (last visited Oct. 25, 2020).

way to fight for justice for their community in whatever form it took. When local police were deployed to help federal immigration agents target people, dozens of Congress members arrived at the site and protested.⁷ I witnessed hundreds of people pack the City Council chambers while members of the organization, organizers, and lawyers, explained why cooperation with ICE was not in the interest of the community and the city. Those directly impacted individuals spoke for themselves, usually in Spanish. When others spoke in English, a person stood at the microphone with them and translated everything into Spanish. The community and their advocates insisted that all the testimony, questions, and answers be simultaneously translated into Spanish. For the first time ever, a City Council meeting was held in English and Spanish. Ultimately, the City of New Orleans withdrew local police cooperation.⁸

When a local sheriff-run jail cooperated with ICE, they jailed and held people on minor charges while authorities waited to see if ICE officers wanted to pick people up; Congress protested, marched, talked, and sued.⁹ Congress not only won in court,¹⁰ but the Sheriff came to their weekly meetings to thank them for bringing this to his attention and pledged his support and solidarity. When ICE continued to threaten to deport community members, Congress worked with local churches to meet with families facing deportation and accompanied them to ICE check-ins. They also recruited a church, which was declared a sanctuary, and sheltered people so that ICE would not arrest them.¹¹ Congress then recruited many other churches to join in the support.¹² When federal and state authorities threatened to cut off funds to the City of New Orleans for being fair to immigrants, Congress members worked side by side with elected officials and stopped that as well.¹³

7. See JACINTA GONZALEZ G. & JJ ROSENBAUM, MAKING JUSTICE REAL: THE IMPORTANCE OF THE CIVIL, LABOR, AND HUMAN RIGHTS PROVISIONS OF ICE'S PROSECUTORIAL DISCRETION POLICY 22 (2012), https://nowcrj.org/wp-content/uploads/2016/09/MakingJusticeReal_Web.pdf.

8. See Robert McClendon, *Sanctuary City' Policy Puts an End to NOPD's Immigration Enforcement*, NOLA.COM (Mar. 2, 2016, 1:29 AM), https://www.nola.com/news/politics/article_ded80350-e854-540b-a607-7cf2fdd8b90e.html.

9. Press Release, Nat'l Immigr. L. Ctr., Workers Win End to Immigration Enforcement in Orleans Parish Prison (Aug. 13, 2013) (on file with author).

10. See *Cacho v. Gusman*, No. 11-225-SS, 2014 WL 4854737, at *7 (E.D. La. Sept. 29, 2014).

11. See Matt Sledge, *Immigrant Who Sought Sanctuary in New Orleans Church Wins His Right to Stay in the U.S.*, NOLA.COM (June 27, 2020, 12:00 PM), https://www.nola.com/news/courts/article_96d2ea16-b738-11ea-bcf0-53ca73546753.html.

12. See Jordan Flaherty, *A Movement Lab in New Orleans*, THE NATION (Aug. 13, 2015), <https://www.thenation.com/article/archive/a-movement-lab-in-new-orleans/>.

13. See Elizabeth Crisp, *House Passes Watered-Down 'Sanctuary Cities' Bill; New Orleans Still 'Strongly' Opposed to it*, THE ADVOCATE (May 17, 2017, 4:45 PM), <https://www.theadvocate.com/news/2017/05/17/house-passes-watered-down-sanctuary-cities-bill-new-orleans-still-strongly-opposed-to-it/>.

Congresso and its members gained credibility, respect, and clout in the community over the years. They did not win everything they fought for, but when Congresso spoke and acted, people paid attention. Like all movements, there were external and internal struggles. This movement was by no means an error-free effort, but for years, this was an effective social change campaign.

Many lawyers, law students and legal workers listened to, took leadership from, assisted, and partnered with Congresso in much of their work. Some worked full-time for the New Orleans Workers' Center, while others were volunteers. National Lawyers Guild ("NLG") volunteers provided legal observers for dozens of marches and protests and NLG members provided legal defense when numerous people were arrested for blocking streets outside ICE offices. Others helped with litigation and legislation. But all tried to follow the lead of the workers themselves. That was an example of movement lawyering.

II. WHY IS THIS CALLED MOVEMENT LAWYERING? ISN'T IT JUST LEGAL WORK?

Lawyers doing legal work can be useful to movements. And yes, much of what the movement lawyer does is legal work. The keys to determining whether legal work is considered movement lawyering are included in the answers to following questions:

- Does the lawyer understand how change comes about and how important social movements led by directly impacted people are?
- Is the lawyer in a respectful, ongoing, and team relationship with the community?
- Is the legal work about building and confronting power alongside directly impacted communities?
- Is the directly impacted community making decisions about what the lawyer should be doing in terms of the direction, purpose, strategies, and tactics?
- Is the lawyer listening and learning?
- Is the lawyer listening to the community as much as they are listening to her?
- Is the community getting credit, support, attention, and resources as a result of the lawyer's work?

- Is the lawyer accountable to the community?

III. HOW DOES SOCIAL CHANGE COME ABOUT?

Anyone who wants to advocate for social change has to first understand how social change comes about. Law schools rarely bother to discuss or teach this. Worse, the legal profession — on the far too rare occasions when it even thinks of social change — likes to tell itself that social change comes about when courageous, hard-working lawyers toil for years to craft creative compelling arguments that ultimately persuade the courts, and the powerful, that change is necessary. This is not true.

History shows us that social change comes about when people get together and demand justice. It does not come when those in power decide that they will give up some of their power. It does not come about when some elected official decides it is time to change. It does not come about when some judge makes a decision. Transformative changes are possible and sustainable only when directly impacted people organize themselves, speak for themselves, and lead. Allies are important and helpful, but the people must lead. Social movements are the way real change comes about.

Many do not understand this. The savior myth must be deeply embedded in our psyches because historians and popular culture continually make the mistake of lifting up one person as “the leader” instead of understanding that movements have many parts and many leaders.¹⁴ In order to understand social change, all of us should carefully study how the labor movement, women’s movement, civil rights movement, anti-apartheid movement, LGBTQ+ movement, and the immigrant movement changed history. History shows us that systemic social change does not come from some savior elected official, the courts, heroic lawyers, law reform, or impact litigation, but from social movements created by directly impacted communities.

Though lawyers can be, and are, helpful with movements for social change, this change is not lawyer-driven nor lawyer-led. Most successful campaigns for social justice attack injustice on multiple fronts: through organizing, educating, taking direct action, storytelling, outreach, leadership development, legislation, and litigation.

Breakthroughs are unpredictable. No one knows how progress is actually going to be made. However, what is predictable is that it takes the hard work of many people working together over time to

14. See e.g., Joseph A. Raelin, *The Myth of Charismatic Leaders*, 57 *T+D* 1-8 (2003).

make it happen. As Barbara Major, a long-time organizer, once told me, “working for social change is like bringing a big pot of water from room temperature to a boil. If you arrive in the middle of the boil, you have no idea how much heat has already been applied and you have no idea how much longer it will take. You just know your job is to keep adding to the fire.”

Finally, social change is about organizations of people fighting for power; people trying to recapture their rightful share of power over their own lives and their futures. The people and institutions with extra helpings of power did not get where they are by giving away power; they fight to hold onto their power. Make no mistake, these are fights; fights for power, human rights, and racial, gender, and economic justice. That is how the struggle for social change is accomplished.

IV. REMAIN ABSOLUTELY CLEAR ABOUT THE PROFOUND DIFFERENCE BETWEEN LAW AND JUSTICE

Law schools are full of courses about law. The courts are full of lawyers. Legal work is work done by lawyers for whoever pays the bills. It is often another type of commercial work for businesses. Oftentimes, legal work is actually anti-justice work.

What is justice? Words related to justice are often plastered on the outside of courthouses. Justice is mentioned regularly at the swearing-in ceremonies of judges and new lawyers, and at law school orientations and graduations. But is justice furthered in the actual practice of law? Hardly. In fact, justice is often a counter-cultural value in the legal profession. Charles Hamilton Houston, a leading civil rights lawyer, said years ago that a lawyer was “either a social engineer or a parasite on society.”¹⁵

No one can dispute that the legal system is based on, reflects, and supports structurally unequal distribution of economic, social, and political power. That is because the laws are made by those with power, and traditional power resides in corporations, governments, courts, and legislatures. People and communities with less power are usually shut out. If you carefully examine how laws are created, you will usually discover stated and unstated race, class, and gender issues are part of the debate and crafting of laws. The law protects power through

15. Angela J. Scott, *Human Rights Hero: The African American Social Engineer*, AM. BAR ASS'N (Jan. 6, 2020), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/black-to-the-future-part-ii/human-rights-hero—the-african-american-social-engineer/.

reinforcement of institutional racism and systematic injustices based on gender, sexual orientation, gender identity, and class.

One way of critiquing law is to change perspective. Landlord-tenant laws might benefit landlords, but what do renters think? Current civil rights laws might look really progressive to white people given the way the laws used to be, but what about to people of color? Should corporations have more legal protection than their employees or the people in the communities where they operate? If private property is so important, why shouldn't everyone have proportional rights to property?

Though social progress has been made, the gulf between the ideals of justice and the practice of law remains wide. People defend our current laws saying that they are much better than before, or that they are better in comparison to other countries. There is no doubt that many of our laws today and many of our institutions represent an advancement over what was in place in the past. However, that does not mean all of our laws and institutions are better than what preceded them, nor does it mean that they are as just as they can be, and that the critique on justice should stop.

Without lawyers, courts are effectively walled off from people. Few lawyers provide direct services for individual poor and working-class people. Visit any family law court, landlord-tenant court, or immigration proceeding, and you will find that the majority of people impacted do not participate at all because they lack access to lawyers or try to represent themselves. The overwhelming majority of people have no access to justice or law. Access to law, much less justice, is determined by money. Those with money can go to court, go to the legislature, and change the laws. That is why most lawyering is performed for corporations and the few with real resources.

Justice advocates for communities of marginalized people are few because community injustice issues are essentially not on any legal agenda. Big injustice issues are well-insulated from real people. They are wrapped in layers of laws and special interests protecting them from influence by communities.

The idea of radical change scares some people because it is not possible to bring about radical change without reducing the power, influence, and comfort of those who have more than their fair share of the world's resources. Some will say this is revolutionary. That is fine. Lawyers can be revolutionaries. Martin Luther King Jr. called each of us to join together to undergo a radical revolution of values and to

conquer racism, materialism, and militarism.¹⁶ Martin Luther King Jr. did not say the call to be revolutionary extended to everyone except lawyers. He also did not call us to merely reform racism, materialism, and militarism. Revolutionaries are called not just to test the limits of the current legal system or to reform the current law, but also to join in the destruction of unjust structures and systems — to tear them up by their roots. We are called to join the struggles and replace them with new systems based on fairness and justice.¹⁷

Radical justice work is what movement lawyering is about. The Latin source for the word “radical” means root.¹⁸ Radical justice does not mean merely trimming the edges of injustices or reforming the unjust systems but ripping the unjust systems out by their roots and starting over. Thus, the root causes that support and underpin current unjust systems must be identified and dismantled.

One way to illustrate the chasm between law and justice is to use the one-hundred-year rule. Think back one hundred years on what was totally legal, but we now know was totally unjust. A hundred years ago, rigid segregation was totally legal and lynching was widespread. It was illegal for women to vote. Children worked in dangerous factories. Men could legally rape their wives. People with disabilities were legally excluded from all parts of society. LGBTQ+ people were arrested for consensual acts in their own homes. Arrested people could be tried, sentenced, imprisoned, and even executed without ever seeing a lawyer.¹⁹ We now know those totally legal things were absolutely unjust.

Hundreds of thousands of lawyers, judges, law professors and law students went along with these injustices because they were “the law.” “In fact, the law was then as it often is now, actually used against those who seek social change.”²⁰ “There were far more lawyers, judges and legislators soberly and profitably working to uphold the injustices of segregation than ever challenged it.”²¹ “The same is true

16. See Martin Luther King, Jr., *A Time to Break Silence*, in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 231, 240-41 (James M. Washington ed., Harper Collins 1991) (1986).

17. See William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 WASH. UNIV. J. L. & POL’Y 101, 115 (2006).

18. See *The Roots of ‘Radical’*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/words-at-play/radical-word-history> (last visited Oct. 26, 2020).

19. See William P. Quigley, *Justice and Law: The One Hundred Year Rule*, 15 CUNY L. REV. 1 (2011).

20. William P. Quigley, *Letter to A Law Student Interested in Social Justice*, 1 DEPAUL J. SOC. JUST. 1, 20 (2007).

21. *Id.*

of slavery, child labor, union-busting, abuse of the environment, segregation, and violations of human rights and other injustices.”²²

The justice challenge for today is to evaluate what is totally legal now but in one hundred years will be looked back at as flatly unjust. Work on that.

Most lawyers today serve the richest, the strongest and the most powerful. Too many bend to the forces of injustice: the corporate overlords of big pharma, big banks, big insurance companies, and those big companies destroying our climate. Lawyers help companies take over other companies and shed employees. Not to mention the lawyers who draft torture memos, justify international human rights violators, assist big tobacco, or work for the extraction industries. Too many lawyers are the well-fed Doberman Pinschers patrolling and protecting ill-gotten fortunes.

Make no mistake. Historically, only a small number of lawyers fought alongside those advocating for radical social change. Together with the movements they supported, lawyers changed some of the horrible laws of the past one hundred years. The legal profession may revere some lawyers today, but at the time, the legal profession often maligned them for fighting for justice instead of just following the law. For the growing number of lawyers fighting alongside social movements today, the commitment is not to the law, but to justice.

V. LEARN HOW LAWYERS CAN RESPECTFULLY PARTNER WITH SOCIAL CHANGE MOVEMENTS

One longtime community activist, Ron Chisom, warned me of the dangers of well-intentioned lawyers who are unaware of what they are doing:

Lawyers have killed off more groups by helping them than ever would have died if the lawyers had never showed up . . . In my 25 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. With most lawyers, there is no leadership development of the group. If lawyers get involved, they create a lot of problems. Most lawyers have never been through the consistent frustration of community building with its petty disputes, confusion, personality problems, and the like. Most lawyers get frustrated with that, have a low degree of tolerance for people’s problems, and will walk away from the effort

22. *Id.*

of community building. The legal dimension of community organizing is only one piece of the overall strategy. Commonly, lawyers are not clear about strategy. They don't understand community, they don't understand organizing, they don't understand leadership development.²³

Humility, not usually a strong suit of law school graduates, is an absolutely necessary starting point for anyone who wants to participate in this work. Being well-intentioned is not enough. Lawyers must begin by recognizing that graduating from law school does not equip a person with the skills necessary to work in a respectful partnership with people and organizations fighting for change. Once a lawyer recognizes that they have a lot to learn, they are ready to start. There are many organizations that would love to have a humble, respectful lawyer on their team. A person who knows the law and is willing to learn about community building is a wonderful resource. Conversely, a lawyer who thinks they already know what people fighting for social change need to be doing is not really going to be much help, and may, as noted above, actually be destructive to the group.

There are important roles for lawyers in this work. Movements can use lawyers for direct services, law reform, and impact litigation. As Deborah Archer writes, "political lawyers use integrated advocacy strategies, including litigation, legislative advocacy, public education, media, and social science research, assessing the efficacy and impact of each tool in service to a long-term vision of equality and solidarity."²⁴ It is important that lawyers be flexible, creative, innovative, and willing to learn new areas of law in order to help the organization go forward and grow. It is not much help if a lawyer shows up and says, "I want to help you change the world but I can only do X kind of legal work." The organization may need other types of work. Accordingly, the lawyer needs to learn how to do what is needed or help recruit others who can. Social change does not need lawyers who are hammers looking for nails.²⁵ Movement lawyers need to learn many more skill sets and need to learn to be like Swiss army knives for social movements.

One threshold decision movement lawyers face is where does the direction for the legal work come from? Who decides what the lawyer

23. William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N. UNIV. L. REV. 455, 457 (1995).

24. Debra Archer, *Political Lawyering for the 21st Century*, 96 DENV. L. REV. 399, 410 (2019).

25. See ABRAHAM H. MASLOW, *THE PSYCHOLOGY OF SCIENCE: A RECONNAISSANCE* 15 (1966) ("I suppose it is tempting, if the only tool you have is a hammer, to treat everything as if it were a nail.").

should do? If corporations or insurance companies are paying the bills, lawyers understand that those who pay for the work ultimately direct the work. For social change advocacy, the direction of the legal work comes from the social movement itself. Contrast that with other types of public interest reform lawyering or impact litigation where the goals are set by the lawyers or institutions they work for, followed by the lawyers seeking out a person or organization who can illustrate the problem as a good plaintiff. When it is movement work, the lawyer should definitely have a voice in the decision about what to do, but the ultimate decisions are made by the movement and not by lawyers.²⁶ After all, many cutting edge innovative social justice cases do not actually win in court.²⁷ If cases that absorb hundreds of hours of legal time can be done in partnership with community organizations, those organizations can use the litigation as opportunities for publicity about their campaigns, and their leadership for community education and developing capacity.

Another way to gauge whether legal work is movement oriented, is to watch and see who gets the power and glory. Does the work empower the organization of directly impacted people or the legal team? Who gets the media attention? Whose fundraising is enhanced by the work? It is totally appropriate for members of a legal team to achieve personal satisfaction in their work. Hopefully, that happens regularly. But the primary goal of this type of advocacy is not lawyer satisfaction but to challenge and dismantle unjust situations and structures, and to shift power to the people of the movement so they can continue to bring about social change.

VI. HOW TO BECOME A MOVEMENT LAWYER

In order to be a movement lawyer, you must prioritize working with organizations and learning from directly impacted people, marginalized people, and communities. That is impossible from behind a computer. It means an investment of yourself, your time, and your energy. This is tough because there are already too many demands on the time of pro bono and public interest lawyers. There are always individuals who have been unjustly treated and in need of direct assistance. The majority of radical social change lawyers that I

26. See William Quigley, *Ten Questions for Social Change Lawyers*, 17 *LOY. PUB. INT. L. REP.* 204, 205 (2012).

27. See Jules Lobel, *CCR President Jules Lobel on Social Justice Lawyering, Success Without Victory, and 30 Years With CCR*, *CTR. FOR CONST. RTS.* (May 5, 2016), <https://ccrjustice.org/home/blog/2016/05/05/ccr-president-jules-lobel-social-justice-lawyering-success-without-victory-and>.

know donate plenty of hours to helping needy individuals. But in order to bring about social change, legal advocates must be intentional and dedicate time and energy to assisting organizations that are working for change. This means not merely working on the “issues,” but rather working with organizations of people. Social change lawyers work with, assist, and are in a constant relationship with social movements to bring about social change.

It is also important to understand that there are no lawyers working alone for radical social change. Justice work is teamwork. There are many radical, social change lawyers and legal workers. Those who invest their time and creativity to help bring about advances in justice will tell you that it is the most satisfying and fulfilling work of their legal careers. But they will also tell you that social justice lawyers never work alone — they are always part of a team that mostly includes non-lawyers. For example, within the civil rights space, there is no bigger legal social-justice myth than the idea that brave and creative lawyers, judges, and legislators were the engines that transformed our society and undid the wrongs of segregation. Civil rights lawyers and legislators were certainly an important part of the struggle for civil rights, but they were a part of a much bigger struggle. Suggesting that lawyers led and shaped the civil rights movement is not accurate history. This should in no way diminish the heroic and critical role that lawyers played and continue to play in civil rights advances, but it is a disservice to misinterpret who is involved in the process of working for social justice.

When spending time with organizations fighting for justice, those who are radical social change lawyers will tell you the first job of the lawyer is to listen and learn. Lawyers do not instinctively show up with the knowledge and understanding of the best way to tackle the injustices facing the community.

Going back to the civil rights work in the 1960s, recall that civil rights activists in the South were being arrested by the thousands because they were fighting for freedom and the right to vote. Many lawyers were needed to help defend people. There were some terrific southern lawyers involved, mostly African American, but there was much more work than those local lawyers could handle. However, the leaders of the civil rights movement did not trust established national legal organizations to take direction from the people on the ground. They feared that the lawyers would make the work about themselves and their own organizational agendas. Instead, a new organization was founded, the Lawyers Constitutional Defense Committee (“LCDC”), made up of well-intentioned and social justice-oriented

volunteer lawyers coming to the South to help out during the 1960s.²⁸ But it was important that these lawyers, many of whom were NLG members, understood that they were not being recruited to come and be the usual lawyer who thinks they know what is best. These lawyers were cautioned by the LCDC:

The volunteer civil rights lawyer is not a leader of the civil rights movement. We are there to help the movement with legal counsel and representation, not to tell the movement what it should do. You may, if asked, suggest what the legal consequences of a course of action might be, but you may not tell them whether or not they should embark on it. They have more experiences than you in civil rights work in the South, and they are responsible for the action programs. Even if they make mistakes, they are theirs to make; your task is to defend their every constitutional and legal right as resourcefully and as committedly as you can, even if they have made a mistake. Until the time comes when they ask us to lead the movement, do not be misled by any advantage of education, worldly experience, legal knowledge, or even common sense, into thinking that your function is to tell them what they should do. The one thing that the Negro leadership in the South is rightly disinclined to accept is white people telling them any further what to do and what not to do, even well-meaning and committed white, liberal Northerners.²⁹

There is not enough space here to address all of the ways that well-intentioned legal advocates must examine ourselves and our positions in society, but we must note that this is not optional if anyone seeks to become, and to remain, a movement lawyer. This work must be grounded in humility — humility to understand that what we once thought was right might no longer be right, or worse, might actually be destructive.

How do we do this? First, we must seek out people who can help us learn how to identify and address our individual, educational, economic, racial, gender, and social privileges that come with being a lawyer. Few of us are perceptive enough to figure this out on our own. As Michelle Alexander writes, “Racial bigotry, fearmongering and scapegoating are no longer subterranean in our political discourse; the

28. See ACLU, *A BOND FORGED IN STRUGGLE* 22-23 (2006), https://www.aclu.org/sites/default/files/field_document/bond_forged.pdf.

29. Thomas Hilbink, *The Profession, the Grassroots and the Elite: Cause Lawyering for Civil Rights and Freedom in the Direct Action Era*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS* 60, 73 (Austin Sarat & Stuart A. Scheingold eds., 2006).

dog whistles have been replaced by bullhorns.”³⁰ The same can be said for other forms of “othering.” Second, once identified, changing long learned perspectives and behaviors is quite difficult but essential. Third, we must commit to making this an ongoing process because there is little worse than a person who is confident that the lessons they once learned will last forever. The process of learning is never ending. We constantly need new teachers to help us learn new lessons.

This is yet another area where we can learn from the people with which we are in partnership. We certainly bring our learning and skills to the relationship, but so do they. Our partners have much to teach us, but only if we are ready to learn. As in any healthy relationship, insight, assistance, and understanding flow both ways. If lawyers approach movement lawyering with the proper amount of humility and see it as an opportunity to learn as well as teach, new worlds will open up.

It is important to include a brief note about law students and movement lawyering.³¹ Law students often arrive at law school charged with radical social justice energy. They hope to learn how to help people and how to use new tools to transform and restructure the world to make it a more just place. However, they quickly learn that the majority of law school is not about justice, but is focused on the law. Unfortunately, as one student told me, “the first thing I lost in law school was the reason that I came.”³² It takes work to stay focused on justice in law school. Law students can be very helpful in community justice struggles. One way is to volunteer with a local community organization to begin the life-long process of learning community dynamics and how people work together. However, there is no map. Directions are set by constantly checking a compass that points toward justice.

VII. A WILLINGNESS TO BE UNCOMFORTABLE

All change starts with a willingness to be uncomfortable. Lawyering is often based on maintaining order and following traditional precedent. However, people who are not being treated fairly are not satisfied with the current order, nor staying with tradition. Staying the same is comfortable.

30. Michelle Alexander, *The Injustice of This Moment Is Not an ‘Aberration’*, N.Y. TIMES (Jan. 17, 2020), <https://www.nytimes.com/2020/01/17/opinion/sunday/michelle-alexander-new-jim-crow.html>.

31. See Quigley, *supra* note 19, at 20.

32. See *id.* at 9.

Partnering with organizations that are fighting for change is occasionally outside the comfort zone of traditional lawyering. For example, an organizer told me about a community group in a small town, which fought for changes to the school board's disciplinary process. The community group found a pro bono lawyer to give them advice and appear with them at an upcoming school board meeting. Together, they planned out the points that they would raise and how they would speak at the meeting. The meeting was held in a big school cafeteria with a microphone for audience members and a microphone for the board members. Dozens of the community group members signed cards to speak on their agenda item. However, when the time came for the community item to be discussed, the board chair leaned into the microphone and told the audience that the board had a lot of other agenda items, so only three people would be allowed to speak on the topic and each speaker could only speak for two minutes. The members of the group were very upset at this. Their lawyer told the group that while the action of the board was not nice, it was within the board's discretion. The community huddled up and quickly decided that they would agree to speak for three minutes each but insisted that every person who signed up would get a chance to speak. After the first three people spoke, the board chair said that they would hear no more people on that topic. When community members gathered around the microphone and continued speaking, the chair warned them to sit down and eventually cut the power to the audience microphone. People were outraged and started yelling but the board chair talked over them. At that point, one of the students in the audience went over to the side of the cafeteria and cut off the power to the school board microphone. The community members cheered and applauded. Then their pro bono lawyer got up, walked over to the side of the cafeteria, and plugged the school board microphone back in.

That is not movement lawyering. Maybe the lawyer was embarrassed because he knew people on the school board. Maybe the chaos of the situation disturbed his sense of orderly process. Who knows? But it was clear that the lawyer, though well-intentioned in offering pro bono advice to the group and attending the meeting with them, was deeply uncomfortable. It is likely that the lawyer may have suggested other ways to challenge the board — ways that the lawyer was more familiar and comfortable with. Maybe pulling the plug was ultimately not a great idea, but whether or not it was a great idea, the lawyer prioritized his own sense of decorum and followed his own

sense of the best way to deal with the situation over that of the organization.

Change is uncomfortable for lawyers. We are usually more accustomed to dealing with those who are profiting from the current situation. Being a movement lawyer often requires people to move out of their comfort zones. As Ron Chisom said:

Another problem is that most community lawyers, especially white [*sic*] lawyers, do not want to confront or agitate the power structure. This is primarily because of the role of racism in all of these conflicts. Lawyers, particularly white lawyers, are trained to understand and be comfortable with the system even when they criticize it. Almost all lawyers, including community lawyers, want to succeed in the system. They want money, power, political advantage, respect or whatever their individual dreams are. Therefore, confronting the system or raising hell makes the lawyer very uncomfortable because it is not how the lawyer was trained to deal with the system, and the lawyer, without realizing it, is challenged individually because the lawyer is part of the system. . . . I also find that black [*sic*] lawyers also have serious problems confronting the system because they don't really want to challenge the system because black lawyers gain advantage and reap rewards from the system so, therefore, they cannot challenge it the way it needs to be challenged.³³

This is frequently uncomfortable work, but the rewards can be life altering.

VIII. BUILD RELATIONSHIPS OF SOLIDARITY, LIBERATION, AND COMMUNITY

Radical change only comes about by working with groups of directly impacted people. Radical change is never the result of working for people. Liberation is never something that people do for others but something that people achieve with others. According to Leonardo Boff, “[n]o one frees anyone else, and no one can free himself or herself by working alone. We liberate ourselves by working together in the same liberation project.”³⁴

Directly impacted people and communities are best positioned to realize the injustices they face. In addition to being the most knowledgeable, they are more motivated to challenge injustices than anyone else. Impacted people also understand that some ideas for change,

33. See Quigley, *supra* note 23, at 459.

34. LEONARDO BOFF, *LIBERATING GRACE* 148 (John Drury trans., Orbis Books 1981) (1979).

which originate from well-intentioned outsiders, will be disempowering in their communities.

Anyone from outside of the community working in solidarity with directly impacted people must understand that we have to act and remain humble. Great intentions are not enough. We need the wisdom that comes with learning from those with experience. We must constantly challenge the racism, paternalism, patriarchy, homophobia, classism, nationalism, and all of the other violent divisions hardwired into ourselves and our systems. Those systems of division were set up and maintained to keep us from being in solidarity with others struggling for justice. We must make common cause with others to identify and overcome those divisions. Solidarity also means no borders; globalized liberation is the goal.

Every relationship has plenty of challenges. We all have egos. We all make mistakes. We all have friends, co-workers, and allies who occasionally drive us crazy. By carefully studying the history of successful social change movements, you will reveal the full range of human activity on display. There is plenty of inspiration, courage, determination, cooperation, organization, education, direct action, media outreach, litigation, and legislative advocacy. But there are also examples of jealousy, personal vendettas, and inappropriate relationships, as well as people who push for money, power, and media attention. A veteran social justice advocate once told me, “if you cannot handle chaos, criticism, and failure, you are in the wrong business.” The path to justice goes over, around, and through chaos, criticism, and failure. Only by experiencing and overcoming these obstacles can you realistically be described as a social justice advocate.

We must be patient and flexible in order to do this work for the long run. There are no perfect people or perfect organizations. Most grassroots social justice advocacy is carried out by volunteers — people who have jobs, families, and responsibilities that compete with their time and energy to dedicate to social justice work. There is usually no money for the work, while often the people on the other side who are upholding the injustices you are fighting against, are well-paid for their work and have staff and support to help them preserve the unjust status quo. This means it is challenging work. Patience with our friends, patience with ourselves, and patience with the shortcomings of our organizations are essential. That is not to suggest that we must tolerate abusive or dysfunctional practices, but while we work to overcome those, we must be patient and flexible.

If you challenge the status quo, you better expect criticism from the people and organizations that are benefiting from the injustices

you are seeking to reverse. Though it is tough to really listen to criticism, our critics often do have some truth in their observations about us or our issues. Sometimes criticism can be an opportunity to learn how to better communicate our advocacy or to think about changes we had not fully considered. Other criticism just hurts your backside, and you just have to learn how to tolerate it and move on.

Our choices in relationships build our community. If we want to be real movement lawyers and social justice advocates, we must invest ourselves and develop relationships in the communities where we want to learn and work. That may sound simple, but it is not. As lawyers, we are constantly pulled into professional and social communities of people whose goals are often based on material prosperity, comfort, and insulation from the concerns of working and poor people. However, if we want to be true movement lawyers and help bring about social change, we must swim against the usual stream of lawyering and develop respectful relationships with groups of people struggling for fundamental social change. For example, helping to preserve public housing may seem controversial or even idiotic to most of the people at a law school function or the bar convention, yet totally understandable at a small church gathering where most people of the congregation are renters.

Seek out people and organizations trying to stand up for justice. Build relationships with them. Work with them. Eat with them. Re-create with them. Walk with them. Learn from them. If you are humble and patient, people will embrace you over time and you will embrace them. Together, you will be on the road to solidarity and community.

IX. NEVER DOUBT THE IMPORTANCE OF HOPE, JOY, AND LOVE

“Hope has two beautiful daughters: anger and courage; anger at the way things are, and courage to change them.”

—Augustine of Hippo³⁵

In order to live a life of social justice advocacy, it is important to have your eyes and heart wide open to the injustices of the world. But it is equally important that your eyes and heart be wide open to seek out and absorb the joy, hope, inspiration, and love you will discover in those who resist injustice. It may seem paradoxical, but it is absolutely true that in the exact same places where injustices are found,

35. David Krieger, *Rising to the Challenge of Peace*, NUCLEAR AGE PEACE FOUNDATION (Nov. 25, 2003), <https://www.wagingpeace.org/rising-to-the-challenge-of-peace/>.

joy, hope, inspiration, and love also exists. In my experiences, this has proven true again and again with people and communities in the United States, Haiti, Iraq, and India. Patrice Cullors, one of the founders of Black Lives Matter wrote:

#BlackLivesMatter is a movement attempting to visiblize what it means to be black in this country. Provide hope and inspiration for collective action to build collective power to achieve collective transformation. [R]ooted in grief and rage but pointed towards vision and dreams.³⁶

Howard Zinn likewise wrote:

To be hopeful in bad times is not just foolishly romantic. It is based on the fact that human history is a history not only of cruelty, but also of compassion, sacrifice, courage, kindness. What we choose to emphasize in this complex history will determine our lives. If we see only the worst, it destroys our capacity to do something. If we remember those times and places — and there are so many — where people have behaved magnificently, this gives us the energy to act, and at least the possibility of sending this spinning top of a world in a different direction. And if we do act, in however small a way, we don't have to wait for some grand utopian future. The future is an infinite succession of presents, and to live now as we think human beings should live, in defiance of all that is bad around us, is itself a marvelous victory.³⁷

Cornell West agrees:

The dominant tendencies of our day are unregulated global capitalism, racial balkanization, social breakdown, and individual depression. Hope enacts the stance of the participant who actively struggles against the evidence in order to change the deadly tides of wealth inequality, group xenophobia, and personal despair. Only a new wave of vision, courage and hope can keep us sane — and preserve the decency and dignity requisite to revitalize our organizational energy for the work to be done. To live is to wrestle with despair yet never allow despair to have the last word.³⁸

If we do not love ourselves, we will be hard-pressed to love others. We cannot give what we do not have. If we are not just with ourselves, we will find it very difficult to look for justice with others. In order to become and remain a social justice advocate, you must live

36. Jamila King, *Facing Race Spotlight: Organizer Alicia Garza on Why Black Lives Matter*, COLORLINES (Oct. 9, 2014, 7:00 AM), <https://www.colorlines.com/articles/facing-race-spotlight-organizer-alicia-garza-why-black-lives-matter>.

37. Howard Zinn, *The Optimism of Uncertainty*, THE NATION (Sept. 2, 2004), <https://www.thenation.com/article/archive/optimism-uncertainty/>.

38. Cornel West, *Prisoners of Hope*, in *THE IMPOSSIBLE WILL TAKE A LITTLE WHILE: A CITIZEN'S GUIDE TO HOPE IN A TIME OF FEAR* 293, 296–97 (Paul Rogat Loeb ed., 2004).

a healthy life. Take care of yourself as well as others. Invest in yourself as well as in others. No one can build a house of justice on a foundation of injustice. Love yourself and be just to yourself and do the same with others. As you become a social justice advocate, you will experience joy, inspiration, and love in abundant measure.

X. CONCLUSION

The world does not need more lawyers or legal workers who support the status quo. Our world desperately needs more movement lawyers and legal workers who will engage in radical solidarity and partnership with the communities of directly impacted people fighting for justice. I close with two stories.

One of my friends — who has been sentenced to federal prison twice for protesting U.S. training of military human rights abusers by going onto a military base — is a counselor for incest survivors. She told me that there are only three ways to deal with evil: (1) fight evil with evil; (2) say that there is nothing I can do about evil and turn away; or (3) look at evil head-on and try to meet it with love. Another friend of mine was convicted of a federal crime for going onto the military base and the judge asked him whether he had anything to say before being sentenced. He responded, “Judge, I have only one request. You have sentenced some of the others here to minimum security facilities. I am telling you that you better sentence me to prison from which I cannot walk off because I refuse to put up walls in my mind.”

Directly impacted communities are fighting against evil for respect and power; we must stand in radical love shoulder to shoulder with them as they do. We cannot allow our profession, our government, our peers, or our own sense of self-identity to wall us off from the radical social justice solidarity, which is demanded when people stand up for what is right.

Working for justice is meaningful and satisfying, but it is not for the faint of heart. We have to look at injustice head-on, even if it angers us. We must face the reality of our world. Then, we must have the courage to change those injustices. And when we do, we will find that not only are others being liberated and transformed, but we too will be liberated and transformed.

Do not be content with being a regular lawyer. There are plenty enough lawyers in this world defending the way things are. Many — some would argue most — lawyers are paid to protect unjust people and institutions in our social, economic, and political systems. Law-

yers are paid to work for structures that perpetuate and increase racism, militarism, and materialism in our world. These lawyers are plentiful and well compensated. If our world is going to be transformed, it will be by social movements. Our world needs lawyers willing to work with movements toward a radical revolution of our world. We do not need any more lawyers defending the status quo. We need revolutionary radical social change lawyers; we need movement lawyers.³⁹

39. See Quigley, *supra* note 17, at 168.

Movement Lawyering: A Case Study in the U.S. South

AZADEH SHAHSHAHANI*

I. ORIGINS OF MOVEMENT LAWYERING

A. *The Civil Rights Movement*

In 1962, prominent civil rights lawyer Len Holt delivered a speech outlining his vision for movement lawyering: a bottom-up approach championed by civil rights lawyers and practitioners of civil disobedience.¹ He believed that this type of lawyering could harness the energy behind the civil rights movement and facilitate the change called for by grassroots activists.² These lawyers would use their legal knowledge to protect advocates of racial justice from legal peril and violence, while making omnibus legal claims against segregation.³

Holt's speech and vision changed the trajectory of civil rights lawyering and shaped the future of movement lawyering. He partnered with unorthodox legal organizations like the National Lawyers Guild ("NLG"), which mainstream liberals denounced.⁴ Founded in 1937 as an alternative to the American Bar Association, which at the time did not admit Black attorneys, the NLG has been devoted to defending social justice movements since its founding. The NLG faced a decline in membership during the McCarthy Era because of the relentless attacks.⁵ However, the organization was re-

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1. See TOMIKO BROWN-NAGIN, *COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT* 187 (2011) [hereinafter Brown-Nagin].

2. See *id.*

3. See *id.* at 188.

4. See *id.* at 176, 183.

5. See Jules Lobel, *Transformational Movements: The National Lawyers Guild and Radical Legal Service* 72 NAT'L LAWS. GUILD REV. 193, 207-09 (2015). This article discusses the attacks on the NLG based on anti-communism and the subsequent decline in NLG membership. At-

vived when Holt allied with the NLG to support the civil rights movement.⁶ His speech in 1962 relayed “. . . the need for more lawyers to go [to the] South to participate in the movement directly.”⁷ Much like Holt, young lawyers joining the Guild saw themselves as part of the movement, and hoped to use the courtroom to promote the movement’s goals.⁸ In fact, six years after Holt’s speech, the NLG proclaimed its role as “the legal arm of the movement.”⁹

In light of this history, the current discourse about movement lawyering should be understood as the recent response to a question that has long existed in progressive legal scholarship: how to connect grassroots groups that are engaged in bottom-up advocacy to an accountable and effective strategy for social change that targets legal institutions?¹⁰ This question arose as lawyering during the civil rights era shone a light on the limitations of legal liberalism, and these criticisms have since shaped movement lawyering.¹¹ In the 1970s, the first criticism liberal lawyers faced was accountability.¹² Specifically, Derrick Bell argued that some lawyers pursuing integration were responding to elite funders instead of African-American community members.¹³ Instead of prioritizing the goals of their clients, these lawyers prioritized their own vision of the future.¹⁴

The second criticism was the efficacy of social reform through law. Critics argued that reform campaigns centered around judicial lawmaking were misguided because the courts did not have the capacity to enforce their judgments, concluding that there would be no authentic social change.¹⁵ In fact, liberal lawyering made social change harder to achieve, as lawyers in the adversary process focused on one-on-one conflicts that undermined collective action.¹⁶

These criticisms continued as both critical legal studies and poverty law scholars continued to struggle with how to center clients

tacks include a House Un-American Activities Committee (“HUAC”) report released in 1950 titled “The National Lawyers Guild: Legal Bulwark of the Communist Party,” state bars initiating disbarment proceedings against NLG members, and Attorney General Brownell’s announcement at the 1953 ABA national convention in Boston that he intended “to place the National Lawyers Guild on the Attorney General’s list of Subversive Organizations.” Membership declined by 80 percent from its 1947 numbers.

6. *See id.* at 183-84.

7. Lobel, *supra* note 5, at 211.

8. *See id.* at 221.

9. *Id.* at 222.

10. *See* Scott Cummings, *Movement Lawyering*, 2017 U. ILL. L. REV 1645, 1657 (2017).

11. *See id.* at 1655.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* at 1655-56.

while advancing social reform.¹⁷ Ultimately, critics framed legal liberal lawyering as a type of practice that was disconnected from progressive social movement activism, giving rise to a need for an alternative type of lawyering.¹⁸ Movement lawyering filled the gap and responded to criticisms by offering a new type of lawyering that was people-centered and politically transformative.¹⁹

B. Principles Outlined in Movement Lawyering

1. Decentering Lawyers and Centering Movements

Len Holt's legal practice in the mid-1900s decentered lawyers in social movements; instead, he believed that lawyers should play a supportive role to movements and immerse themselves in local communities to learn their objectives.²⁰ His vision of lawyering was shaped by his personal influences such as Arthur Kinoy, a National Lawyers Guild New York lawyer, who represented civil rights activists during the 1960s and held similar beliefs about lawyering.²¹ Kinoy argued that a new insight into the lawyer's role developed during the Southern Freedom Movement in the 1960s as lawyers began to realize that they could use their skills and talents to serve the people's struggle; Kinoy characterized this type of lawyer as a "people's lawyer."²²

According to Kinoy, a people's lawyer was more focused on the movement and therefore had a different metric of success than other lawyers.²³ The formal legal victory, or the winning and losing, did not matter as much as the impact the legal activities had on the morale and understanding of the people in the movement.²⁴ Therefore, if the legal work developed a sense of strength and an ability to fight back, Kinoy characterized that as a success for a people's lawyer.²⁵

Progressive legal scholarship continues to highlight centering grassroots organizers as a tenet of movement lawyering, where movement lawyers are encouraged to use legal strategies that complement and advance the movement's political goals and emphasize grassroots accountability.²⁶ Moreover, lawyering for movements reframes the

17. *Id.* at 1656-57.

18. *Id.*

19. *Id.* at 1657.

20. See BROWN-NAGIN, *supra* note 1, at 191.

21. See *id.* at 190.

22. Arthur Kinoy, *The Present Crisis in American Legal Education*, 24 *RUTGERS L. REV.* 1, 5 (1969).

23. See ARTHUR KINOY, *RIGHTS ON TRIAL: THE ODYSSEY OF A PEOPLE'S LAWYER* 57 (1983).

24. *Id.*

25. *Id.*

26. See Cummings, *supra* note 10, at 1657-58.

lawyer-client relationship as a power-sharing and participatory process as lawyers are held accountable by politically-activated clients that have the power to set the agenda and execute campaigns.²⁷ To be part of the organizing process in this manner, lawyers must be willing to engage in deep learning about the communities they aim to serve.²⁸

2. Educating the Citizenry and Building the Capacity of Movements

Holt's bottom-up approach to lawyering in the 1960s also pushed lawyers to be concerned with mobilizing citizens so that they could claim their political voices and confront abusive authorities themselves, a belief that has been carried into present movement lawyering.²⁹ In the 1990s, Kinoy emphasized the point that lawyers needed to engage in mass education of the people³⁰ in order to ensure that their fundamental constitutional rights were protected.³¹

In modern day movement lawyering, educating citizens continues to play an important role; education mobilizes people, enabling them to resist lawyer domination.³² Resisting lawyer domination is crucial because lawyers and the law are rarely on the "frontlines of social, cultural, and legal change." Instead, social movements are what hold the power to transform ideas and institutions.³³ For this reason, contemporary movement lawyers argue that lawyers should use their legal work to aid everyday people in collectivizing their resistance and emboldening leaders and movements.³⁴ However, lawyers must be careful not to create a dependent relationship with the impacted community as this can disempower them.³⁵

3. Pursuing Advocacy Outside of Litigation

In the 1960s, Holt also encouraged civil rights advocates to diversify their strategies and seek justice outside of the courts by looking to

27. *See id.* at 1658.

28. *See* Jim Freeman, *Supporting Social Movements: A Brief Guide for Lawyers and Law Students*, 12 HASTINGS RACE & POVERTY L.J. 191, 199 (2015) [hereinafter Freeman].

29. *See* BROWN-NAGIN, *supra* note 1, at 210.

30. *See generally* Arthur Kinoy, *The Role of the People's Lawyer in the 1990s*, 2 TEMP. POL'Y & C.R. L. REV. 209 (1993).

31. *Id.* at 222.

32. *See* Cummings, *supra* note 10, at 1691-92.

33. Jennifer Ching et al., *A Few Interventions and Offerings from Five Movement Lawyers to the Access to Justice Movement*, 87 FORDHAM L. REV. ONLINE 186-87 (2018) [hereinafter Ching].

34. *Id.* at 188.

35. William P. Quigley, *Reflections of Community Organizers: Lawyering for Empower of Community Organizations*, 21 OHIO N.U. L. REV. 455, 464-66 (1994) [hereinafter Quigley].

direct action instead.³⁶ While activists would define the objectives, lawyers would use different strategies to solve problems that arose.³⁷ Such direct action offered an alternative to slow, and often ineffective constitutional litigation during the civil rights movement.³⁸

This strategy has extended into current day movement lawyering. Recent literature about movement lawyering highlights movement “lawyers who use complex and coordinated legal strategies to achieve [the movement’s] political goals” and “advance campaigns in policy-making contexts” outside of litigation.³⁹ Before turning to litigation, movement lawyers are encouraged to think about the movement’s advocacy goals; if the goal is to advance the movement by helping the group develop power, litigation is often not an effective means to that end.⁴⁰ Instead, because movements are often out-resourced by their opposition, movement lawyers should develop a more sophisticated understanding of how different strategies can be utilized within a campaign.⁴¹

4. Question the Profession and Who the Legal System was Designed for

Lastly, contemporary movement lawyers emphasize questioning who the legal system was designed for and how identity impacts one’s interaction with the legal system.⁴² These types of questions encourage lawyers to think beyond technical reform and procedural innovation, and to focus instead on process-driven transformation.⁴³

In order to be an effective movement lawyer, one must question the foundational assumptions of the legal profession and have an understanding of the barriers that inhibit individuals from fully and equally participating in legal processes.⁴⁴ In addition, movement lawyers need to question their own positionality within the legal system and how they profit from their legal education and participation in the legal system. This will allow them to “de-lawyer” systems and share power with their clients.⁴⁵

36. BROWN-NAGIN, *supra* note 1, at 188-89, 210.

37. *Id.* at 188.

38. *Id.* at 176.

39. Cummings, *supra* note 10, at 1658-59.

40. Quigley, *supra* note 35, at 467-68.

41. Freeman, *supra* note 28, at 200-01.

42. Ching, *supra* note 33, at 188.

43. *Id.* at 189.

44. Freeman, *supra* note 28, at 197-98.

45. Quigley, *supra* note 35, at 475, 477.

II. MOVEMENT LAWYERING: A CONTEMPORARY CASE STUDY

Project South⁴⁶ was founded as the Institute to Eliminate Poverty & Genocide in 1986. Our work is rooted in the legacy of the Southern Freedom Movement, and our work areas achieve our mission of cultivating strong social movements in the U.S. that are powerful enough to contend with some of the most pressing and complicated social, economic, and political problems we face today.

Our framework at Project South is the Black Radical Tradition. Some principles of the Black Radical Tradition include (1) the struggle being led by those directly impacted, (2) knowing that we're in this struggle for the long-haul, and thereby focusing on organizing and building social justice movements, (3) looking up to the traditions and legacy of success of organizing and grassroots movements, (4) relying on internal resources as opposed to external factors, knowing that nobody is going to come save you, and (5) internationalism.

In 2016, I joined Project South as its first lawyer to support the organizing work of the organization. From the start, it was clear to me that my role as a lawyer was not to direct the movement. My role was to take direction from, serve, and be accountable to the movement. My role was to support the work — not stand in the way.

We bring lawsuits to support the movement. Currently, we are involved in a class action lawsuit focused on forced labor at the corporate-run Stewart Detention Center.⁴⁷ But for us, litigation is only one of the strategies in the toolbox — not the sole tactic. We bring lawsuits because the movement has demanded them; in this case, to help shut down detention centers.⁴⁸

As part of our work, we use creative legal strategies and think outside the box. We do not conceive of litigation as the ultimate goal and we do not rely on courts for our liberation. For example, when the United States Supreme Court delayed the hearing on the second version of the Muslim Ban,⁴⁹ we decided to move forward with our own 'people's tribunal' in Atlanta, which focused on the Muslim Ban. This tribunal consisted of a jury of community members that convened for multiple hours and heard from people who were directly impacted by the Muslim Ban. Family members spoke about the pain

46. See generally PROJECT SOUTH, <https://projectsouth.org/> (last visited Oct. 21, 2020).

47. See *Barrientos v. CoreCivic, Inc.*, 332 F. Supp. 3d 1305 (M.D. Ga. 2018).

48. *Id.*

49. In January 2017, Trump issued Executive Order 13769 that barred individuals from seven predominantly Muslim countries from entering the United States for 90 days. Following litigation resulting in a temporary injunction on enforcement of the ban, Trump issued a second Executive Order, which removed Iraq from the list of affected countries and exempted certain visa and green card holders. See Exec. Order No. 13780, 82 Fed. Reg. 13209 (2017).

of separation and economic hardship as a result of the Muslim Ban. We, the jury, then adjourned and deliberated before returning with a verdict of guilty against the Muslim Ban and the Trump administration for grave human rights violations against community members.

We also attempt to shift power in our work, knowing that as lawyers, we are often in spaces where the voices of directly impacted people are not represented. For example, the Mayor of Atlanta pulled together a council in the summer of 2018 to advise on the next steps regarding the Atlanta City Detention Center and the city's relationship with U.S. Immigration and Customs Enforcement ("ICE") in detaining immigrants there.⁵⁰ At first, there were no formerly detained immigrants on the council. We kept pushing and made sure that directly impacted people were represented. The head of the jail was on the council, and he, along with some of the businesspeople and lawyers on the council, wanted to maintain the status quo. However, the voices of the formerly detained immigrants overpowered them. There was also a hearing⁵¹ where we made sure that formerly detained immigrants could call in from all over the world to speak about their horrendous experience at the Atlanta City Detention Center. Lastly, we documented conditions at the Atlanta City Detention Center over several years and spoke with many detained and formerly detained immigrants. Our efforts resulted in the publication of a report on the conditions at the jail.⁵² As such, we were able to counter what the head of the jail had to say based on direct conversations with detained immigrants. In the fall of 2018, we were finally able to force the City of Atlanta to end its collusion with (ICE) and stop detaining immigrants for ICE.⁵³

Another example of shifting power involved our lobbying efforts around immigrants' rights. The Georgia legislature is an example of an institution representing a type of power that has nothing in common with impacted people. Getting immigrants and refugees, particularly women, to own the space and shift power to themselves in order

50. See Lisa Hagen, *Atlanta Mayor Considers Future of City Contract to House ICE Detainees*, WABE (June 22, 2018), <https://www.wabe.org/atlanta-mayor-considers-future-of-city-contract-to-house-ice-detainees/>.

51. Emma Hurt, *Atlanta Mayor's Advisory Council Holds Public Hearing on ICE Contract*, WABE (July 26, 2018), <https://www.wabe.org/atlanta-mayors-advisory-council-holds-public-hearing-on-ice-contract/>.

52. See PRIYANKA BHATT ET AL., PROJECT S. & GA. DET. WATCH, *INSIDE ATLANTA'S IMMIGRANT CAGES* (2018).

53. Press Release, Mayor's Office of Communications, Mayor Keisha Lance Bottoms Issues Executive Order to Permanently End City of Atlanta Receiving ICE Detainees (Sept. 6, 2018) (on file with author).

to hold the lawmakers accountable is, by itself, a victory for the movement.

Project South was also involved in a campaign in Clarkston, Georgia, to persuade the City Council to adopt a resolution limiting their collaboration with ICE.⁵⁴ The campaign occurred after the ICE raids that targeted Somali community members in April 2017.⁵⁵ The community came to us and asked that we draft a resolution, develop the legal backing for it, and present it to the City Council. The community of Clarkston, led by the wives of the detained men, showed up *en masse* to the City Council meeting. The City Council was supposed to adopt the resolution the following Tuesday. However, that Tuesday morning, a couple of council members had a meeting with ICE, and ICE threatened to put them on the “naughty” list if they adopted the resolution. When we arrived at the City Council meeting that afternoon, where they were supposed to pass the resolution, the Council’s attitude had completely shifted. They expressed reluctance to pass the resolution: “Why do we need a resolution when we know that Clarkston is a progressive and welcoming city?” they asked. The community was outraged. Over the next two hours, they delivered powerful testimony and reminded the City Council that elections were coming up, and that Clarkston City Council members were accountable to “us, not to ICE.” After this intense session, the City Council adopted the resolution unanimously.⁵⁶

This was a powerful example of the coupling of legal and organizing strategies. As a lawyer, I was under no illusion that if I had approached the City Council with the fancy legal papers in my hands, nothing would have happened. It was the movement and power of the people that made it happen.

Yet another example of shifting power in lawyering is what happened in Decatur, Georgia. Project South was part of a coalition that pushed Georgia localities to limit their collaboration with ICE. As lawyers, we complemented the work of the coalition by employing a legal strategy to warn localities about the legal ramifications of an unconstitutional collaboration with ICE. The City of Decatur was one of those localities. The Lieutenant Governor, Casey Cagle, who was run-

54. Jeremy Redmon, *Activists to Call on Clarkston, Atlanta to Limit Cooperation with ICE*, AJC (May 10, 2017), <https://www.ajc.com/news/breaking-news/activists-call-clarkston-atlanta-limit-cooperation-with-ice/yH6FnDJuDGqAH3pftG9WzJ/>.

55. See Maryam Saleh, *A Second Chance*, THE INTERCEPT (Dec. 22, 2018, 10:44 AM), <https://theintercept.com/2018/12/22/georgia-ice-raids-muslim-refugees/>.

56. See Annie Rose Ramos, *Small Georgia Town Limits Cooperation with Immigration Agents*, NBC NEWS (May 4, 2017, 5:57 PM), <https://www.nbcnews.com/news/latino/small-georgia-town-limits-cooperation-immigration-agents-n755066>.

ning for governor, decided to file a complaint against Decatur in front of the Immigration Enforcement Review Board, a vigilante body unique to Georgia, whose goal was to go after localities deemed friendly to immigrants.⁵⁷ Faced with this complaint and a relentless public campaign, the Decatur community urged their city officials to stand up to Cagle and the Immigration Enforcement Review Board. They made it clear to the city that, as a self-avowed welcoming community, they expected Decatur to go on the offensive rather than backing down.

With community support, the city doubled down and brought several lawsuits against the board, forcing the resignation of the board's chairman and two other members. The board ultimately settled with the city of Decatur by paying \$12,000 in attorney fees and other costs and agreeing to more transparency in its proceedings. It was an outcome that Casey Cagle and the rest of the political establishment never could have expected when they decided to scapegoat Decatur. A few months later, the Immigration Enforcement Review Board was dismantled through state legislation pushed by Republicans. They realized that the board had become an embarrassment.

III. CONCLUSION

Movement lawyering creates spaces where lawyers are held accountable by the community and work towards authentic social change inside and outside the courts. Many of Len Holt's ideas regarding movement lawyering carried into present day, including centering movements while decentering lawyers, educating the citizenry, and pursuing legal strategies outside of litigation. Contemporary movement lawyers have built on this foundation and encourage lawyers to question whom the legal system was designed for and analyze one's own positionality within the system. In emphasizing these tenets, movement lawyering effectively becomes people-centered and politically transformative. Our legal work with Project South offers a contemporary example of movement lawyering that has led to people's victories against powerful institutions.

57. See Jim Galloway, *Casey Cagle Personally Accuses Decatur of Defying State Immigration Law*, AJC (July 30, 2018), <https://www.ajc.com/blog/politics/casey-cagle-personally-accuses-decatur-defying-state-immigration-law/wUQhBmCWVvtYqUJC2jdB7O/>.

Yes, You Can Learn Movement Lawyering in Law School: Highlights from the Movement Lawyering Lab at Denver Law

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ABSTRACT

This Article describes the Movement Lawyering Lab at the University of Denver Sturm College of Law. The Movement Lawyering Lab is an experiential course that exposes students to the philosophy of movement lawyering and provides an opportunity for students to partner directly with national and grassroots organizations. The Movement Lawyering Lab draws from some of the key tenets of clinical legal education and adapts that framework for movement work. Through this model, law students learn how they can meaningfully contribute to national, state and local campaigns dedicated to social, racial, and economic justice. This Article is intended to serve as a guide and support for other legal educators with a commitment to introducing a course about race, movements, and power into their law school curriculum.

INTRODUCTION

Social change is driven by social movements. Shifts in societal norms, whether progressive or regressive, do not begin in the courtroom or the legislative floor, but rather are the culmination of the efforts of individuals and organizations seeking transformation of the

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status quo. In the United States, such movements have driven the abolition of enslavement, the expansion of voting rights, the legalization of same-sex marriage, and the end of child labor, among hundreds of other changes, large and small. Indeed, if, as Frederick Douglass told us over 150 years ago, “power concedes nothing without a demand,”¹ we cannot understand the concessions of the powerful unless we study the source of those demands.

In law schools, however, we examine social change through the lens of legal action. We often teach and learn about school desegregation by studying *Brown v. Board of Education*,² for example, not the organizing efforts of high school students in Kinston, North Carolina,³ or the arrival of James Meredith at the University of Mississippi,⁴ or the thousands of other individual and community efforts demanding an end to racial discrimination in public schools.⁵ This legal frame is meaningful; students must understand legal strategies, arguments, and precedents in order to become skilled and effective advocates. But the legal framework is also limited, because it studies the moment that power conceded or failed to concede, rather than the grassroots movements that lead to that moment.

But law students in the Trump era have been surrounded by, and perhaps involved in, social movements. The last four years have seen women’s marches, immigration protests, a months-long nationwide outpouring of grief and rage in reaction to the murder of Black people by law enforcement, as well as the creation of new organizations and the building up of others⁶ — in short, racial, gender, environmental,

1. Frederick Douglass, Speech at the West India Emancipation (Aug. 3, 1857).

2. 347 U.S. 483 (1954), *supplemented by* 349 U.S. 294 (1955).

3. Rita Lashaun Joyner, *Adkin High School and the Relationships of Segregated Education* (May 2009) (Ph.D. dissertation, University of North Carolina, Chapel Hill) (on file with the Carolina Digital Repository, University of North Carolina); Holly, *Adkin High School Walkout*, YOUTUBE (Nov. 18, 2017), https://youtu.be/XUZnJ4_DanE (last visited Sept. 21, 2020); *Adkin High School 1951*, <http://adkinhighwalkout.weebly.com/> (last visited Sept. 21, 2020).

4. *See generally* United States v. Barnett, 376 U.S. 681 (1964); *Mendez v. Westminster School Dist.*, 64 F. Supp. 544 (S.D. Cal. 1946), *aff’d*, 161 F.2d 774 (9th Cir. 1947).

5. *See, e.g.*, Hugh B. Price, *School Segregation in Washington D.C. in the 1950s*, EDUCATION NEXT, <https://www.educationnext.org/school-desegregation-washington-d-c-1950s-hugh-b-price-this-african-american-life-memoir-excerpt/> (last visited Sept. 20, 2020) (describing family-led boycotts in the time of segregation). For a current example of organizing work around racial discrimination in public schools, *see About the Alliance*, ALLIANCE TO RECLAIM OUR SCHOOLS, <http://www.reclaimourschools.org/about> (last visited Sept. 19, 2020).

6. Advancement Project, Beyond Legal Aid, Center for Popular Democracy, Community Justice Project, Grassroots Action Support Team, Law for Black Lives, and Movement Law Lab are some examples of groups with a movement framework. This non-exhaustive list does not include existing organizations, which now have movement lawyering as one component of its work. *See generally* Super User, *Purvi & Chuck: Community Lawyering*, ORGANIZING UPGRADE (June 1, 2010, 7:20 AM), <http://archive.organizingupgrade.com/index.php/modules-menu/community-organizing/item/71-purvi-amp-chuck-community-lawyering>; Purvi Shah, *Social Justice*

and other forms of activism on an enormous scale.⁷ Law students now, as in prior eras of social unrest and transformation, are confronted daily with the question of how their law degrees can and should be used in service of the movements that surround them. They learn that there is a need and a role for lawyers to file lawsuits, to represent arrested protestors, to conduct investigations into rights violations, and to push for legislative reform — but few are introduced to the concept of serving grassroots organizers in the role of *movement lawyers*.

Movement lawyers use their legal skills but are focused on and guided by the stated needs of impacted communities rather than on lawyer-led legal strategies; movement lawyers focus on shifting power rather than on policy change alone; movement lawyers work in service of, and in partnership with, social movements and do not pursue agendas that are contrary to or uninformed by the community's stated needs. While movement lawyers have supported social movements for decades, the theory and application of movement lawyering is rarely taught in law school. Because legal education does not offer this framework to law students, they are not only deprived of a skillset that might prove meaningful to their own careers and the movements that they value, but they run the risk of inadvertently harming communities and organizers by failing to understand the role of the movement lawyer.

This Article describes a course offered at the University of Denver Sturm College of Law (“Denver Law”) designed to address these concerns. The Movement Lawyering Lab, which builds on shorter Movement Law courses offered at Denver Law in the recent past, provides an opportunity for student movement lawyers to work in partnership with grassroots racial justice organizations under the supervision of law professors and community organizers. This Article is intended to provide those with an interest in creating similar courses with the pedagogical framework we have designed, which applies several traditional clinical methods of teaching and learning to the less-

Lawyering Reading List, BILL QUIGLEY (Apr. 3, 2013), <https://billquigley.wordpress.com/2013/08/13/social-justice-lawyering>.

7. See, e.g., Hadiya Presswood, *New Generation of Social Justice Activists Emerge With BLM Initiatives*, CHARLOTTE POST (June 18, 2020, 10:40 AM), <http://www.thecharlottepost.com/news/2020/06/18/local-state/new-generation-of-social-justice-activists-emerge-with-blm-initiative/>; Emiene Wright, *Activists Push Education as Crucial Strategy in Social Justice Movement*, QCI-TYMETRO (June 18, 2020), <https://qcitymetro.com/2020/06/18/activists-push-education-as-crucial-strategy-in-social-justice-movement/>; Marcus Blackwell, *The Intersection of Sports and Social Justice in 2020*, REVOLT (July 2, 2020 3:00 PM), <https://www.revolt.tv/2020/7/2/21311582/sports-social-justice-intersection>.

traditional (or perhaps just less-understood) practice of movement lawyering.

In Part I, we provide a brief overview of how we — and others — have defined movement lawyering. In Part II, we share Denver Law’s Movement Lawyering Lab as a model for teaching movement lawyering in law school. We outline its three core structural elements — the seminar, supervision, and movement lawyering fieldwork — in depth. In Part III, we pull out four important components that are central to the Lab, including an explicit focus on racial justice, interdisciplinary co-teaching, diverse work products, and student reflection. Part IV concludes.

I. WHAT IS MOVEMENT LAWYERING?

Attorneys work in the realm of progressive social justice in a wide variety of ways — as environmental litigators, public defenders, immigration lawyers, and human rights advocates, among many other significant roles. It is no denigration of this important work to note that, while the values of social justice lawyering and movement lawyering often inform each other and overlap, social justice lawyering and movement lawyering are not necessarily the same thing. While lawyers in all these areas of practice may work on behalf of communities and individuals who have been harmed by systemic and personal injustices, the practice of movement lawyering is specifically and exclusively focused on supporting and centering social movements and organized communities.

In an earlier work, Professor Freeman reviewed the origin of definitions of progressive social movement lawyering, writing:

This concept of lawyers working toward systemic social change with marginalized groups perhaps first developed an “official name” in Gerald López’s seminal piece about rebellious lawyering. Since then, a number of scholars have sought to define and re-define what this type of lawyering is. These discussions employ an array of terms and philosophies to encompass the work with substantial overlap but some distinctions in their definitions and terms.⁸

In that seminal 1992 work, “Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice,” Professor López discusses the “rebellious idea of lawyering against subordination . . .”⁹ sharing that “lawyers (and those with whom they work) nurture sensibilities and

8. Alexi Freeman, *Teaching for Change: How the Legal Academy Can Prepare the Next Generation of Social Justice Movement Lawyers*, 59 *HOW. L.J.* 99, 108 n.22 (2015).

9. See, e.g., GERALD P. LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO’S VISION OF PROGRESSIVE LAW PRACTICE* 38 (1992).

skills compatible with a collective fight for social change.”¹⁰ In the years since, many others¹¹ have suggested descriptions of this type of lawyering, including a recent definition offered by Law for Black Lives: “Movement lawyering means taking direction from directly impacted communities and from organizers, as opposed to imposing our leadership or expertise as legal advocates. It means building the power of the people, not the power of the law.”¹²

Based on practice experience as a movement lawyer, conversations with other self-identified movement lawyers,¹³ and a review of existing literature, Professor Freeman has previously identified four critical components of this practice: power-building as a priority;¹⁴ authentic relationships with community partners;¹⁵ the (limited) role of traditional legal strategies;¹⁶ and the use of multimodal advocacy strategies and skills.¹⁷ In the Movement Lawyering Lab, we rely on this framework with some modifications. A brief synopsis of these four characteristics follows.

10. *Id.*

11. Movement lawyering and its variations have been discussed by many scholars. For example, William Quigley calls this work *revolutionary lawyering*, identifying it as including solidarity with the community and a commitment to challenging the status quo. See William P. Quigley, *Revolutionary Lawyering: Addressing the Root Causes of Poverty and Wealth*, 20 WASH. UNIV. J.L. & POL’Y 101, 116 (2006). Asciano Piomelli uses the term *democratic lawyering* and focuses on a goal of “the transformation of living conditions” for the disenfranchised by employing multilateral strategies. Asciano Piomelli, *The Challenge of Democratic Lawyering*, 77 FORDHAM L. REV. 1383, 1385 (2009). Piomelli also uses *collaborative lawyering* to describe engaging clients in decision making and the implementation of strategies, encouraging clients to speak out, and facilitating work with community groups. See Asciano Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 440 (2000). Jennifer Gordon describes campaign-based lawyering as work contributing to a broader campaign rather than the outcome of any individual legal action. See Jennifer Gordon, *The Lawyer Is Not the Protagonist: Community Campaigns, Law, and Social Change*, 95 CALIF. L. REV. 2133, 2141 (2007). Lucie E. White uses the term *change-oriented lawyering*, where participants “scrutinize themselves, their relationships, their adversary, their culture and institutions, in the interest of a multidimensional process of emancipation.” Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 WIS. L. REV. 699, 768 (1988). For other forms, see Charles Elsesser, *Community Lawyering - The Role of Lawyers in the Social Justice Movement*, 14 LOY. J. PUB. INT. L. 375, 377 (2013); see also Gabriel Arkles et al., *The Role of Lawyers in Trans Liberation: Building A Transformative Movement for Social Change*, 8 SEATTLE J. SOC. JUST. 579, 614 (2010).

12. *What We Can Do: Movement Lawyering in Moments of Crisis*, LAW FOR BLACK LIVES, <http://www.law4blacklives.org/respond> (last visited Oct. 25, 2020).

13. Freeman, *supra* note 8, at 106 n.16. As noted, for this piece, Freeman reached out to 25 present or former movement lawyers and the research team interviewed 16 lawyers in total.

14. *Id.* at 110. Freeman previously identified this factor as long-term vision and power-building. The long-term nature is inherent in power building and we wanted to emphasize the point of power versus time and duration.

15. See *id.* at 112. We changed key relationships with community partners to authentic relationships with community partners since that more accurately reflects the focus.

16. See *id.* at 113.

17. See *id.* at 114.

A. *Power-Building as a Priority*

A defining principle of movement lawyering is its specific focus on the role that power plays in creating and maintaining structural inequities, and the importance of transforming those power dynamics to create lasting change. This is so because movement lawyers support organized grassroots communities and such communities are themselves focused on shifting and building power.

Power, in this context, means the ability to shape the world. For these organizers and leaders, the primary goal is not to change laws or policies because that represents, at best, a means to an end. Instead, they seek to change the severely disproportionate allocations of power that create and reinforce the systems of oppression that produce unjust laws and policies¹⁸

This view of social change can be surprising to those trained in the law; training that is cognizant of the role of power in social inequity but is often focused on achieving justice through changes achieved through litigation or legislative reform. From a movement lens, on the other hand, the goal of increased power is more important than policy change. Policy change is not irrelevant. Indeed, it may be significant, but it also may be short-lived or easily altered, geographically limited, dependent on the success or sustainability of other factors, or disconnected from the challenges communities face,¹⁹ — and thus cannot be the lynchpin of the work if the overarching goal is lasting change.

A focus on shifting and building power must be aligned with the stated priorities and preferences, struggles, and leadership²⁰ of impacted communities and people. The shifting of media, legal, political, grassroots, and other forms of power to the formerly disempowered and disenfranchised has greater impact than an individual policy win. When such a shift occurs, those who have been marginalized are no longer demanding change from those in power; rather, they are able to enact such change on their own terms.

B. *Authentic Relationships with Community Partners*

Another core value of movement lawyering is that movement lawyers take the lead from their community partners. Of course, movement lawyers have expertise and knowledge to share, but unless the lawyers are engaged in clearly defined litigation, the hierarchy of

18. Alexi Freeman & Jim Freeman, *It's About Power Not Policy: Movement Lawyering for Large-Scale Social Change*, 23(1) CLINICAL L. REV. 147, 150 (2016).

19. Gordon, *supra* note 11, at 2141.

20. Elsesser, *supra* note 11, at 384.

the knowledge and expertise is not structured by the traditional lawyer-client relationship.²¹ Instead, movement lawyers see their grassroots partners as just that — partners. Movement lawyers strive to value shared knowledge, power,²² leadership, control, and decision-making,²³ while prioritizing community control and framing. They do not, or should not, see themselves, as Professor Piomelli has observed, “as saviors, protectors, or . . . as preeminent engines or engineers of social change.”²⁴ They instead, in Professor Lopez’s words, are seeking to “lawyer[] against subordination,” which involves working *with* and not *for* impacted social movements.²⁵

Movement lawyers share insights and knowledge²⁶ with their partners (otherwise, they are arguably of little use to the movement), but they do not set the agenda or define the goals of the community. This is particularly important because in most circumstances, movement lawyers do not share the same lived experiences²⁷ or live the same day to day realities as affected communities. Effective movement lawyers are committed to learning from the communities with whom they are partnered,²⁸ seek to build authentic and long-term relationships with those partners, and consistently work to understand and further the partner’s stated goals.

21. See, e.g., Michael Diamond, *Community Lawyering: Introductory Thoughts on Theory and Practice*, 22 GEO. J. ON POVERTY L. & POL’Y 395, 397 (2015) (“There has long been a concern that when lawyers represent clients in disempowered communities, the lawyer’s will would overbear that of the clients so that the lawyer’s goals, and the lawyer’s sense of what-should-be, would prevail over the client’s.”). This is in comparison to Diamond’s definition discussing the definition of a community as “a bounded geographical space (that is often used interchangeably with the idea of “neighborhood”) in which the residents share a common culture, religion, language and values.” *Id.* at 396.

22. Angelo Ancheta, *Community Lawyering*, 81 CALIF. L. REV. 1363, 1370 (1993) (reviewing LOPEZ, *supra* note 9).

23. Elsesser, *supra* note 11, at 400.

24. Piomelli, *supra* note 11, at 1385.

25. LOPEZ, *supra* note 9.

26. It is tempting as a movement lawyer to be solely of service to the movement as a “do-er” (i.e. the community or movement asks you to do something, and you simply comply). But you are adding only limited, short-term value with that approach. The idea of building power means helping to transfer knowledge, skills, and information. You do not just do tasks. You share and collaborate so communities can gain power and voice. See e.g., Arkles, *supra* note 11, at 616. This is how, ultimately, communities will no longer need a movement lawyer, which should be a goal.

27. See Nancy Polikoff, *Am I My Client: The Role Confusion of a Lawyer Activist*, 31 HARV. C.R.-C.L. L. REV. 443, 469-70 (1996) (discussing shared identity with lawyer and clients, but still distinct experience given the lawyer hat versus non lawyer hat).

28. A hallmark of rebellious lawyers is their openness to learn from those they work with; particularly the marginalized. See Margaret Martin Barry et al., *Teaching Social Justice Lawyering: Systematically Including Community Legal Education in Law School Clinics*, 18 CLINICAL L. REV. 401, 413 (2012).

C. The [Limited] Role of Traditional Legal Strategies to Achieve Social Change

Movement lawyering does not uniformly reject all traditional lawyering models. It is common for legal and policy strategies to play a role in social movements and lawyers may be needed to draft non-profit paperwork, represent those arrested or injured in political actions, and undertake other necessary work related to the movement. That said, movement lawyers recognize the ways in which lawyers have betrayed and undermined social movements — whether by assuming a leadership role rather than taking direction from the community, undertaking legal action without consulting with organizers and impacted people, or by centering themselves as the heroes in the change narrative — and recognize that pursuing traditional legal pathways carry these and other risks.

In the words of Professor William Quigley, “If the legal work is the primary part of the campaign, it is unlikely that the legal component is in relationship with a real social change movement.”²⁹ As documented in previous work,³⁰ scholar Jennifer Gordon suggests that movement lawyers ask a series of questions before engaging in traditional legal advocacy (typically litigation): How can legal levers put the community in a position to achieve its goals? What power could it build? What doors could law open? What stories could the law tell? What time could the law buy?³¹ This framing leads to law being seen as a tactic³² that the social movement may choose to employ rather than the primary driver or solution.

D. The Use of Multi-Modal Advocacy Strategies and Skills

When traditional legal advocacy is removed as the primary or default strategy, the movement lawyer must then be prepared to employ other approaches. These may include lobbying, policy advocacy, strategic communications, litigation, and data advocacy, as well as grassroots organizing and mobilization.³³ In the Movement Lawyering Lab, we analogize the willingness and ability to roll up your sleeves and contribute to the work in as many ways as the movement demands to Bruce Lee’s mantra, “be like water:”

29. William P. Quigley, *Ten Questions for Social Change Lawyers*, 17 LOY. PUB. INT. L. REP. 204, 206 (2012).

30. Freeman, *supra* note 8, at 114.

31. Gordon, *supra* note 11, at 2138.

32. *See id.* at 2141.

33. *See* Super User, *supra* note 6; *see also* Piomelli, *supra* note 11, at 1386.

Empty your mind; be formless, shapeless-like water. Now you put water into a cup, it becomes the cup. You put water into a bottle, it becomes the bottle. You put it in a teapot, it becomes the teapot. Now water can flow or it can crash. Be water, my friend.³⁴

With this framework, movement lawyers need to find ways to develop their skills in multiple areas so that they can add value to the campaign's needs and priorities. This approach is not a rejection of legal training and education, but rather the application of the research, communication, negotiation, writing, strategy, persuasion, and other legal skills gained through that education in a broader context. While movement lawyers use those skills in organizing meetings, community events, and legislative hearings, rather than in courtrooms, the movement lawyer, like all effective lawyers, is a counselor, problem-solver, and an advocate. In so doing, however, they are intentional in ensuring that they perform in these roles as needed in partnership with communities.

II. DENVER LAW'S MOVEMENT LAWYERING LAB MODEL

A. Background

In Fall 2016, Denver Law launched a one-credit weekend workshop titled "Movement Lawyering for Social Justice: Skills Workshop."³⁵ The course ran for three semesters between Fall 2016 and Spring 2019. It was designed to introduce students to the movement lawyering framework in an intensive one-and-a-half-day class. More specifically, the course sought to deepen participants' understanding of the theory and practice of movement lawyering, leave participants better equipped to participate within mass movements and support

34. Jim Freeman, Supporting Social Movements: A Brief Guide for Lawyers and Law Students, 12 HASTINGS RACE & POVERTY L.J. 191, 201 (2015) (citing Zekel Healthcare, *Be Water My Friend - Bruce Lee*, YOUTUBE (Feb. 12, 2013), <https://www.youtube.com/watch?v=VQHSbMRudo>).

35. See generally *Movement Lawyering for Social Justice: Skill - Building Workshop - L47xx*, UNIVERSITY OF DENVER - STURM COLLEGE OF LAW, <https://www.law.du.edu/forms/registrar/course-description.cfm?ID=714> (last visited Sep. 8, 2020) (This class was created and developed by Alexi Freeman and Jim Freeman. Jim Freeman served as an adjunct professor at Denver Law and also serves as executive director of the Grassroots Action Support Team ("GAST"), which is a "one-stop-shop for meeting the advocacy needs of grassroots organizations, labor unions, and community-based coalitions." GAST provides partners with the behind-the-scenes research, policy, communications, and organizing support they need to create dynamic advocacy campaigns that mobilize communities, swing public opinion, shift public policy, and reverberate regionally and nationally. Jim Freeman is now leading the Social Movement Support Lab at the University of Denver, which extends the goals and purpose of the Movement Lawyering Lab across disciplines, providing greater opportunities for students and faculty across the university to contribute to community campaigns).

grassroots organizing, and assist participants in building a community of movement lawyers that extends beyond the course.

Due to the limited duration of the class, students did not conduct any work for grassroots organizations the first time it was offered. Instead, the course focused on providing students with the philosophy of the movement lawyering model and asking them to examine a mock problem using the four key components — power building, authentic relationships, limited use of traditional legal advocacy, and multi-modal strategies. In subsequent semesters, however, we found minimal ways for students to provide movement support within the short time frame of the class. Namely, a local organizer shared a problem the organization was grappling with and teams of students brainstormed questions and steps needed for the campaign to address the issue. The student teams also developed some initial work products: they drafted potential opinion editorials for future use by the organizing partner; drafted research questions for potential records requests; and contributed to the campaign by proposing timelines for work.

While we will still offer this option in future semesters to provide some exposure to movement lawyering, this experience — including the positive feedback received by students, many of whom expressed interest in working more intentionally on live campaigns — motivated us to create a more comprehensive model. This motivation led to the design of a semester-long, hybrid clinic-externship course: The Movement Lawyering Lab.

B. Structure of the Movement Lawyering Lab

The Movement Lawyering Lab at Denver Law adopts many of the key components of in-house clinical legal education while incorporating some attributes of externship pedagogy. For example, Movement Lawyering Lab students are supervised by law school faculty members who share confidentiality with the students and the partner organizations, allowing us to discuss the specifics of the work that the students are undertaking, but students also receive a form of supervision and direction from the community partners themselves. The Lab employs the think-plan-do-reflect pedagogy³⁶ and the seminar-super-

36. See generally *Movement Lawyering Lab*, UNIVERSITY OF DENVER – STURM COLLEGE OF LAW, <https://www.law.du.edu/forms/registrar/course-description.cfm?ID=793> (last visited Sep. 8, 2020) (explaining that students engage in “thinking” by reading relevant materials and preparing for and meaningfully participating in the seminar class. Students engage in “planning” by considering how the knowledge gained in class and elsewhere applies to the fieldwork projects in which they are engaged. “Planning” also requires understanding the goals and values of the organization for which you are working, considering multiple options and approaches that could advance those values and goals, and identifying and engaging with resources that can assist in

vision-fieldwork structure common to in-house clinics, but students are also engaged in work with their partner organizations outside of the law school. We adopted this blended approach to provide students with the experience of working closely with a partner organization while receiving the support of law faculty who are trained in clinical pedagogy and informed by movement lawyering practice and principles.³⁷

The Lab is taught by an in-house clinical and externship faculty member (the authors). However, supported by a grant from the Interdisciplinary Research Institute for the Study of (In)Equality (“IRISE”) at the University of Denver,³⁸ we invited a seasoned organizer, Dr. Daniel Kim,³⁹ to serve as co-professor for Spring 2020. Dr. Kim contributed to the course in Summer 2020 as well, albeit to a lesser extent given that his fellowship at the university concluded in that timeframe. The inclusion of an organizer as a faculty member added an additional dimension to this experiential course, which is discussed in greater depth below.

Based on an informal review of existing clinics and externships in American law schools, the Movement Lawyering Lab is unique in legal education. While in-house clinics that employ a movement lawyering framework exist,⁴⁰ we have not identified a course in which

understanding and implementing those options effectively. “Doing” is the execution of the final plan. “Reflecting” requires critically evaluating your performance and its outcomes, including receiving feedback from instructors. This cycle is repeated throughout the course).

37. *See generally id.* (explaining that the course generally requires more credits than a typical externship but fewer credits than the in-house clinical courses at Denver Law. Thus far, the course includes a two-credit seminar and three credits of fieldwork. Depending on the number of weeks in the semester, students are expected to devote 10 or 20 hours to the fieldwork component, in addition to seminar and supervision, as described below. During the Spring 2020 semester, this class lasted 14 weeks; in Summer 2020, it was condensed into 7 weeks. Students were expected to finish fieldwork by the end of exams in both semesters, which typically extended the duration by one week).

38. *See generally id.* (explaining that IRISE, the Interdisciplinary Research Institute for the Study of (In)Equality, is based at the University of Denver and its mission is to provide opportunities and support for faculty and students to engage in the development of cutting-edge interdisciplinary research on issues of inequality, social justice, and inclusivity through community engaged projects in health and education. IRISE’s runs a Visiting Community Scholar initiative, which invites and compensates community leaders to lead efforts, part time, in collaboration with IRISE sponsored by existing faculty members).

39. Dr. Daniel Kim has been a social justice organizer and advocate for over 20 years. More specifically, he served as the Director of Youth Organizing at Padres & Jóvenes Unidos, a grassroots educational justice & immigrant rights organization in Denver. Dr. Kim led Padres’ landmark campaign to End the School-to-Jail Track. He was initially trained as an organizer by the Labor/Community Strategy Center where he organized on the buses of Los Angeles to build the power of working-class communities of color. Dr. Kim also had familiarity with the university culture and structure, as he served for six years as a faculty member within the English Department at the University of Colorado, Boulder.

40. *See e.g., Farmworker Legal Aid Clinic*, VILL. UNIV., <https://www1.villanova.edu/university/law/experience/clinics-externships/clinics/farmworker.html> (last visited Nov. 9, 2020); *Community Justice Clinic*, LOY. UNIV., <https://law.loyno.edu/centers/law-clinic-center-social-justice/>

students receive concentrated clinical teaching from faculty members, including an experienced community organizer, while simultaneously working with local and national organizers in the field. There is thus ample space in the legal academy in which to introduce students to the theory and practice of movement lawyering, and it is our hope that by describing our movement lawyering course development and implementation, we can encourage others to fill this gap in legal education.

In order to provide a clear description of the organization of the Movement Lawyering Lab and specific pedagogical choices that we made in its development, we will first review its seminar, supervision, and field work components. Subsequently, we will turn to a discussion of the course focused on racial justice, interdisciplinary co-teaching, diverse work products, and student reflection.

1. The Lab Seminar

The Movement Lawyering Lab includes both a classroom and fieldwork component. The classroom seminar follows a discussion-based model. Professors present lessons and materials critical to understanding the philosophy of movement lawyering and to developing an understanding of how to provide multi-faceted advocacy support. Additionally, students actively engage in group, small group, and partner dialogues and reflection.

We established the following student learning outcomes, building on the goals for student learning developed in the previous one-credit course:

- Gain a deeper understanding of movement lawyering practice, including key principles and the practical, ethical, and theoretical challenges of the practice.
- Be better equipped to analyze the law and social issues through a racial justice lens.
- Develop a base level understanding and familiarity with the multi-faceted strategies employed by movement lawyers in partnership with organized communities.

To make progress towards these outcomes, we designed the seminar classes into three buckets: 1) underlying theory for this lawyering model; 2) understanding of racial dynamics, identity, and cross-cultural communication; and 3) the nature and application of movement

fields-practice (last visited Nov. 9, 2020); *Immigrant Rights Clinic*, U.C. IRVINE, <https://www.law.uci.edu/academics/real-life-learning/clinics/immigrant-rights.html> (last visited Nov. 9, 2020); *Community Group Advocacy & Social Change Lawyering Clinic*, U.C. HASTINGS, <https://www.uchastings.edu/academics/experiential-learning-opportunities/clinical-programs/community-group-advocacy-and-social-change-lawyering-clinic/> (last visited Nov. 9, 2020).

lawyering skills, with an emphasis on skills not traditionally taught in legal education.

In classes focused on the theory of movement lawyering, we share research on best practices and origins of this philosophy and dissect the ways in which it differs significantly from existing legal training and most legal practices. While we recognize that some of our students have been exposed to these concepts through courses on race and the law, or the philosophy of client-centered lawyering in law school,⁴¹ in large part, movement lawyering requires students to engage in a practice that runs in opposition to much of what they have already learned. With this in mind, and in order to encourage students to consider the reasoning and history behind movement lawyering principles, we also actively focus on how lawyers have failed racial justice movements by using case studies that reveal tensions in power, priorities, philosophies and decision-making processes.⁴² Ultimately, we want students to understand the movement lawyer's theory of change, and how a lawyer- and law-focused theory of change differs from a theory of change that is community centered and led.

The Movement Lawyering Lab classes that are focused on race include sessions addressing community organizing in racial justice movements. Dr. Kim, as an experienced organizer in such movements, led classes focused on the origins, philosophies, strategies, and realities of race-based community organizing. His work was supplemented with readings by Rinku Sen and Eric Mann.⁴³ In addition to these classes, we offer a class session focused on cross-cultural communication, using the well-regarded framework of the Five Habits for Cross-Cultural Lawyering,⁴⁴ developed by Professors Jean Koh Peters

41. See generally Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287, 288 (2001); see also Jane H. Aiken, *Striving to Teach "Justice Fairness, and Morality"*, 4 CLINICAL L. REV. 1 (1997) (discussing broadly clinic students' disorienting moments as a way to challenge their privilege and justice). But see Minna J. Kotkin, *Clinical Legal Education and the Replication of Hierarchy*, 26 CLINICAL L. REV. 287, 302-04 (2019) ("The classic legal services style practice no longer is the most prominent feature of the clinical world. Instead, programs that replicate the more elite elements of private and public practice have proliferated [Transactional law clinic work] avoids the conflict and the win-lose dynamic inherent in litigation settings. It does not invoke the struggle for justice and fairness that permeates poverty law. As a general matter, it does not create a learning environment where empathy and cultural awareness are daily concerns.").

42. Specifically, we created a case study that unfolded in the Chicago region around competing interests for stop and frisk reform among public interest lawyers and community organizations run by and serving people of color.

43. See generally RINKU SEN, *STIR IT UP: LESSONS IN COMMUNITY ORGANIZING AND ADVOCACY* (1st ed. 2003); ERIC MANN, *THE 7 COMPONENTS OF TRANSFORMATIVE ORGANIZING THEORY* (2010) (students were assigned portions of each book).

44. See Sue Bryant & Jean Koh Peters, *Five Habits for Cross-Cultural Lawyering*, in *RACE, CULTURE, PSYCHOLOGY, AND LAW* 49 (Kimberly Holt Barrett & William H. George eds., 2005).

and Sue Bryant. In this class, we discuss student identities, how they can both differ and overlap with the identities of the organizers and impacted communities with whom we work, and figure out how to best serve our partners with these identities in mind.

Our classes that focus on lawyering skills are informed by the need for movement lawyers to develop a wide range of advocacy and problem-solving approaches in service to their movement partners. We encourage our students to consider when we, as lawyers, habitually revert to legal solutions when confronted with an injustice. We then ask them to reflect on the ways in which gaining competency in multi-modal strategies can help us resist this impulse, so we can instead make reasoned judgments that consider multiple pathways to change. Many of the skills essential to effective movement lawyering are embedded in legal education, but students often do not recognize their applicability outside of litigation and other legal avenues unless those connections are made clear. In the Movement Lawyering Lab, we seek to help students consider the role that their legal training can play in developing extra-legal approaches to community issues, as well as exposing the students to skills that are rarely taught in law schools but are essential to effective movement lawyering. Class topics in this “bucket” include:

- 1. Strategic Communications:** Strategic communications are critical to social movement efforts, but lawyers typically lack understanding on framing, messaging, narrative, and communication tools. While these skills may be taught in law school courses focused on oral and written advocacy, students (and lawyers) may struggle to use them effectively and to understand their application in a non-traditional legal context. For example, law students and lawyers frequently have little to no understanding of how these skills can be used in social media campaigns, press releases, interviews, and other modes and methods of communication beyond the courtroom or legal briefing. Class sessions devoted to this topic lay a foundation that values strategic communications and the distinct communications work that must occur in race-based efforts. To help students better understand these components, we engage in exercises such as asking students to analyze news articles from various mediums, developing messages for campaigns they are working on and/or mock campaigns, and identify how different values — values of opportunity, freedom, safety and more — can be used to frame a campaign. We assign written work by Makani Themba-Nixon, which focuses

on racial justice framing within communications strategies and tools,⁴⁵ The Opportunity Agenda, including its social justice communications toolkit,⁴⁶ and we work actively with tools developed by ReFrame and the Spin Project.⁴⁷

2. **Data Analysis:** In classes focused on data analysis, we discuss the value of both qualitative and quantitative data, including assessing how data has been used to support movements, understanding how data can be an important lever in a campaign, determining how data can be framed in distinct ways and what that means, and identifying various ways to gather qualitative and quantitative data. We emphasize the value of the lived experience — that “data” can include collecting stories about the experiences of members of the impacted community via surveys, interviews, focus groups, and more — and also discuss ways in which this data is not perceived to be as relevant and valid as quantitative data. We encourage students to consider how lawyers, in partnership with communities, can push back against that prevailing norm.
3. **Legislative Advocacy and Drafting:** In these sessions, we discuss the art of legislative drafting. We bring in a legislative drafting expert⁴⁸ to explain what the drafting process typically looks like to address the relevance, importance, and meaning attached to specific word choices in legislation, and to discuss how organizers and legislators can collaborate on legislative efforts. We then complement this presentation by discussing whether the strategies and expertise involved in legislative drafting align with movement lawyering practices. We ask students to consider how understanding best practices in legislative drafting might benefit movements in weighing whether, and how, to work with legislators to create new laws or dismantle existing ones.

45. See generally HUNTER CUTTING & MAKANI HEMBA-NIXON, *TALKING THE WALK: A COMMUNICATIONS GUIDE FOR RACIAL JUSTICE* (2d ed. 2006).

46. See generally Gan Golan, *Communications Toolkit*, THE OPPORTUNITY AGENDA <https://www.opportunityagenda.org/explore/communications-toolkit> (last visited Oct. 11, 2020).

47. See generally *About Reframe*, REFRAME, <https://www.reframementorship.org/about/> (last visited Oct. 11, 2020); *The Spin Project*, TOOLS FOR CHANGE, <http://www.toolsforchange.net/2011/04/the-spin-project/> (last visited Oct. 11, 2020). (while Spin Project no longer exists, its resources have been valuable, including the message box, a tool used to determine framing).

48. See generally *Professional Biography*, UNIVERSITY OF DENVER – STURM COLLEGE OF LAW, <https://www.law.du.edu/about/people/michael-whitlow> (last visited Oct 8, 2020) (discussing Michael Whitlow’s professional background).

4. Rapid Response: Community organizations must balance long-term campaign interests and goals with the need to respond quickly to unexpected challenges impacting the movement. These challenges include urgent issues and emergencies that require an immediate shift of priorities or the creation and implementation of new policies or practices. Our class focuses on these issues and addresses the ways in which movement lawyers and organizers can respond to these moments in a productive way, such as identifying crises that are likely to occur and proactively preparing to respond to them, or by using challenging moments to consider new approaches to ongoing issues. Funders often recognize emergency needs⁴⁹ and allow groups to receive grants that have room to adjust priorities as needed. This class session asks students to consider how movement lawyers can be of service to organizers when such emergencies and unexpected events occur.

In addition to the classes described above, we also incorporate “project rounds” sessions into the Lab. Project rounds are a variation on “case rounds” sessions common to clinical courses. In case rounds in litigation clinics, students present a case for “group input on the decision-making necessary to the next actions in the case or to report on an event that has occurred in the case.”⁵⁰ Classmates help each other work through what has occurred and consider options for future action. In case rounds, “[t]he group process is used sometimes to look forward, by helping a team make a strategic decision, and sometimes to look back, analyzing the relationship between a result and the actions the legal team took to produce the result.”⁵¹

Project rounds work similarly, although students bring questions and challenges related to their work with their community partner, rather than case-related concerns. We have several goals for the project rounds classes. The first goal is to provide a forum for teams to share information about their partner work, thus exposing students to the wide variety of projects in which movement lawyers can engage.

49. See, e.g., *FCYO COVID-19 Youth Organizing Rapid Response Fund*, FUNDERS’ COLLABORATIVE ON YOUTH ORGANIZING, <https://fcoy.org/resources/fcoy-covid-19-youth-organizing-rapid-response-fund> (last visited Oct. 11, 2020) (describing a grant program created in response to the COVID-19 pandemic); see also *Rapid Response Grant Guidelines*, SOCIAL JUSTICE FUND NORTHWEST, <https://socialjusticefund.org/grants/rapid-response-seed-grants/rapid-response-grant-guidelines/> (last visited Oct. 11, 2020). (describing a grant program designed to help communities respond quickly to the changing political climate).

50. Elliott S. Milstein, *Clinical Legal Education in the United States: In-House Externships and Simulations*, 51 J. LEGAL EDUC. 375, 377 (2001).

51. *Id.*

The project rounds discussions also enable students to identify others who are working on specific issues and who may be a resource for a team if they encounter similar questions or challenges in their own projects. Additionally, project rounds require students to effectively present information to a group of people who may be unfamiliar with the work in which they, the students, are engaged — an important skill regardless of the area of law in which they ultimately plan to practice. And, of course, a primary goal of project rounds is to provide opportunities for students to give and solicit feedback from each other about issues related to their work as movement lawyers.

Project rounds provide an opportunity for students to grapple with the challenges and nuances of movement lawyering, including questions around professional identity, ethics, and partner relationships, among others. For example, one team explained that their partner organization assigned a robust, multi-faceted project that continued to grow with each meeting and check-in. What was initially a two-state, two-issue assignment grew to include several more states and a long list of issues. The students wanted to help and fulfill the partner's needs, but the project's scope had gotten too big for the hours of work they were able to provide. While the team reflected on the fact that it is often necessary to rise to a challenge and complete additional work, the faculty supervisors and the students knew that the partners' requests were simply undoable given the time available to the student team.

Sharing this quandary with the entire class allowed the students to feel validated about their concerns, but also led to an important discussion about setting expectations, communicating challenges, and “pushback” strategies that still respected the partner but set boundaries as needed. We discussed the timing of such dialogues with partners as well, knowing that the longer students failed to express concerns about the scope, the longer the partner would expect a work product that addressed all of their requests. The project rounds format allows us to apply the movement lawyering principles that the students learn to actual movement work and allows students to gain experience in grappling with difficult questions and weighing strategic choices necessary to any effective legal advocate.

2. Supervision

Supervision sessions, which take place at least once a week, are designed to assist student teams⁵² with fieldwork planning and reflection. In supervision, student teams assigned to specific community organizations meet with their faculty supervisors to discuss their ongoing projects.⁵³ The professors, following the clinical model of nondirective teaching,⁵⁴ act as guides and provide feedback, but the students are responsible both for the work they undertake for their partners and the content of the meeting itself. Students are required to submit a written agenda for the team supervision to the faculty supervisor at least 24 hours in advance of each supervision meeting, which sets out what the students want to discuss,⁵⁵ as well as the research and other work they have already done to identify and evaluate the options available to address the issues they have raised. Grassroots partners may also participate in these meetings as available and appropriate. While students frequently meet with their partner organizations to receive assignments and feedback, in-school supervision sessions are primarily designed as a space for students to reflect on their work with their faculty supervisor.

52. Like many in-house clinical models, we ask students to work in teams, either in pairs or in a group of three. When determining which student teams work with which partner, we solicit preferences from students. We ask them to share their interests via an online survey and also ask that they share information about what existing skills and knowledge they bring to the table. This information, alongside the needs and priorities of partners, helps us determine partner assignments.

53. Each professor oversees one to three teams, depending on the semester.

54. See, e.g., Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience Through Properly Structural Clinical Supervision*, 40 MD. L. REV. 284, 300 (1981) (“The supervisor should be concerned not only with the content of the information he provides for the student, but also with the quality of the relationship between the student and himself. . . . The student cannot, as he can in the traditional classroom, hide in the back row or withdraw from an unpleasant environment. . . . The supervisor must be concerned with developing in the student the ability to define and solve problems. Thus[,] the student and the supervisor must work together and deal with the problem of authority inherent in the teacher-learner relationship.”).

55. See Barbara A. Blanco & Sande L. Buhai, *Externship Field Supervision: Effective Techniques for Training Supervisors and Students*, 10 CLINICAL L. REV. 611, 642 (2004) (In the Lab, the students set the agenda and share their goals, weekly and in an ongoing way. This model very much mirrors general goal setting that occurs in experiential learning. “For students, the process involves identifying the goals and objectives he or she hopes to accomplish during the course of the externship, communicating those goals to the supervisor, and adjusting the goals as appropriate based on the experience and feedback of the supervisor. Returning to the goals throughout the experience and reflecting on the measure of accomplishment of the goals, guides both supervisor and student through the stages of learning and the self-reflective process of improvement and accomplishment.”).

3. Fieldwork

Students in the Movement Lawyering Lab are partnered with both local and national organizations. The nature of this work — its focus on racial justice, the variety of placements, and the types of projects in which the students engage — is discussed in Part III below.

III. KEY COMPONENTS OF THE MOVEMENT LAWYERING LAB

As described above, the primary components of the Movement Lawyering Lab — seminar, supervision, and fieldwork — derive from in-house clinical pedagogy, while the partnering of students in organizations outside of the law school more closely mirrors the externship model of experiential learning. The combination of these models is not unheard of in the legal academy, and those wishing to replicate the Movement Lawyering Lab can look to those models as well as our own. As we previously stated, using a hybrid clinic-externship model to introduce movement lawyering is far less common, and in this section, we describe five additional components that we view as essential to teaching law students how to effectively serve organized communities.

A. *Explicit Focus on Racial Justice*

Movement lawyers do not work solely in racial justice campaigns or for racial justice movements. In the Movement Lawyering Lab, however, we have made a conscious choice to partner only with organizations that have a specific and articulated racial justice focus. This choice is not only informed by our own personal dedication to this area of work but more so by our commitment to expanding the number and nature of law school courses that focus on race.

As we have discussed in a previous article,⁵⁶ when law schools fail to address race in their curriculum, they are failing to adequately prepare students for the practice of law. Law schools are producing lawyers who are not trained to engage in critical thinking around race and racial inequity in the law. Additionally, these lawyers have not been provided tools to develop cross-cultural competencies; and are, therefore, ill-equipped to represent clients in a legal system and society that is deeply informed by race.⁵⁷ This failure harms students of all races and sends a specific message to students of color that, by its nature,

56. See generally, Alexi Freeman & Lindsey Webb, *Positive Disruption: Addressing Race in a Time of Social Change Through a Team-Taught, Reflection-Based, Outward-Looking Law School Seminar*, 21 UNIV. PA. J.L. & SOC. CHANGE 121 (2018).

57. *Id.*

the law is a system for White people, one in which they are not intended or welcomed to engage. As our country becomes increasingly aware of the racial disparities and inequities inherent to every aspect of our legal system — from police violence to immigration prisons, evictions, foster placements, and beyond — law students and others are demanding that law schools do better. Our focus on racial justice in the Movement Lawyering Lab is a part of our efforts to answer that call.

B. Interdisciplinary Co-Teaching

We believe that co-teaching, while not always feasible, carries several benefits for both students and instructors. Students are exposed to different teaching styles and perspectives, they receive feedback from professors with different backgrounds, and the professors themselves benefit from sharing their ideas and responsibilities in course development and in the classroom. In the Movement Lawyering Lab, we were fortunate to expand the benefits of co-teaching by incorporating a community organizer as a co-professor. Bringing an organizer into the classroom — not just as partner in the field — helps cement to students the value and expertise that non-legal experts bring.⁵⁸ To our knowledge, it is rare, if not unprecedented, for law professors to co-teach a course with a community organizer who is not an attorney. By positioning Dr. Kim as an equal professor who has knowledge to share with students, we sought to challenge traditional notions of who law students can and should learn from, both in the classroom and in the field.

C. Partnerships with Local and National Groups

In the Movement Lawyering Lab, we have made a conscious decision to develop partnerships with organizations of varied size, experience, scope, and focus. We have partnered with an established Denver-based organization primarily, but not exclusively, focused on racial justice in public education. We partnered with two affiliates of a

58. See Harold McDougall, *Rebellious Law Professor: Combining Cause and Reflective Lawyering*, 65 J. LEGAL EDUC. 326, 339-40 (2015) (Professor Harold McDougall discusses how using “rebellious law professors again need to consider interdisciplinary approaches, turning to labor and community organizers to help teach students how to be conscious of the community that they deal with and how to create new analyses and solutions with collaborative thinking.” He also refers to interdisciplinarian Allen Repko’s work, which elevates interdisciplinary practitioners as individuals who “build bridges between disciplines by borrowing the tools and methods of one discipline for use in another. It is the rebellious law professor’s job to build bridges not just between law and economics, politics, history or psychology. It is also to build bridges to ‘lay’ problem-solvers whose intellectual discipline is rooted in their own community’s cultural DNA.”).

multi-issue justice movement lead by LGBTQ+ people of color that spans several southern states. We partnered with a newly formed organization focused on racial disparities in foster care systems. We also partnered with a national civil rights organization staffed by movement lawyers, and a national organization focused on racial and economic justice for Black people and lead by Black movement lawyers. By partnering with organizations in different circumstances — established and new, nationwide and local, well-funded and largely volunteer-run — our students gain important insights into the nature and challenges of movement work, while also seeking to provide meaningful support to their partners. They witness the challenges that a new organization experiences as it forms its identity, gathers new members, and establishes its agenda in furtherance of its goals. Our students also witness the skills necessary for organizers to work effectively on a national scale or build deep relationships at the local level. By diversifying the fieldwork placements, the Lab provides students with a wider range of project opportunities and a deeper knowledge of the varied nature of movement work.

D. Use of Multi-Faceted Advocacy Strategies, Resulting in a Diverse Set of Work Products

It is rare for movement lawyers to file litigation brief after litigation brief. Instead, movement lawyers have “a more expansive set of advocacy skills and [are] willing to use them, or at least [are] able to assist grassroots leaders in securing other resources to meet their needs.”⁵⁹ When working with partners to design projects, we express a willingness to contribute to campaigns in a multitude of ways. We do so intentionally, both in order to effectively serve the partner organizations and to provide students with a range of movement lawyering experiences. Community partners are easily able to identify areas of need and, in many cases, able to design projects for students to complete throughout the semester. With some partners, however, the faculty team takes a more active role in helping to brainstorm projects that can be completed within the hours that students are able to devote and in the duration of a semester.

In either case, partner organizations have asked students to engage both in short-term projects and semester-long efforts. At times,

59. Jim Freeman, *Supporting Social Movements: A Brief Guide for Lawyers and Law Students*, 12 HASTINGS RACE & POVERTY L.J. 191, 200 (2015) (“[M]any movement lawyers work with grassroots leaders to conduct significant research projects, perform data analysis, plan organizing strategies, secure individual and organizational allies, and develop and implement a wide variety of traditional media, social media, and other communications strategies.”).

students also engaged in rapid response, in which partners asked students to drop their existing work at that moment and contribute to emergent on-the-ground needs. This was particularly apparent in the Spring 2020 semester when the coronavirus pandemic hit. In one local organization, students were originally slotted to provide significant efforts around the Census, but the pandemic quickly required them to contribute to the creation of a set of demands that would be delivered to local leadership around housing, health, and economic stability. In addition to providing this team of students with feedback and support through supervision, Dr. Kim incorporated the student's experience in his class focused on rapid response, in which he identified the ways that movements are required to respond to unexpected crises and how they balance such efforts with existing campaigns.

The students produced a wide range of tangible work product for partners over the two semesters. Examples of completed work include:

1. A chart of the legislative landscape of trans-related legislation in four Southern states for a Black, queer-led organization, categorized into anti- and pro-, and divided into key subject areas such as family/youth, identification, solicitation, and much more;
2. Rapid response planning document around COVID-19 for a Latinx organizing group in Colorado;
3. Research on bail reform laws and policies in two states in the South;
4. Data template for a participatory action research survey for Latinx youth and parents in Colorado;
5. Multimedia-based political education webinar on race and the criminal justice system for an organizing partner in Texas;
6. COVID-19 legislation tracker and infographic documenting policy changes occurring across the country around criminal justice, housing, and other areas for a national organization with grassroots partners nationwide;
7. Sample policies and background research for community budgeting models;
8. Census information and outreach materials including a PowerPoint presentation for Latinx communities in Colorado; and
9. A letter to a southern governor in opposition to proposed legislation to be signed by movement members and allies.

1. Reflection

The final hallmark of the Movement Lawyering Lab is a focus on, and a commitment to, reflection. As scholar Timothy Casey has written: “A conscious and deliberate analysis of a lawyering performance can provide the new lawyer with insights into what choices were available, what internal and external factors affected the decision making process, and what societal forces affected the context of the representation.”⁶⁰ Casey further discusses how “the goals of reflective practice are to provide the professional with a self-improvement algorithm, and to increase the capacity of the professional to exercise judgment in the professional context.”⁶¹ “[R]eflective practice forces the professional to increase awareness of the factors that affect judgment[,] [and] [a] higher level of awareness and consciousness of the decision-making process will lead to better and more ethical practice.”⁶²

Reflective practice is a hallmark of experiential learning;⁶³ the Movement Lawyering Lab, accordingly, prioritizes reflective practice and reflective assessment. For example, supervision allows teams to reflect with their professor on their fieldwork, and project rounds allow teams to reflect with their classmates about issues and questions raised in their fieldwork. In addition to these opportunities, we incorporate several other reflection components throughout the course.

These opportunities include “bookend” self-reflective assessments. In the beginning of the semester, each student creates and shares a Story of Self.⁶⁴ In the Story of Self, students reflect on how they arrived at this work, what values they bring to the work, and why they are motivated to do this work. The students also share the challenges they have encountered and how they have managed those challenges. We ask students to engage in the Story of Self exercise because, as Ganz shares, “when you do public work, you have a re-

60. Timothy Casey, *Reflective Practice in Legal Education: The Stages of Reflection*, 20 CLINICAL L. REV. 317, 319 (2014).

61. *Id.* at 321.

62. *Id.*

63. See ABA STANDARDS & RULES OF PROC. FOR APPROVAL OF L. SCHS. Standard 304(a)(5) (AM. BAR ASS'N 2020-2021); see also Colleen F. Shanahan & Emily A. Benfer, *Adaptive Clinical Teaching*, 19 CLINICAL L. REV. 517 (2013) (A core element of clinical teaching is asking students to be reflective, thoughtful, and strategic in their learning and lawyering); Peter Toll Hoffman, *The Stages of the Clinical Supervisory Relationship*, 4 ANTIOCH L.J. 301, 301-02 (1986); Anahid Gharakhanian, *ABA Standard 305's "Guided Reflections": A Perfect Fit for Guided Fieldwork*, 14 CLINICAL L. REV. 61 (2007).

64. See, e.g., Marshall Ganz, *Telling Your Public Story: Self, Us, Now*, WELCOMING REFUGEES, <https://www.welcomingrefugees.org/sites/default/files/documents/resources/Public%20Story%20Worksheet07Ganz.pdf> (last visited Sept. 18, 2020) (The Story of Self was developed by Marshall Ganz); *What is Public Narrative and How Can We Use It?*, WORKING NARRATIVES, <https://workingnarratives.org/article/public-narrative/> (last visited Sept. 17, 2020).

sponsibility to offer a public account of who you are, why you do what you do, and where you hope to lead.”⁶⁵ In the Movement Lawyering Lab, we remind our students that our partners and the impacted communities they serve are constantly asked to share their stories. We expect truth, vulnerability, and reflection from them all of the time, whether it is for a news media outlet, legislative testimony, or a legal complaint. The Story of Self is one technique that encourages us, as movement lawyers, to begin sharing our own truths and vulnerabilities; we then better understand what we and others ask of our partners. When we are grounded in who we are and why we are here — especially if and when we share that with others, including partners — we experience tremendous growth in ourselves and begin to develop more authentic relationships with partners.

Towards the end of the seminar, we return to an individual reflection exercise, offering students a fairly wide-open prompt that asks them to reflect on their overall experience with movement lawyering. We ask students to create a culminating project that allows them to cover the most important things that they learned about movement lawyering and about themselves as future lawyers. We encourage students to critique the field and themselves, and to share both positive and constructive thoughts. Students are not assessed on whether they find movement lawyering to be a good fit for their practice, but rather on how thoughtfully they have engaged with, and reflected on, their experiences as movement lawyers. We allow students to share their reflection in virtually any format, with the exception of a traditional, reflective essay. We offer suggestions for other mediums, such as Prezi presentations, songs, artwork, comics, videos, games, and interviews. All students share their culminating reflections with the class during our final session together.

IV. CONCLUSION

As grassroots communities continue to actively demand change and lead racial, social, and economic justice campaigns across the country, lawyers must find additional ways to meaningfully contribute to their efforts. While such communities will always need lawyers to represent members in court on individual matters, their needs do not end there. If communities and lawyers truly want to contribute to large-scale transformative change that challenges traditional notions of power, lawyers must be willing to step outside the courtroom, look

65. Ganz, *supra* note 64.

beyond an individual case, and offer multi-faceted support that furthers the campaign.

Movement lawyering is nothing new, but legal education has generally failed for generations to prepare law students to engage in this type of advocacy. The Movement Lawyering Lab at Denver Law is one model that provides students with in-depth exposure to this framework and allows them to contribute to the needs of active campaigns. We hope it provides guidance and inspiration to create similar models at law schools across the country. If we can graduate a greater number of lawyers who understand the need to center community, race, and power-shifting in their work and are prepared to deploy an array of skills to fulfill such goals, we will be one step closer to offering the support that communities of color and other oppressed communities so richly deserve, and to the long-term vision of achieving an equitable and just world.

